

SMITH'S (GLOUCESTER) LIMITED

TERMS AND CONDITIONS

PART B ~ SERVICE TERMS AND CONDITIONS

PLANT HIRE DIVISION

Except as otherwise defined herein and except where the context requires otherwise, words and expressions defined in the General Terms and Conditions set out in Part A above, shall have the same meanings when used in these terms and conditions.

PLANT HIRE

IMPORTANT SAFETY WARNING

The Customer's attention is drawn to the following points:

- A. The Customer must ensure that all users of the Plant, in particular electrical equipment, have been instructed in its safe use and that such use is in accordance with any relevant operating and safety instructions supplied.
- B. The Customer must ensure that all electrical equipment is connected to the correct supply via suitable plugs or sockets. Where a temporary change in electrical plugs or sockets is required, this must be carried out by a qualified electrician who must also re-instate the Plant to its original condition. All electrical equipment must be correctly earthed and insulated.
- C. The Customer must ensure that all liquid fuels and compressed gases supplied for use with the Plant are transported, stored and used in a safe manner in accordance with any safety instructions supplied, or as instructed by the Supplier.
- D. The Customer must only operate the Plant in accordance with the operating and safety instructions supplied with it or any other safety instructions provided by the Supplier. If the Customer does not understand any part of the relevant operating and safety instructions then they must seek assistance from the Supplier before using the Plant. The Supplier will not accept any responsibility for any damage and/or injury caused by the Customer's failure to comply with the operating and safety instructions supplied. It is the Customer's responsibility to ensure that they are fully covered by insurance for any risks involved in the use of the Plant, such as personal injury or death to users of the Plant or other persons.**
- E. This safety warning is not in any way intended to exclude or limit the Supplier's liability for death or personal injury caused by the Supplier's negligence, breach of contract or other default.

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1. ADDITIONAL DEFINITIONS

Advice any information or advice (including any designs, drawings or specifications in relation to the Plant) as to the supervision, control, operation or installation of the Plant.

Hire Period shall have the meaning in condition 4.

Hire Charge the charge in respect of the hire of the Plant as set out in the Order or as otherwise stated in the Supplier's price list or otherwise as agreed in writing. The Hire Charge is exclusive of VAT unless otherwise stated.

Idle Time shall have the meaning in condition 6.

Individual Consumer an individual as defined by the Consumer Credit Act.

Plant means all classes of plant, machinery, vehicles, equipment, manuals, keys and accessories which the Supplier agrees to hire to the Customer.

Operated Hire where a Supplier provides Supplier's Employees to operate the Plant.

Self Drive Hire where the Customer operates the Plant themselves

Supplier's Employees any employees of the Supplier whose job is either to drive or operate the Plant or to provide any other services in connection with the Plant.

2. INDIVIDUAL CONSUMER

2.1 If the Customer is an Individual Consumer, the Plant is hired to the Customer on the basis that it is used only for private or non-commercial use. The Customer must not use the Plant for commercial purposes.

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- 2.2 In these circumstances, if the Supplier is in breach of Contract, the Supplier will not be liable to the Customer for any claim relating to business expenses or losses, including but not limited to claims for loss of profit.
- 2.3 The Supplier does not expect an Individual Consumer to have complete technical knowledge of the Plant that they are hiring. That said, the Supplier has a reasonable expectation that, in hiring the Plant, the Customer has a basic knowledge of the operation of the Plant and they will have read and understood the safety warning on page 1 of these conditions.
- 2.4 The conditions in Part A and Part B apply to an Individual Consumer as they do to any other Customer. It is important that those conditions are read and understood. If the Customer is in any doubt about the meaning of any of the conditions then they must refer to the Supplier for clarification before hiring or operating any Plant.

3. SAFETY

- 3.1 The Customer warrants that they will use the Plant in accordance with the safety warning on page 1 of these conditions.
- 3.2 The Customer must read any relevant operating and safety instructions supplied with the Plant and must only use (or permit the use of) the Plant in accordance with the operating and safety instructions supplied with the Plant. **If the Customer does not understand any part of the relevant operating and safety instructions you must seek assistance from the Supplier or other suitably qualified person before using the Plant.**
- 3.3 The Customer must also take their own sensible safety precautions (for example, you must take all reasonable measures to prevent children from playing on or near the Plant at all times).
- 3.4 The Customer must ensure that the site itself, where the Plant is being operated, is safe.

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4. HIRE PERIOD

- 4.1 The Hire Period shall commence on the date on which the Plant leaves the Supplier's depot or place where last employed and shall continue until the Plant is received back at the Supplier's depot or other agreed location.
- 4.2 If the Customer is an Individual Consumer the maximum Hire Period shall be 3 months.
- 4.3 Unless agreed otherwise, a day shall be 9 hours (to include a 30 minute lunch break) and a week shall be 45 hours, from starting time on the Monday to finishing time on the Friday.

5. HIRE CHARGES

- 5.1 Where the Customer does not have an authorised credit account with the Supplier, payment for the Hire Charge and any delivery charges must be paid before collection or delivery of the Plant.
- 5.2 For account customers, invoices will be due in accordance with the agreed credit terms.
- 5.3 The date of delivery and the date of removal shall be counted as whole days for the purpose of calculating the Hire Charge.
- 5.4 The Supplier will render to the Customer an invoice accurately detailing the Hire Charge.
- 5.5 Where Plant is hired on a daily basis, without qualification as to hours, the full daily rate will be charged irrespective of the hours worked except in the case of breakdown for which the Supplier is responsible, when the actual hours worked will be charged pro rata of the average working day. No Hire Charge shall be made for Saturday and/or Sunday unless the Plant is actually worked on those days.
- 5.6 Where the Plant is hired by the week or month, without qualification as to hours, the weekly or monthly rate shall be charged irrespective of the number

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of hours worked, except in the case of breakdown for which the Supplier is responsible when an allowance pro rata of the agreed Hire Charge will be made for each complete half working day that the Plant is unusable due to break down.

- 5.7 No charge will be made for statutory holidays unless the Plant is actually operated on those days.
- 5.8 No claims will be admitted (unless otherwise herein provided) for stoppages through causes outside of the Supplier's control, including bad weather or ground conditions nor shall the Supplier be responsible for the cost of recovering Plant from soft ground.
- 5.9 Stoppages due to changing of tyres and repairs to punctures will be chargeable as working time up to a maximum of 2 hours for any one stoppage and any excess will be charged for at the appropriate Idle Time rates.
- 5.10 Each item of Plant is hired as a separate unit and the breakdown or stoppage of one or more units (whether the property of the Supplier or otherwise) through any cause whatsoever, shall not entitle the Customer to compensation or allowance for the loss of working time by any other unit or units of Plant working in conjunction therewith, provided that where two or more items of Plant are expressly hired together as a unit, such items shall be deemed a unit for the purpose of breakdown or stoppage.
- 5.11 If more than one day is properly and unavoidably required for transporting the Plant, a Hire Charge at Idle Time rates shall be payable for such extra time, provided that where the Plant is hired for a total period of less than one week, the full Hire Charge shall be paid from the date of despatch to the date of return to the Supplier's depot or other agreed location.
- 5.12 For Self Drive Hire the Hire Charge relates solely to the hire of the Plant and does not include the provision of fuel or oil. The Plant will be supplied with full tanks of fuel and oil and those tanks will be checked upon return to the Supplier. The Customer will be charged for any difference at the Supplier's prevailing rates.

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- 5.13 For Operated Hire the Hire Charge includes the provision of fuel, oil and the supply of Supplier's Employees throughout the Hire Period.
- 5.14 Delivery charges are not included in the Hire Charge for Self Drive Hire or Operated Hire and the Customer will be charged separately for such costs.
- 5.15 The Hire Charge shall be paid by the Customer at the rates contracted save that any subsequent increases before and/or during the Hire Period arising from awards under any wage agreements and/or from increases in the Supplier's statutory contributions shall be charged as additions at cost by the Supplier and shall be admitted and paid by the Customer.

6. IDLE TIME

- 6.1 When the Plant is prevented by prolonged inclement weather from working for a complete week, the Hire Charge to be invoiced shall be two thirds of the Hire Charge as stated in the Order. If the Plant works for any time during the Hire Period then the whole of that Hire Period shall be charged. In any case no period of less than one day shall be reckoned as Idle Time save for as provided for in condition 5.

7. SUPPLIER'S EMPLOYEES

- 7.1 The Customer or Customer's representative will sign the time sheets of the Supplier's Employees. The signature will bind the Customer to accept the hours shown on the time sheets.
- 7.2 When Supplier's Employees are supplied by the Supplier with the Plant, the Supplier shall supply persons competent in operating the Plant and such persons shall be under the control of the Customer. The Supplier's Employees shall for all purposes be regarded as the servants of the Customer who alone shall be responsible for all claims arising in connection with the preparation or operation of the Plant. The Supplier shall have no liability for any loss or damage caused by any act or omission whatsoever of the Supplier's Employees during the Hire Period.
- 7.3 The Customer shall fully and completely indemnify the Supplier in respect of all claims by any person whatsoever for injury to person or loss or damage to

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property howsoever caused including all costs and charges in connection with the same and arising out of any act or omission of the Supplier's Employees whilst the Customer is responsible for them.

8. TRAVELLING TIME AND ASSOCIATED COSTS

- 8.1 Travelling time and other travel costs for Supplier's Employees are included in the Hire Charge unless otherwise stated in the Order.
- 8.2 No charge shall be made by the Supplier for any such costs incurred by other employees of the Supplier for the purpose of servicing, repair or maintenance of the Plant, unless necessitated by the Customer's negligence, misdirection or misuse of the Plant.

9. DEFECTIVE PLANT

- 9.1 The Customer shall report to the Supplier any defects or malfunction in the Plant within 24 hours of delivery and shall, if so requested by the Supplier, return the Plant to the delivery point for inspection by the Supplier. If the Customer fails to do this, the Hire Charge will continue for the Hire Period.
- 9.2 If the Supplier agrees in its absolute discretion that the Plant is not functioning properly, it shall use all reasonable endeavours (but shall not be bound) to provide a suitable replacement item or items from the stock of the Supplier, and shall credit the Customer with such an amount not exceeding one days' Hire Charge as it shall in its absolute discretion consider appropriate.

10. USE OF THE PLANT

- 10.1 The Plant shall be under the control of the Customer at all times from delivery to site until collection or delivery to the Supplier's depot, and the Customer shall ensure that Plant is used safely and without risk to health, is used by competent and duly licensed operators as the case may be, and is not used for any purpose for which it is not designed or reasonably suitable.
- 10.2 The Customer acknowledges that the Plant may cause damage to underground services such as drains and sewers. The Supplier will not be

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held liable for any such damage unless due to the negligence of the Supplier's Employees, where supplied.

- 10.3 The Customer shall allow the Supplier access to the Plant at all reasonable times for the purpose of inspection, maintenance, replacement or repossession. So far as reasonably possible, such work will be carried out at times to suit the convenience of the Customer.

11. RETURN OF THE PLANT

- 11.1 You must return the Plant to the Supplier in the same condition as when supplied it to you although the Customer will not be responsible for reasonable wear and tear which may occur during the Hire Period.

- 11.2 The Customer must clean the Plant at the end of the Hire Period. If the Customer has not made a reasonable attempt to clean it, the Customer will be responsible for the Supplier's reasonable costs for cleaning and restoration of the Plant to a fit and proper condition.

12. NAMEPLATES

- 12.1 The Customer must not remove, deface or cover up any nameplate or identification mark or number on the Plant, nor put any mark on the Plant, which might indicate or suggest that the Plant belongs to the Customer or other party.

13. INDEMNITY

- 13.1 The Customer shall be responsible for and shall indemnify the Supplier against all loss or damage, fair wear and tear accepted, caused to or by the Plant during the Hire Period regardless of how the loss or damage arises.

- 13.2 If the Plant is involved in an accident resulting in injury to persons or damage to property, immediate notice must be given to the Supplier by telephone and confirmed in writing. In relation to any claim in respect of which the Customer is not bound fully to indemnify the Supplier, no admission, offer, promise or

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payment or indemnity shall be made by the Customer without the Supplier's consent in writing.

14. INSURANCE

14.1 The Customer shall keep the Plant insured against loss or damage and third party risks and upon request shall produce evidence of such insurance to the Supplier, who shall be entitled to withhold delivery until such production.

14.2 The Customer will pay to the Supplier the replacement cost of any Hired Goods which are lost, stolen and/or damaged beyond economic repair during the Hire Period less the amount paid to the Supplier under any policy of insurance taken out in accordance with the Contract.

14.3 In the event of theft, damage, write off or such event that renders the Plant unserviceable, the Hire Charge will continue at Idle Time rates until the Supplier's invoice for the Plant has been paid in full, either by the Customer or the Customer's insurers.

14.4 In the event of theft or criminal damage, you must notify the Police immediately and obtain a Crime Reference Number.

15. NO SALE OR RE-HIRE

15.1 The Customer shall not move the Plant from the general location that it was delivered to without first obtaining the Supplier's written consent (which may be withheld or made subject to such conditions as the Supplier in its absolute discretion shall decide).

15.2 The Customer shall keep the Plant in its sole possession and shall not lend the Plant or sublet it to any person or otherwise part with possession of it in any way unless agreed in writing with the Supplier.

15.3 The Customer acknowledges that the Plant remains the property of the Supplier at all times and must not in any circumstances be sold or used as security. The Customer shall not permit any lien to be created on the Plant.

16. LOADING / UNLOADING

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- 16.1 Where the Supplier is delivering Plant to or collecting Plant from the Customer, the Supplier shall be responsible at all times for the loading and unloading of the Plant.

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- 16.2 Where the Customer is collecting Plant from the Supplier's depot or other site as agreed, the Customer is responsible for the loading and unloading of that Plant. Any Supplier's Employees who are asked to help load or unload the Plant shall be deemed to be employees of the Customer in relation to such loading/unloading and the provisions of condition 7 above shall apply.
- 16.3 The Customer is responsible for the provision of free and suitable access to and from the site and ensuring suitable ground conditions for the erection, operation and dismantling of the Plant. The Supplier accepts no responsibility for any damage to any surface caused by the delivery and/or collection of the Plant or damage to any surface over which the Plant is moved.
- 16.4 Where access is required over land the Customer does not own, the Customer must undertake to obtain consent from the respective owners and to pay any charges they may make.
- 16.5 The Customer is responsible for making good any damage caused to property or adjoining land in obtaining access.
- 16.6 If the Customer is particularly concerned to avoid superficial damage to the ground they must inform the Supplier as soon as possible. The Supplier may be able to provide additional protection, although there will be an additional cost in doing so, which the Supplier will pass onto the Customer.

17. MAINTENANCE AND REPAIRS

- 17.1 Unless otherwise agreed and stated in the Order, the Supplier will maintain the Plant at its own expense and the Customer shall, when required by the Supplier, grant access to the Plant for the purpose of inspecting it and carrying out any work of maintenance or repair.
- 17.2 Where the Customer is responsible for the maintenance of the Plant they shall follow the manufacture's recommended service schedule at all times and use replacement parts, fuel, oil and lubricants of a grade specified by the manufacturer or the Supplier.

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- 17.3 Unless instructed otherwise by the Supplier, the Customer must not repair or attempt to repair the Plant in the event of damage or breakdown but must at once notify the Supplier. If the damage or breakdown has been caused by the fault or carelessness of the Customer or by misuse of the Plant, the repair will be at the expense of the Customer.
- 17.4 The Customer shall when hiring Plant on a Self Drive Hire take all reasonable steps to keep acquainted with the state and condition of the Plant. If the Customer continues to use such Plant knowingly in an unsafe and unsatisfactory state or environment, the Customer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising there from.
- 17.5 The Supplier may substitute other Plant of a similar type or condition in lieu of repairing the Plant without relieving the Customer from responsibility for the cost of repair and without extending the Hire Period.
- 17.6 Full allowance will be made for breakdown periods resulting from mechanical or electrical faults or absence of Supplier's Employees except where breakdown is due to acts or omissions of third parties and/or the Customer's misuse, misdirection or negligence. Breakdown time in respect of such periods shall be allowed for not more than one day less the actual hours worked
- 17.7 The Supplier may terminate the hiring by written notice to the Customer at any time if in the sole opinion of the Supplier the Plant is not worth repairing or cannot be repaired. In such event the Supplier shall repay the Hire Charge for any outstanding period for which it has already been paid.
- 17.8 Nothing in this condition 17 shall affect or diminish the liability of the Customer for any breach of the Contract or render the Supplier liable to the Customer for any resultant or consequential loss, damage or inconvenience.

18. ACCESSORIES AND TOOLS

- 18.1 If the Plant requires the fitting or re-fitting of any accessories (such as drills, wheels, discs, and blades etc), it is the Customer's responsibility to ensure
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that any such accessory is correctly fitted or re-fitted in accordance with any relevant operating and safety instructions that the Customer is given.

18.2 If any injury or damage to persons or property or to the Plant arises because the Customer has incorrectly fitted or re-fitted any accessory, the Customer will be responsible for that injury or damage (unless the Supplier has been negligent in any way). The only exception to this is where the injury or damage occurs as a result of a fault or defect in the Plant, which the Customer was not aware of.

18.3 The Customer is responsible for the cost of re-sharpening drills, cutting edges and other tools.

19. ADVICE

19.1 If the Supplier or any Supplier's Employees gives Advice it is provided strictly on the basis of guidance only and without any responsibility (legal or otherwise) being accepted by the Supplier.

20. GOVERNMENT REGULATIONS

20.1 The Customer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including regulations under the Factories Act, Health and Safety at Work Act etc and observance of the Road Traffic Acts should they apply, save that if and during such time as the Plant is travelling, whether for full or part journey from the Supplier's depot to site and site to Supplier's depot under its own power with a driver supplied by the Supplier, the Supplier and not the Customer shall be responsible as aforesaid.

21. CERTIFICATES OF CONFORMANCE

21.1 Certificates of Conformance for the Plant, where applicable, will be provided by the Supplier to the Customer upon request.

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22. ADDITIONAL TERMINATION RIGHTS

22.1 At the option of the Supplier the Contract and the hiring constituted by it shall end without notice, and the Customer shall no longer be in possession of the Plant with the Supplier's consent, if the Customer fails to maintain their credit account in accordance with condition 6 of Part A of these terms and conditions or, where the Customer does not have a credit account with the Supplier, the Customer defaults in any Hire Charges due under this agreement.

23. NOTICE OF TERMINATION

23.1 Where the Hire Period is indeterminate or having been defined becomes indeterminate the Contract shall be determinable by seven days notice in writing given by either party to the other except in cases where the Plant has been lost or damaged. Notwithstanding that the Supplier may have agreed to accept less than 7 days notice of termination, the Customer's obligations shall continue until the Plant is returned to the Supplier or until the Supplier has collected the Plant within the 7 days following the acceptance of short notice.

23.2 Verbal notice given by the Customer to the Supplier's Employees shall not be deemed to constitute compliance with the provisions of this condition.

24. SALE OF PLANT

24.1 From time to time the Supplier may sell items of Plant.

24.2 Unless agreed in writing no warranty is provided and the Plant is sold as seen.

24.3 The title to the Plant passes to the Customer upon cleared payment in full of the Supplier's invoice.

24.4 The risk to the Plant passes to the Customer upon collection from the Supplier or upon delivery by the Supplier to the Customer.