

Conditions of Hire – Excavation Safety Solutions

DEFINITIONS

The following expressions shall (unless the context demands otherwise) have the following respective meanings:-

- a) "the Lessor" means MGF (Trench Construction Systems) Limited and includes its servants, agents, successors and assigns and the Lessor shall be entitled to assign or subcontract all or any of its rights and/or obligations hereunder.
- b) "the Hirer" means the company, firm, person, corporation or public authority taking the Equipment on hire and includes their successors and/or personal representatives. If two or more persons constitute the Hirer, e.g. a partnership, their liability hereunder shall be joint and several and any notice, agreement or otherwise given to or by any one or more shall bind all of them.
- c) "Equipment" means all plant, machinery and equipment, which the Lessor agrees to hire to the Hirer, including all extras, components and replacements.
- d) "A working week" means five days from Monday to Friday inclusive (including public holidays) in each week.
- e) "Period of Hire" means the period commencing at commencement of business on the day when the Equipment leaves the Lessor's depot where last in use for delivery to the Hirer and terminating at the close of business on the day when all the Equipment is delivered to the Lessor's named depot, or otherwise as directed by the Lessor.

CONFIRMATION BY THE HIRER

The Hirer confirms that: -

- a) the particulars overleaf are correct and acknowledges that the Lessor specifically relies thereon in entering into this Agreement;
- b) he makes the Agreement in the course of a business and has selected the Equipment relying solely on his own skill and judgement;
- c) at no time shall the Equipment become the property of the Hirer who shall not re-hire or subcontract the Equipment or any part thereof or part with possession or control thereof.
- d) having regard to the nature of the Equipment and of the respective businesses of the Hirer and the Lessor and to the Hirer's specialist knowledge, the exclusions in Condition 3 are fair and reasonable.
- e) pursuant to Section 6(8) of the Health and Safety at Work Act 1974, he will inspect the Equipment immediately on its delivery to him and thereafter at such intervals as may be required to ensure, so far as is reasonably practical that the Equipment will be safe and without risk to health when properly used and he will immediately repair or cause to be repaired any defects in the Equipment which such examination may reveal.
- f) he will take delivery of the Equipment at the location specified by the Lessor and acceptance by the Hirer of the Equipment shall be conclusive that he has examined it and found it in good order and condition.
- g) he accepts that the conditions of Hire as set out in the Construction Plant-hire Association (CPA) Model Conditions, including supplementary conditions for Shoring and Piling Technology and Design and/or Installation Conditions for Shoring and Piling Technology Operations form part of this agreement. These conditions are available for inspection at the Lessor's depot.

REPRESENTATIONS AND LIABILITY OF THE LESSOR

The Lessor: -

- a) does not exclude or restrict its liability for death or personal injury resulting from negligence of the Lessor, its servants or agents in the course of their employment by the Lessor.
- b) does not make any representation or undertaking, express or implied, in respect of the Equipment, its description, condition, quality, attributes or fitness for any particular purpose.
- c) shall not, save as provided in Condition 3 a) hereof, be liable for any death, injury, loss or damage (including consequential loss or damage) by reason of any defect in the Equipment howsoever arising;
- d) shall not be liable for any loss or damage arising as a result of any delay or non-delivery of the Equipment however caused and reasonable delay in delivery shall not entitle the Hirer to avoid or rescind this Agreement;
- e) may, so far as may be legally permissible, at any time substitute for the Equipment other Equipment fulfilling a similar function;
- f) shall not be prejudiced by any time or other indulgence granted to the Hirer

BASIS OF CHARGING AND PAYMENT

- a) The minimum period of hire is two working weeks and thereafter charges shall be on either a working weekly or a daily basis unless specifically agreed otherwise in writing. The Hirer shall pay rentals for each day (including the day of delivery and of redelivery to the Lessor) until all the Equipment has been redelivered to the Lessor (where hire is on a working weekly basis the daily rate shall be at one fifth of the weekly rate with no charge being made for Saturday and Sundays).
- b) All payments by the Hirer shall be made within 30 days of invoice date and without any deduction, counterclaim or set-off, to the Lessor at the address shown overleaf (or otherwise as notified by the Lessor) and all payments by post shall be at the Hirer's risk. In payment time shall be of the essence and without prejudice to any other rights of the Lessor the Hirer shall pay interest at 2 per cent per month on all overdue amounts down to actual payment. The Hirer is not under any circumstances entitled to any rebate or cesser of rental whether as a result of the Equipment becoming unserviceable or otherwise.

THE HIRER'S OBLIGATIONS

The hirer shall: -

- a) not take or permit the Equipment to be taken out of the United Kingdom and the Isle of Man without the prior written consent of the Lessor;
- b) if at the date hereof any charge or interest exists on the Hirer's assets or if at any time hereafter the Hirer wishes to create any such charge or interest which may in any way affect the Equipment he shall immediately notify the Lessor and obtain a waiver from the holder of such interests of any claim which he might otherwise have had on or in respect of the Equipment and the Hirer shall produce evidence to the Lessor of having done so and an acknowledgement from every such holder that the Equipment will not be subject to the interest concerned;

c) punctually pay all rent, rates, outgoings and taxes payable on the premises where the Equipment may be at any time (including mortgage payments) and shall produce evidence of payment to the Lessor on request, and shall keep the Equipment free from any distress, execution, diligence or other legal process;

d) be solely responsible for and indemnify the Lessor in respect of all loss of or damage to the Equipment however caused (excepting fair wear and tear) and use the Equipment properly and carefully and at all times keep it in good repair and condition and immediately deliver it to the Lessor in good order and repair at the end of the hiring;

e) obtain and keep valid all permissions and licenses that may from time to time be required in connection with the use of the Equipment and take all such other steps as are necessary to ensure that the Equipment will in use be safe and without risk to health and safety;

f) ensure that the Equipment is only operated by properly qualified persons and immediately notify the Lessor of all loss, damage and/or destruction of the Equipment;

g) immediately insure and keep the Equipment insured (with prompt payment of all premiums) in at least its full replacement value at any time. Any monies received by the Lessor may be applied by him towards the repair and/or replacement of the Equipment and/or towards payment of the rentals hereunder (without in any way releasing the Hirer from his obligations under this Agreement);

h) be responsible for the safe unloading, loading and protection of the Equipment on site;

i) if the Equipment is involved in any accident resulting in injury to persons or damage to property, immediately notify the Lessor by telephone and confirm the same in writing and insofar as any claim may be made by any person or body suffering injury or damage, the Hirer shall not unless that claim lies within the terms of any indemnity given to the Lessor hereunder, make any admission, offer, promise or settlement without the prior consent of the Lessor in writing;

j) not move the Equipment from the site to which it was delivered or consigned without the prior authority of the Lessor, such authority to be confirmed in writing;

k) give the Lessor, its agents and those authorised by its access to every premises and site where the Equipment may be at all reasonable times to inspect same and if necessary remove it on the termination of or otherwise deal with it in accordance with this Agreement;

l) subject to Condition 3 a), indemnify the Lessor against all claims by any third party in respect of any death, injury, loss or damage to persons or property (whether or not caused or contributed to by the negligence of the Lessor) arising out of or in connection with as a result of the use or possession of the Equipment or the condition thereof;

m) reimburse to the Lessor all expenses incurred by the Lessor in repossessing and/or repairing the Equipment, obtaining payment, and/or otherwise caused by any breach by the Hirer of his obligations under this Agreement

EARLY TERMINATION

a) if the Hirer shall default in the payment of any sums payable hereunder (whether or not the same shall have been demanded) or in the performance or observance of any stipulation herein or on his part to be performed or observed or commit any breach of any such stipulation or if he shall die or, in the case of a company, it shall be wound up compulsorily or voluntarily (otherwise than in connection with a scheme of reconstruction or amalgamation with a declaration that the Hirer is solvent) or a receiver be appointed if any of its assets or if any execution, distress or diligence or if any other legal process shall be threatened, commenced or levied against it or its goods or in the case of an individual he shall commit any act of bankruptcy or shall become not our bankrupt or shall have a receiving order made against him or shall be sequestered or, in the case of a partner, if the partnership shall be dissolved or if the Hirer abandons the Equipment or signs a trust deed on behalf of or calls any meeting of or enters into any arrangement or composition with his or its creditors or does anything to prejudice the rights of the Lessor hereunder to the Equipment, then the Lessor forthwith without notice or demand become entitled to immediate possession of the Equipment and

i) the Lessor may forthwith and without notice repossess the Equipment and thereupon this Agreement and the hiring shall terminate; or

ii) the Lessor may by written notice sent by post or left at the Hirer's address terminate this Agreement and thereupon the Hirer shall no longer be in possession of the Equipment with the Lessor's consent and such deterioration shall be without prejudice to any pre-existing liability of the Hirer to the Lessor or the Hirer's liabilities under Condition 7 hereof.

b) If at any time during this Agreement there shall be any other Hire Agreement or other Agreements in existence between the Lessor and the Hirer, whether in similar terms to this Agreement or otherwise, which are not regulated agreements (as defined in the Consumer Credit Act 1974) then provided always that the provisions of legislation from time to time in force do not apply thereto and invalidate this Condition 6 b) all such Agreements shall be construed as forming one transaction so that:-

i) any money paid to the Lessor under this Agreement or any such Agreements may be appropriated by the Lessor in full or part satisfaction of any sums due to the Lessor by the Hirer under any such other Agreements or under this Agreement, and notwithstanding that the Hirer may have purported to appropriate such money in some other way;

ii) any breach of any such Agreement may be treated by the Lessor as a breach of all such agreements then existing between the Lessor and the Hirer; and/or

iii) termination of any such Agreement may be treated by the Lessor as termination of all such Agreements

TERMINATION

If the hiring and this Agreement shall be terminated under any of the provisions of Condition 6 hereof the Hirer shall forthwith at his own expense deliver up the Equipment to the Lessor and shall immediately pay to the Lessor.

a) all arrears of rentals due at the date of such termination, interest thereon in accordance with Condition 4 b), the cost of repairs required to be done to the Equipment to put the same in good condition, and all legal and other costs and expenses incurred by the Lessor in connection with the repossession of the Equipment;

b) the balance of all rentals applicable to the remainder of the Period of Hire less such rebate as the Lessor in its absolute discretion may allow in consideration of accelerated payment.

VARIATION OF AGREEMENT

This agreement constitutes the sole agreement between the parties relating to the hire of the Equipment and no variation shall be made to it unless in writing signed by the Lessor's duly authorised representative.

NOTICES

All notices, demands and communications given by the Lessor hereunder shall be validly given when served personally on the Hirer or sent by post to or left at the address of the Hirer stated overleaf or at the Hirer's present or last known business or private address or registered office and, if sent by first class post shall be deemed to have been received by the Hirer 48 hours after posting.

LAW

The Agreement shall be read and construed in accordance with English Law.