

Terms and Conditions for Supply of Services

CIRCLE WASTE LIMITED T/A CIRCLE WASTE

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

1. Interpretation

1.1 In these Conditions:

"CLIENT" means the natural person or persons, firm, partnership, company, corporation, association, organisation or other body or entity named on the Sales Order Confirmation for whom the Company has agreed to provide the Specified Service in accordance with these conditions and those set out in the Sales Order Confirmation

"COMPANY" means CIRCLE WASTE LTD (UK) LTD (registered in England) under number 11239466

"COMPANY'S STANDARD CHARGES" means the charges shown on the Sales Order Confirmation

"CONTRACT" means the contract for the provision of the Specified Service

"CONTRACT PERIOD" means a minimum period of 12 months from the commencement of the Specified Service, unless otherwise agreed in writing between the Company's Authorised Representative and the Client

"SALES ORDER CONFIRMATION" means the confirmation sent by the Company to the Client within 7 days of an order being placed by the Client whether in writing or orally for the supply of services by the Company to the Client

"SITE" means the site where the Specified Service is to be provided

"SPECIFIED SERVICE" means the sole and exclusive supply of waste management, recycling and environmental services to the Client and which may be varied from time to time by the Sales Order Confirmation

"INCORRECT MATERIAL" means any waste material that falls outside of the description specified in the Company's quotation and Sales Order Confirmation

"ACCEPTANCE" means acknowledgement by the Client that once the Specified Service has commenced the Client accepts the Company's standard terms and conditions and such conditions of Contract take precedent over any other terms and conditions that exist or existed between the Company and the Client (and for evasion of doubt cannot be varied in any way, including by way of the Client's purchase order or acknowledgement of the Sales Order Confirmation, without the written agreement of an authorised representative of the Company, prior to the commencement of the Specified Service)

"SERVICE PROVIDER" means those persons or organisations, other than the Company's employees, that are retained or employed by the Company to carry out partial or total performance of the Contract

"CONFIDENTIAL INFORMATION" means any information that is clearly and precisely identified as confidential at the time of disclosure or by its nature confidential

"PERSONAL DATA" has the same meaning as section 1(3) of the Data Protection Act 1984

"AUTHORISED REPRESENTATIVE" means the person or persons that are authorised by the Company to act on behalf of the Company in relation to the Contract and will be of no lesser designation than that of a Director

1.2 The headings in these Conditions are for convenience only and shall not affect their construction or interpretation

2. Supply of the Specified Service

2.1 The Company shall provide the Specified Service to the Client subject to these Conditions. Any changes or additions to the Specified Service or these Conditions must be agreed in writing by the Company and the Client

2.2 The Specified Service shall be provided at the Site in agreement with the Sales Order Confirmation and these conditions

2.3 The Client shall, at its own expense, supply the Company with all necessary and required documents or other materials, and all necessary

data or other information relating to the Specified Service within adequate time to enable the Company to provide the Specified Service in accordance with the Contract and, in particular, shall supply an accurate and precise description of any materials or

waste to be handled or collected by the Company or its Service Provider, agent, sub-contractor or employee during the provision of the Specified Service. If it is unable to give an accurate description the Company is allowed and permitted to carry out an analysis

of any such materials or waste at the Client's expense. Where such information is supplied by the Client, the Client shall be responsible for its accuracy and that of any information supplied by its agent(s) or employees, to the Company

2.4 The Company may correct any typographical or other errors or omissions in any Sales Order Confirmation or invoice relating to the provision of the Specified Service without any liability or penalty to the Company

2.5 The Company may at any time without notifying the Client make any changes to the Specified Service, which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially or greatly affect the nature or quality of

the Specified Service

2.6 The Company or its nominated service provider will Supply the Specified Service and appropriate container(s) storage receptacles or equipment at the address specified in the Sales Order Confirmation and the Specified Service will be undertaken during normal operating hours unless otherwise agreed in writing with the Company

2.7 If applicable the Specified Service may be for a minimum number of services per month which may also be inclusive or exclusive of rental charges and/or charges for delivery/collection of receptacles/containers, and for a minimum period of time and such information will be detailed in the Company's offer (quotation) to the Client and will be confirmed in the Company's Sales Order Confirmation

3. Charges

3.1 Subject to any special terms agreed, the Client shall pay the Company's Standard Charges and any additional sums and costs which are applicable to the provision of the Specified Service or which, at the Company's sole discretion, are charged as a result of the Client's instructions or lack of instructions, or any other cause attributable to the Client including the provision by the Client of Incorrect Material.

3.2 The Company's Standard Charges quoted to the Client for the provision of the Specified Service will be exclusive of landfill tax unless otherwise stated in the Company's offer (quotation) to the Client.

3.3 All charges quoted to the Client for the provision of the Specified Service are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate.

3.4 The Company shall be entitled to invoice the Client at any time following the provision of the Specified Service unless it has been agreed otherwise in writing, by the Client, with the Company's Authorised Representative.

3.5 The Company's Standard Charges and any additional sums payable shall be paid by the Client (together with any applicable Value Added Tax, and without any set-off or other deduction) within 30 days of the date of the Company's invoice.

3.6 The Client's attention is drawn to prompt resolution of queries. Any queries must be provided in writing to the Company's credit control department within 14 days of the date of Company's invoice. To accord with the Company's sustainability policy and the requirement to eliminate paper or photo static copies of tickets (Proof of Delivery) and or copy invoices etc. they will not be supplied to the Client in this format. However, the documents are available on line and can be downloaded, at any time, by the Client, accessing their account on the Company's Reporting software. Failure to notify queries as defined in 3.6 will confirm acceptance by the Client of the Company's invoice and render it due for payment.

3.7 If payment is not made on the due date, the Company shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 4% above the base rate from time to time of Barclays Bank Plc, from the due date until the outstanding amount is paid in full. Additionally, the Company will have the right to seek court action for the recovery of any outstanding amounts and be entitled to reimbursement by the Client of all associated costs of taking such action, not limited to all legal and collection agency costs associated with the recovery of the outstanding amounts, together with an administrative fee(s) deemed reasonable by the Company at the time of taking such action, to cover the Company's own internal costs, associated with such action. Details of the Company's current administrative fee(s) are available by contacting the Company's Credit Control Manager.

3.8 The Company may vary the Standard Charges to take into consideration governmental landfill tax or such other increases including, but not limited to changes in the market pertaining to waste collection, disposal, recycling or reuse of waste, that has a direct or indirect effect on prices, or the interpretation or re classification of the rate of landfill tax (i.e., from a material previously classified as non-active to active, whether that being at the point of collection or once the material has been processed in a recycling facility, the outcome of which results in a higher proportion of tax being recovered by HMRC, fuel, labour, transport and, if applicable, any effect of any decrease in global commodity prices for recycled materials and any increases in associated export costs of such recycled materials, or any increased costs associated with the export of waste derived fuels/refuse derived fuels, to the European Union, or restrictions or tariffs on trade between the U.K. and the European Union (E.U.)

3.9 The Company reserves the right to apply a rental charge to any container where the frequency of service or collection has been less than once per week.

4. Warranties and Liability

4.1 The Company warrants to the Client that the Specified Service will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Sales Order Confirmation and at the intervals and within the times referred to in the Sales Order Confirmation. Where the Company supplies in connection with the provision of the Specified Service any goods supplied by a third party, the Company does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Company.

4.2 The Company holds no responsibility to the Client for any loss, damage, costs, expenses or other claims for compensation arising from instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault attributed to be beyond the control of the Company.

4.3 Except as expressly provided in these Conditions, the Company shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for any:

- (a) death or personal injury other than death or personal injury caused by the Company's negligence; or
- (b) damage to the tangible property of the Client or any third party unless such damage is caused by the negligence of the Company (but in any event the Company shall not be responsible for the damage described in condition 5.4)
- (c) loss of profits; or
- (d) loss of business; or
- (e) depletion of goodwill and/or similar losses; or
- (f) loss of anticipated savings; or
- (g) loss of contract; or
- (h) loss of use; or
- (i) loss or corruption of data or information; or
- (j) indirect, special or pure economic loss, damage, costs, expenses or other claims which arise out of or in connection with the provision of the Specified Service

4.4 In any event, the entire liability of the Company under or in connection with the Contract shall not exceed the amount of the Company's charges for the provision of the Specified Service, except as expressly provided in these Conditions

4.5 The Company shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Specified Service, if the delay or failure was due to any cause beyond the Company's reasonable control.

4.6 Nothing in these Conditions limits or excludes the liability of the Company for death or personal injury resulting from its negligence or any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the Company..

5. Obligations of the Client

5.1 Unless otherwise agreed, the Client shall be responsible for keeping in good condition, and insuring against "all risks" any container or equipment provided by the Company or its Service Provider, agent or sub-contractor and shall fully reimburse the Company for any damage or loss, any total loss at the replacement value of the container or equipment.

5.2 The Client shall not overload by means of weight or volume, or move any container or other equipment provided by the Company or its Service Provider, agent or sub-contractor, from the position from that which it was originally delivered and if the Client fails to observe the requirements of this clause the Client will indemnify the Company against all risks and costs associated with the same.

5.3 The Client shall not sell, charge, subcontract, re-hire, lend, affix any advertising data to or assign any container or other equipment supplied by the Company or its Service Provider, agent or sub-contractor without the consent in writing of an Authorised Representative of the Company.

5.4 It is the responsibility of the Client to ensure that the Site is a suitable location for the provision of the Specified Service and that any location should be left clear and unobstructed and be left free from the storage of materials or equipment in the vicinity of the container(s) which may result in the said materials or equipment being damaged, in which circumstance the Company will not accept liability for making good the damage, howsoever and by whom it was caused. Further, the Company shall not be responsible or liable for any damage done to any driveway, car park, entrance, or any other external surface area of the Site as a result of the Company or its Service Provider, agent or sub-contractor carrying out the Specified Service regardless of how and by whom such damage was caused. It is clearly understood that once the Service Providers vehicle leaves the public highway all risk and liability with respect to damage (other than injury to person) will become the sole responsibility of the Client.

5.5 The Client shall provide to the Company or its Service Provider, agents or sub-contractors, in a timely manner and at no extra cost, safe access to the Site, data, information and any other facilities, in order that the Company can perform its obligations and requirements under the Contract.

5.6 The Client shall inform the Company of, and comply, with all health and safety rules and regulations and any other reasonable security requirements that apply at the Site.

5.7 The Client will ensure that all equipment that is delivered to the Site will be used in a safe and correct manner in accordance (where applicable) with any instructions or manuals provided by the Company and the Company will ensure that all equipment so delivered will be in good working order and suitable for the purposes for which it is to be used in relation to the Specified Service and conforms and corresponds to all relevant United Kingdom standards or requirements.

5.8 The Client shall ensure that any materials or waste collected or handled by the Company or its Service Provider, agent or sub-contractor during the provision of the Specified Service correspond with any description given by the Client prior to the commencement of the Specified Service and/or contained in the Company's quotation and Sales Order Confirmation and, unless otherwise agreed in writing with the Authorised Representative of the Company, is packaged or contained adequately, safely and in accordance with any relevant legislation. The Company, without liability, is entitled to refuse to deal with any materials and waste that do not comply with this condition or recover any additional cost from the Client in relation to the handling or disposal of the Incorrect Material or waste.

5.9 The Client shall obtain and maintain all necessary licences, permits and consents unless otherwise agreed in writing with the Company and comply with all relevant legislation in relation to the Specified Service and ensure that they are in place before the date on which the Specified Service is due to commence. In circumstances where the Client fails to comply, the Client will fully indemnify the Company against all costs and fines, including any legal costs in defending such actions, incurred by the Company as a result of the Client's failure to comply and will reimburse the Company accordingly for the said amounts.

5.10 The Client shall be responsible for and indemnify the Company and its nominated service providers and agents in respect of all, costs, charges or losses sustained or incurred by the Company (including direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person) arising directly or indirectly from the Client's fraud, negligence or failure to perform or delay in the performance of any of its obligations in respect of these Conditions.

5.11 When the Client off-hire's containers they will provide to the Company at least 24 hours prior written notice of their intention to do so (subject to any minimum period of hire that may have been specified) and the Company will use its best endeavours to remove the same from site within 48 hours of such notice or will notify the client at the time of off-hire if a longer period of time is required. The Client notes that any such container (s) remains the responsibility of the Client until they have obtained a signed collection note from the Company's service provider and that any additional costs associated with the Client's failure to observe the procedure contained within this condition will be payable to the Company by the Client.

5.12 It is necessary for the Client to provide the Company with a written description of the waste to be consigned for disposal. Any change of waste description must be notified by the Client to the Company in advance in order that appropriate Transfer Note documentation can be raised. All waste will be consigned to a final disposal location which is appropriately licensed to accept that classification of waste. An explanation of codes will be provided upon request from the Company's compliance department.

5.13 The Client will not place Hazardous Waste as defined in the Hazardous Waste Regulations 2005 or any modification thereto, in to the Company's Service Provider's container(s) without specific notification and prior written consent of the Company and in an eventuality, where consent is not given by the Company, the Client will indemnify the Company against all costs, including any additional costs of removing and disposing of the waste, or any fines, or any other litigation costs that may be applicable to the said waste being placed into the container without the Company's consent.

6. Termination

6.1 The Client shall be entitled to terminate the Contract at any time, following the Contract Period, by giving not less than three months' written notice to the Company's Authorised Representative. 6.2 Either party may (without limiting any other remedy) at any time terminate the Contract by;

6.2.1 giving written notice to the other if the other commits any breach of these Conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, or ; 6.2.2 if the other goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed

6.3 On termination of the Contract, for any reason:

- (a) the Client shall immediately pay to the Company all of the Company's outstanding invoices and interest and, in respect of any services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
- (b) the Client agrees that in respect of circumstances detailed in condition 6.2.2 the Company will not be liable to the Client, or any other organisation, for the payment of any prebate, rebate or discount in respect of the Contract or the Specified Service, whether such payments are outstanding or have been invoiced by the Client to the Company and furthermore, the Company shall be entitled to the immediate reimbursement by the Client of any such payments previously made by the Company in respect of prebate, rebate or discount
- (c) the Client shall, within 14 days return all of the Company's property. If the Client fails to do so, then the Company may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping; and
- (d) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected

7. Non-Solicitation

7.1 Where the Company has negotiated with various Service Provider's to undertake Services on behalf of the Client, the Client agrees not to contact or treat with the Service Provider directly or during the term of the Contract and for a further period of twelve months following termination of the Contract. Additionally, if a Service Provider contacts or canvasses the Client they will inform the Company accordingly.

8. Timing

8.1 The Company will use its best endeavours to provide the Specified Service on the date and time that has been scheduled but accepts no liability or loss resulting from late or delayed arrival to Site.

9. Compliance with Contract

9.1 The Client, unless otherwise specified in the Contract shall use its best endeavours to ensure that the usage of the Specified Service is comparable with the Company's understanding of the Clients estimated annual volume.

9.2 Where the Company provides a reporting procedure on the usage of the Specified Service the Client will monitor the same against annual volume, quarterly and where there is significant variation in usage will endeavour to determine the reasons for such change and inform the Company accordingly.

9.3 Where significant variations in usage are identified which are likely to materially affect the estimated annual volume, the Client will give (30) days written notice to the Company of the revised estimated volume. It is accepted by the Client that any appreciable decrease may give rise to a revision in price.

10. Management Information

10.1 The Company will provide the Client with reports in a format and with content, as mutually agreed and the Company reserves the right to charge the Client for the provision of such information.

10.2 It should be noted that the Company or its nominated Service Provider(s) may operate ticketless systems, particularly in the case of scheduled trade waste collection containers (1100 litre or similar), mobile compaction containers (REL/FEL). In these circumstances individual proof of delivery tickets will not be available and in such circumstances an Annual Waste Transfer Note will be provided to signify proof of service and to discharge the Client's obligation under the Environmental Protection Act and the Client accepts that in such circumstances individual service tickets to denote proof that the service has been carried out will not be issued for signature by the Clients nominated representative.

10.3 In certain circumstances the Company may have to rely on estimated tonnage and in such circumstances will use its best endeavours to ensure that the data is correct utilising as its base, industry averages; however, in such cases the Company accepts no liability as to the precise accuracy of the same.

11. Insurance

11.1 Unless otherwise agreed in writing by the Authorised Representative of the Company, the Company will insure against its liability to an amount of, £10 million for Employers liability, £5 million for Public and Products liability and £5 million for Professional Indemnity. It is acknowledged by the Client that the Company may provide cover more than these individual amounts on a specific basis and at the written request of the Client, but any additional premium for providing such additional cover will be recoverable from the Client.

12. Duty of Care Section 34

12.1 All operations carried out by the Company or its nominated service provider will be in full compliance with the Duty of Care Section 34 of the Environmental Protection Act (1990). The Company carries the status of Registered Waste Carrier and Broker for the purposes of this Act (Section 34:3: D).

12.2 The Company may issue an Annual Waste Transfer Note, to satisfy the description and documentary requirements of the Duty of Care legislation for a period of 12 months, after which time the Annual Waste Transfer Note will automatically be renewed, unless notified by the Client in writing not to do so and as an important legal document that will require the Clients nominated representative to sign and return the Annual Waste Transfer Note to the Company, every cooperation will be given to the Company by the Client, to ensure that it is returned in a timely manner. No reminders will be sent to the Client following issue and it is the Clients responsibility to ensure that the Annual Waste Transfer Note is returned to the Company once it has been issued.

1. DEFINITIONS

- (a) The “Contract” is the Contract between the Owner and the Hirer for the hire of Plant, which incorporates the Offer and is governed by these conditions.
- (b) The “Hire Period” shall commence from the time when the Plant leaves the Owner’s depot or place where last employed and shall continue until the Plant is received back at the Owner’s named depot or other agreed location. For the avoidance of doubt the Hire Period includes the time Plant is left on site during a Holiday Period
- (c) The “Hirer” is the Company, firm, person, Corporation or public authority taking the Owner’s Plant on hire and includes their successors or personal representatives.
- (d) “Holiday Period” covers any cessation of work over Easter, Christmas and the New Year; as well as any other Bank or Public holidays.
- (e) “Offer” is the Owner’s offer to hire the Plant to the Hirer which will include details of the Plant to be hired, the Hire Period, relevant hire rates and charges and any supplementary conditions to be incorporated into the Contract.
- (f) The “Owner” is the Company, firm or person letting the Plant on hire and includes their successors, assignees or personal representatives.
- (g) “Plant” covers all classes of Plant, or replacement Plant, machinery, vehicles, equipment, accessories, and any ancillary items, vehicles or equipment therefor, which the Owner agrees to hire to the Hirer, or anything which is supplied by the Owner to effect the hire, and anything supplied by the Owner for the safe operation and routine inspection and maintenance of the Plant.
- (h) A “Working Day” shall be from 8.00 am to 4.30 pm, Monday to Thursday, and 8.00 am to 3.30 pm, on Friday allowing a half-hour lunch break each day, unless otherwise specified in the Contract.
- (i) A “Working Week” covers the period from 8.00 am on Monday to 3.30 pm on Friday, unless otherwise specified in the Contract.

2. EXTENT OF CONTRACT

No terms, conditions or warranties other than as specifically set forth in the Offer shall be deemed to be incorporated or to form part of the Contract or shall otherwise govern the relationship between the Owner and the Hirer in relation to the hire of any particular Plant pursuant to the Offer. This excludes all other terms or conditions which the Hirer may seek to apply under any order or acknowledgement or acceptance or similar document and supersedes all prior negotiations, representations or agreements, whether written or oral unless and to the extent that they are expressly accepted in writing and signed by the Owner. The Owner and the Hirer do not intend that any of the terms of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Contract, except that a person who is a successor to or an assignee of the rights of the Owner is deemed to become a party to the Contract after the date of succession or assignment (as the case may be).

3. ACCEPTANCE OF PLANT

Acceptance of the Plant on site implies acceptance of all terms and conditions herein unless otherwise previously agreed in writing.

4. UNLOADING AND LOADING

The Hirer shall be responsible for the unobstructed access and egress and, unless otherwise agreed in writing, for unloading and loading of the Plant at the site; and any personnel supplied by the Owner for such unloading and / or loading shall be deemed to be under the direction and control of the Hirer. Such personnel shall for all purposes in connection with their employment in the unloading and / or loading of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of clause 13) who shall be solely responsible for all claims arising in connection with unloading and / or loading of the Plant by, or with the assistance of, such personnel.

5. DELIVERY IN GOOD ORDER AND MAINTENANCE: INSPECTION REPORTS

- (a) Unless notification in writing to the contrary is received by the Owner from the Hirer in the case of Plant supplied with an operator within four working days, and in the case of Plant supplied without an operator within three working days, of the Plant being delivered to the site, the Plant shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with terms of the Contract and to the Hirer’s satisfaction, provided that where the Plant requires to be erected on site, the periods stated above shall be calculated from the date of completed erection of Plant. The Hirer shall be responsible for the safe keeping of the Plant, its use in a workmanlike manner within the manufacturer’s rated capacity and in accordance with the manufacturer’s and / or the Owner’s recommendations, and its return on the completion of the Hire Period in equal good order (fair wear and tear excepted).
- (b) The Hirer shall at all times when hiring Plant without the Owner’s operator or driver take all reasonable steps to keep himself acquainted with the state and condition of the Plant. If such Plant is continued at work or in use in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss, cost, expense or accidents whether directly or indirectly arising therefrom.
- (c) Any inspection report required under the relevant legislation, or a copy thereof, shall be supplied by the Owner, if requested by the Hirer, and returned on completion of the Hire Period.

6. SERVICING AND INSPECTION

The Hirer shall at all reasonable times allow the Owner, his agents or his insurers to have access to the Plant to inspect, test, adjust, repair or replace the same. So far as reasonably practicable the Hirer shall allow such access during the Working Day.

7. GROUND AND SITE CONDITIONS

- (a) The Hirer is deemed to have knowledge of the site or the property or land where the Plant is to be delivered and the Hirer warrants that the condition of the site or place of delivery of the Plant is suitable for the use of such Plant.
- (b) If, in the opinion of the Hirer, the ground (including any private access road or track) is soft or unsuitable for the Plant to work on, travel over, be transported over, be erected or dismantled on without timbers or equivalent support, the Hirer shall supply and lay suitable timbers or equivalent support in a suitable position for the Plant to travel over, work on, be transported over, be erected or dismantled on, including for the purpose of delivery and collection.
- (c) Any timber or other material supplied by the Owner is provided solely to assist the Hirer under their duties within clause 7(b) and expressly not to relieve him of his legal, regulatory or contractual obligations to ensure adequate stability of the Plant.
- (d) The Hirer is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the site and the Hirer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

8. HANDLING OF PLANT

- a) When a driver or operator or any person is supplied by the Owner with the Plant, the Owner shall supply a person competent in operating the Plant or for such purpose for which the person is supplied and such person shall be under the direction and control of the Hirer. Such drivers or operators or persons shall for all purposes in connection with their employment in the working of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of clause 13) and the Hirer shall be solely responsible for all claims arising in connection with the operation of the Plant by the said drivers / operators / persons.
- (b) The Hirer shall not allow any other person to operate such Plant without the Owner's prior written consent.
 - (c) Such drivers or operators or persons shall not operate any other plant or machinery or undertake work other than that for which they are supplied by the Owner unless previously agreed in writing between the Owner and the Hirer.

9. BREAKDOWN, REPAIRS AND ADJUSTMENT

- (a) Any breakdown or the unsatisfactory working of or damage to any part of the Plant must be notified immediately to the Owner, and confirmed in writing. Any claim for breakdown time will only be considered from the time and date at which written notification is received and acknowledged by the Owner.
- (b) Full allowance for the hire charges set out in the Offer will be made to the Hirer for any stoppage due to breakdown of the Plant caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs in accordance with the terms of the Contract.
- (c) The Hirer shall not (except for the changing of any tyre and repair of punctures), repair, modify or alter the Plant without the prior written permission of the Owner. The changing of any tyre and repair of punctures are however the responsibility of the Hirer who should arrange for them to be changed / repaired. The Hirer is responsible for all costs incurred in the changing or replacement of any tyre (which must be of an equivalent specification) as approved by the Owner and for the repair of any puncture.
- (d) The Hirer shall be responsible for all expense involved arising from any breakdown, unsatisfactory working of or damage to any part of the Plant due to the Hirer's negligence, misdirection or misuse of the Plant, whether by the Hirer or his servants, and for the payment of hire at the idle time rate as defined in clause 25, during the period the Plant is necessarily idle due to such breakdown, unsatisfactory working or damage. The Hirer is responsible for the cost of spares and / or repairs due to theft, loss or vandalism of the Plant. The Owner will be responsible for the cost of repairs, inclusive of the cost of spares, to the Plant involved in breakdown from all other causes.

10. OTHER STOPPAGES

No claims will be admitted (other than those allowed for under "Breakdown" (clause 9) or for "Idle Time" (clause 25), as herein provided), for stoppages through causes outside the Owner's control, including but not limited to bad weather and / or ground conditions nor shall the Owner be responsible for the cost or expense of recovering any Plant from soft or unsuitable ground, or a hazardous environment. For the avoidance of doubt, the Hirer shall be responsible for the cost and expense of recovering any Plant from soft or unsuitable ground or a hazardous environment.

11. LOSS OF OTHER PLANT DUE TO BREAKDOWN

Each item of Plant specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units or vehicles (whether the property of the Owner or otherwise) through any cause whatsoever, shall not entitle the Hirer to compensation or allowance for the loss of working time by any other unit or units of Plant working in conjunction therewith, provided that where two or more items of Plant are expressly hired together as a unit, such items shall be deemed to be one unit for the purpose of breakdown.

12. LIMITATION OF LIABILITY

Except for liability on the part of the Owner which is expressly provided for in the Contract (including these clauses):

- (a) the Owner shall have no liability or responsibility for any loss, or damage of whatever nature due to or arising through any cause beyond his reasonable control;
- (b) the Owner shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of the Contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the hire, for any of the Hirer's loss of profit, loss of use of the Plant or any other asset or facility, loss of production or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party, and / or any other financial or economic loss or indirect or consequential loss or damage of whatever nature; and
- (c) whenever the Contract (including these clauses) provides that any allowance is to be made against hire charges, such allowance shall be the Hirer's sole and exclusive remedy in respect of the circumstances giving rise to the allowance, and such remedy shall be limited to the amount of hire charges which would otherwise be or become due if the allowance in question had not been made.
- (d) For the avoidance of doubt, nothing in these conditions limits or seeks to exclude the Owner's liability for claims of death or personal injury caused by the Owner's negligence, fraud or for any other liability for which it is not permitted to seek to limit or exclude by operation of law.

13. HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE

- (a) For the avoidance of doubt it is hereby declared and agreed that nothing in this clause affects the operation of clauses 4, 5, 8 and 9 of these conditions.
- (b) For the duration of the Hire Period (which for the avoidance of doubt includes the time Plant is left on site during a Holiday Period) the Hirer shall, subject to the provisions referred to in sub paragraph (a) make good to the Owner all loss of or damage to the Plant from whatever cause the same may arise, fair wear and tear excepted, and except as provided in clause 9 herein, and shall also fully and completely indemnify the Owner and any personnel supplied by the Owner in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the Plant during the continuance of the Hire Period, and in connection therewith, whether arising under statute or common law. In the event of loss of or damage to the Plant, hire charges shall be continued at idle time rates as defined in clause 25 until the settlement has been agreed. Payment of the settlement must be made within 21 calendar days of the date of the agreement or idle time charges can be reinstated from the date of that agreement. Should idle time charges be re-instated, the agreed settlement figure remains payable in full.
- (c) Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury:
 - (i) prior to delivery of any Plant to the site (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving such highway) where the Plant is in transit by transport of the Owner or as otherwise arranged by the Owner,
 - (ii) during the erection and / or dismantling of any Plant where such Plant requires to be completely erected / dismantled on site, provided always that such erection / dismantling is under the exclusive control of the Owner or his agent,
 - (iii) after the Plant has been removed from the site and is in transit on a highway maintainable at the public expense (or where the site is not immediately adjacent to a highway maintainable at the public expense after it has joined such highway) to the Owner by transport of the Owner or as otherwise arranged by the Owner,
 - (iv) where the Plant is travelling to or from a site on a highway maintainable at the public expense (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving or after its joining such highway) under its own power with a driver supplied by the Owner.

14. NOTICE OF ACCIDENTS

If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notification must be given by the Hirer to the Owner by telephone and confirmed in writing to the Owner no later than 24 hours after such telephone notification. In relation to any claim in respect of which the Hirer is not bound to fully indemnify the Owner, no admission of liability, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's prior written permission.

15. RE-HIRING ETC.

Neither the Plant nor any part thereof shall be re-hired, sub-let, or lent to any third party without the prior written permission of the Owner.

16. CHANGE OF SITE

The Plant shall not be moved from the site to which it was delivered or consigned without the prior written permission of the Owner.

17. RETURN OF PLANT FOR REPAIRS

If during the Hire Period the Owner decides that urgent repairs to the Plant are necessary then he may arrange for such repairs to be carried out on site or at any location of his nomination. In the event that urgent repairs to the Plant are necessary the Owner shall be obliged to replace the Plant with similar Plant if available, the Owner (but without prejudice to any of the provisions of clauses 9 and / or 13) paying all transport charges involved. In the event of the Owner being unable to replace the Plant he shall be entitled to terminate the Contract forthwith (but without prejudice to any of the provisions of clauses 9 and / or 13) by giving written notice to the Hirer. If such termination occurs:

- (a) within three months from the commencement of the Hire Period, the Owner
(but without prejudice to any of the provisions of clauses 9 and / or 13) shall pay all transport charges involved, or,
- (b) more than three months from the commencement of the Hire Period, the
Owner (but without prejudice to any of the provisions of clauses 9 and / or 13) shall be liable only for the cost of reloading and return transport.

18. BASIS OF CHARGING

- (a) The Hirer shall render to the Owner for each Working Week an accurate statement of the number of hours the Plant has worked each day. When any personnel, operator or driver is supplied by the Owner, the Hirer shall sign their time record sheets. The signature of the Hirer's representative shall bind the Hirer to accept the hours shown on the time records sheets.
- (b) Full allowance will be made for breakdown periods resulting from mechanical or electrical faults or absence of driver or operator supplied by the Owner except where breakdown is due to acts or omissions of third parties and / or the Hirer's misuse, misdirection or negligence, subject however to the provisions of clause 8 of these conditions.
- (c) Breakdown time in respect of such periods shall be allowed for not more than the Working Day less the actual hours worked.
- (d) Plant shall be hired out either:
 - (i) for a stated minimum number of hours per Working Day or per Working Week or,
 - (ii) without any qualification as to minimum hours. Odd days at the beginning and at the end of the Hire Period shall be charged pro rata.
- (e) Stoppages due to changing of tyres and repairs to punctures will be chargeable as working time up to a maximum of 2 hours for any one stoppage and any excess will be charged for at the appropriate idle time rates.
- (f) In the case of Plant which is required to be dismantled for the purpose of transportation, if the Owner agrees to a modification of the hire charge for the period required for assembling on site and dismantling upon completion of the Hire Period, such modification of the hire charge and the Hire Period for which it shall apply shall be stated in the Offer / Contract.

19. PLANT HIRED ON A DAILY BASIS WITHOUT QUALIFICATION AS TO HOURS

The full daily rate will be charged on a daily basis irrespective of the hours worked except in the case of breakdown for which the Owner is responsible, when the actual hours worked will be charged pro rata of the average Working Day. No hire charge shall be made for Saturday and / or Sunday unless the Plant is actually worked.

20. PLANT HIRED BY THE WEEK OR MONTH WITHOUT QUALIFICATION AS TO HOURS

The weekly or monthly rate shall be charged irrespective of the number of hours worked, except in the case of breakdown for which the Owner is responsible when an allowance pro rata of the agreed weekly rate or pro rata of the agreed monthly rate will be made for each full Working Day broken down calculated to the nearest half Working Day.

21. PLANT HIRED BY THE WEEK OR THE HOUR FOR A MINIMUM OF 39 HOURS PER WEEK

The full hire for the minimum period in the Contract will be charged and an additional pro rata charge will be made for hours worked in excess of such minimum period. Allowance will be made for breakdowns up to 8 hours except on Fridays when the allowance will be up to 7 hours providing always that where the actual hours worked are in excess of the minimum period less breakdown time, the actual hours worked shall be chargeable. Idle time for this purpose shall be treated as actual working time. The minimum Working Week of 39 hours shall be reduced by 8 hours Monday to Thursday and 7 hours Friday for each Holiday Period occurring in such Working Week, provided that the Plant is not in use during such Holiday Period.

22. "ALL-IN" RATES

Where "All-In" rates are charged by agreement the minimum period shall be as defined in the Contract and in accordance with the hire rates and terms contained therein, subject to the provisions of clause 26.

23. COMMENCEMENT AND TERMINATION OF CONTRACT (TRANSPORT OF PLANT)

- (a) The Hire Period shall commence from the time when the Plant leaves the
Owner's depot or place where last employed and shall continue until the Plant is received back at the Owner's named depot or other agreed location but an allowance shall be made of not more than one day's hire charge each way for travelling time. If the Plant is

used on the day of travelling, full hire rates shall be paid for the period of use on that day. If more than one day is properly and unavoidably occupied in transporting the Plant, a hire charge at idle time rates shall be payable for such extra time, provided that where Plant is hired for a total period of less than one Working Week, the full hire rate shall be paid from the date of despatch to the date of return to the Owner's named depot or other agreed location.

- (b) If the Plant is not made available for collection as agreed between the parties,
such Plant shall be deemed with immediate effect to be placed back on hire. The Hirer shall be responsible for the safekeeping of the Plant in accordance with clause 13, and for all the reasonable costs and expenses incurred by the Owner in seeking to collect such Plant.
- (c) Upon the completion of the Hire Period, the Hirer shall clean and where
necessary, decontaminate the Plant. All fuel and contaminants will be removed from bunds, storage tanks and bowsers. The Hirer shall be liable for any costs, liabilities and expenses incurred by the Owner should the Hirer fail to comply with this clause.

24. HIRER'S LIABILITY DURING THE NOTICE OF TERMINATION OF CONTRACT

a) Where the Hire Period is indeterminate or having been defined becomes

indeterminate the Contract shall be terminable by seven days notice in writing given by either party to the other except in cases where the Plant has been lost or damaged. Notwithstanding that the Owner may have agreed to accept less than 7 days notice of termination, the Hirer's obligations under clause 13 shall continue until the Plant is returned to the Owner in accordance with clause 31 or until the Owner has collected the Plant within the 7 days following the acceptance of short notice. Oral notice given by the Hirer to the Owner's driver or operator shall not be deemed to constitute compliance with the provisions of this clause.

b) Without prejudice to clause 24(a), should the Hirer fail to make the Plant available

for collection by the Owner before the end of the 7 day notice, the Hirer's obligations under clause 13 shall continue for a further 3 days or until such time as the Plant is made available for collection and the Owner has collected the Plant. For the avoidance of doubt, where the Hirer gives a notice pursuant to clause 24(a) but subsequently and with the consent of the Owner, withdraws such notice, the obligations of clause 13 shall continue to apply and the requirements of clause 24 will apply to any later termination of the Contract.

c) If the Hirer terminates the Contract before the Hire Period commences, then

the Hirer is liable for all reasonable costs and charges incurred by the Owner or to which the Owner is committed at the time of termination.

25. IDLE TIME

When the Plant is prevented from working for a complete Working Week, the hire charges shall be two thirds of the hire rate or such other idle time rate as is agreed in writing by the Owner for the period during which the Plant is not in use. If the Plant works for any time during the Working Day then the whole of that Working Day shall be charged as working time. In any case no period less than one Working Day shall be reckoned as idle time save for as provided for in clause 18(e). Where an "All-In" rate is charged, idle time is calculated on the machine element only. Full rate will be charged for the operator.

26. WAGES AND OTHER CHARGEABLE ITEMS RELATING TO DRIVERS AND OPERATORS OF PLANT

All chargeable items shall be paid by the Hirer at the rates set out in the Contract save that any subsequent increases before and / or during the Hire Period arising from awards under any wage agreements and / or from increases in the Owner's statutory contribution shall be charged as additions at cost by the Owner and shall be admitted and paid by the Hirer.

27. TRAVELLING TIME AND FARES

Travelling time, fares and similar expenses for drivers, operators and any person supplied by the Owner, incurred at the beginning and end of the Hire Period and where appropriate return fare of the driver, operator and any person supplied by the Owner to his home will be chargeable at cost. No charge shall be made by the Owner for any such expenses incurred by other employees of the Owner for the purpose of servicing, repair or maintenance of Plant, unless necessitated by the Hirer's negligence, misdirection or misuse of the Plant.

28. FUEL, OIL AND GREASE

Fuel, oil and grease shall, when supplied by the Owner, be charged at net cost or an agreed estimate of net cost, and when supplied by the Hirer, shall be of a grade or type specified by the Owner. The Hirer shall be solely responsible for all damages, losses, costs and expenses incurred by the Owner if the Hirer uses the wrong fuel, oil or grease.

29. SHARPENING OF DRILLS/STEELS ETC.

The cost of re-sharpening or replacement of drill bits, blades and other ancillary items shall be borne by the Hirer.

30. OWNER'S NAME PLATES

The Hirer shall not remove, deface or cover up the Owner's name plate or mark on the Plant indicating that it is his property, without the prior written permission of the Owner.

31. TRANSPORT

The Hirer shall pay the cost of and if required by the Owner, arrange transport of, the Plant from the Owner's depot or other agreed location to the site and return to the Owner's named depot or other agreed location on completion of the Hire Period.

32. GOVERNMENT REGULATIONS

a) The Hirer will be responsible for compliance with relevant regulations issued

by the Government or Local Authorities, including regulations under the Environmental Acts, Factories Acts, Health and Safety at Work, etc. Act and observance of the Road Traffic Acts should they apply, including the cost of road fund licences and any insurances made necessary thereby, save that if and during such time as the Plant is travelling, whether for full or part journey from Owner to site and site to Owner under its own power with a driver supplied by the Owner, the Owner and not the Hirer shall be responsible as aforesaid.

b) The Hirer shall indemnify the Owner against any charges or fines that the Owner may become liable for as a result of the operation of the Plant during the Hire Period.

33. PROTECTION OF OWNER'S RIGHTS

(a) The Hirer shall not re-hire, sell, mortgage, charge, pledge, part with possession

of or otherwise deal with the Plant except as provided under clause 15 and shall protect the same against distress, execution or seizure and shall indemnify the Owner against all losses, damage, costs, charges and expenses arising as a direct result of any failure to observe and perform this condition except in the event of Government requisition.

(b) The Owner may terminate the Contract forthwith by written notice to the Hirer if one or more of the following events occur:

- (i) The Hirer defaults in punctual payment of any sum due to the Owner for hire of Plant or other charges payable pursuant to these conditions;
 - (ii) The Hirer fails to observe and perform the terms and conditions of the Contract;
 - (iii) The Hirer suffers, or the Owner reasonably believes that the Hirer shall suffer, any distress or execution to be levied against him;
 - (iv) The Hirer makes or proposes to make any arrangement with his creditors or becomes insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof for the time being in force; or
 - (v) The Hirer does or causes to be done or permit or suffer any act or thing whereby the Owner's rights in the Plant may be prejudiced or put into jeopardy.
- (c) In the event of termination under sub-paragraph (b) above:
- (i) The Hirer must give the Owner or his agents, immediate unobstructed access to recover the Plant.
 - (ii) The Owner shall be entitled to claim the hire charges outstanding as at the
date of termination of the hire under this clause and return transport charges under clause 31.
- (d) The rights under sub-paragraph (b) and (c) above:
- (i) May be exercised notwithstanding that the Owner may have waived some previous default or matter of the same or a like nature.
 - (ii) Shall not affect the Owner's right to claim damages for breach of Contract or recover any sums due under the Contract as a debt.
- (e) If the Hirer does not make payment of a sum by the final date on which payment is due to be made, the Owner has the right to suspend performance of its obligations under the Contract. The right to suspend may not be exercised without first giving to the Hirer at least 7 days notice in writing of the Owner's intention to suspend performance, stating the ground or grounds on which the Owner intends to suspend performance. The right to suspend performance will cease when the Hirer makes payment in full of the amount due.

34. CHANGES IN NORMAL WORKING WEEK

The foregoing provisions have been framed upon the basis of the Hirer working a 5-day week of 39 hours; it is hereby agreed that in the event of:

- (a) there being any agreed change in the normal weekly hours in the industry in which the Hirer is engaged or,
- (b) the Contract being made with reference to a 5 day week of other than 39 hours.

Clauses 1(h) and (i), 18(c) and (d), 20 and (in regard to breakdown allowance and reduction for statutory holidays) 21 shall be deemed to be modified conformably and in the event of an alteration in the normal weekly working hours in the said industry the "Hire Rates and Terms" of Plant hired for a minimum weekly or daily period shall be varied pro rata.

35. DISPUTE RESOLUTION

- (a) If the site is situated within the United Kingdom, then the court whose jurisdiction covers the site will have exclusive jurisdiction and interpretation of the law for this Contract. If the original site is not situated within the United Kingdom, then the relevant jurisdiction and interpretation of the law of the Contract will be governed by the country where the Owner's head office is located.
- (b) Both parties to the Contract have a right to refer any difference or dispute arising under or in connection with the Contract to adjudication and the procedure set out in Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (or any amendment or re-enactment thereof for the time being in force) will apply. The person (if any) specified in the Contract to act as adjudicator may be named in the Offer. The specified nominating body to select adjudicators shall be the Construction Plant-hire Association acting by its President or Chief Executive for the time being. .
- (c) The Owner and the Hirer shall comply forthwith with any decision of the adjudicator; and shall submit to summary judgment and enforcement (and / or, under Scots law, shall consent to a motion for summary decree and submit to enforcement) in respect of all such decisions; in each case, without any defence, set-off, counterclaim, abatement or deduction. Where, under Scots law, the Owner, the Hirer, or the adjudicator, wishes to register a decision of the adjudicator for execution in the Books of Council and Session, any other party shall, on being requested to do so, forthwith consent to such registration by subscribing the decision before a witness.

36. LATE PAYMENTS

The Owner reserves the right to charge the Hirer for the late payment of any outstanding invoices under the Late Payment of Commercial Debts (Interest) Act 1998, or any subsequent legislation.

37. SEVERABILITY

If any of these clauses are held to be unlawful, void or unenforceable, then that clause will be deemed severable and will not affect the validity and enforceability of the remaining clauses, to the extent permitted by law.