

Terms and Conditions of Hire

1. INTERPRETATION

1.1 In these Conditions of hire (unless the context otherwise requires) the following words shall have the following meanings:-

- "Conditions" means these conditions of hire.
- "Contract" means any contract between the Owner and the Hirer for the hire of a unit of Plant.
- "Hire Period" means the period set out in Condition 3.
- "Hire Rates" means the Owner's rates of hire for Plant in force from time to time.
- "Hirer" means the company, firm, body or person hiring the Plant.
- "Order" means any order for Plant given by the Hirer to the Owner.
- "Owner" means Maccaferri Limited
- "Plant" means all plant, vehicles, machinery and equipment of any nature and all accessories for them, including without limitation compressed air guns and lifting frames, which the Owner hires to the Hirer.
- "Site" means the site specified in the Contract at which the Plant is to be used.
- "Week" means seven consecutive days.
- "Working" means 9.00 am to 5.00 pm Monday to Friday not including English bank holidays.

1.2 Headings are for reference only and will not affect the interpretation of these Conditions.

2. APPLICATION OF TERMS

- 2.1 Subject to Condition 2.3, these Conditions shall apply to the hire of all Plant by the Owner to the Hirer and to all Contracts to the exclusion of any other terms and conditions including any which the Hirer may purport to apply.
- 2.2 Each Order for Plant or delivery instruction from the Hirer shall be an offer by the Hirer to Hire Plant subject to these Conditions and any acceptance by the Owner of such Order or delivery instruction shall be on and subject to these Conditions. The Hirer must ensure that the terms of its Order are complete and accurate.
- 2.3 Any variation to these Conditions and any representation about the Plant will only be effective if it is agreed in writing, contains a specific reference to these Conditions and is signed by a duly authorised officer of the Owner.
- 2.4 All drawings, descriptive matter, specifications, data, advertising and other similar information issued by or on behalf of the Owner are issued only to give an approximate idea of the Plant described in them and will not form part of the Contract.
- 2.5 Any Contract may only be cancelled or varied by the Hirer with the prior written consent of the Owner and on terms that the Hirer will indemnify the Owner in full against all losses (including but not limited to loss of profit), costs, damages, charges and expenses incurred (directly or indirectly) by the Owner as a result of such cancellation or variation.

3. COMMENCEMENT AND TERMINATION OF HIRE

- 3.1 If Plant is collected hire shall commence from the time that the plant leaves the Owner's (or its sub-contractor's) premises or is made available for collection in accordance with the Contract (whichever is earlier). If Plant is delivered by or on behalf of the Owner, the hire shall commence from the time of arrival on Site.
- 3.2 The hire shall continue (subject to the provisions for earlier termination set out in these Conditions) until the termination date specified in the Contract or where no such date is specified until either party gives the other written notice of termination.

4. DELIVERY

- 4.1 Delivery shall take place when the Plant is delivered to the Site or made available for collection where it is to be collected.
- 4.2 The Owner will use reasonable endeavors to deliver the Plant on the dates and times set out in the Contract but they are estimates only and the Owner will not be liable for the consequences of any delay or failure to deliver if the duration of the delay is not substantial or if the delay or failure is due to any circumstances beyond the Owner's reasonable control or of an unexpected or exceptional nature. The Owner uses independent carriers to deliver to site and the Owner's liability shall not in any event exceed that undertaken by such carrier.

4.3 The Hirer shall be responsible for unloading and loading the Plant at Site and for all instructions given by it to any carrier who delivers or collects it and such carrier shall be deemed to be acting under the Hirer's instruction. The Hirer shall ensure that the place where Plant is to be loaded and unloaded (and all access routes to it) are appropriate for the Plant concerned and any vehicle on which it is supplied.

4.4 The Plant will be conclusively deemed complete and in good condition at delivery save for any fault not noticeable by reasonable examination unless the Hirer notifies the Owner to the contrary by telephone on the day of delivery to Site and confirms this in writing within 3 working days.

5. RISK AND OWNERSHIP

- 5.1 The Plant is at the risk of the Hirer from the time that it leaves the premises of the Owner (or its sub-contractor as the case may be) until the time of its return to such premises.
- 5.2 The Plant is and shall at all times remain the property of the Owner and the Hirer shall have no right title or interest in or to it. The Hirer shall not remove or deface any plate or marking on the Plant identifying the Owner as the owner of the Plant.
- 5.3 The Hirer shall keep the Plant free and clear of any and all levies, liens, security interests and encumbrances of any kind, shall protect the Plant against distress, execution or seizure and shall give the Owner prompt notice of any attachment or judicial process affecting the Plant.
- 5.4 The Hirer shall ensure that title to the Plant does not pass to the owner or occupier of any land/building or any third party whether by being fixed to it or otherwise.

6. CHARGES AND PAYMENT

- 6.1 The Hirer shall pay the Owner the Hire Rates for the Plant for the Hire Period.
- 6.2 At any time and from time to time during a Contract the Hirer may alter Hire Rates and from the date of notification of such alteration to the Hirer the Plant shall be hired at the Hire Rates as so altered.
- 6.3 Payment will be due as invoiced by the Owner to the Hirer. Invoices are due for payment in full 30 days from date of invoice, unless otherwise agreed. The Hirer shall pay all amounts due under a Contract in full without any deduction or withholding other than as required by law and shall not be entitled to assert any credit, set-off or counterclaim against the Owner. All Hire Rates, delivery and collection charges exclude value added tax which the Hirer will pay in addition to such charges.
- 6.4 Time for payment will be of the essence of the Contract and the Hirer will indemnify the Owner against all expenses and legal costs incurred by the Owner in recovering overdue amounts. No payment shall be deemed to have been received until the Owner has received cleared funds.
- 6.5 Interest shall be due at [4%] above the base rate of [insert appropriate bank] per year, calculated daily and compounded monthly on all overdue sums from the due date for payment until the actual date of payment inclusive and both after as well as before judgment. Such interest shall be payable to the Owner by the Hirer on demand.

7. CARE OF PLANT

- 7.1 The Hirer undertakes that during the Hire Period he shall take all reasonable and proper care of the Plant and maintain it in good and serviceable condition, stored appropriately and shall not operate (or permit others to operate) the Plant after it has become defective, damaged or in a dangerous state.
- 7.2 If any Plant is damaged or breaks down as a result, directly or indirectly, of the Hirer's breach of Contract, negligence, breach of statutory duty or other act or omission or as a result of willful or accidental damage to the Plant, the Hirer shall be liable to the Owner for:

- 7.2.1 the full cost of repair of the unit of Plant damaged or broken down; and
- 7.2.2 the Owner's hire charges for the unit of Plant until it has been fully repaired.

8. BREAKDOWN

- 8.1 Any breakdown or unsatisfactory working of the Plant must be notified immediately to the Owner and for this purpose notification shall not be effective until it is actually received by the Owner.
- 8.2 The Hirer shall not attempt to make repairs himself without the prior written authority of the Owner.
- 8.3 Each item of Plant is hired as a separate unit under a separate Contract and the breakdown or stoppage of one or more units shall not entitle the Hirer to compensation

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or allowance for the loss of working time by any other unit or units of Plant working in conjunction with it.

9. ACCESS AND MAINTENANCE

9.1 The Hirer shall allow the Owner's employees, and agents access to the Plant at all reasonable times to inspect, test, maintain, repair or replace it. The Hirer shall be responsible for providing safe, proper and adequate access for such purposes and for delivery and collection of the Plant.

9.2 The Owner will not charge the Hirer for routine maintenance or servicing during a Working Week but if the Hirer only makes Plant available for this purpose outside the Working Week then the Owner may charge the Hirer for the additional cost to the Owner.

10. LIMITATION OF LIABILITY

10.1 Nothing in these Conditions shall exclude or limit the Owner's liability to an individual for death or personal injury caused by the Owner's negligence or for liability arising out of the Owner's fraudulent misstatement.

10.2 Subject to Condition 10.1, the Owner's sole liability for failing to supply Plant or for delivering Plant which is not in good working condition or for the breakdown or unsatisfactory working of Plant shall be at its option to:

10.2.1 repair or replace or supply replacement Plant, in which case the Hirer shall pay no hire charges from notification to the Owner in accordance with the terms of these Conditions until repair or replacement has taken place; or

10.2.2 to terminate the relevant Contract, in which case it's sole liability to the Hirer for such termination shall be to refund to the Hirer pro rata the hire charges, which the Hirer has paid in respect of any period from and including the date on which the Hirer notifies the Owner in accordance with the terms of these Conditions.

10.3 Without prejudice to the other Conditions the Owner shall not be liable for any damage to or loss caused in connection with the use of the Plant which occurs at any time when the Plant is used other than strictly in accordance with these Conditions.

10.4 The Hirer shall keep the Owner indemnified on demand from and against all costs, claims, losses, demands, expenses, fines, penalties and other liability whatsoever ("Claims") which may be made against or sustained by the Owner, its employees or agents arising directly or indirectly out of the Hirer's breach of the Contract, negligence or breach of statutory duty.

10.5 The Hirer shall also keep the Owner indemnified on demand from and against all Claims made against or sustained by the Owner, its employees or agents arising directly or indirectly out of

10.5.1 injury to or death of the Hirer's employees, servants, agents or sub-contractors, caused by or in connection with the use or situation of the Plant and whether arising from the Owner's breach of contract, negligence, breach of statutory duty or in any other way whatsoever; or

10.5.2 any Claim made against the Owner by any third party arising out of or in connection with the operation, situation or possession of the Plant or performance of the Contract and whether arising from the Owner's breach of contract, negligence, breach of statutory duty or in any other way whatsoever.

The indemnities in Conditions 10.4 and 10.5 are given to the Owner for the benefit of itself, its employees sub-contractors and agents.

10.6 The Owner shall not in any event be liable for:

10.6.1 any loss of anticipated profits, damage to the Hirer's reputation or goodwill, loss of expected future business, damages costs or expenses payable by the Hirer to any third party; or

10.6.2 any consequential or indirect loss (whether economic or otherwise) suffered by the Hirer however it may be caused.

10.7 Without prejudice to the other Conditions and subject to Condition 10.1, the Owner's total liability in contract, tort (including negligence and breach of

statutory duty), misrepresentation or otherwise arising in connection with a Contract shall not exceed the total hire charges received by the Owner from the Hirer in respect of the unit of Plant to which such liability is related.

11. USE OF PLANT

11.1 The Hirer confirms that it has the necessary knowledge and experience to properly and safely operate the Plant and that it will ensure that at all times the Plant is operated in a safe manner using only appropriate equipment and operators that have the required expertise.

11.2 The Hirer shall ensure that any manufacturer's and/or Owner's instructions for the safe and proper use of the Plant are complied with. However, without limiting Condition 11.1 the Hirer acknowledges that the Owner is hiring the Plant to the Hirer solely on the basis that the Hirer has all of the necessary expertise required to use the Plant properly without further instruction.

11.3 For the avoidance of doubt, the Hirer shall at all times operate the Plant in accordance with all applicable health and safety legislation and guidance.

11.4 The Plant or any part of it shall not be moved from the Site, re-hired, sub-let or lent to any third party without the prior written agreement from the Owner.

12. WARRANTIES

12.1 The Owner warrants that all Plant supplied under a contract shall be in reasonable working condition as at the date of supply.

12.2 The Hirer warrants that all information and data supplied to the Owner by the Hirer, its agents or representatives, is accurate.

12.3 All other warranties, conditions and other terms implied by statute or common law are expressly excluded from the Contract to the fullest extent permitted by law.

13. INSURANCE AND ACCIDENTS

The Hirer shall keep the Plant insured until it is returned to the Owner with a reputable insurance company for an amount equal to the full new replacement value of the Plant on fully comprehensive terms (including third party liability) against loss or damage from any cause whatsoever, including, but without limitation, all risk of third party liability arising out of the transport, presence or use of the Plant. It shall provide the Owner with evidence of this insurance on demand and shall enforce such terms for the benefit of the Owner and assign any proceeds directly to the Owner on demand.

14. LICENCES AND COMPLIANCE WITH LAW

14.1 The Hirer agrees to obtain and maintain in force all permissions, licences and permits which required in connection with the installation, transport, use and operation of the Plant.

14.2 The Hirer shall be responsible for and shall comply with all relevant laws, regulations, codes of practice and requirements of any statutory, public, local or other competent authorities applicable in relation to the transport, use and operation of the Plant.

15. CONFIDENTIALITY

All intellectual property rights in material supplied by the Owner in shall remain the property of the Owner and information of a confidential nature supplied to the Hirer shall be treated by the Hirer as confidential and shall not without the consent in writing of the Owner be published or disclosed to any third party or made use of by the Hirer.

16. TERMINATION

Without prejudice to the Owner's other rights under the Contract, the Owner may terminate a Contract immediately on giving notice to the Hirer if:

16.1 the Hirer is in breach of any term of the Contract and has failed to remedy such breach within 14 days of receipt of written notice specifying the breach and requiring it to be remedied; or

16.2 the Hirer shall do or allow to be done any act or thing which may prejudice or endanger the Owner's property or rights in the Plant; or

16.3 the Hirer shall die or the Hirer shall have a bankruptcy order made against him; or

16.4 the Hirer shall be liquidated or wound up or have a petition for winding up presented against him or pass a resolution for voluntary winding up (otherwise than for a bona fide reconstruction), or a petition for the appointment of an administrator is presented against the Hirer or if the Hirer has a receiver or administrative receiver appointed or the Hirer shall convene any meeting of its creditors or make a deed of assignment or arrangement or otherwise compound with its creditors, or any step shall be taken to levy

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distress or execution upon any chattels of or in the possession of the Hirer or the Hirer shall be subject to any similar process in any jurisdiction outside England and Wales; or

16.5 the Hirer shall abandon the Plant; or

16.6 there is a change in control in the ownership or control of the Hirer; or

16.7 the Owner issues a general product recall in respect of any of the Plant supplied by it where termination wholly relates to the affected Plant.

17. CONSEQUENCES OF TERMINATION

Without prejudice to the Owner's other rights under these Conditions, immediately that the hiring terminates (whether in accordance with the Contract or otherwise):

17.1 the Hirer shall pay the Owner all arrears of hire charges and all hire charges which had the Owner's consent to the Hirer's possession of the Plant not been so determined were agreed to be paid by the Hirer to the Owner under the terms of the Contract;

17.2 the Hirer shall immediately return the Plant to the Owner or (if the Owner is to collect the Plant under the Contract) permit the Owner to take possession of the Plant wherever it may be and ensure that the Owner has adequate access for such purpose; and

17.3 the Hirer shall pay the Owner immediately on demand the cost of any repair, replacement or cleaning of the Plant incurred by the Owner following its return (or non-return as the case may be), other than such as is required as a result of fair wear and tear, together with Hire Rates for each day from the date of termination of the hire until the Plant is fit for re-hire. For the avoidance of doubt, it shall be for the Hirer to demonstrate that the condition of the Plant on its return to the Owner's premises is not the same as when it was collected.

18. GENERAL

18.1 If the Owner is delayed or prevented from performing its obligations under the Contract by any matter outside its reasonable control, including without limitation, bad weather, ground conditions, strikes, lockouts, labour disputes of any kind (whether of the Owner's own employees or others), war, hostilities or any local or national emergency, compliance with any order or request of any national, provincial, or other public authority, accident, failure of or delays to transportation or failure of any of the Owner's suppliers or sub-contractors, the Owner shall not be liable for any loss, damage or expenses incurred and may cancel the Contract or suspend it for the period during which such circumstance exists without incurring liability.

18.2 Any notice or document shall be deemed served, if delivered, at the time of delivery, if posted, 48 hours after posting and if sent facsimile transmission, at the time of transmission.

18.3 Nothing in these Conditions shall create, or be deemed to create a partnership or agency relationship between the parties.

18.4 The Hirer shall not be entitled to assign, mortgage, charge, hold on trust or dispose of any of its rights or subcontract or otherwise delegate any of its obligations under a Contract without the Owner's prior written consent.

18.5 Failure or delay by either party in exercising any right or remedy will not be construed as a waiver of such right or remedy or a waiver of any other right or remedy.

18.6 The illegality, invalidity or unenforceability of any provision of these Conditions will not affect the legality, validity or enforceability of any other provision of these Conditions.

18.7 Each right or remedy of the parties under these Conditions is without prejudice to any other right which that party may have under these Conditions or otherwise.

18.8 Save for the rights expressly granted in Conditions 10.4 and 10.5, a person who is not a party to the Contract will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

18.9 Where the Plant is supplied to the Hirer for use outside of England and Wales the Hirer shall be responsible for complying with any legislation or regulations governing the exportation and the importation of the Plant and for the payment of any duties on it.

18.10 The Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English and Welsh courts, except that the Owner shall be entitled to seek emergency relief, including but not limited to injunctive relief and to enforce the judgment of any English or Welsh court in any other jurisdiction that it considers appropriate.