



# CONTRACTORS PLANT HIRE ASSOCIATION (CPHA)

"Version 2"

## TERMS AND CONDITIONS OF HIRE (GENERAL PLANT)

### 1. AGREEMENT

The owner, in consideration of the payment of or an undertaking by the hirer to pay the amount of the hire charges calculated in terms of the hire rates set out overleaf, lets to the hirer and the hirer hires, the plant described overleaf. The conditions of hire set out in this document take precedence over any other terms which may have been included in the hirer's offer to hire or enquiry and signature by the hirer of this contract constitutes a cancellation of any such prior terms. This agreement records the whole agreement between the owner and the hirer and overrides all other agreements, terms or conditions purporting to relate to the hire of the plant and collateral verbal agreements are expressly excluded. No condition, terms or representation not expressed herein shall be binding on the owner of the hirer and no variation shall be binding on either of the parties unless reduced to writing and agreed to by the owner and the hirer.

### 2. PLANT AND ACCESSORIES

- 2.1. Unless the context otherwise requires, the word plant shall be deemed to be the power source and shall include any accessories supplied with the plant at the commencement of the anticipated hire period or at any time thereafter by the owner to the hirer
- 2.2. Accessories to or for the plant are hired independently from the plant and the breakdown of any accessory shall not be deemed to be a breakdown in the plant and shall not affect the hire rate of the plant specified overleaf.

**3. NO CESSION OR SUBLETTING**

The hirer shall not cede or assign this agreement nor sublet, mortgage, pledge nor in any way encumber the plant, lend or part with possession thereof and shall be obliged to retain the plant on the site and, save for the purpose of returning it to the owner, shall neither remove nor allow it to be removed there from without first obtaining the written consent of the owner.

**4. HIRER'S OBLIGATIONS**

The hirer shall:

- 4.1. Take all reasonable precautions to prevent loss of or damage to the plant including, but not limited to, employing competent and qualified staff;
- 4.2. On the happening of any event which may result in loss of or damage to the plant as soon as possible notify the owner by telephone or facsimile or by electronic communication and shall take all steps within its power to minimise the extent of the loss or damage and shall preserve damaged parts and make them available for inspection by a representative of the owner;
- 4.3. Forfeit all benefits under this contract in the event that any claim arising out of actual or alleged loss or damage to the plant be in any respect fraudulent or if any fraudulent means or devices be used by the hirer or by anyone acting on behalf of the hirer to obtain benefit under this contract.

**5. PERIOD OF HIRE, TERMINATION, MINIMUM HOURS AND DOWNTIME**

- 5.1. The hire period in respect of plant transported at the hirers cost shall be deemed to commence when the plant leaves the owner's depot or nominated site, and shall continue until it is returned to the owner's depot or nominated site or until the expiry of the notice period referred to in clauses 5.2 and 5.3 below, which is the later.

- 5.2. If the hire is for a definite period and if the hirer does not return the plant to the owner at the expiration of such period then the hirer of the plant will thereafter continue upon the same terms and conditions as are set out herein for an indefinite period and upon payment by the hirer to the owner of hire rates specified overleaf, subject to either party being entitled to give the other not less than 24 (twenty four) hours written notice of termination. Notice of termination to the owner's operator shall not constitute valid notice of termination of the agreement of hire.
- 5.3. If the hire specified overleaf is for an indefinite or an estimated hire period it will be deemed to be automatically extended at the end of such period for additional periods 24 (twenty four) continuous hours upon the same terms and conditions as are set out herein and upon payment by the hirer to the owner of hire rates specified overleaf until terminated in writing on 24 (twenty four) hours notice by either party
- 5.4. The hirer shall be liable for ongoing hire charges calculated at the rates specified overleaf notwithstanding that the plant is idle as a result of inclement weather, normal running repairs including refuelling, changing tyres and repairing punctures, or as a result of any other factor beyond the owner's control. The hirer shall not be liable for hire charges when the plant is idle due to unavailability of the operator or due to breakdown of the plant caused by defect in the plant subject to compliance by the hirer with the terms of clause 9.

## **6. RATED CAPACITY AND USE OF PLANT**

- 6.1. The owner undertakes that the plant will perform substantially in accordance with the manufacturers rated capacity and specifications and shall be serviced and maintained by it. The hirer acknowledges that the owner has tendered to the hirer the manufacturers rated capacity and specifications of the plant. Signature of the daily time sheets shall be deemed to be acceptance by the hirer that the plant has performed satisfactorily or when no operator is supplied, signature by the hirer of the delivery note shall be deemed to be acceptance by the hirer that having regard to the manufacturers rated capacity and specifications, the plant is fit for the purpose for which it has been hired.

6.2. The hirer undertakes that it will use or permit the plant to be used only in a responsible manner and undertakes not to perform or attempt to perform any work beyond the plants rated capacity and specification. During the period of hire the hirer undertakes and warrants that it will use or permit the plant to be used only for the purpose for which it was hired.

**7. PERMITS**

The hirer shall at its own expense apply for and obtain any permits, licences, certificates, permission or exemptions which may be required for and in connection with the entry and use of the plant on the site.

**8. ACCESS AND SITE CONDITIONS**

8.1. The owner or its duly authorised representatives shall at all times be entitled to have access to the site and to inspect the plant.

8.2. Where the ground or surface at the site is soft or unsuitable for the safe travelling or operation of the plant, the hirer shall be obliged, at its own cost, to provide and lay suitable materials for the plant to travel or work on site. Failure by the hirer to comply with this obligation will constitute a breach of a material term of the agreement entitling the owner to cancel the agreement alternatively excusing the owner from performance of its obligations until such time as the hirer has provided and laid suitable materials.

**9. DEFECTS AND BREAKDOWN REPORT**

9.1. The hirer shall be obliged to notify the owner of any defects or deficiencies in the plant which are, or which become apparent, and/or are notified to the hirer by the operator, immediately by the quickest practical method. In such event the hirer shall cease using the plant forthwith failing which the hirer shall be liable for all loss or damage, including consequential loss or damage, sustained by the owner arising out of such continued use of the plant.

9.2. Any breakdown of the plant shall be reported immediately by the quickest practical means by the hirer to the owner and such report shall be confirmed in writing forthwith. If a breakdown of the plant due to its defect has been reported in accordance with this clause the hirer shall not be charged for the duration of the downtime. If the hirer fails to notify the owner of any breakdown to the plant caused by the defect in the plant in terms of this clause then the hirer shall not be entitled to any reduction in the hire rate.

#### **10. TYRES AND TUBES - HIRER'S RESPONSIBILITY**

Unless otherwise specified overleaf, tyres and tubes are the hirer's responsibility and the owner warrants that the tyres on the plant supplied will be in good condition. The hirer shall be responsible for the cost of repairing all tyre and tube punctures or other damage to tyres or tubes during the period of hire and shall be responsible for all cuts or abrasion of tyres and tubes and the replacement thereof while the plant is on site. Unless the hirer notifies the owner in writing to the contrary within 24 (twenty four) hours of delivery of the plant to site, the tyres on the plant shall be deemed to be in good condition.

#### **11. OPERATOR**

11.1 If the plant is supplied with the owner's operator then during the period of hire the operator shall be under the sole and absolute control and supervision of the hirer who shall be responsible for all of the operator's acts or omissions. The hirer warrants and undertakes that it will give to the operator clear and specific instructions and directions for all work to be performed by the operator and the plant. The hirer shall be obliged to and warrants that it will, supervise or will provide responsible and competent supervision for, the operator during the period of hire.

11.2 In the event that the owner's operator is indisposed through illness or refuses, fails or neglects to perform his duties then in any one of the aforementioned events the hirer shall forthwith report to the owner any such illness, refusal, failure or neglect on the part of the operator in which event the owner shall provide a substitute operator and the hirer shall have no other remedy against the owner arising there from.

11.3 Where it is necessary for the operator to reside on or near the site during the period of this agreement, this shall be specified overleaf and throughout such period the hirer shall be obliged to provide reasonable accommodation of a standard appropriate to the operator and transport to and from such accommodation to the site.

## **12. HIRER'S OPERATOR**

The hirer shall not permit or allow any person other than the operator supplied with the plant to operate the plant without the prior written consent of the owner. If the plant is supplied without the owner's operator or the owner agrees to the hirer providing an operator, then the hirer shall supply a competent plant operator licensed where required by law to operate the plant and shall undertake such regular daily service of the plant as is necessary to keep it in good working order and condition.

## **13. ABANDONMENT**

13.1. In the event of accidental loss of or damage to the plant and subject to :-

13.1.1. compliance by the hirer with all of its obligations in terms of this contract;

13.1.2. payment by the hirer of all hire charges due in terms of the contract;

13.1.3. payment by the hirer of the first amount payable set out on the face of this contract;

13.1.4. Compliance by the hirer with the territorial limitations set out on the face of this agreement, the owner abandons its rights to recover such loss or damage from the hirer.

13.2. Nothing in this clause detracts from the hirer's obligations set forth in clauses 11, 15 and 16.

## **14. RISK**

The risk of any damage to any property (other than the plant) and/or injuries to or death of any person arising out of the use of the equipment passes to the hirer on arrival of the equipment on site. Such risk remains with the hirer until the plant leaves site.

**15. INDEMNITY BY THE HIRER AND EXCLUSION OF OWNER'S LIABILITY**

- 15.1. While the plant is at the risk of the hirer, the owner shall not be responsible or liable to the hirer or to any other person for any acts or omissions on the part of the owner's operator (or on the part of the hirer's servants or employees or contractors) nor shall the owner be liable for any damages whether direct or consequential of whatsoever nature and howsoever arising occasioned to the hirer or to any other person; and the hirer indemnifies and holds the owner harmless against all such claims including the cost of defending any such claim or action.
- 15.2. The owner shall not be liable or responsible to the hirer or to anyone else for any direct or consequential loss or damage suffered by the hirer or any other person arising out of stoppage of the plant through any cause whatsoever, non-arrival of the plant or any accident or breakdown of the plant at any time. The hirer hereby indemnifies and holds the owner harmless in respect of any such claim made by any other person against the owner arising out of the hirer of the plant or from any cause aforesaid.
- 15.3. The provisions of sub-clauses 1 and 2 above shall not apply to breakdown of the plant caused by inherent defect in the plant or by the owner's failure to repair or maintain the plant subject always to compliance by the hirer with the provisions of clause 9. Provided that this sub-clause will not apply to breakdown or stoppage of the plant caused by defect in the plant.

**16. INSURANCE**

Insurance of all and any liability of whatsoever nature to third parties on the part of the hirer arising out of the use of the plant or the hire of the plant is the responsibility of the hirer.

**17. OCCUPATIONAL HEALTH & SAFETY ACT 85 OF 1993 (“the Act”)**

- 17.1. Acceptance of these Conditions of Hire constitutes an acknowledgement by the hirer that it is familiar with the provisions of the Act and the Regulations made there under insofar as they relate to plant and machinery and the hirer undertakes that to the extent it is an Employer user in terms of the Act, it will comply with the provisions of the Act and the Regulations.
- 17.2. In the event that the hirer believes that it does not have the competence to ensure the safe use of the plant, the hirer shall notify the owner of that belief in writing on signature of this hire contract.

**18. POLITICAL, INDUSTRIAL OR SOCIAL DISTURBANCE OR STRIKE**

- 18.1. In the event of the plant becoming inoperative as a consequence of riot, disturbance, strike, or any other stoppage or interference attributable to political or industrial or social unrest or activity, the hirer shall be obliged forthwith to notify the owner of such occurrence and that the plant has become inoperative, in which event, but in that event only, the hirer shall have the option of returning the plant to the owner within 24 (twenty four) hours of such notification, or of continuing the hire in which latter case the hirer shall remain liable to the owner for the full hire rate until the plant is restored to the possession of the owner. If the plant is returned to the owner in terms of the hirer’s first option recorded above, this agreement shall ipso facto be deemed to be terminated.
- 18.2. Notwithstanding the provisions of sub-clause 15.1 above, the hirer shall not be liable for any hire charges if the plant has become inoperative or is stopped as a consequence of any act solely attributable to the owner’s operator.
- 18.3. In interpreting the provisions of Section 15.1 above, the words “returning the plant” shall mean that the obligation will at all times be on the hirer to physically hand over the plant to the owner at the owner’s premises.
- 18.4. Any transport charges incurred in returning the plant to the owner or restoring the plant to the possession of the owner shall be for the hirer’s account.



**19. ESCALATION**

In the event of any statutory variation the cost of fuel, oil, grease, tyres, tubes, parts or labour or in the event of a fluctuation of the US Dollar/South African Rand exchange rate, during the currency of the hire period (including variations arising from any form of duty or taxation) then the rates specified overleaf shall be increased by such amount as the owner determines to be applicable having regard to the variation of costs.

**20. PAYMENT - NO SET OFF**

- 20.1. Payment of the amount shown as due by the hirer on the owner's invoice shall be made to the owner on presentation of invoice and free of exchange at the place indicated on the invoice.
- 20.2. Interest on overdue accounts will accrue at the prime overdraft rate charged by the owner's bankers from time to time.
- 20.3. The hirer shall not be entitled to claim set off in respect of any amount owing or alleged to be owing to the hirer under any circumstances whatsoever.

**21. BREACH**

If the hirer commits any breach of the conditions of this agreement, including failure to pay amount due by the hirer to the owner, or if any judgment is obtained against the hirer or the hirer commits an act of insolvency, or is placed under judicial management, or ceases to carry on business, then the owner shall be entitled forthwith notice to the hirer to cancel this agreement and take possession of the plant and the hirer shall immediately restore and give possession of the plant to the owner. Notwithstanding the cancellation of this agreement by the owner or the taking of possession by the owner of the plant, the owner shall be entitled to recover from the hirer all monies due or to become due in terms of this agreement for the full and unexpired hire period, including any extension thereof, together with all costs, expenses and payments including legal costs, incurred or made by the owner in connection with cancellation of the agreement and/or obtaining possession of the plant.

**22. WAIVER**

Any act of relaxation, indulgence or grace granted by the owner to the hirer shall not operate as or be deemed to be a waiver by the owner of its rights hereunder or as a notation of this agreement.

**23. HEADINGS TO CLAUSES**

The headings in this agreement are intended to facilitate easy reference and shall not affect the interpretation of the provisions of the agreement.

**24. JURISDICTION CLAUSE**

The hirer consents to the jurisdiction of the Magistrates Court in terms of section 45 of the Magistrate Court Act No. 32 of 1944 (as amended) having jurisdiction under section 28 of the said Act, notwithstanding that the claim by the owner exceeds the normal jurisdiction of the Magistrate's Court as to amount. The owner shall, in its discretion, be entitled to proceed against the hirer in any other court of competent jurisdiction, notwithstanding the foregoing.