

QUIN PLANT HIRE LTD

Operated Hire Terms and Conditions

1. DEFINITIONS. In This agreement

(a) "Owner" "we", "us" or "our" means QUIN PLANT HIRE LTD, its successors, its employees and agents, and any business or other person to whom the owners transfers (by absolute assignment, by way of novation or by way of security) any or all of its rights or its rights and responsibilities (whether legal or equitable) under the Agreement.

(b) The "Hirer" is the Company, firm, person, Corporation or public authority taking the owner's plant on hire as shown on the delivery advice and includes their successors or personal representatives.

(c) "Plant" covers all classes of plant, machinery, vehicles, equipment and accessories therefore, which we agree to hire to the Hirer.

(d) A "day" shall be 8 hours or if the day is a Friday it shall be 7 hours, unless otherwise specified in the Contract.

(e) A "working week" covers the period from starting time on Monday to finishing time on Friday.

(f) The "hire period" shall commence from the time when the plant is delivered to the site as specified by the 'hirer' and shall continue until such time as the plant is back in the custody and control of the owner.

(g) A "Consumer Contract" is a contract entered into with a person acting in his own capacity and not for or on behalf of any business or trade entity.

2. EXTENT OF CONTRACT

No conditions other than specifically set forth in the Offer and Acceptance and herein shall be deemed to be incorporated in 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 and Acceptance. The Contract does not create any right enforceable by or purport to confer any benefit on any person not a party to it 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 agreed in writing.

4. TRANSPORTATION, UNLOADING AND LOADING

We will deliver and collect the Plant and Equipment. We will provide this service at a reasonable cost, which we will confirm to you prior to the hire.

You acknowledge that the Plant and Equipment you have chosen to hire may cause superficial damage to the ground, particularly in wet weather (for example, ruts may be created or paving stones may be cracked). You further acknowledge that the Plant and Equipment may also cause damage to underground services such as drains and sewers. Our delivery driver will do his best to limit any such damage, but we cannot be held responsible for any damage of this sort. The Hirer is responsible for making good any damage caused to the site or adjoining land or property in obtaining access.

5. DELIVERY IN GOOD ORDER AND MAINTENANCE

We will ensure that the Plant and Equipment hired to you is in good working order and fit for the purpose for which the Plant and Equipment of that kind is normally used. The Hirer shall be responsible for its safe keeping. If such plant be continued at work or in use in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising there from.

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 possible, such work will be carried out at times to suit the convenience of the Hirer.

7. TIMBER MATS OR EQUIVALENT

If the ground (including any private access road or track) is soft or unsuitable for the plant to work on, travel, or be transported over without timbers or equivalents the Hirer shall supply and lay suitable timbers or equivalents in a suitable position for the plant to travel over, work on, or be transported over, including for the purpose of delivery and collection.

8. HANDLING OF PLANT

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) who also shall be responsible for all claims arising in connection with the operation of the plant by the said drivers/operators/persons. The Hirer shall not allow any other person to operate such plant without the Owner's previous consent to be confirmed in writing.

9. BREAKDOWN, REPAIRS AND ADJUSTMENT

(a) Full allowance for the hire charges and for the reasonable cost of repairs that have been authorised by the Owner will be made to the Hirer for any stoppage due to breakdown of 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.

(b) The Hirer shall not, except for the changing of any tyre and repair of punctures, repair the plant without the written authority 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 without awaiting authorisation from the Owner. The Hirer is responsible for all costs incurred in the changing or replacement of any tyre and the repair of any puncture.

(c) The Hirer shall be responsible for all expense involved arising from any breakdown and all loss or damage incurred by the Owner due to the Hirer's negligence, misdirection or misuse of the plant, whether by the Hirer or his servants. Subject to 'Owners' discretion all hire charges may continue to be applied.

(d) 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", as herein provided), for stoppages through causes outside the Owner's control, including bad weather or ground conditions nor shall the Owner be responsible for the cost or expense of recovering any plant from soft ground.

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 a 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.

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 this Agreement.

(b) During the continuance of the hire 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 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 respect of all costs and charges in connection therewith whether arising under statute or common law.

(c) Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury due to or arising:

(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 it 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, always provided 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 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.

d) Damage to Services and neighbouring properties: Wherever possible, our Operator will carry out a CAT scan prior to the commencement of any dig. However, such a scan is NO GUARANTEE that all services will be detected. Our scanning cannot detect plastic pipes such as water, gas or underground drainage. It is the Hirer's responsibility to determine the location of all such services in the area to be excavated and to make our Operator aware of all such locations. Whilst every effort will be made to avoid damage to any services found, Quin Plant Hire LTD cannot be held responsible for any damage to services caused by the excavation process. Similarly, QUIN PLANT HIRE LTD cannot be held responsible for any damage caused to neighbouring properties as a result of excavations being carried out under the direction of the Hirer.

14. NOTICE OF ACCIDENTS

If the plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to the Owner by telephone and confirmed in writing to the Owner's office. In relation to any claim in respect of which the Hirer is not bound fully to indemnify the Owner, no admission, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's consent in writing.

15. RE-HIRING ETC.

The plant or any part thereof shall not be re-hired, sub-let, or lent to any third party without the 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 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 he may arrange for such repairs to be carried out on site or at any location of his nomination. In that event 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 determine the Contract forthwith (but without prejudice to any of the provisions of Clauses 9 and/or 13) by giving written notice to the Hirer.

18. BASIS OF CHARGING

(a) All hire charges will be based upon a MINIMUM of eight (8) hours when supplied with an Operator. Where Operators are supplied with the Plant, charges for the Operator will be made for the SAME period of time as the Plant itself, but may be subject to a charge for reasonable travelling time. The 'Rate of Hire' will be notified to the Hirer prior to the commencement of the hire period, wherever possible, in writing by us.

(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 this Agreement.

19. TRAVELLING TIME

All travelling time will be calculated from / to our base in TELFORD.

20. NOT USED

21. NOT USED

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.

23. COMMENCEMENT AND TERMINATION OF HIRE

(a) Commencement of the hire period shall be from the time when the plant is delivered to the 'site' subject to any travelling time incurred.

(b) Termination of the hire period shall be when the item hired is received back in the custody and control of the owner at the owner's base. Hire charges may (at the discretion of the owner) be reduced upon early termination of hire. However, the Hirer's attention is drawn to Clause 13 of this Agreement in relation to the Responsibility for Loss and Damage. The responsibilities under Clause

13 will continue until the item hired is back in the custody and control of the owner at the owner's base.

24. NOTICE OF TERMINATION OF CONTRACT

Where the period of hire is indeterminate or having been defined becomes indeterminate the Contract shall be determinable 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.

25. NOT USED

26. NOT USED

27. NOT USED

28. FUEL, OIL AND GREASE

Fuel, oil and grease may, 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.

29. SHARPENING OF DRILLS/STEELS ETC.

The cost of re-sharpening 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.

31. TRANSPORT

The Hirer shall pay the previously agreed cost of transport of the plant from the Owner's depot to the site and return on completion of the hire period.

32. GOVERNMENT REGULATIONS

The Hirer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including regulations under the Factories Acts, Health and Safety at Work Act etc and observance of the Road Traffic Acts should they apply.

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) If the Hirer make default in punctual payment of any sum due to the Owner for hire of plant or other charges or shall fail to observe and perform the terms and conditions of this Contract, or if the Hirer shall

suffer any distress or execution to be levied against him or make or propose 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 shall do or cause 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, this Contract may forthwith be determined by notice from the Owner to the Hirer (notwithstanding that the Owner may have waived some previous default or matter of the same or a like nature). The Contract shall thereupon be deemed determined by reason of the Hirer's breach and it shall be lawful for the Owner to retake possession of the said plant and for that purpose enter into or upon any premises where the same may be and the determination of the hiring under this Condition shall not affect the right of the Owner to recover from the Hirer any monies due to the Owner under the Contract or any of the Owner's rights and remedies. In particular, without limitation, the Owner shall be entitled to claim the hire charges outstanding as at the date of determination of the hire under this clause, return transport charges under clause 31, and damages for the Hirer's actual or deemed breach of the Contract under this Clause.

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 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(d) and (e) and 20 (in regard to breakdown allowance) 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. PAYMENT

- a) The Hire Charges will be charged and based on the length of time for which you require the Plant and Equipment and the Operator. If you agreed to take the Plant and Equipment for a minimum or a fixed period, you must pay the Hire Charges applicable for the whole of the minimum or the fixed period.
- b) You do not continue to pay Hire Charges during stoppages which we could have avoided (such as breakdowns in the Plant and Equipment).
- c) Stoppages which are not due to a fault on our part, or on the part of our operator, will be charged for. (E.g. stoppages caused by inclement weather, unforeseen problems with the Site or access, punctures or usual running maintenance such as re-fuelling or refitting accessories).
- d) You can ask our Operator to stop work at any time. If you do so, you will be responsible for the Hire Charges up to the point at which your request is made including the daily rate for the day on which work ceases, or the agreed minimum or fixed period.

- e) We may ask you for payment of all or part of the Hire Charges in advance. If you give us more than 72 hours' notice that you wish to cancel the hire then we will repay the whole of any such advance payment. If you give us less than 72 hours' notice that you wish to cancel the hire, then we will repay 50% of the advance payment (unless we are able to re-hire the Plant and Equipment in which case we will repay the whole of the advance payments). We will repay the whole of the advance payment if hire of the Plant and Equipment does not proceed due to a fault on our part.
- f) During the period of hire, from time to time, you will be asked to sign a time sheet confirming that it is an accurate record of the Operator's chargeable hours. You should check the time sheet carefully and only sign it if you agree with the information set out.
- g) Hire charges are due at the beginning and/or at the end of the hire. We will let you know when you must pay the Hire Charges at the time you hire the Plant and Equipment.
- h) You will pay the Hire Charges in full and upon the due dates, and time of payment is of the essence.
- i) Payment is due immediately upon completion of the hire period.
- j) Interim payments may be charged in cases of prolonged periods.
- k) Where a credit account has been agreed, payment MUST BE MADE WITHIN 14 days of date of invoice.
- l) QUIN PLANT HIRE LTD reserves the right to charge interest on all overdue accounts at the statutory rate of 8.5% stipulated by the Late Payment of Commercial Debts Regulations 2013 and also charge an Administration Charge of £50.00 per additional invoice raised to recover all costs incurred in collection of such monies. If debt still remains unpaid then Court proceedings will be commenced if necessary.
- m) All payments shall be made without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise unless the Hirer has a valid Court order requiring an amount equal to such deduction to be paid by QUIN PLANT HIRE LTD to the Hirer.
- n) The Hirer shall reimburse on demand any charges incurred by QUIN PLANT HIRE LTD for any cheque issued by the Hirer which is returned by a bank for any reason, in addition to any administrative fee TJH may impose for dealing with same.

36. DISPUTE RESOLUTION

- (a) If the original site is in England or Wales, the proper law of the Contract shall be English law.

(b) The Scheme for Construction Contracts contained in the Scheme for Construction Contracts (England and Wales) Regulations 1998, or any amendment or re-enactment thereof for the time being in force, shall apply to the Contract. 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. In paragraph 21 of the Scheme “this paragraph” shall be deleted and “paragraph 20” substituted.

(c) The Owner and the Hirer shall comply forthwith with any decision of the adjudicator; and shall submit to summary judgment and enforcement in respect of all such decisions; in each case, without any defence, set-off, counterclaim, abatement or deduction.