

# WS MACHINE & PLANT HIRE LTD

## TERMS AND CONDITIONS OF HIRE

1. These Terms and Conditions are the only Terms and Conditions under which WS MACHINE & PLANT HIRE LTD companies hire out plant and conduct all other trading and these shall apply under all circumstances to all Hirers/customers including both account and non account holding customers with the exception of contract lifting operations where separate Terms & Conditions must be agreed prior to commencement.

### **2. Definitions relevant to these Terms and Conditions**

- a. "WS MACHINE" or "WS TRADING GLOBAL" shall mean WS MACHINE & PLANT HIRE LTD and/or Subsidiary and/or Associate companies.
- b. The "Hirer" is a firm, person, corporation, company or public authority including their representatives or successors who hire plant from or carry out business with WS MACHINE.
- c. "Plant" covers all types of equipment, vehicles, attachments, accessories, machinery and plant which WS MACHINE agrees to hire out to the Hirer.
- d. A "day" is unless otherwise stated in the Contract 8 (eight) consecutive hours in any working day.
- e. A "week" is classed as seven consecutive days.
- f. A "working week" is from the time started on Monday through to the finishing time on Friday.
- g. "Sale" is the sale of accessories, spare parts and consumables. The sale of either new or used equipment is subject to WS MACHINE separate Terms and Conditions of Sale, copies of which are available on request and displayed on our website.
- h. The headings in this document are for convenience only and shall not affect their interpretation.
- i. These Terms and Conditions shall be hereafter referred to as "WS MACHINE' TERMS AND CONDITIONS".

### **3. Contract Extent**

No conditions other than these shall be considered to form or to be incorporated into any Contract for hire or sale. WS MACHINE' TERMS AND CONDITIONS will at all times be deemed to prevail over any condition(s) that the Hirer seeks to impose by whatever method unless otherwise agreed in writing by a Director of WS MACHINE. Where these Terms and Conditions conflict with any others, these Terms and Conditions shall prevail under all circumstances.

### **4. Placement of an Order/Acceptance of Plant on Site**

When the Hirer orders or the site accepts a piece of plant, unless otherwise agreed in writing by a Director of WS MACHINE, the Hirer is deemed to accept the plant on hire subject to WS MACHINE' TERMS AND CONDITIONS.

### **5. Responsibility for Personnel**

Any personnel that WS MACHINE supplies to the Hirer are deemed to be under the control of the Hirer and should comply with all of their instructions. The Hirer is responsible for their compliance with all statutory rules and regulations with regard to any personnel supplied on the site as they are with their employees.

## **6. Loading and Unloading**

WS MACHINE shall not be responsible for any damage to any plant, equipment, surface or property whatsoever during the loading or unloading of the plant upon delivery or collection whether by WS MACHINE' employees, the hirer or any other third party.

## **7. Condition on Delivery and Maintenance Inspection Reports**

- a. All plant will be deemed to be in good order at the point of on-hire save for any fault not noticeable by reasonable examination or marked on the on-hire advice note, unless the Hirer notifies WS MACHINE to the contrary by telephone on the day of on-hire and confirms this in writing within three working days. The Hirer is responsible for the safekeeping, use in accordance with the manufacturer's recommendations and the safe return on completion of the hire of any item of plant or accessory hired.
- b. The Hirer when hiring self drive must take all reasonable precautions to ensure they are aware of the continuing condition of the plant and the Hirer will be totally responsible for the safe use of the plant and the reporting of, and payment for, rectification of all damage (except for fair wear and tear) to the plant whilst the plant is on site.
- c. F91 Part 1 Section C inspection reports if necessary will be supplied to the Hirer upon request to WS MACHINE. These must be returned at the end of the hire or a charge will be made to the Hirer.
- d. When plant is delivered to site or collected from site and for whatever reason the WS MACHINES driver is unable to obtain a signature on the delivery/collection ticket the following shall apply:
  - i. On delivery a copy of the unsigned delivery ticket will be left with the plant.
  - ii. On collection a copy of the collection ticket signed by the WS MACHINES driver will be posted to the address last advised by the Hirer as their invoice address.
  - iii. Any claim for damages/shortages on deliveries (excepting those noted on the delivery ticket) must be advised to the WS MACHINE depot of hire by phone or fax within 24 hours of the delivery AND confirmed in writing by the Hirer within three days in the case of phone notification.
  - iv. Completion of (i) above will be deemed as acceptance of the plant on site by the Hirer at the time of delivery.
- e. Although every possible precaution has been taken to ensure that the equipment is in good serviceable condition, no liability whatsoever can be accepted by WS MACHINE for the consequences of any failure or inaccuracies of the equipment. The Hirer is expected to satisfy themselves that the equipment is functional before attempting to use it on site.

## **8. Inspections and Servicing**

The Hirer shall allow access to WS MACHINE, their agents and their insurers at all reasonable times to inspect, repair, test or adjust the plant. Such work will be carried out at times convenient to the Hirer wherever practical.

## **9. Unsuitable Ground and Operating Conditions**

- a. The Hirer will be totally responsible for the ground condition upon which the equipment is to work and must provide excavator mats or equivalent wherever unsuitable ground conditions could threaten the security of the plant. The Hirer will be responsible for any costs of recovery of plant from unsuitable ground.

- b. Where the Hirer seeks to use WS MACHINES plant in arduous conditions which include but are not limited to sea water, chemicals, fertilizer, abrasive products, contaminated waste and radioactive materials, the Hirer must:
- i. Advise WS MACHINE at the time of placing the hire or in advance by fax/e-mail, and
  - ii. Indemnify WS MACHINE against any loss or damage in connection with the conditions or occasioned by the materials that the plant is in contact with either noticed at time of off-hire or subsequently if affecting electrics, hydraulics or unexposed components, and
  - iii. Clean the plant thoroughly before collection from site.
  - iv. If hiring operated plant the Hirer must provide WS MACHINE in advance with a full risk assessment and provide the operator with all necessary protective equipment and information required to guarantee their safety.

**c. Operators for Plant and Appointed Persons**

- a. For plant hired together with an operator, WS MACHINE will supply a person competent to operate the plant. The operator will be deemed to be under the control of the Hirer for all purposes and the Hirer shall be responsible for all claims arising from the operation of the plant as if the operator was an employee of the Hirer.
- b. The Hirer will not permit any other person to operate attempt to operate or move any item of plant hired with an operator without the previous written consent of WS MACHINE.
- c. The operator supplied by WS MACHINE shall hold any appropriate mandatory licence for the driving of the plant in question as laid down by statute. Any decision on the competence or otherwise of the operator shall be made by a Director of WS MACHINE and shall be final.
- d. For plant hired without an WS MACHINES operator the Hirer shall ensure that the plant is only operated by a competent operator.
- e. In the case of crane hire/lifting operations the Hirer is responsible for nominating an “appointed person” to take responsibility for and overall control of all lifting operations. For contract lifting WS MACHINE will nominate the “appointed person”.
- f. The Hirer nor any connected body shall not without prior written consent of WS MACHINE at any time during the period of the hire or within 6 months after the date of termination of the hire solicit or endeavour to entice away from or discourage from being employed by WS MACHINE or other employment or subcontract work to any person who is or shall at any time during the hire be one of WS MACHINES employees or agents engaged in providing the hire or other services. A charge of £1200 will be levied against any customer in full and final settlement in the case of a breach of this condition.

**11. Repairs and Breakdowns**

- a. Any breakdown or loss of performance of the whole or any part of the plant must be notified to WS MACHINE immediately. Any claim for breakdown time allowance will only be considered from the time of this report.
- b. Full allowance will be made to the Hirer for breakdowns caused by inherent faults or a fault (but not damage howsoever caused) not noticeable by reasonable examination or arising from fair wear and tear subject to clause 7 above.
- c. The Hirer shall not, except for punctures, repair or cause to be repaired any item of plant without the written authority of WS MACHINE.

**d. Puncture repairs will remain the responsibility of the Hirer:**

- i. On all plant hired without an operator from the time of delivery (or collection from an WS MACHINES depot) until the time of collection (or return to the WS MACHINES depot).
- ii. On all plant hired with an WS MACHINES operator from the time of entry onto the site or area of work until the exit from the same. Punctures may be repaired by the Hirer or their agent at their expense provided such repairs are of the recommended specification and cause no damage to the plant or tyre.

**di.** The Hirer is responsible for all costs and losses incurred by WS MACHINE resulting from any breakdown and / or damage arising from the misuse or misdirection of the plant or the negligence of the Hirer, their agents, servants or any other party. The Hirer shall also be responsible for payment to WS MACHINE for the relevant standing / hire rate during the period of such repairs or replacement. WS MACHINE will be responsible for the cost of repairs and spares due to breakdown for reasons detailed in clause 11b above.

**dii.** The fuel injection systems of WS MACHINES plant and equipment are NOT compatible with Bio Diesel. Therefore, Bio Diesel must NOT be used as this will cause extensive damaged to the fuel systems, which will result in expensive repairs. The Hirer is fully responsible for all costs and losses incurred by WS MACHINE if Bio Diesel is used or for any other type of fuel contamination.

**diii.** In the case of any repair to plant or equipment owned by The Hirer, carried out by WS MACHINE, WS MACHINE reserve the right to exercise a lien over the item, until the bill is paid in full, including any storage and transport costs / charges.

## **12. Other Stoppages**

WS MACHINE will not accept claims, nor can WS MACHINE give any allowance in hire time for stoppages through causes outside their control such as bad ground conditions, bad weather, the failure of another Item of plant (whether owned by WS MACHINE or not), punctures or tyre repairs and the lack of an operator (when not supplied by WS MACHINE).

## **13. Loss of use of Other Plant**

Each item of plant hired by WS MACHINE to the Hirer is hired as a separate unit and stoppage or breakdown of one unit or vehicle (whether the property of WS MACHINE or not) through whatsoever cause shall not entitle the Hirer to allowance or compensation for the loss of working time of any other hired item under any circumstances.

## **14. Consequential Loss**

WS MACHINE accept no responsibility or liability for any consequential loss or damage arising or due to the failure or unsuitability of or defects in the plant or for any other cause whatsoever.

## **15. Loss and Damage**

- a. To avoid doubt this clause does not affect the operation of clauses 7, 9 and 11.
- b. Some of WS MACHINES items of plant are fitted with immobilizers / tracking devices provided by a third party. The supply and activation of such devices is charged as an optional extra to the hire rates. The weekly charge for such devices may be charged and shown as a separate item on invoices or may be included as an all in hire rate for the main type of plant on hire. Where the Hirer requests / agrees to having and paying for an immobilizer / tracking device, this must be confirmed by the Hirer in writing prior to the hire commencing.

Immobilizer / tracking devices are tested and activated immediately prior to a hire commencing, however WS MACHINE cannot be held responsible for any losses or costs in the event of the failure of the device or service or in the event of the unauthorized removal of or tampering with the device.

Throughout the hire period and until the plant is safely returned to WS MACHINES depot of hire, the Hirer shall make good to WS MACHINE all damages to or loss of the plant howsoever that damage may be caused, except fair wear and tear. The Hirer except as provided in clause 11 above shall fully indemnify WS MACHINE in respect of all claims by any person for injury to persons or damage to property caused by or in connection with or arising out of the use of the plant and indemnify WS MACHINE against any charges or costs under statute or common law.

- c. WS MACHINE will only accept responsibility for loss damage or injury due to or arising during:
- i. Prior to delivery of any plant to the Hirer's site where the plant is in transit on transport owned by or under the control of WS MACHINE.
  - ii. After the plant has been collected and removed from the site and is in transit on transport owned by or under the control of WS MACHINE.
  - iii. Where plant is travelling under its own power to and from site under the control of a driver supplied by WS MACHINE.
- ci. The Hirer must insure at full value all items of plant hired from WS MACHINE from the moment the plant is delivered/collected at the start of the hire until such time as the plant is safely collected or returned to the WS MACHINES designated depot. Off-hiring the plant shall not determine the responsibility for the safekeeping of the plant and the Hirer must keep the plant safe on site for up to five working days after off-hire. Plant will normally be collected within 24 hours of off-hire date and the Hirer must telephone the WS MACHINES depot of supply if collection has not been made within 24 hours.
- cii. In the event of full or partial loss or theft of the plant and payment of any compensation by the Hirer (or their Insurers) to WS MACHINE, the title to the machine will remain with WS MACHINE under all circumstances.
- ciii. In the event of full or partial loss or theft of the plant or in the event of damage to the plant and until full compensation has been paid, the Hirer shall pay to WS MACHINE the sum of 2/3rds of the current WS MACHINES self drive hire rate of the item of plant from the time that the loss/theft/damage is reported to WS MACHINE until such time as a settlement has been made in full. Until such report of loss/theft/damage, the hire charge will continue at the contracted rate. This clause applies even if the item of plant is supplied with an immobilizer / tracker.
- civ. In the event of full or partial loss or theft or damage of the plant payment is to be made by the Hirer (or their Insurance Company) as follows:- Plant up to 3 years old at the incident date at replacement as new price, plant over 3 years old at the incident date at replacement value.
- cv. To assist negotiation and to speed the settlement the Hirer shall at all times allow WS MACHINE to liaise direct with the Hirer's Insurance Company and/or Agents. In addition the Hirer will instruct their Insurers to settle any claim by payment direct to WS MACHINE and acceptance of these conditions shall deem this permission to have been given. This does not affect the Hirer's liability in the event of any damage. If any payment of insurance monies is made to the Hirer either direct from their Insurers or via their Brokers, such monies must be held in trust for WS MACHINE and the Directors/Shareholders/Partners/Proprietor will remain personally responsible for ensuring that such monies are paid in full to WS MACHINE.
- j. WS MACHINE accept no responsibility for any damage to roadways, pathways, manholes or covers, cables, pipes or other services (whether above on or below ground) which may be occasioned due to the travelling positioning or working of any item of plant except in the case of damage to items excluding underground services where caused due to the negligence of an WS MACHINES operator proven to the satisfaction of WS MACHINE.

- k. Where practicable upon collection of plant from site the WS MACHINES driver and the site representative of the Hirer shall examine the plant and record details of any damages/deficiencies at the time of off-hire. The Hirer shall be bound by the signature of their representative to pay for any damages/deficiencies so recorded. Upon return of the plant to WS MACHINES home depot the plant shall be subject to a thorough examination and any further damages/deficiencies will be notified by telephone/fax/e-mail to the Hirer with the option to view the plant prior to commencing the repairs and invoicing such damages/deficiencies to the Hirer.
- l. In the case of lifting appliances, electronic data from A.S.L.I may be used as conclusive evidence of shock-loading or misuse.
- m. The Hirer will be offered the opportunity to view any plant for which damage/deficiency charges are to be made within 2 days of notification of these damages/deficiency. Failure by the Hirer to inspect the plant within this 2 day period shall signify the Hirers' acceptance that the Hirer is responsible for and will settle the WS MACHINES invoice for damages/deficiencies.
- n. In no circumstances shall WS MACHINES liability to the Hirer for any breach or provision (whether expressed or implied) of this contract exceed the total amount paid by the Hirer to WS MACHINE under the individual hire.

#### **16. Notification of Accidents**

- a. It is the duty of the Hirer to notify WS MACHINE immediately by telephone if the plant is involved in an accident resulting in damage to property or injury to any person and confirm this in writing giving full details within 24 hours. In respect of any claim not within the liability of the Hirer, the Hirer shall make no promise or offer of payment or admission without WS MACHINES written permission.
- b. In addition the Hirer is responsible for reporting to The Health and Safety Executive any incident which comes within the scope of The Reporting of Injuries Diseases and Dangerous Occurrences Regulations 1985 whilst the machine is under their control.

#### **17. Re-hiring/Selling to Third Parties**

- a. All plant, equipment or any part thereof shall not be re-hired, sub-let or lent to any third party without the written permission of WS MACHINE, and at all times the ownership shall remain with WS MACHINE.
- b. At all times and in all cases items on hire will always remain the property of WS MACHINE. Goods supplied on sale will remain the property of WS MACHINE until full payment has been made by cleared funds and WS MACHINE reserves the right to reclaim goods not paid for in full.

#### **18. Moving from Site of Contract**

The Hirer must not remove plant to any other site location without prior notification to the WS MACHINE' depot of supply. Plant must not be moved outside the United Kingdom without advance permission in writing from a Director of WS MACHINE.

#### **19. Plant Repairs During Hire**

If WS MACHINE decides that urgent repairs (not caused by damage or misuse) are necessary to the plant during the hire period, they may arrange for repairs to be carried out upon site or at any other site they choose. In such event requiring removal of plant from site WS MACHINE will provide replacement plant if available and all transport charges will be paid by WS MACHINE. If WS MACHINE are unable to supply replacement plant within 24 hours the Hirer shall be entitled to determine the contract immediately by giving written notice to WS MACHINE. If the contract is determined in this way WS MACHINE shall be liable for any collection charge.



## **20. Calculation of Hire Charges**

- a. Plant will be hired out on the following basis only:
- i. Operated plant hired with an WS MACHINE operator is hired out per hour with a minimum 9 hours chargeable in any working day (regardless of the number of hours worked if any). Overtime at the rates detailed in WS MACHINES price list current at the time of hire shall be chargeable in addition for every hour worked over 9 hours in one shift Monday to Friday and for the first 4 hours on Saturday at time and a half. All other hours worked at weekends on bank/public holidays during night work and over 12 hours in any one shift shall be charged at double time unless otherwise agreed in advance and confirmed by WS MACHINE in writing.
  - ii. Self drive plant is hired out on a "per day" or "per week" basis. A "day" is a period of up to 10 hours operating between midnight and midnight 24 hours later and is charged at 50% of the weekly rate. A "week" for the purposes of these terms is a period of up to 50 hours operating between midnight and midnight 168 hours later. All self drive hires exceeding one week shall be charged at the weekly pro-rata rate throughout the term of hire based on a five day working week Monday to Friday unless the plant is being used on Saturdays/Sundays/Bank Holidays in which case these are chargeable days @  $\frac{1}{5}$  of the weekly rate each. Hires of less than one week in duration will be charged at 75% of the weekly rate for the first day, 85% for 2 days and 90% for 3 days except that in any week no more than the weekly hire rate for each week, will be charged on anyone hire.
- b. Where plant is supplied with an WS MACHINES operator the Hirer or their authorized representative shall sign the operators timesheet daily or weekly. The Hirer or their representative's signature on the timesheet shall bind the Hirer to accept the hours shown thereon and these hours signed for will form the basis of the charging and in the event of any dispute can not be amended except by mutual agreement.
- c. Full allowance shall be given for periods of breakdown resulting from any electrical or mechanical fault provided that the Hirer informs WS MACHINE at the time of the breakdown, except where the breakdown is due to the Hirer's negligence misuse or misdirection. Every breakdown call is recorded by WS MACHINE and allowances will only be made from the time that the breakdown is reported until the plant is repaired, unless there was no time lost due to the fault.
- d. Breakdown time allowed in any weekday Monday to Friday or operated hires only on weekends as well shall not exceed 8 hours less the time actually worked. No allowance will be made on self drive plant for breakdowns outside of the normal working week Monday to Friday (8.00am to 5.00pm).
- e. Stoppages due to changing tyres and puncture repairs shall be chargeable as working time up to a maximum of 2 hours for anyone stoppage provided that WS MACHINE are asked to effect the repair by the Hirer. If the Hirer repairs or arranges the repair by any one other than WS MACHINE all stoppages due to punctures and their repair will be chargeable as working time. Any time for stoppage due to puncture repairs in excess of 2 hours per puncture and where WS MACHINE have been asked to effect the repair will not be charged during normal working hours.
- f. Any site bonuses to be paid to WS MACHINES operators must be authorized on timesheets by the Hirer's representative and will be charged to the Hirer's account plus an additional 20% to cover additional cost of N.I. etc. payable by WS MACHINE directly as the result of the payment of this bonus. The signature of the Hirer's representative on the timesheet shall bind the Hirer to pay such bonuses entered thereupon and the 20% addition.
- g. The maximum machine clock hours to be worked in the case of self drive plant are 10 hours per day or 50 hours per working week. In the event of hours being worked in excess of these excess hours will be charged pro-rata.
- h. A £5.00 credit charge will be payable on each invoice by the Hirer. If payment is made by Debit / Credit Card, this is to partly cover the costs of the transaction. If payment is on a monthly account basis, this is to partly cover the costs of giving the credit facilities.

- j. The "Minimum Hire Period" is:
  - i. On a self drive hire - one day (in most cases)  
- one week (for some specified items)
  - ii. On a hire with WS MACHINES operator – 9 hours per day regardless of any circumstances if less hours are worked excepting breakdowns. Machine travelling time (if any) for the plant is counted as working time and charged at the same rate.
- k. Where plant is returned to the appropriate WS MACHINE depot or collected from site in a condition that requires more than a basic power clean WS MACHINE reserve the right to clean the plant and charge the Hirer at cost. Customers are required to dig out tracks sufficiently to enable the plant to be safely transported in accordance with Road Traffic Law. The appropriate WS MACHINE depot manager will be the sole judge of condition of cleanliness of the plant.
- l. Time is not of the essence with regard to delivery times/collection times. Whilst WS MACHINE endeavours to ensure that requested times are met, WS MACHINE cannot be responsible for any costs/losses due to late/early delivery or collection.

## **21. Daily & Weekly Rate Charges**

Notwithstanding the maximum working hours set down in clause 20(g) relating to self drive plant, the daily rate shall be the minimum charge regardless of hours worked. No hire charges shall be made for Saturdays and Sundays if the plant is not working.

## **22. Commencement and Termination of Hire**

- a. If the plant is collected, the hire shall commence from the time that the plant leaves the WS MACHINES depot or is signed for (whichever is the earlier) and shall continue until the plant is received back at the WS MACHINES depot of origin and a returns note given to the Hirer excepting in the case of damage where standing charges will apply after collection/return (see condition 15f).
- b. If delivered by WS MACHINE, the hire shall commence from the time of arrival on site and shall continue until the plant is collected from site (or returned to the WS MACHINES depot of origin) excepting in the case of damage where standing charges will apply after collection/return. Operated hires where the plant travels to site under its own power shall be on hire from the time the plant leaves WS MACHINES depot until its collection/return (see condition 15f).
- c. WS MACHINE may immediately terminate any hire having given prior notice where the Hirer has exceeded his credit limit or where payment is overdue.
- d. The Hirer hereby confers the irrevocable right upon WS MACHINE to enter sites and remove plant hired to them by WS MACHINE without notice:
  - i. If the Hirer voluntarily or otherwise goes into liquidation or receivership, or
  - ii. If a bankruptcy order is issued against any Director/Partner/Proprietor of the Hirer, or
  - iii. If any account is not paid within 30 days of invoice date, or
  - iv. If the Hirers' credit limit with WS MACHINE is exceeded, or
  - v. If WS MACHINE believe that the Hirer will be unable to pay the hire monies, or
  - vi. If WS MACHINE believe that their plant is/are an immediate target for theft, or
  - vii. If WS MACHINE believes that the plant is to be or is likely to be used for unlawful purposes, or
  - viii. If 48 hours notice in writing is given to the Hirer by WS MACHINE by fax/post/e-mail to the registered office/trading address of the Hirer.



### **23. Use of Plant on the Highway and Responsibility for Fines, Charges etc.**

- a. It is the responsibility of the Hirer to advise WS MACHINE if the plant they wish to hire is to be used on the public highway. The Hirer must satisfy themselves that the plant is licenced for use on the road.
- b. The Hirer shall be solely responsible for and indemnify WS MACHINE against any fines levied, tolls charged or offences committed whilst the plant is on hire to them. The Hirer hereby agrees that WS MACHINE may supply their name, address and telephone number to the authorities if requested to do so.
- c. The Hirer shall be responsible and indemnify WS MACHINE for any parking or other fines incurred by WS MACHINES drivers due to access problems on site. WS MACHINE reserves the right to pass on all such charges to the Hirer.

### **24. Notice of Termination of Hire**

- a. When a fixed period of hire is agreed at the time of hire, no notice of termination is necessary and the plant will be collected automatically (or the return of it expected). Should this period be extended so that the off-hire date is no longer agreed and it is therefore an "open" period of hire the following shall then apply as an open period of hire:-
- b. Where the period of hire is indeterminate at the outset i.e. it is an "open" hire (or having been fixed becomes indeterminate) the hire may only be determined by the Hirer giving 24 hours notice of off-hire to the WS MACHINES depot of hire, except as in clauses 22c and 22d above and 24c below, and confirming such in writing (preferably by e-mail) immediately. An off-hire reference from WS MACHINE and the name of the WS MACHINES employee accepting the off-hire shall be the only proof of off-hire in the event of any dispute. Note that after the period of hire has terminated there may be continuing standing charges in the event of loss or damage, see 11(e) and 15(f).
- c. In respect of machines of over 22 tonnes in weight or over 3m in width which are notifiable loads if transport is provided by WS MACHINE, the notice required to off-hire is 72 working hours.
- d. Notice of termination by the Hirer to WS MACHINES operators/service engineers/delivery drivers shall not be deemed to be acceptable as any notice of off-hire.
- e. If plant is not collected by WS MACHINE within 48 hours of the agreed time the Hirer shall advise WS MACHINE in writing (preferably by fax or e-mail) of that fact.

### **25. Idle Time**

- a. In respect of plant hired from WS MACHINE by the Hirer on a self-drive basis idle time shall not be allowed under any circumstances except in the case of complete theft, damage to or loss of the plant as outlined in Clause 15.
- b. In respect of plant hired from WS MACHINE by the Hirer to include an operator supplied by WS MACHINE idle time will be allowed and charged at the current self drive hire rate in minimum units of one day chargeable at 1/5<sup>th</sup> of the weekly rate per day where the WS MACHINES Depot of hire is notified prior to the day in which idle time is required.  
If this notification is not received by at least the previous day or an operator attends the site for work the minimum of 8 hours will be charged at the contracted hire rate regardless of the hours worked (if any).

### **26. Working, Travelling Time, Fares and Expenses**

WS MACHINE operators' travelling time, daily fares and similar expenses will be chargeable to the Hirer at cost as/if agreed during the placement of the hire. No charge shall be made for any WS MACHINES employee for the purpose of maintenance repair or servicing of plant save if this is necessary due to the Hirer's misuse, negligence or misdirection of the plant.

## **27. Consumables and Fuel Supplies**

- a. All consumables such as oil, grease, adblue and fuel will be paid for by the Hirer on self-drive hires and it is the responsibility of the Hirer to carry out the required daily checks and to supply the required consumables in any case. Fuel supplied by WS MACHINE will be charged at the rate published in their current price list.
- b. When hired "Self-Drive" or "Operated", machines will be delivered or made available for customer collection with a full tank of fuel. This will be charged for on the first invoice. A credit for the fuel remaining in the plant will be issued at off-hire. Refuelling shall be the responsibility of the Hirer and not an operator supplied by WS MACHINE. No credit can be given at a later date for the supply of fuel by the Hirer to WS MACHINE to compensate for any fuel deficiency.
- c. Fuel will be charge by the litre and credits calculated on the percentage of a tank full recorded at the time of hire/off-hire. Tank capacities are generally published in our Pocket Guide.
- d. The fuel injection systems of WS MACHINES plant and equipment are NOT compatible with Bio Diesel. Therefore, Bio Diesel must NOT be used as this will cause extensive damaged to the fuel systems, which will result in expensive repairs. Please refer to Clause 11 (f).
- e. Under no circumstances must 'adblue' be put in the fuel tanks of any diesel powered vehicle. The adblue causes major corrosion and damage to the fuel systems which can result in extremely expensive repairs, which will be the responsibility of the hirer, together with any standing charges.

## **28. WS MACHINE Signs and/or Name Plates**

- a. The Hirer shall not cover up, remove or deface in any way the signs, stickers, signwriting or nameplates of WS MACHINE nor shall they fix to the plant any sign or sticker nor paint in any way any part of the plant.
- b. The Hirer will be responsible for the cost of repairing any damage to WS MACHINES signs, stickers, signwriting or nameplates sustained during the hire period and any preparation work necessary to replace them.

## **29. Transport of Plant and Ancillary Items.**

- a. The Hirer will be responsible for payment for transport to and from their site or will be entitled to arrange and pay for their own transport if they so wish.
- b. Transport carried out by WS MACHINE will be charged at the rates published in the current WS MACHINES price list or those otherwise agreed on each and every item of plant and for each and every on-hire and off-hire. These charges will apply regardless of where the machine is moved to, when off-hired (If anywhere) and regardless of where it comes from when originally hired.
- c. No discount in transport rate will be given regardless of the number of items of plant on a delivery vehicle as rates already take into account the size of each item of plant.
- d. Any road, bridge, tunnel toll, congestion or similar charges incurred by WS MACHINE in the course of delivery/collection will be charged to the customer in addition to normal transport charges.
- e. Where buckets, attachments, ancillary items or breakers are on-hired or off-hired separately from the plant and have to be transported separately to or from site as a separate journey, a charge for transport for each journey will be made by WS MACHINE to the Hirer.
- f. Where plant is driven to site under its own power by an WS MACHINES operator (i.e. Backhoe Loader) WS MACHINE will charge the Hirer at the hourly hire rate as if the machine was working (Travelling as Working) from the time the plant leaves the WS MACHINE depot of supply until its arrival on site and vice versa on return. Where the total of operating hours plus travelling hours is less than or equal to eight hours the minimum daily charge of eight hours will apply. Where the total exceeds eight hours the total number of hours will be charged.

### **30. Change of Ownership/Directorship and Change of Name.**

- a. WS MACHINE reserve the right to continue or determine any contract at their sole discretion in the event of any change of ownership/directorship of the Hirer. The Hirer is hereby bound to notify WS MACHINE of any such change in writing within 24 hours of such an occurrence during a period of hire or within 14 days if not during a period of hire.  
The original Directors/Partners/Proprietors of the Hirer shall remain responsible for all liabilities for future hires if they are unable to conclusively prove that WS MACHINE were notified in writing of such changes.
- b. The Hirer is hereby bound to advise WS MACHINE in writing within seven days of any change of name of the Hirers' company. Accounts are allocated to a company by Registered Number and any change of name shall not change responsibility of the company with the registered number for all debts thereafter. In the event of an un-notified "name swap" between companies, both companies shall be liable jointly and severally for all debts. Any Guarantee(s) signed on behalf of the initial account holder will remain in force and retain full liability.

### **31. Government Regulations**

The Hirer shall be responsible for compliance with all Local and National Government regulations relating to the use of the plant including but not limited to all Health & Safety at Work Legislation, The Factories Act, Mines & Quarries Act, Road Traffic Act Legislation, Construction (Lifting Operations) Regulations 1961, Lifting Operations, Lifting Equipment Regulations 1998 and BS7121 safe use of cranes.

### **32. Protection of Rights of H.E. SERVICES**

The plant shall remain the property of WS MACHINE at all times and the Hirer shall not sell, loan, pledge, mortgage, charge, re-hire or part with the plant except in the case of accidental loss or damage referred to in clause 15. The Hirer shall further protect the plant against seizure, distress or execution and shall indemnify WS MACHINE against all damage charges, costs, losses or expenses arising from any failure to perform the requirements of this protection.

### **33. Payment Terms**

- a. All accounts shall be paid within 30 days of invoice date or earlier if agreed by both parties.
- b. Punctual payment of hire charges shall be the essence of this Hire Agreement and the Hirer shall be in breach of this Agreement if any part thereof shall remain unpaid for more than seven days after becoming due.
- c. Where a Direct Debit mandate payment is cancelled, rejected or is unpaid by the Hirer's bank, or where a Debit / Credit Card payment has been rescinded, interest shall be charged and be payable upon the unpaid amount(s) of any accounts or invoices immediately. Also, interest shall be charged and be payable upon the amount(s) of any accounts or invoices remaining unpaid beyond 30 days, such interest to be calculated (at WS MACHINES option) either at the rate of 2.5% per month or at the rate of interest prescribed from time to time under the Late Payment of Commercial Debts (Interest) Act 1998, such interest to be calculated on a daily basis on the balance outstanding and compounded monthly.
- d. If any account remains outstanding after a period of 60 days from invoice date, is over its credit limit or if credit facilities have been withdrawn, the matter may be referred for debt collection action and WS MACHINE reserve the right to pass the cost (both internal and external) of any such service, including that of Solicitors (both before and after the issue of court proceedings) or other action under The Insolvency Act 1986 (if any), on to the Hirer's account which amount will be due and payable within 14 days. Internal costs include, but are not limited to, i) £15 for each telephone call made to request payment of an outstanding account as described above, ii) £25 per calendar month Arrears Management Fee, iii) £100 for each visit by WS MACHINE manager or external field agent. The internal costs that are added to the account reflect the cost of the additional administrative work carried out whilst managing the outstanding account as described above and interest in accordance with clause 33.c. of these Terms and Conditions of Hire shall be applied to these costs if they remain unpaid after 14 days.

- e. Where the Hirer has a grievance for which they believe they are due a credit, the undisputed sum whether part of an invoice or a number of invoices must be paid within WS MACHINES standard credit terms. WS MACHINE accept that part payment of an invoice in these circumstances shall not be considered proof that the entire invoice is accepted as payable by the Hirer. Interest will accrue on the undisputed sum if payment is not received to terms in accordance with Clause 33a. If the disputed sum is proved to be owing to WS MACHINE or is paid by the Hirer to WS MACHINE then WS MACHINE reserve the right to charge interest on this originally disputed sum as well. Interest will be charged at the rate shown in clause 33c above.
- f. If discount is negotiated from WS MACHINES list prices these discounts are conditional upon payment being made to WS MACHINES terms. WS MACHINE reserve the right to disallow such discounts where payment is overdue and therefore invoice the discount amount, which will be immediately payable.
- g. Where the Hirer is also a supplier to WS MACHINE, WS MACHINE reserves the right to deduct any monies outstanding by the Hirer to WS MACHINE from purchase ledger payments to the Hirer from any WS MACHINE Group / Associated Company.

#### **34. Direct Debit Mandates**

- a. As part of WS MACHINES Direct Debit Guarantee if an error is made by WS MACHINE or the Bank/Building Society, the Hirer is guaranteed a full and immediate refund from the branch of the amount debited.
- b. Where WS MACHINE hold mandates, payments will be taken on the last working day of each month for the preceding month's invoices unless otherwise agreed. In cases where the credit limit is exceeded, payments on account may, at WS MACHINES discretion, be taken weekly but the Hirer will be advised in advance of the amounts and dates.
- c. Some accounts are offered by WS MACHINE only provided a Direct Debit Mandate is completed. Additional credit is also occasionally offered to some account holders because WS MACHINE hold a signed mandate.
- d. WS MACHINE reserve the right to close an account or reduce a credit limit as it deems fit if a Direct Debit Mandate is cancelled rejected or unpaid. Should an account be closed for this reason all outstanding monies become due for immediate payment.

#### **35. Additions for Statutory Taxation**

WS MACHINE shall be entitled to charge additionally any statutory taxation to The Hirer. (For example Value Added Tax).

#### **36. Bank Holidays and Industry Holidays**

All Bank Holidays and Construction Holidays will be charged as normal hire days (Monday to Friday only) unless the Hirer notifies WS MACHINES depot of hire in writing giving SEVEN DAYS NOTICE of the day(s) that the site will be closed down. Full allowance against the hire will then be allowed subject to all of the following:

- a. If the Hirer wishes WS MACHINE to leave the plant on site over the holiday period, the Hirer accepts full responsibility for security and liability for theft and/or damage and agrees to maintain full insurance cover on the plant at all times.
- b. If the Hirer wishes the plant to be removed from site over the holiday period, the Hirer agrees to pay WS MACHINE the cost of transport to and from the nearest WS MACHINES secure depot.

- c. The Hirer agrees that should the plant be found to be working on any day during the pre-notified holiday period the Hirer will pay for the whole holiday period as working.
- d. The maximum allowance (in working days) for Bank/Industry holidays will be 1 DAY for each Bank Holiday, 6 DAYS at Easter (to include the 2 Bank Holidays) and 10 DAYS at Christmas (to include the 3 Bank Holidays).

Should the Hirer request the plant to be left on site as in section (a) but WS MACHINE prefer to remove the plant to their depot for any reason, WS MACHINE shall bear the cost of transport from site and back to site after the period of holiday and shall accept responsibility for the plant while under their control.

### **37. Machines Hired with Breakers or Specialist Attachments**

- a. All machines supplied with breakers (or special attachments) and buckets will be charged at breaker (or special attachment) rate irrespective of their use or otherwise until the breaker (or special attachment) is off-hired giving 24 hours notice and the breaker (or special attachment) returned to the WS MACHINES depot of supply. "Split rates" are not available under any circumstances.
- b. On machines hired with Hydraulic breakers, point wear which is "fair wear and tear" will be the responsibility of WS MACHINE. Broken points (under all circumstances), excessive wear and damage will be chargeable to the Hirer (self drive hires only).
- c. On every hire the Hirer is responsible for supplying suitable lifting gear for all lifting operations. The Hirer is also responsible for carrying out all required daily and weekly statutory inspections of equipment (self drive hires only).

### **38. Fitting of Non-WS MACHINE Attachments to an WS MACHINE item of plant and vice-versa**

If the Hirer wishes to fit their own attachments or attachments hired by them from a company other than WS MACHINE to an WS MACHINES item of plant or vice versa they must firstly obtain advanced written permission from a Director or Manager of WS MACHINE. If permission is granted the Hirer will become responsible for:

- a. Any damage howsoever caused to WS MACHINES plant (or attachment) due to the fitting, removal or operation of the attachment (or item of plant).
- b. Any damage howsoever caused to the item of plant or attachment.
- c. The cost of fitting, removal and making good any additions to the plant (or attachment) necessary for the operation of the attachment (or item of plant) if carried out by WS MACHINE.
- d. Payment of the full hire rate for the plant and attachment during any modification, fitting or removal of the attachment or any necessary repair to either item.
- e. In the case of the fitment of a Hirer's attachment to an WS MACHINE machine or visa versa, should there be any damage caused to the item of plant or attachment belonging to WS MACHINE caused by contaminated hydraulic oil passing from the Hirer's item of plant or attachment to the WS MACHINE item of plant or attachment then WS MACHINE will hold the Hirer liable for all repair costs necessary due to such damage caused by contaminated hydraulic oil, as well as for idle time hire charges for the item while the repairs are being carried out, together with any other cost which are necessary including (but not limited to) transport, replacement of hydraulic oil and third party inspection and analysis cost.

### **39. Notification of Queries**

- a. Any query regarding an WS MACHINES invoice must be taken up in writing (preferably by fax or e-mail) within FOURTEEN DAYS of invoice date and addressed to WS MACHINES Head Office. Any query not notified in writing within this period will not be entertained.
- b. Any query regarding any Delivery ticket / Collection ticket / Time Sheet or other documents / correspondence from WS MACHINE must be taken up in writing within seven days (or sooner if so stated). Any query not notified within the period will not be entertained.

### **40. Plant Working Close to Buildings or Structures etc.**

In general, plant should not be worked close up to buildings, structures, kerbs, cables, pipes, vehicles and the like. On hires where WS MACHINE have supplied the operator WS MACHINES drivers may upon instruction work close to such as the above. WS MACHINES drivers will always operate using their best skill and endeavour not to cause damage but the cost of repair of any damage or the responsibility for any injury to the Hirer's employees or property WS MACHINES employees or property or any third party or its property howsoever caused will be the sole responsibility of the Hirer.

### **41. Inherent Dangers of Plant and its Operation**

- a. Ordering and/or accepting WS MACHINES plant on site implies that the Hirer is fully conversant with the item of plant or equipment and the dangers associated with it as well as its safe operation and storage. The Hirer hereby confirms that they will not allow any person who is not competent nor is fully trained to operate or use the plant. If the Hirer has any doubts in respect of the safety or other regulations governing the use of the plant or equipment they must immediately contact WS MACHINE for advice.
- b. The Hirer should be aware of The British Standard code of Practice for safe use of cranes BS7121 part 1 in respect of lifting operations and abide by its recommendations.
- c. If the Hirer has any doubt as to the capability of any WS MACHINES driver or has any reason to believe that all or any part of the plant or equipment hired may be defective or dangerous they must (as applicable) cease use of the item immediately and contact the Depot Manager at the depot of hire. Hire time chargeable at the contracted rate will be charged up to this time under all circumstances.

### **42. Cab Removal**

Removal of cabs and/or any other safety or protective structural device can be carried out solely at the request of the Hirer where it is necessary for the environment in which the Hirer is working. By making such a request the Hirer accepts full responsibility for such removals and agrees that WS MACHINE shall not be held liable for any accident, incident, injury or damage that occurs due to such removal and the Hirer understands that the machine may now no longer comply with certain statutory legislation and accepts exclusive and full responsibility in this area.

### **43. Credit Limits**

- a. WS MACHINE reserve the right to amend the Hirer's credit limit or close credit accounts at any time without explanation.
- b. If a credit limit is exceeded by the Hirer or payment terms not complied with, the whole outstanding balance (not only the overdue amount) will become due for immediate payment.



- c. Those signing the WS MACHINE Credit Application Form on behalf of limited companies do so as guarantor and irrevocably undertake to guarantee the payment of all monies owing to WS MACHINE by the relevant limited company if WS MACHINE believe that the limited company cannot meet its obligations. If the limited company goes into receivership, liquidation or administration, the guarantor will pay to the receiver, liquidator or administrator, as the case may be, such sum as will enable him or her to pay all monies owed to us by the limited company.

#### **44. Hire Rates**

- a. All plant shall be hired out at WS MACHINES price list rate current at the time of booking except as in (b), (c) and (d) below.
- b. Special discounted rates may be agreed in advance for an agreed minimum term of hire. A confirmation letter of this discounted hire rate agreement will usually be produced by WS MACHINE and must be signed by both parties to achieve this discount. This rate will apply for the one hire only and shall be conditional on the hire running for at least the agreed term and payment being made to terms. WS MACHINE will guarantee to keep the hire rate fixed for the minimum hire period agreed. Should any of these criteria not be met WS MACHINE shall be entitled to charge the entire hire at the WS MACHINES price list rates current at the time of booking.
- c. A Partnership Agreement has been signed between the Hirer and WS MACHINE whereby specially agreed discounts are offered on all hires from the Hirer subject to agreed conditions.
- d. A discounted rate is agreed at the time of booking between both parties and confirmed in writing by WS MACHINE to the Hirer.

#### **45. Dishonoured Payments**

WS MACHINE reserve the right to charge to the account of the Hirer and recover from them the bank charges and subsequent costs (both internal and external) incurred for any cheque returned or refused for payment and/or any Standing Order or Direct Debit unpaid, refused or cancelled and/or any other type of payment (including Credit Card) being rejected. Under these circumstances the whole outstanding balance (not only the payment in question) will become due for immediate payment.

#### **46. Variation of Hire Rates**

WS MACHINE reserves the right to alter hire and other rates without notice except as in 44 (b) above.

#### **47. Non-Credit Account Transactions**

Transactions with any Hirer not having an approved credit account with WS MACHINE will only be accepted on the basis of payment with cleared funds to cover the expected hire and any transport plus one day's deposit (refundable less any damages/shortages).

#### **48. Weights and Measures**

- a. All weights, measures, dimensions and digging depths etc. provided in WS MACHINES GROUP literature, electronic media and price lists are approximate and are provided only for the guidance of the Hirer and are subject to change without notice. No guarantee is offered regarding their accuracy.
- b. Hirers are reminded of their duty to comply with the Hydrocarbon Oil Duties Act 1979 with regard to the use of rebated (red) diesel. WS MACHINE will hold the Hirer fully liable for any penalties incurred.

#### **49. Currency of Prices**

All prices in WS MACHINES literature are quoted in pounds sterling and apply to hires in Mainland Britain only unless otherwise stated.

#### **50. Internet and E-mail Communications and E-commerce Transactions.**

- a. Hirers may place orders direct from WS MACHINE website using an electronic order form/system and/or e-commerce solutions as and when available. Hirers that hold a credit account may use an "account order" form. Hirers paying by credit card must use a "credit card order" form. The provision of details by the Hirer using either of these methods shall not be considered an order until confirmed to the Hirer by WS MACHINE. Orders cannot be accepted in this way for any other payment method such as cheque or cash.
- b. Where correspondence/transactions are carried out by e-mail or e-commerce, the electronic "signature" or e-mail "signature" shall constitute an authorised signature on behalf of either party and shall bind both parties to the hire contract.
- c. Although WS MACHINE and its e-commerce provider will take all reasonable steps to ensure security is of the highest order, no warranty is given that e-commerce solutions provided by WS MACHINE are secure.

#### **51. Data Protection Act and Consumer Credit Licence.**

- a. WS MACHINE use a number of credit reference agencies and other organizations to protect itself from fraud and bad credit risk as well as taking references from Trade Suppliers and Bankers where appropriate. By applying for an account with WS MACHINE, the Hirer hereby agrees that WS MACHINE may access, store and use such information about their Company and/or Directors and/or Shareholders and/or Partners to allow WS MACHINE to decide whether to offer or continue to offer credit.
- b. Searches of information held by credit reference agencies, including the Electoral Register, may be carried out. This is done in order to assess the application (even if it does not proceed fully), prevent fraud and confirm identity. Searches are logged by the credit reference agencies and other parties who make searches in the future will be able to see this information.
- c. For its part WS MACHINE agrees that any information accessed as detailed in clause (a) above will be held solely for the purposes detailed in the said Act and that at no time shall this information be imparted to a third party except to WS MACHINES legal representatives or where WS MACHINE is required to by law.
- d. WS MACHINE are registered under the Data Protection Act and holds a current Consumer Credit Licence. Details are available upon written request to the Financial Director at WS MACHINE Head Office.

#### **52. Right to Communicate.**

- a. By applying to open an account with, or hiring from, or requesting a quotation from WS MACHINE, the Hirer hereby confers upon WS MACHINE the right to contact the Hirer by telephone, facsimile or e-mail to offer advice, supply invoices / statements and the like, or additional services that WS MACHINE believe will be of interest to the Hirer.
- b. The Hirer has the right to opt out of any of the agreements in clause 52a above by writing to WS MACHINE, stating which of the above they do not wish to receive. Letters should be addressed to, The Financial Director, WS MACHINE, Ivy Farm, Lidsing, Gillingham, Kent, ME7 3NL
- c. WS MACHINE reserves the right to record any incoming or outgoing telephone conversation, for training, monitoring or other purpose.

### **53. The Contracts (Rights of Third Parties) Act 1999**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to any contracts or agreements entered into between WS MACHINE & The Hirer.

### **54. General**

- a. If any provision in these conditions is held by any competent court of law to be invalid or unenforceable in whole or in part, the validity of the other provisions of these conditions and the remainder of the provisions in question shall not be adversely affected thereby.
- b. WS MACHINE shall not be liable to the Hirer nor be deemed to be in breach of any of these conditions by reason of any delay in performing or failure to perform any obligation of these conditions due to any of the following causes, which are beyond its control:
  - i. Act of God, explosion, flood, tempest, fire, or accident.
  - ii. War or threat of war, sabotage, insurrection, civil disturbance, or requisition or act of terrorism.
    - iii. Acts, restrictions, bye-laws, regulations, prohibitions, or measures of any kind on the part of any governmental parliamentary or local authority.
  - iii. Strikes, lock-outs or other trade disputes
  - iv. Difficulties in obtaining new plant, labour, fuel, spare parts or machinery.
  - v. Power failure or breakdown in machinery.
- c. This contract shall be governed by the laws of England and is subject to the exclusive jurisdiction of the English Courts
- d. Notwithstanding anything to the contrary in the absence of any specific condition English common law applies.
- e. WS MACHINE shall be entitled at any time and from time to time to vary or replace the terms and conditions and exceptions herein contained without advance notice.
- f. No variation to these terms and conditions shall take effect or have any affect in law unless the variation has been agreed and confirmed in writing to the Hirer by a Director of WS MACHINE.
- g. WS MACHINE and / or the machine manufacturer may fit a tracking and locating device and / or immobilizer to the item of plant, entirely at their own discretion. In the event of any device of this nature being fitted to the item of plant, the Hirer hereby agrees not to remove, tamper, block or otherwise impede the device so that it does not work as originally intended. In the event of the Hirer removing / disabling / interfering with any tracking or immobilizing device then the Hirer will be responsible for all costs associated with the correct reinstatement of the device(s) as well as any other costs / losses associated (including for a replacement item of plant if it has been stolen).

### **55. Valid from**

These Terms and Conditions of Hire are valid from September 2021 and supersede all previous Terms and Conditions of Hire.

**WS MACHINE & PLANT HIRE LTD**

