

## **GENERAL TERMS AND CONDITIONS OF HIRE OF PLANT**

### **1. DEFINITIONS.**

- (a) NZL Group Limited is the Company letting the plant on hire is hereinafter referred to as the "Owner" and this expression includes its successors.
- (b) The "Hirer" is the Company firm or person taking the Owners Plant on hire and this expression includes his successors or personal representatives.
- (c) "Plant" shall include any machine or part thereof and any attachments or fittings or replacements or any other thing hired under this contract.
- (d) "Regulations" means any Act of Parliament, regulation, bylaw or other similar instrument whether national or local, including any amendment thereto or re-enactment or replacement thereof
- (e) "Hire Rate" shall be the rate of hire of the Plant as provided overleaf and subject to the provisions of these General Terms and Conditions of Hire.

### **2. ACCEPTANCE**

- (a) The Hirers order, whether oral or in writing, for the supply of Plant shall be construed as an expression of acceptance of these General Terms and Conditions of Hire and so far as any provision of the Hirer's said order be inconsistent therewith these General Terms and Conditions of Hire shall be deemed to prevail.
- (b) Any variation or purported variation of these General Terms and Conditions of Hire shall be deemed to be of no effect unless otherwise agreed in writing signed by a Director or Principal of the owner.
- (c) The Hirer hereby acknowledges that no representations have been made to him by the Owner. Its servants or agents, save where any particular purpose or work in any particular place has been made known by the Hirer to the Owner or where such representations (if any) have been notified in writing to the owner or before the making of this contract.

### **3. COMMENCEMENT OF HIRE**

Subject to the other provisions of this Contract, the Owner shall supply the Plant on the delivery date and at the site stated overleaf. The period of hire shall start on such delivery. Hire charges shall commence on delivery unless otherwise stated on the face of this Contract Responsibility for loss or damage to the Plant is accepted by the Hirer from the time the Plant is delivered to the site until it is removed from the site by, or on the instructions of, the Owner. This responsibility will also apply whilst the Plant is on site during any period prior to the commencement of the hire period or after its termination whilst the Plant is awaiting collection.

### **4. MAINTENANCE AND REPAIR**

#### **Owners Obligations**

- (a) The Owner shall ensure that at the commencement of the hire the Plant shall be in good working order and properly maintained. Unless notification to the contrary is received by the Owner within 48 hours of delivery to the site, the Plant shall be deemed to have been delivered in good working order.
- (b) The Owner shall (save as hereinafter provided) carry out and provide all necessary repairs and replacements as quickly as reasonably possible and (so far as reasonably possible and during normal working hours at times to suit the convenience of the Hirer.

### **5. Hirer's Obligations**

- (a) The Hirer shall return the Plant with the same tyre type and tyre life as at commencement of the hire period unless otherwise agreed in writing or the owner will

apply an hourly rate to the invoice to cover covering tyre wear. The Hirer will repair all punctures and replace all damaged tyres (and tyre rims) at their own expense; but save as aforesaid shall not repair the Plant or make replacements or alterations unless authorised to do so by the Owner. Any replacements by the Hirer shall forthwith become the property of the Owner, and part of the Plant unless otherwise agreed in writing.

(b) The Hirer shall forthwith notify the Owner if the Plant breaks down or fails to work properly, or if any repairs or replacements are necessary.

(c) The Hirer shall at all reasonable times allow the Owner or its accredited representatives or its insurers' representatives to have access to the Plant to inspect, test, adjust, repair or replace the same

(d) The Hirer shall provide fuel, oil and grease and shall carry out a daily check to ensure that the correct engine, hydraulic, and cooling system levels are maintained, and shall take steps to ensure the protection of the plant from damage by frost, including the use of a suitable anti-freeze mixture in the proportion specified by the makers of the Plant, regular cleaning, the maintenance of the correct tyre pressures and the tightening of wheel nuts.

(e) Without prejudice to the generality of the foregoing the Hirer shall cause the following steps to be taken to maintain any traction battery forming part of the Plant.

(1) Battery must be properly charged, must at no time be operated in a discharged condition and must be allowed to cool for at least half an hour before use.

(2) Battery must be checked daily to ensure the correct level of distilled water is maintained.

(3) An equalizing charge must be carried out every four weeks. Where an equalizing charge is given the charger must be switched off manually after four (4) hours as the charge termination automatic relay only operates in the 'normal' charge position on the charging apparatus.

Serious battery damage will occur if these points are not supervised

## 6. HIRERS LIABILITY FOR LOSS OR DAMAGE

(a) The Hirer accepts full responsibility to the Owner for loss or damage to or destruction of the Plant suffered during the period of hire from whatever cause the same may arise (fair wear and tear or Owners Negligence excepted) and is fully responsible to the owner for the safe keeping of the Plant and its return in equal order to the Owner at the end of the hire (fair wear and tear excepted).

(b) The Hirer accepts all liability and responsibility in respect of, and shall fully and completely indemnify the Owner against, all third party claims and losses howsoever arising in respect of damage to or loss or destruction of any property or in respect of the personal injury or death of anybody in any way caused by or relating to the Plant or its use (including but not limited to the payment of all damages costs and charges in connection therewith except insofar as the damage, loss, destruction, injury or death directly results from due to the negligence of the Owner its employees or agents

(c) The Owner shall not be liable to the Hirer in respect of any damage to or loss or destruction of the property of the Hirer nor in respect of the personal injury or death of the Hirer or t5he Hirer's employees or contractors or other person in any way caused by or relating to the plant or its use except insofar as any such damage loss destruction injury or death directly results from the negligence of the Owner its employees or agents.

## 7. PAYMENT

(a) Unless otherwise agreed in writing the Owner shall render invoices to include where applicable the price of transport to and from the site and insurance and licensing effected by the Owner pursuant to Clause 10(c) hereof at the end of each month for Plant on hire during that month or at the expiration of the hire whichever is



the earlier or in case of a long term hire monthly in advance; the Hirer shall pay by the 20th day of the month following presentation of invoices,

(b) Immediately upon the hiring being terminated by the Owner in accordance with sub clause 13(b) the Hirer shall pay to the Owner (in addition to any compensation payable hereunder) all moneys then accrued due under this contract and any moneys which the Owner may be liable pay to any third party by reason of any seizure or removal.

(c) The Hirer shall pay the Owner forthwith for all repairs and replacements to the Plant, except from repairs and replacements arising from fair wear and tear or from notification (given under the proviso to paragraph (a) of the Owners obligation under Clause 5 hereof.

#### 8. SUBLETTING

The Hirer shall not without the consent of the Owner assign, sub let, mortgage, charge, pledge, and part with possession of or otherwise deal with the Plant.

#### 9. HANDLING OF PLANT

(a) The Plant shall remain the property of the Owner but shall at all times after delivery to the site be under the direction or control of the Hirer only. The Hirer is fully responsible to the Owner for the use of the Plant only for purposes and in places for which it is suitable and for his own business and in a skilful safe and workmanlike manner and in accord with the Regulations. If the Plant should for any reason require recovery, then the hirer shall be responsible for all costs incurred.

(b) The Hirer shall employ an experienced and qualified driver (not being less than 18 years of age) to operate the Plant in a safe and proper manner. Where however the Owner provides the services of a driver with the Plant, he shall work under the supervision and instruction of the Hirer's agent or his representative. For the duration of the hire the driver shall be deemed to be a servant of the Hirer who alone shall be responsible for his actions as though he were in the Hirer's direct employ. The Hirer shall not allow any person other than the driver provided by the Hirer or the Owner to operate the Plant without the Owners consent in writing.

(c) Other than for trailers or trucks designed to be operated on and licensed for use on the road the Hirer shall not use or cause or permit any other person to use the Plant on any public road without having first obtained the consent in writing of the Owner. In all cases the Hirer shall ensure that the driver holds a current driving license applicable to the Plant, such that regulatory and statutory compliance is strictly maintained at all times.

(d) The Owner shall on or before giving such consent license and insure the Plant in accordance with regulatory requirements and or relevant statutory enactments at the hirers expense unless otherwise agreed.

(e) The Hirer shall notify the Owner immediately in the event of any accident loss or damage arising and in any caused by or relating to the use of the Plant howsoever caused. Oral notification shall be confirmed in writing to the Owner as soon is reasonably possible.

#### 10. CHANGE OF SITE

Other than in the course of reasonable operation, the Hirer shall not move or permit the Plant to be moved from the site specified overleaf without the Owners prior consent in writing. Any consent given by the owner is without prejudice to all the other obligations of the hirer under this contract.

#### 11. OWNER PLATES

These may be affixed or marked on the Plant by the Owner and shall not be removed,

## 12. TERMINATION OF HIRE

(a) Except in the case of a fixed term contract the hire of the Plant may be terminated by either party giving the other party not less than seven days notice.

(b) Without prejudice to the other provisions of this contract, should the Hirer: mutilated or obliterated by the Hirer.

(i) Fail to make payment of the Hire charges as detailed in paragraph 7(a)

(ii) Fail to observe and perform any of the other terms and conditions of this contract, or

(iii) Do or cause to be done or permit or suffer anything whereby the Owner's rights in the plant are prejudiced or put into Jeopardy, or

(iv) Commit any act of bankruptcy or have a receiver appointed or make any arrangement or composition with his creditors, or being a company go into liquidation whether compulsory or voluntary,

(v) Or suffer any distress or execution upon his property, Then in any such case the Owner may, forthwith determine the hiring and seize and remove the Plant for which purpose it shall be lawful for the Owner to enter into or upon any premises or site where the Plant may be.

(vi) When the hire is terminated it shall be the responsibility of the Owner to collect the Plant from the site; but if the plant is not collected at the termination of the hire the Hirer shall continue to accept full responsibility and liability as set out in Clause 6 of this contract until it is so collected.

## 13. ALLOWANCES AND LIABILITY

(a) Without prejudice to the provisions for payment hereinbefore set out, the Hirer shall be fully liable to the Owner for damages for any breach of this Contract.

(b) The Owner shall not be liable to the Hirer for any consequential or indirect loss or damage (including loss of profits) arising out of any accident or damages howsoever caused, provided always that nothing in this sub clause shall protect the Hirer against liability arising from a fundamental breach of contract on its part.

(c) The owner shall not be liable to the Hirer for any loss or damage caused by delay in delivery or non delivery of the Plant or by delay in repairing or replacing the Plant if such delay or non delivery is caused by an industrial dispute (including but not limited to strikes or lockouts), by force majeure by non-availability of spare parts or by any other circumstances beyond the Hirers control.

(d) Hire charges shall continue during any stoppage whether or not the Plant is returned to the Hirers Works and whether or not a replacement of the Plant is supplied for the period of the stoppage save that by agreement with the Hirer that the Owner may give credit against hire charges for any stoppage due to a breakdown of the plant caused by an inherent fault or fair wear and tear notified to the Owner by the Hirer under Clause 5 hereof.

(e) The Hirer shall be liable for hire charges at the "Hire Rate" in respect of any period after the termination of this Agreement during which the Plant or any part thereof cannot be removed from the site to the Owners depot owing to an industrial dispute (including but not limited to strikes or lockouts) affecting the Hirer or the site.

## 14. INSURANCE

(a) The Hirer shall at the hirers expense fully insure with reputable insurers.

(1) The Plant as described overleaf for the value shown, against loss or damage or destruction howsoever arising

(2) In respect of all the Hirers liability (or responsibility and indemnify the Owner within sub Clause 6 (b) above and

(3) subject to Clause 10 (c) above. In respect of the Hirer's liability to third parties relating to the plant or its use.

(2) The Hirer shall

(1) Produce the policy or policies effected hereunder for inspection on demand and



(2) Hand the proceeds of any claim under sub Clause (i) above to the Order of the Owner.

15 . TIME OF INDULGENCE

Any time or other indulgence granted by the Owner shall not affect the strict rights of the Owner under this Contract.

17 The Law governing this contract shall be the law of New Zealand.