

SMITH'S (GLOUCESTER) LIMITED

TERMS AND CONDITIONS

PART B ~ SERVICE TERMS AND CONDITIONS

TRANSPORT 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.

TRANSPORT

1. ADDITIONAL DEFINITIONS

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

Hire Charge the charge in respect of the hire of the Vehicle and where applicable tipping fees 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.

Hire Period shall have the meaning in condition 2.

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

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

Vehicle any tipper, low loader, trailer, grab, artic unit or similar vehicle provided by the Supplier.

2. DURATION

2.1 Unless hired on a per load basis, the Hire Period shall commence on the date on which the Vehicle leaves the Supplier's depot or place where last employed and shall continue until the Vehicle is received back at the Supplier's depot or other agreed location.

SMITH'S (GLOUCESTER) LIMITED

TERMS AND CONDITIONS

PART B ~ SERVICE TERMS AND CONDITIONS

TRANSPORT DIVISION

2.2 Unless agreed otherwise, a day shall be a maximum of 10 hours (to include the Supplier's Employees statutory breaks) and a week shall be 50 hours, from starting time on the Monday to finishing time on the Friday.

3. CHARGES

3.1 Where the Customer does not have an authorised credit account with the Supplier, payment for the Hire Charge must be paid in advance.

3.2 For account customers, invoices will be due in accordance with the agreed credit terms.

3.3 The Supplier will render to the Customer an invoice accurately detailing the Hire Charge.

3.4 Where the Vehicle is hired on a per mile basis, the Hire Charge commences on the Vehicle leaving the Supplier's depot or last place of work and ceases when the Vehicle is received back at the Supplier's depot or other agreed location.

3.5 Where the Vehicle is hired on an hourly basis, the Hire Charge commences on the Vehicle leaving the Supplier's depot or last place of work and ceases on the tipping or delivery of the last load.

3.6 Where the Vehicle is hired on a per load basis, without qualification as to hours, the Hire Charge will reflect the number of loads completed, regardless of duration or distance travelled.

3.7 Where the Vehicle is hired by the week or month, without qualification as to hours or loads, the weekly or monthly rate shall be charged irrespective of the number of hours worked or loads completed, 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 full working day broken down and calculated to the nearest half working day.

SMITH'S (GLOUCESTER) LIMITED

TERMS AND CONDITIONS

PART B ~ SERVICE TERMS AND CONDITIONS

TRANSPORT DIVISION

- 3.8 Unless otherwise agreed in writing with the Supplier no claims will be admitted for stoppages through any cause outside the Supplier's control, including bad weather or ground conditions.
- 3.9 The Customer will not be charged for the cost or the time for the changing of tyres and repairs to punctures unless resulting from the fault or carelessness of the Customer.
- 3.10 The Hire Charge includes the provision of fuel, oil and the supply of any Supplier's Employees throughout the Hire Period unless otherwise stated in the Order.
- 3.11 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.

4. WAITING TIME

- 4.1 Unless agreed otherwise in the Order, when a Vehicle is hired on a per load basis, the Vehicle shall be loaded by the Customer within 20 minutes of arrival on site. For every part half hour after the initial 20 minutes, waiting time will be charged at the prevailing rate.

5. SUPPLIER'S EMPLOYEES

- 5.1 The Supplier's Employees shall be persons competent in, and licensed for, the operation of the Vehicle.

6. TRAVELLING TIME AND ASSOCIATED COSTS

- 6.1 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 Vehicle, unless necessitated by the Customer's negligence, misdirection or misuse of the Vehicle.

SMITH'S (GLOUCESTER) LIMITED

TERMS AND CONDITIONS

PART B ~ SERVICE TERMS AND CONDITIONS

TRANSPORT DIVISION

7. USE

7.1 The Vehicle may only be used for the purpose specified in the Order.

8. INSURANCE

8.1 The Supplier shall keep the Vehicle insured at all times.

9. INDEMNITY

9.1 Where, at the direction of the Customer or agent of the Customer, a Vehicle is used not in accordance with the purpose specified in the Order, any resulting injury or damage, other than as a result of negligence on the part of the Supplier's Employees, shall be the responsibility of the Customer.

9.2 Specifically, where a Vehicle is driven from the public highway, at the direction of the Customer or agent of the Customer, damage to any surfaces or any structures shall be the responsibility of the Customer.

10. LOADING / UNLOADING

10.1 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.

10.2 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 by the Vehicle or damage to any surface over which the Plant is moved.

11. MAINTENANCE AND REPAIRS

11.1 At all times the Supplier will maintain the Vehicle at its own expense and the Customer shall, when required by the Supplier, grant access to the Vehicle for the purpose of inspecting it and carrying out any work of maintenance or repair.

SMITH'S (GLOUCESTER) LIMITED

TERMS AND CONDITIONS

PART B ~ SERVICE TERMS AND CONDITIONS

TRANSPORT DIVISION

- 11.2 The Customer must not repair or attempt to repair the Vehicle 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 Vehicle the repair will be at the expense of the Customer.
- 11.3 The Supplier may substitute another Vehicle of a similar type or condition in lieu of repairing the Vehicle without relieving the Customer from responsibility for the cost of repair (if applicable) and without extending the Hire Period.
- 11.4 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
- 11.5 The Supplier may terminate the hiring by written notice to the Customer at any time if in the sole opinion of the Supplier the Vehicle 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.
- 11.6 Nothing in this condition 11 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.

12. NAMEPLATES

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

13. ADVICE

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

SMITH'S (GLOUCESTER) LIMITED

TERMS AND CONDITIONS

PART B ~ SERVICE TERMS AND CONDITIONS

TRANSPORT DIVISION

14. SOIL ANALYSIS REPORTS

- 14.1 The Customer must provide to the Supplier independent soil analysis reports for each location prior to the Supplier removing any material.
- 14.2 Further reports must be provided by the Customer for every 250m³ of material removed from that location.
- 14.3 The cost of preparing these reports is at the expense of the Customer.
- 14.4 Where such reports are not provided the Supplier may cease work at that location until such time as the reports are provided.

15. GOVERNMENT REGULATIONS

- 15.1 The Supplier is at all times responsible for ensuring that the Vehicle complies with all applicable regulations.
- 15.2 The Supplier is at all times responsible for ensuring that the Supplier's Employees are satisfying the Working Time regulations.

16. ADDITIONAL TERMINATION RIGHTS

- 16.1 At the option of the Supplier the Contract and the hiring constituted by it shall end without notice 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.

17. NOTICE OF TERMINATION

- 17.1 Where the Hire Period is indeterminate or having been defined becomes indeterminate the Contract shall be determinable by a maximum of seven days notice in writing given by either party to the other except in cases where the Vehicle has been lost or damaged.

SMITH'S (GLOUCESTER) LIMITED

TERMS AND CONDITIONS

PART B ~ SERVICE TERMS AND CONDITIONS

TRANSPORT DIVISION

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

18. SALE OF VEHICLES

18.1 From time to time the Supplier may sell Vehicles.

18.2 Unless agreed in writing no warranty is provided and the Vehicle is sold as seen.

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

18.4 The risk to the Vehicle passes to the Customer upon collection from the Supplier or upon delivery by the Supplier to the Customer.