



MCFADYENS CONTRACTORS (CAMPBELTOWN) LIMITED

GENERAL CONDITIONS OF HIRE



1. Definition.

"Owner" means McFadyens Contractors (Campbeltown) Limited.
"Hirer" means the person, firm or company or other party taking the plant on hire.
"Plant" means and includes any type of machine or equipment.
"Week" means from midnight on Sunday until midnight the following Sunday.
"Standing Time" means the time during which the plant is standing idle and available for work.

2. Commencement and Termination of Hire

a) For the purpose of determining the Hirer's responsibility for hire charges, the date of commencement of hire is the date the plant leaves the Owner's depot. Subject to the provisions of Conditions 13 and 17 hereof the date of termination is the date the plant is returned to the Owner's depot or such other destination (not being greater in distance) as the Owner may direct.

b) Subject to the provisions of Conditions 13 and 17 hereof for the purpose of determining the Hirer's liability to third parties in terms of Condition 5 hereof, the time of commencement of hire is:

(i) In a case where the plant is collected by the Hirer from the Owner's depot or elsewhere, the time it is so collected.

(ii) In a case where the plant comes under the control or direction of the Hirer before arrival at the Hirer's site, the time it becomes so subject to his control or direction.

(iii) In all other cases, the time plant arrives at the Hirer's site.

For the purpose of determining the Hirer's liability to third parties as aforesaid, the time of determination of hire is:

(i) In a case where the plant is returned by the Hirer to the Owner's depot or to such other destination as may be directed by the Owner, the time of its arrival thereat.

(ii) In a case where the plant comes under the control and direction of the Owner after leaving the Hirer's site but before arriving at the Owner's depot or such other destination as may be directed by the Owner, the time it becomes so subject to the Owner's control or direction.

(iii) In all other cases, the time it leaves the Hirer's site.

3. Passing of Risk. Subject to these Conditions, all liability for loss or damage to the plant supplied by the Owner to the Hirer shall pass from the Owner to the Hirer on the commencement of hire as defined herein.
In the event of loss or damage to or a claim arising which prevents the operation of the plant, hire charges will continue until termination of the hire in terms hereof.

4. Notification of Defects, Safe Keeping of Plant.

a) **Notification of Defects.** The Hirer or his representative shall inspect the plant on delivery. The plant shall be deemed to be in good order (save for latent defects and defects not reasonably ascertainable by inspection) and no claim for loss and damage shall be entertained by the Owner unless the Hirer gives written notice to the Owner of an alleged defect within 48 hours of delivery.

b) **Safe Keeping of Plant.** The Hirer or his representative shall keep himself acquainted with the state, condition and use of the Plant, and shall ensure its safekeeping, shall use it in a workmanlike manner only and not for any purpose beyond its capacity nor in any way likely to result in undue deterioration and shall be responsible for returning it to the Owner at the termination of the hire in the same condition as that in which it was delivered (fair wear and tear expected)

c) **Vandalism.** Without prejudice to b) hereof, the Hirer will be responsible to the Owner for destruction of or damage to the plant caused maliciously or mischievously by any party whilst it is in his care or under his control, and the provisions of the immediately preceding sub-condition will not detract from the Hirer's absolute obligation in this respect. Destruction of or damage to plant will be presumed to have been caused maliciously or mischievously and the onus of rebutting that presumption will be on the Hirer.

5. Hirer's Responsibilities.

a) From the commencement of hire as defined herein, but subject to the provisions of Conditions 8 & 10 hereof the Hirer shall indemnify the Owner for all loss of or damage to the plant however caused and whether or not caused by fault on the part of the Hirer or his servants or agents (fair wear and tear expected) and the Hirer shall indemnify the Owner in respect of all claims by third parties for any loss and damage whatsoever which may have been sustained by them in consequence of any malfunctioning of, or defect in, or damage to or loss of the plant, whether such claims arise under statute or common law and all costs and charges in connection therewith.

b) From the commencement of the hire as defined herein the Hirer shall, is so required by the Owner insure the plant at the Hirer's own expense against loss and damage however caused at a sum specified by the Owner. But whether or not such a requirement is made the Hirer shall at all times be liable in respect of all loss of or damage to the plant in accordance with these conditions.

c) From the commencement of the hire as defined herein the Hirer shall, in the event of loss of or damage to the plant howsoever caused, be liable for the hire charges payable in terms hereof, and such liability shall continue until such time and date as the Hirer pays for the cost incurred by the Owner in respect of such loss and damage.

6. Indemnity to Owner. Where an operator is provided with the plant, he shall work under the supervision and instructions of the Hirer or his representative and the Hirer shall not permit any person other than the operator to operate the plant without the Owner's prior consent in writing. The operator shall be deemed for the duration of the hire to have become a servant of the Hirer who shall be responsible for his actions as if he were in the Hirer's direct employ to the effect that the Hirer shall free and relieve the Owner of and from the consequences of all claims of whatever nature which may be made against the owner by third parties arising from the actions of the operator, including claims arising from the operator's negligence or breach of statutory duty.

7. Sub-Letting. The Hirer shall not sub-let the plant or any part of it without the Owner's prior consent in writing.

8. Servicing and Inspection. The Hirer shall allow the Owner or his insurers access to and plant at all reasonable times for the purposes of inspecting, testing, adjusting, repairing or replacing the same. In the event of a breakdown in the plant, not readily repairable, the Owner shall be entitled to supply in substitution plant of a similar type and condition. If the Owner is not in a position to do so, the hire shall be terminated as from the date of the breakdown.

9. Breakdown. Without prejudice to the provisions of Condition 4a) hereof, any breakdown or unsatisfactory working of the plant or any part thereof must be notified to the Owner within 24 hours of its discovery by the Hirer or his representative.

10. Allowances. Subject to notification having been made to the Owner in accordance with the immediately foregoing condition, no charge will be made on the Hirer for any stoppages due to breakdown of plant caused by the development of an inherent fault or fair wear and tear nor for stoppages for normal working repairs, but no allowances will be made for stoppages resulting from any other cause for which the Owner is not responsible.

11. Guaranteed Period of Hire, Overtime, Standing Time and Assembling, Rigging and Dismantling of Plant.

a) **Periods of Hire.** Where the plant is hired at a rate per week of a specified number of hours, it shall be paid for on the basis of a minimum of the hours per week so specified, unless otherwise stated, and where hired on a basis of a rate per day, for minimum of eight hours per day unless otherwise stated. Time worked in excess of these minimum periods will be paid for as overtime. Where standing time is paid for in accordance with the following provisions, it shall be at two-thirds of the rate quoted.

b) **Overtime.** Where plant is hired on the basis of a working week of a specified number of hours, any time for which it is working in excess of the hours so specified per week shall be paid for pro rata, the hourly rate being arrived at by dividing the weekly rate by the number of hours so specified. Overtime shall not be charged in the case of a hire for a day of eight hours, until eight hours have been worked at any time within the day in question and in the case of a hire for a week of a specified number of hours, until the hours so specified have been worked at any time within the week in question.

c) **Standing Time.** In computing standing time, periods of shorter duration than those for which the rates are quoted shall be treated as working time. A standing period of less than a week shall be treated as working time in the case of items of plant quoted in the schedule as failing to be hired for a week of a specified number of hours and in any event, standing time of less than one day shall be treated as working time. A machine standing idle for the whole of the period for which the rates are quoted shall be paid for at standing time rates only.

d) **Assembling, Rigging and Dismantling.** Time spent in assembling, rigging and dismantling plant shall be charged for and the cost of assembling, rigging and dismantling shall also be paid for by the Hirer.

12. Repairs and Adjustments. The Hirer shall not repair or adjust the plant or attempt to do so unless authorised by the Owner in writing.

13. Determination of Hire. Where the hire is for a fixed period, it shall terminate on the date of termination provided for. Where the hire is not for a fixed period, or where it is continued after the expiry of the fixed period without any new period being determined, the hire shall be terminated by either party giving to the other two days notice in writing. If the Hirer shall fail to pay any sum if and when it may become due, the Owner may forthwith and without notice, retake possession of the plant for which purpose it shall be lawful for him to enter into or upon any premises or site where the plant may be. Such retaking of possession shall not prejudice any right of the Owner under the terms and conditions of hire.

14. Operated Plant. The Hirer shall sign the operator's weekly timesheet, which shall be conclusive as to the working hours of the plant plus the operator's driving and normal maintenance time. The operator's time spent on breakdown will not be chargeable to the Hirer unless the repairs involved are necessary because of the fault of the Hirer.

15. Exclusion of Warranties. All common law or statutory warranties with regard to the plant, except such as are consistent with the above mentioned conditions, are expressly excluded.

16. Consequential Loss. Save in respect of the Owner's negligence if any and that only where death or bodily injury to any persons results, the Owner shall not be liable for any consequential loss or damage to or arising as a result of the Hirer having entered into this contract and the Owner's prices are set accordingly.

17. Consumer Credit Legislation. Where any contract of hire is one to which the Consumer Credit Act 1974, or any subsequent legislation substantially re-enacting the same, would otherwise apply, then the following further conditions will apply notwithstanding anything to the contrary contained in the contract or in the General Conditions of Hire.

(i) **Maximum Duration of Hire.** It shall be an over-riding and essential condition that the duration of the contract shall not in any circumstances exceed eighty days. Said condition applies notwithstanding anything to the contrary in the Schedule. Furthermore, on the expiry of the contract, there shall be no right or option on the part of the Hirer to require the Owner to extend the contract or to enter into a new contract of hire with the Owner.

(ii) **Determination of Contract.** The contract shall terminate on the expiry of the contractual duration which shall not in any circumstances exceed eighty days. Where no contractual period is specified, the contract shall automatically terminate on the expiry of eighty days from its commencement without any requirement of written notice from either party to the other. Where no contractual period is specified the contract may be terminated by either party at any time before the expiry of eighty days (and subject always to any minimum period of less than eighty days which may be stipulated by agreement of the parties) on his giving to the other four clear days' written notice of termination. In addition the contract may be terminated by the Owner in accordance with sub-paragraph (iii) of this Condition.

(iii) **Failure to Pay.** If the Hirer shall fail to pay any sum if and when it may become due, the Owner may at his option hold the contract to be terminated and in that event the Owner may forthwith and without written notice of any kind, retake possession of the plant, for which purpose it shall be lawful for him to enter into or upon any premises or site where the plant may be. Such retaking of possession shall not prejudice any right of the Owner under the terms and conditions of hire.

(iv) **Delivery of Plant on Termination.** On the termination of the contract in accordance with sub-paragraphs (i), (ii) and (iii) of this Condition and subject always to the Owner's right to retake possession in accordance with sub-paragraph (iii) the Hirer shall be bound to redeliver the plant to the Owner's depot or to such other destination (not being greater in distance from the Hirer's site than the said depot) as the Owner may direct. If the Hirer shall fail to do so, he shall be liable to pay to the Owner, as liquidate damages in respect of his failure, a sum for each week or part of a week (where the plant is hired on a weekly rate) or for each day or part of a day (where the plant is hired on a daily rate) representing 120% of the contract rate per week or per day as the case may be for so long as the plant shall remain undelivered to the Owner.