

## **CONDITIONS OF CONTRACT**

### **1. DEFINITIONS**

- a. "The Buyer" means Barton Plant Limited (BPL).
- b. "The Seller" means the Supplier named on the order with whom the Buyer has placed the Contract.
- c. "The Goods" means the Goods or Services described in the Contract or subsequent variation(s) thereto.
- d. "The Specification" means the description of the Goods set out in the Contract together with any drawings, particular specification, requirements, samples or patterns referred to in the Contract.
- e. "The Order" means the Order document to which these Conditions are attached together with these Conditions.
- f. "The Contract" means the Buyers enquiry and Order and the Sellers offer where applicable but excluding any general or particular terms or conditions pertaining to the Sellers offer unless expressly accepted by the Buyer".

### **2. DOCUMENTATION**

In the event of conflict arising between any documents issued in connection with this contract then the buyer's conditions shall prevail.

### **3. SCOPE**

The Contract is limited to the quantities described therein as amended by authorised variations to the Contract for use at the Site described in the Contract

### **4. QUALITY INSPECTION AND TESTING**

All goods shall be new unless otherwise agreed. The Buyer shall be at liberty to inspect the Goods at any time and carry out tests thereon. Nevertheless, testing certificates where appropriate shall be procured by the Seller and provided to the Buyer at the Sellers expense at the time of delivery. The Buyer shall be at liberty to reject the Goods if he considers them to be in part or wholly not in accordance with the Specification or otherwise defective or inferior in quality of material, workmanship or design. Any Goods so rejected shall be replaced or substituted with Goods meeting the requirements of the Specification.

### **5. TIME OF DELIVERY**

Time is of the essence of the Contract.

### **6. VESTING OF GOODS**

The Goods shall become the property of the Buyer after he has accepted them at the place specified for delivery. The Goods shall remain at the risk of the Seller until the Buyer has accepted delivery thereof.

### **7. ASSIGNMENT AND SUB-LETTING**

The Seller shall not assign or sub-let the Contract in whole or in part without the express written permission of the Buyer which permission shall not be unreasonably withheld.

### **8. PATENTS RIGHTS**

The Seller shall indemnify the Buyer and his customer against all claims arising out of the breach of patent or copyright.

### **9. SELLER'S DEFAULT**

Should it appear to the Buyer-

- 9.1 that the Goods do not or will not upon delivery comply with the Contract
- 9.2 that the Seller has not delivered or will not deliver the Goods within the time stipulated in the Contract
- 9.3 that the Seller has not carried out the reasonable instruction of the Buyer for the supply of the Goods
- 9.4 that the Seller has committed any other breach of the Contract.

### **10. BUYERS REMEDIES**

If

- 10.1 The Seller does not comply with any notice served under Clause 9 within 7 days from the date of such notice or
- 10.2 the Seller dies or commits an act of bankruptcy or being a corporation appoints or has a receiver appointed or commences to be wound up, other than for purposes of amalgamation or reconstruction, the Buyer may, without prejudice to all his other rights arising there from, immediately determine the Contract and contract with others for the supply of the Goods. The Buyer shall not be liable to the Seller for any loss suffered by him as a result of the Buyer's action. The Seller shall indemnify the Buyer against all cost, losses and expenses incurred by the Buyer resulting from the termination of the Contract.

### **11. DEFECTS LIABILITY**

11.1 The Seller shall remedy, at his expense, all defects that may arise in the Goods through faulty workmanship, material or design within a period of 12 months from the date of delivery of the Goods. The Buyer shall have the right to assign to his customer the benefit of this warranty. The Seller shall indemnify the Buyer against the cost of any work done by the Buyer, or of damage which he is liable to rectify, resulting from defects in the Goods and against all other costs, losses, expenses and liabilities direct and consequential, incurred by the Buyer as a result of defects in the Goods. If the Seller does not fulfil his obligations under this clause within a reasonable time of the Buyer's giving him notice so to do, the Buyer may carry out such obligations but without prejudice to any right of the Buyer arising from the defects so remedied.

11.2 If the Buyer specifies a required performance for the Goods in the Contract, the Seller shall be deemed to have warranted that the Goods will attain the required performance, notwithstanding any other provisions of the Specification. The Buyer is at all times relying on the skill and knowledge of the Seller. Should the Goods fail to maintain the required performance during the period specified in Clause 11.1 such failure shall be considered a defect within the meaning of the Clause.

### **12. TERMS OF PAYMENT.**

Payments will be made on a nett monthly account basis.

Invoices to be received by the end of the month following delivery and shall include all of the following:

A reference to this purchase order number within the content of the invoice itself

A copy of this purchase order appended to the invoice

Copies of all proof of delivery for materials/servicessigned by an authorised signatory

Payment Terms: 60 days nett i.e. from the end of month following receipt of invoice unless agreed otherwise in writing.

### **13. HEALTH AND SAFETY AT WORK etc. ACT 1974**

The Seller's attention is directed to the Health and Safety at Work etc. Act 1974 (as amended) and it shall be a condition of the Contract that the Seller shall comply with the provisions of the Act in full.

In accordance with Section 6 of the Health and Safety at Work etc. Act 1974 we would be pleased to receive your confirmation that the article or substance to be supplied is safe and without risk to health and safety when properly used. Also, in accordance with the above, please supply details of any tests or examinations carried out and full instructions for the safe use of the article or substance. Reference should also be made to the Provision and Use of Work Equipment Regulations 1998.

14. The Contract shall be governed by and interpreted in accordance with English Law.

15. Insofar as the order includes any design, the Seller undertakes to use the utmost skill and care in the preparation and execution of such design and to ensure that such design shall be safe and suitable for its purpose and shall indemnify and keep indemnified the Buyer against any loss or damage howsoever caused arising out of or in connection with any defect in or the unfitness of such design and against all claims or demands by any person in respect to such loss or damage.

### **16. INTELLECTUAL PROPERTY**

Subject to the Seller's pre-existing rights in the Know How, all Know How which may be acquired or created by the Seller under this order shall be the property of the Buyer, and the Seller hereby waives all rights he may acquire under or pursuant to the copyright Designs and Patents Act 1988 or any statutory modification or re-enactment thereof.

## **ADDITIONAL CONDITIONS APPLICABLE TO HIRE AGREEMENTS**

CPA Model Terms and conditions apply, except for amended conditions as stated below.

### **3. ACCEPTANCE OF PLANT**

Or as per Hire Agreement.,

### **4. UNLOADING AND LOADING**

Shall be deemed the responsibility of the competent person supplied by the owner to carry out said operations, unless agreed in writing prior to the said operations taking place.

### **5. DELIVERY IN GOOD ORDER AND MAINTENANCE INSPECTION REPORTS**

(c) The current Inspection Report, will be supplied by the Owner to the Hirer

### **9. BREAKDOWN, REPAIRS AND ADJUSTMENT**

(c) The Hirer is responsible for all costs incurred in the changing or replacement of any tyre and the repair of any puncture less the percentage of wear against the replacement cost

(d) For the avoidance of doubt reasonable steps must be taken by the owner to supply equipment that will limit loss by theft or vandalism.

### **13. HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE**

(b) In the event of loss of or damage to the plant, hire charges shall cease on the date the equipment/plant becomes inoperable or stolen.

(iv) or where Plant is under the control of the owners agent/operator

### **18. BASIS OF CHARGING**

Stoppages due to changing of tyres and repairs to punctures will not be chargeable.

No minimum daily hours are applicable and breaks are not chargeable.

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

Hours worked are paid for at the contract working rate. Breakdowns and breaks are not paid. If no breakdown occurs, the full hire for the minimum period in the Contract will be charged and an additional pro rata charge will be made for hours worked in excess of such minimum period. Allowance will be made for breakdowns up to 8 hours except on Fridays when the allowance will be up to 7 hours providing always that where the actual hours worked are in excess of the minimum period less breakdown time, the actual hours worked shall be chargeable. Idle time for this purpose shall be treated as actual working time. The minimum week of 39 hours shall be reduced by 8 hours Monday to Thursday and 7 hours Friday for each day's statutory holiday occurring in such week, provided that the plant does not work on the holiday.

### **23. COMMENCEMENT AND TERMINATION OF HIRE (TRANSPORT OF PLANT)**

Commencement and Termination of hire will be from when the plant arrives at the designated delivery address and shall terminate when written notification is given to the owner or verbal with the receipt of an off-hire reference.

### **24. NOTICE OF TERMINATION OF CONTRACT**

Termination of hire will be 24 hours-notice and shall be collected within 48 hours. No liability shall be accepted for loss or theft after this period.

### **25. IDLE TIME**

Will be that stated in the Hire Agreement.

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

If agreed in writing

### **27. TRAVELLING TIME AND FARES**

No charge shall be made by the Owner for any such expenses incurred by other employees of the Owner for the purpose of servicing, repair or maintenance of plant, unless necessitated by the Hirer's negligence, misdirection or misuse of the plant or as per the Hire Agreement

### **29. SHARPENING OF DRILLS/STEELS ETC.**

If agreed in the Hire Agreement

**\*\* No payment will be made unless invoices are accompanied by a copy of the BPL PURCHASE ORDER / HIRE AGREEMENT \*\***