

CONDITIONS OF CONTRACT FOR HIRE

1. DEFINITIONS

- (a) The 'Owner' shall mean the company, firm or person letting the equipment on hire and shall include their successors, assignees and representatives.
- (b) The 'Hirer' shall mean the company, firm, person, corporation or public authority taking the equipment on hire and shall include their successors, assignees and personal representatives.
- (c) 'Equipment'. Any plant, machinery or equipment of whatsoever kind supplied by the owner and the subject of this contract and shall include any additional equipment, accessories or gas cylinders for the same let or supplied by the Owner on hire to the Hirer.
- (d) The 'Hire Period' shall mean the period of hire commencing when the equipment leaves the Owner's depot and ending when the equipment is received back at the Owner's depot.
- (e) The 'Minimum Hire Period' (M.H.P) shall mean the period for which the Hirer shall be charged for each piece of equipment.
- (f) Equipment may be charged on a daily (shows Maximum) or weekly (shows minimum) basis and one day shall be taken as twenty-four consecutive hours and one week will be taken as five days unless otherwise specified.
- (g) It is incumbent upon the Hirer to inform the Owner by telephone, in writing, or by fax, of the cessation of the hire period, notwithstanding that this date is at the end of the minimum period.

2. EXTENT OF CONTRACT

The terms and conditions herein set forth and any further express terms and conditions, which have been agreed to by the Owner in writing shall constitute the whole of the contract between the Owner and the Hirer. The owner's servants and agents have no authority, orally, to vary these terms and conditions or to make and oral representation as to their effect or otherwise and unless in writing such variation or representations shall be ineffective.

3. AVAILABILITY OF EQUIPMENT

The equipment is offered subject to its being available at all material times.

4. HANDLING OF EQUIPMENT

- (a) The Hirer shall be responsible for unloading and reloading the equipment at site and any driver or operator supplied by the Owner shall be deemed to be under the Hirer's control.
- (b) The equipment shall not be operated except by the person nominated by the Hirer. The Hirer undertakes to ensure that no one uses the equipment who is not properly instructed.
- (c) The Hirer shall not sub-let or part with possession of the equipment or any part thereof to a third party unless the Owner's prior consent in writing has been obtained.

5. TRANSPORTATION LOADING AND UNLOADING

- (a) The Hirer shall be responsible for collecting the equipment from the Owner's premises and for delivering the equipment to the Owner's premises at the end of the hire period unless otherwise agreed between the Hirer and the Owner.
- (b) When the Hirer requires the Owner to transport the equipment the transportation shall be at the Hirer's expense.
- (c) The Hirer shall be responsible for loading and unloading at the time of collection for the Owner's premises and at the time of delivery to the Owner's premises on the termination of the hire period.
- (d) Any person supplied by the Owner to assist in the loading and unloading shall be deemed to be under the Hirer's control and shall comply with all directions of the Hirer who alone shall be responsible for any damage caused to the equipment as a result of such loading and unloading.

6. UNAUTHORISED CHANGE OF SITE

The equipment must not be moved from the site to which it was delivered or when the equipment is collected by the Hirer the site specified by the Hirer without the written authority of the Owner.

7. UNAUTHORISED REHIRING OF EQUIPMENT

- (a) The equipment or any part thereof shall not be rehired, sublet, or lent to any Third Party without the written consent of the owner.
- (b) The Hirer shall at all times keep himself acquainted with the state and condition of the equipment and ensure that it remains safe, serviceable and clean.
- (c) The Hirer shall not use or permit the use of the equipment for any purpose beyond its capacity or in a manner likely to result in excessive wear.
- (d) The Hirer shall not make any alterations or modifications to the equipment.

8. FITTING OF ACCESSORIES

- (a) When the equipment requires the fitting of any of any accessory (which generally includes but is not confined to drills, wheel discs and blades) it shall be the hirer's responsibility to ensure that any such accessory is correctly fitted or refitted in a manner so as not to render the equipment unsafe to the user and that any legislation relating to the fitting such accessories are complied with.
- (b) The Hirer shall be responsible for any injury or damage to persons or property arising from the incorrect or unsafe fitting or use of any accessory.

9. DAMAGE TO EQUIPMENT

(a) The Hirer shall make good to the Owner all loss or damage whatsoever of or to the equipment occurring during the hire period or arising there from and all reasonable loss of hire or damage. Provided always that the Hirer shall not be liable hereunder for the loss or damage solely occasioned by fair wear and tear or by mechanical breakdowns caused by inherent fault. In the case of such wear and tear or mechanical breakdown an allowance in respect of hire charges may be made dependant upon the date when the breakdown is notified to the Owner. No other allowance shall be made whatsoever.

(b) The Hirer shall not re-hire, sell mortgage, charge, pledge, create and lien over or part with possession of or otherwise deal with the equipment except as herein provided and shall protect the same against distress, executioner seizure and shall indemnify the Owner against all losses, damage, costs, charges and expenses which may be occasioned by the failure to observe and perform this condition.

(c) If the Hirer shall default in punctual payment of any sums due to the Owner for hire of the equipment or any other charges shall fail to observe and perform the terms and conditions of this contract or if the Hirer shall suffer any distress or execution to be levied against him or make or propose to make any arrangement with his creditors or being a company shall go into liquidation (other than a members voluntary liquidation) or shall do or shall cause to be done or permit or suffer any act or thing whereby the Owner's rights and equipment may be prejudiced or put it in jeopardy then this contract shall be for with terminated (without any notice or other act on behalf of the Owner and notwithstanding that the Owner may have waived some previous default or matter of the same or like nature) and it shall hereunder be lawful for the Owner to re-take possession of the equipment and for that purpose to enter into or upon any premises where the same may be and the termination of the hire and under this condition shall not affect the right of the Owner to recover for the Hirer any monies due to the Owner under the contract or damage or breach thereof.

(d) The Owner may affix or cause to be affixed on the said equipment or any part thereof a plate or other mark indicating that the said equipment is the property of the Owner (or as the case may be) and the hirer shall not obliterate, deface or cover up such plate or mark.

10. NOTIFICATION OF ACCIDENTS

(a) If the equipment is involved in any accident resulting in damage to the equipment or to other property or injury to any person the Owner must be notified immediately.

11. LIABILITY OF HIRER FOR PERSONAL INJURY

(a) The Hirer shall indemnify the Owner against claims, demands, proceedings, damages, costs, charges and expenses for injury to persons arising out of or in connection with the use of the equipment during the hire period, and arising otherwise than as a result of the negligence of the Owner.

12. BREAKDOWN OF EQUIPMENT

(a) Any breakdown or unsatisfactory working of the equipment must be notified to the Owner immediately by the quickest means.

(b) No charge hire will be made by the Hirer from the time when notice is received by the Owner in respect of stoppage due to breakdown of the equipment caused by the development of a fault not discoverable by reasonable examination.

(c) The Owner accepts no liability or responsibility for any loss or damage arising from any stoppage due to breakdown of the equipment from any cause whatsoever.

(d) In the case of wheeled equipment punctures the repair shall be the responsibility of The Hirer and no refund of hire charges will be made by the Owner in respect of stoppages caused by punctures.

(e) Except for the repair of punctures the Hirer shall not repair or attempt to repair equipment unless authorized to do so by the Owner.

(f) In the event of a breakdown in the equipment in the equipment which is not repairable the Owner shall be entitled to substitute equipment of a similar type. If the Owner is not able to do the hire shall be terminated as from the date of notification of the breakdown.

(g) Where breakdown of the equipment arises from a cause other than through the development of a fault not discovered by reasonable examination all costs incurred by the Owner in repairing the equipment including transport costs shall be chargeable to the Hirer.

13. INSURANCE

In the event of any equipment being taken or used outside the confines of the United Kingdom or the Republic of Ireland, it is such a condition of such taking or use before the equipment is so removed that the Hirer must arrange adequate all risks insurance on all equipment involved.

14. INDEMNITY/CONSEQUENTIAL LOSS

(a) You the Hirer must ensure that you are properly covered by insurance in respect of any liability falling on you under this contract.

(b) The Owner accepts no liability whatsoever for any consequential loss due to or arising out of any breakdown, stoppage, delay, detention or non arrival of the equipment or due to or arising out of any defect whatsoever in the same, nor for any damage to property arising from use of the equipment, any loss or damage to other property of the Hirer arising out of such use or any loss or damage which may result from the use of any ancillary equipment supplied with the main equipment unless the whole of such loss or damage results with the negligence of the Owner.

15. RETURN OF EQUIPMENT ON COMPLETION OF HIRE

(a) The Hirer shall be responsible for returning the equipment on completion of the hire is a condition equal to that as at the commencement of hire fair wear and tear EXPECTED.

(b) Where equipment is returned in an unclean condition a charge shall be made for the cleaning and restoration of the equipment to its condition as at the commencement date.
(c) When the equipment (or any part of the equipment) cannot be returned to the owner on the completion of the hire owing to the loss, destruction or theft of the equipment (or such part), whether or not due to any fault of the Hirer, his agent, or employee, the hirer shall pay to the Owner the manufacturer's recommended selling price for that equipment (or that part of the equipment).

16. RETENTION OF DEPOSIT

The Owner reserves the right to retain any deposit made but the Hirer if the equipment is not returned damaged or dirty.

17. PAYMENT OF HIRE CHARGES

(a) Equipment shall be hired by day, by the working week, by the month or for a weekend.
(b) All times, including Saturday and Sunday and public holidays falling within the hire period are chargeable unless agreed otherwise in writing.
(c) All hire charges are payable on demand.
(d) Hire charges shall continue until such time as the equipment is returned to the Owner, or until payment has been made by the Hirer as described in Clause 15 (c).
(e) For the avoidance of doubt without and prejudice to the generality of Clause 15 (a) it shall be assumed when calculating hire rate that equipment hired shall be used for no longer than eight hours per day. It is the responsibility of the Hirer upon requesting a quotation for hire to advise the owner of proposed use in excess of eight hours per day. **ANY EXCESS HOURS WILL BE CHARGEABLE IN ADDITION TO THE HIRE RATE QUOTED.**

18. CARRIAGE

Hire rates do not include carriage and any expense incurred by the Owner in delivering or recovering equipment will be charged by the Hirer.

19. GOVERNMENT REGULATIONS

The Hirer shall be responsible for complying with all laws, bye-laws and regulations applicable to the equipment and particularly with all fire regulations which may affect the use thereof on the Hirer's premises. Each item of equipment is let as a separate unit and a stoppage through any cause whatsoever shall not entitle the Hirer to allowance for the loss of hiring time by any other items of equipment which may be let by the Owners on hire to the Hirer and affected thereby.

20. TERMINATION FOR BREACH OF CONTRACT

(a) This contract of hire shall immediately be terminated without any notice or other act on the part of the Owner if the Hirer:
(1) Defaults on any payment of any sums due to the Owner for the hire of equipment or other charges; or
(2) Fails to observe or perform the terms and conditions of this contract; or
(3) HAS and CHARGE SERVED against him or makes or proposes to make any arrangement with his creditors or being a company goes into liquidation (other than a member's voluntary liquidation); or
(4) Does or cause to be done or permits or suffers any act or thing whereby the Owner's rights to the equipment may be prejudiced.
(b) If this contract is terminated other than in this Clause it shall be lawful for the Owner to retake possession of the equipment and for that purpose to enter into upon any premises where the equipment may be.
(c) The termination of the contract under this clause shall not affect the right of the Owner to recover from the Hirer and monies due under this contract or damages for breach of this contract.
(d) The waiver by the owner of any breach of any term of condition of this contract shall not prevent the sub seen enforcement of that term of condition and shall not be deemed a waiver of any subsequent breach.

CONDITIONS OF SALE

Title to the goods on this delivery/collection note shall not pass to the purchaser until the payment has been made in full.

CREDIT CHARGES: End of month following invoice date. Interest charge 2.5% per month thereafter.

1. GENERAL

In these conditions the following words shall have the following meanings.

(a) 'the Seller' means Emco Services Limited, 10 Panmure Gardens, Potterton, Aberdeenshire, AB23 8UG.
(b) 'the Buyer' means the person, firm or company purchasing the goods.
(c) 'the Goods' means and products or items purchased or items purchased by the Buyer from the Seller and/or products, items or services supplied by the Seller to the Buyer.

2. FORMATION OF THE CONTRACT

The contract comes into being when the buyer has placed an order with the Seller giving details of HIS requirements and have agreed to be bound by these conditions and THE SELLER HAS accepted your order.

3. PAYMENT

When the Seller has granted monthly account facilities to you, all invoices must be paid

by the last day of the month following the month of delivery. Where no such facilities have been granted payment will be made by the Buyer at the time of ordering or where previously agreed, on delivery by the Seller. If payment is not made when due the Seller will be entitled to interest on that amount that is overdue at 4% above prevailing base rate of the high street clearing banks from time to time calculated on a daily basis. This will be without prejudice to any other rights or remedies the Seller may have.

4. PRICE AND COST

(a) The price payable for goods shall unless otherwise stated by the Seller in writing be the price as indicated in any quotation issued by the Seller to the Buyer.
(b) The Buyer agrees to pay for any loss or extra cost incurred by the Seller through the Buyer's instructions or lack of instructions or thorough failure to delay in taking delivery or through any act or default on the part of the Buyer his servants agents or employees.

5. DELIVERY AND RISK TITLE TO GOODS

(a) The risk on the goods will pass to the Buyer immediately upon delivery of the goods to the Buyer or where the Buyer is not taking delivery to the recipient of the goods.
(b) The ownership of the goods will remain with the Seller and the Seller reserves the right to dispose of the goods until the Buyer has paid in full for all goods which the Seller has supplied at any time to the Buyer. Until such payment has been made in full the Buyer will hold the goods on behalf of the Seller and will be under an obligation to return them to the Seller on demand. The Seller will be permitted to enter any land on premises of the Hirer recover the goods and to use Sherriff Officers for that purpose.

6. SELLER'S LIABILITY

(a) At all times which the Seller states or quotes for delivery the quotations are approximate.
(b) The Seller will not be liable for any delay caused by any circumstances beyond their reasonable control.
(c) The Seller will not be liable for any indirect loss, loss of business, profits, savings you expected to make, wasted money, wages, fees, or expenses due to late delivery, non-delivery, unsuitability, breakdown or stoppage of the goods or any part of them.

7. WARRANTIES AND LIMITATION OF LIABILITY FOR GOODS

(a) All goods are sold with the benefit of and subject to the conditions of the manufacturer's warranties supplied with them which are available for inspection on request.
(b) Nothing herein or in any warranty given by the Sellers shall impose and liability upon the Seller in respect of any defect in the goods arising out of the acts, omissions, negligence or default of the Buyer, its servants and agents including in particular and without prejudice the generality of the foregoing any failure by the Buyer to comply with any recommendation of the Seller as to storage and handling or use of servicing of the goods, use of the goods with other goods which are unsuitable for the Buyers purpose or other misuse of goods or accidents or fair wear and tear of the goods.

8. BUYERS

The selection of a product suitable for the Buyer's purposes depends on a range of factors. These factors include but are not limited to on site conditions and other circumstances of the proposed application of the product known only to the Buyer. The Buyer is solely responsible for satisfying himself that the data supplied by the Seller on which information recommendations made by the Seller are based is correct and that assumptions made by the Seller to supplement that data are suitable for the Buyer's purpose. The Seller accepts no responsibility of any nature whatsoever for information or advice it supplies where and data supplied by the Buyer is incorrect or whether and assumption which the Seller has made is unsuitable for the Buyer's purposes. The Buyer is encouraged to raise with the Seller any question that it may have.

9. DEFAULT OR INSOLVENCY OF THE BUYER

If the buyer shall be in breach of any of its obligation under the contract or if and CHARGE shall be SERVED on the Buyer's property or assets or if the Buyer (an individual or partnership) shall make or offer to make and voluntary arrangement or sign a trust deed for behalf of his creditors or become sequestrated or if any petition for sequestration be presented against him or (if the Buyer is a company) has Administrative Receiver or an Administrator appointed or makes a voluntary arrangement with creditors or commences to be wound up the Seller at its discretion and without prejudice to any other right or claim may by notice in writing terminate wholly or in part any and every contract between the Seller and the Buyer or may (without prejudice to the Seller's right subsequently to terminate the contract for the same cause should it so decide) by notice in writing suspend further deliveries of goods until any default by the Buyer is remedied.

10. FORCE MAJEURE

The seller shall be entitled to delay or cancel the delivery or to reduce the amount delivered if it is prevented from or hindered in or delayed in manufacturing obtaining or delivering the goods by normal route or means of delivery through any circumstance beyond its control including but not limited to strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant machinery or shortage or unavailability of raw materials from normal source of supply.

11. SEPERATE TERMS VALIDITY AND HEADINGS

If any term in this contract is held invalid this shall not affect the validity of the remaining terms. The headings in these conditions are for reference purposes only and shall not affect the interpretation of these conditions.