

## RENTAL TERMS AND CONDITIONS

### 1. DEFINITIONS

- (a) "The Owner" is SAPPHIRE MACHINERY & EQUIPMENT RENTAL L.L.C. where the context so requires its successors, assigns or associated companies.
- (b) "The Hirer" is the hirer specified in the schedule and includes its successors and personal representatives.
- (c) "The equipment" is the equipment hired by the Owner to the Hirer details of which are set out in the schedule together with all alterations, additions or improvements.
- (d) "The Handbook" is the Operating and safe working Handbook provided by the owner with the equipment.
- (e) "The fixed period" is the minimum hire period under this Agreement.
- (f) "The premises" are the premises specified in the schedule where the equipment will be kept and used.
- (g) "Month" shall mean a Gregorian calendar Month.

### 2. RENT

The rent for the equipment shall be the sum specified by the Owner. Invoicing Monthly in advance, Payment after 30 days.

### 3. LICENSES AND ADDITIONAL COSTS

- (a) The Hirer shall be responsible for all fees, duties, assessments, levies, charges, rates, taxes and other impositions which may from time to time be payable in respect of the equipment or this Agreement or the rent or the premises payable hereunder or which may be imposed on the hiring, possession or use of the equipment or any item comprised therein.
- (b) The Hirer shall obtain all necessary licenses, permits and permissions for the use of the equipment and shall not use the equipment or permit the same to be used contrary to law or regulation for the time being in force.

### 4. TITLE AND POSSESSION

- (a) The equipment shall be and at all times remain the sole and exclusive property of the Owner and the Hirer shall in no circumstances acquire any right title or interest therein.
- (b) The Hirer will not sell, let, charge assign, pledge or otherwise deal with the equipment and will at its own expense protect and defend the Owner's title to the equipment against all persons claiming through or against the hirer and shall at all times keep the equipment on the premises and in its actual possession or control and free from any legal process or encumbrance whatsoever, whether legal or equitable, including but not limited to any lien, distress or execution and shall give immediate written notice to the Owner of any such legal process or encumbrance as aforesaid and shall indemnify the Owner from any loss occasioned thereby or resulting therefrom.
- (c) The Owner may affix to the equipment such plates or other marks indicating that the equipment is the property of the owner as the Owner thinks fit and the hirer shall not remove, obliterate, deface, or in any way cover up such plates or marks nor allow any person so to.
- (d) The Owner covenants with the Hirer that so long as the Hirer is not in breach of this agreement the Hirer shall enjoy quiet possession of the equipment during the terms of the hire and subject to the terms of this Agreement.

### 5. ACCESS TO THE EQUIPMENT

The Owner or its agents shall have the right at all reasonable times during normal business hours to enter into and upon any premises in which the equipment is used or stored for the purposes of fulfilling its obligations and exercising its rights under this Agreement and shall be granted reasonable facilities by the Hirer therefor.

### 6. INSURANCE

The equipment is working under the supervision and sole direction of the Hirer and any third-party liability howsoever arising is expressly excluded from this agreement. SEE CLAUSE 8 ALSO

### 7. OBLIGATIONS OF THE HIRER

- (a) The Hirer shall ensure that the conditions at the premises are at all times suitable for the safe delivery and operation of the equipment.

(b) The Hirer shall undertake daily routine maintenance in accordance with the Handbook and shall provide fuel , oil and grease and shall carry out a daily check to ensure that the correct engine, hydraulic and cooling system levels are maintained, and shall take steps to insure the protection of the equipment from damage by corrosion including the use of a suitable coolant inhibitor mixture in the proportion specified by the makers of the equipment, and shall undertake regular cleaning, mending of punctures, the maintenance of the correct tyre pressures and the tightening of the wheel nuts at the commencement of each shift. Without prejudice to the generality of the foregoing the Hirer shall cause the following steps to be taken to maintain any traction battery forming part of the equipment: -

- (i) Battery must be properly charged, must at no time to be operated in a discharged condition and must be allowed to cool for at least half an hour after charge and before use:
- (ii) Battery must be checked daily to ensure the correct level of distilled water is maintained:
- (iii) No electric truck battery shall be charged and discharged more than once in 24 Hours:
- (iv) Strict observance of the charging instructions on the battery charger provided is essential.
- (v) Any charger supplied with the equipment shall be installed in accordance with the Handbook and/ or the instructions on the charger.
- (vi) If the equipment requires maintenance, repair or replacement other than in the circumstances specified in clause 9(d) hereof, the Hirer shall be responsible for any costs resulting therefrom and all such costs payable by the Hirer shall be due forthwith on demand.

(c) Save as aforesaid the Hirer shall not repair or attempt to repair the equipment or make replacements or alterations unless specifically authorized in writing by the Owner, but any replacements made by the Hirer shall forthwith become part of the equipment and the property of the owner.

(d) Except as otherwise specified in the schedule the Hirer shall not operate the equipment in excess of 50 Hours in any period of six working days.

(e) The Hirer shall not use or cause or permit any person to use the equipment on any public road without having first obtained the consent in writing of the owner and where such consent is given the Hirer shall ensure that the driver holds a current driving license applicable to the equipment.

## **8. LOSS OR DAMAGE**

(a) The Hirer undertakes that it will use the equipment for purposes and places for which it is suitable and for his own business and in a skillful, safe and workmanlike manner and in accordance with all regulations relating thereto and will comply and will procure that its employees and all other persons working with on or near , or using the equipment comply in full with the instructions and recommendations made in the relevant handbook which is provided with all instructions, whether written or verbal , given by the owner or manufacturer in connection with the use or operation of the equipment and in particular that only a trained and experienced driver shall operate the equipment.

(b) The Hirer accepts full liability for loss or damage to or destruction of the equipment suffered from the time it is delivered to hirer until it is collected by the Owner from whatever cause the same may arise and is fully responsible for the safe keeping of the equipment and its return in good condition and repair to the Owner at the end of the period of hire.

(c) The Hirer accepts all liability and responsibility in respect of , and shall fully and completely indemnify the Owner against , all third party claims and losses however arising in respect of damage to or loss or destruction of any property or in respect of the personal injury or death of any person in any way caused by or relating to the equipment or its use (including but not limited to the payment of all damages, costs and charges in connection therewith) .

(d) The Owner hereby excludes any liability to the Hirer in respect of any damage to or loss or destruction of the property of the Hirer or its employees or contractors or other persons in any way caused by or relating to the equipment or its use against which loss or damage the Hirer should take out all necessary insurance.

(e) The Hirer shall notify the Owner immediately in the event of any accident, loss or damage arising and, in any way, caused by or relating to the equipment and its use howsoever caused.

**9. OWNERS OBLIGATIONS**

- (a) The Owner shall deliver the equipment to the premises on or before the commencement of the hire (provided that the Owner shall incur no liability to the Hirer for any loss or damage caused by delay in delivery or non-delivery of the equipment where this was caused by circumstances beyond the control of the Owner) and shall ensure that at the commencement of the hire the equipment shall be of sound construction and in good working order and properly maintained and that at that time all regulations regarding construction, maintenance testing and inspection applicable to the equipment have been complied with and unless the Hirer notifies the Owner to the contrary within 48 hours after delivery to the site, the equipment shall be deemed to have been delivered in good working order.
- (b) Except where the Owner has given information to the Hirer in writing relating to the equipment and in particular concerning its suitability for any particular purposes or for work in any particular place, the Hirer confirms to the Owner that no such representations were made to it concerning the equipment and that in entering this agreement the Hirer relies upon no such representations and has satisfied itself independently on all such matters. No conditions or warranties other than herein specifically set forth shall be implied or deemed to be incorporated in or to form part of this Agreement.
- (c) The owner shall be responsible throughout the term of this Agreement for repair of the equipment and shall undertake such repairs as soon as reasonably possible after having received notice in writing of any defects provided that Owner shall incur no liability to the Hirer for any loss or damage caused by any delay in undertaking repairs where such delay is caused by circumstances beyond the control of the Owner. The Owner shall further inspect, test, adjust, repair and replace the equipment from time to time as it shall in its sole discretion think necessary.
- (d) If the equipment has been notified to the Owner as being defective under sub-Clause (a) of this clause or if work requires to be done to the equipment which in the reasonable opinion of the Owner is due to fair wear and tear the owner shall complete such work at its own expense
- (e) Should the equipment prove unserviceable in the circumstances set out in sub-Clause (d) of this Clause for a period in excess of 48 hours after notice in writing to that effect has been received by the Owner the Owner will use its best endeavors but without being bound to do so to provide a replacement of similar specification, subject to availability.

**10. TERMINATION**

- (a) The hire shall continue for the fixed period and is terminable at the end of the fixed period or thereafter by three months' notice in writing given by either party to take effect on any date specified in this agreement for the payment of rent.
- (b) Without prejudice to the other provisions of this Agreement should the Hirer: -
- (i) Withhold payment of the hire charges or any other sums due under this agreement for fourteen (14) days; or
  - (ii) Fail to observe and perform any of the other terms and conditions of this Agreement; or
  - (iii) Do or cause to be done or permit or suffer anything whereby the Owner's rights in the equipment are prejudiced or put in jeopardy then and in any such case the owner may determine the hiring.
- (c) Without prejudice to the other provisions of this Agreement should the Hirer: -
- (i) Abandon the equipment or any part thereof; or
  - (ii) permit any act of bankruptcy or have a receiver appointed or make any composition or arrangement with its creditors or being a company go into voluntary liquidation whether compulsory or voluntary (Except for reconstruction or amalgamation without insolvency).
  - (iii) Suffer any execution or distress upon its property then the hiring shall automatically and without notice determine and the Hirer shall cease to be in possession of the equipment with the consent of the Owner and no payment subsequently accepted by the Owner without knowledge of such automatic termination shall in any way affect or prejudice the operation of this Clause;
- (d) On termination of this Agreement from any cause: -

- (i) The Owner or its agents may without notice retake possession of the equipment and may for that purpose enter upon any land or building on or in which the equipment is or is believed by the Owner or its agents to be situated; and
- (ii) Notwithstanding the termination of this agreement the hirer shall be liable to the Owner for: -
  - Any sums due from the hirer to the owner under this agreement at the date of such termination whether by way of unpaid rent or arising from any breach of the obligations of the hirer under this agreement prior to that date or otherwise;
  - The entire amount of the unpaid rent of the equipment for the unexpired balance of the fixed period hereunder less a discount of 5% on such unpaid rent in respect of the early payment thereof and less also a discount of 20% in the respect of the estimated reduction in maintenance cost.

#### **11. REMEDIES**

(a) All rights, powers or remedies herein conferred upon or reserved to the owner may be exercised by the owner without prejudice to any other right, power or remedy and no neglect, delay or indulgence on the part of the owner in enforcing the terms and conditions of this agreement shall prejudice its strict rights hereunder or be construed as a waiver thereof.

(b) Without prejudice to any other rights of the owner hereunder the owner shall be entitled to recover from the hirer all costs, charges and expenses however incurred by the owner in remedying any failure of the hirer to observe the terms and conditions of this Agreement or in ascertaining the whereabouts of, taking possession of, preserving, Insuring and storing the equipment or in enforcing the provisions of this Agreement.

(c) The Hirer hereby agrees that any claim by the Hirer against the Owner under this Agreement or otherwise shall be subject of a separate claim or action against the owner and accordingly the hirer waives all rights of set –off in respect of any instalment of rent or other payment due hereunder and agrees to pay the rents and other payments due hereunder regardless of any equity, cross-claim or set-off on the part of the hirer against the owner on any account whatsoever and further hereby renounces any lien which it may have over the equipment.

#### **12. RETURN OF THE EQUIPMENT**

On the termination of this Agreement for whatever reason the Owner shall collect the equipment but in the event that the Owner does not collect the equipment immediately at the end of the hiring the hirer shall continue to be solely responsible for ensuring the safe and proper housing, storing, supervision and custody of the equipment pending its return to the owner.

#### **13. NOTICES**

Any notice or instructions given to the Owner by the Hirer under this Agreement must be given in writing. Any notice given orally will be accepted by the Owner on the basis that it will be confirmed in writing not less than 48 hours thereafter and the Owner will not be liable for the consequences of any inaccuracy or misunderstanding resulting from any such oral notification.

#### **14. GENERAL**

(a) The terms and conditions of this agreement comprise the entire agreement between the parties and supersede any previous arrangements and agreements relating to the equipment. No variation of this agreement shall have effect unless agreed in writing by the parties.

(b) The liability of the Hirer (if more than one) under this Agreement shall be joint and several.

(c) Headings to the clauses contained in this Agreement are for ease of reference only and do not affect its construction or limit its scope.