

# Aureos Infrastructure Plant Limited



## Standard Plant Terms and Conditions

31 March 2025 to  
27 March 2026

**AUREOS**

## Aureos Infrastructure Plant Limited

### Standard Terms & Conditions

31 March 2025 – 27 March 2026

These are the conditions for the hiring of all plant provided by **Aureos Infrastructure Plant Limited (Company Number: 14882585)** whose registered office is at 2nd Floor, 1 Lindsey Street, London, EC1A 9HP, United Kingdom (**The Company**).

Provision of all Plant by The Company is under these Terms & Conditions.

The following documents will be incorporated into these Terms and Conditions. The RPA Hire Conditions for Rail Plant Hire 2023, Standard Terms and conditions for POS operations 2022 and CPA Hire conditions for non-Rail Plant Hire (October 2021).

#### ORDER OF PRIORITY

Z1.1 These conditions comprise of the following documents which shall be read and construed as part of these conditions and in the case of any ambiguity or discrepancy shall have the following order of priority:

1. Aureos Infrastructure Plant Limited Standard Terms & Conditions 31 March 2025 – 27 March 2026
2. The Rail Plant Association (RPA) Terms and Conditions 2023
3. Standard Terms and Conditions for POS operations 2022
4. CPA Model Conditions for the Hiring of Plant with (with effect October 2021)

Z2.1 Within the Rail Plant Association (RPA) Terms and Conditions 2023 DELETE Clause 18.1 and replace with:

Should the Customer terminate the Contract before the Services have commenced, then (unless agreed otherwise by the parties in writing), the Customer is liable to the Company for the following:

- a. 100% of the Contract Price if between 0 hours and 72 hours' notice is provided
- b. 75% of the Contract Price if between 72 hours and 144 hours' notice is provided

This is with the exception for all plant booked between 24 December 2025 and 02 January 2026. All plant booked between these dates will be 100% of the Contract Price if less than 60 days' notice is provided.

Z2.2 Within the Rail Plant Association (RPA) Terms and Conditions 2023 DELETE Clause 18.2 and replace with:

Should the Customer terminate the Contract after the Services have commenced, then (unless agreed otherwise by the parties in writing, with regard to the class of Plant and Type of Services hired by the Customer), the Customer is liable to the Company for the following:

- a. 100% of the Contract Price if between 0 hours and 72 hours' notice is provided
- b. 75% of the Contract Price if between 72 hours and 144 hours' notice is provided

This is with the exception for all plant booked between 24 December 2025 and 02 January 2026. All plant booked between these dates will be 100% of the Contract Price if less than 60 days' notice is provided.



Collective Mark

# THE RAIL PLANT ASSOCIATION (RPA) TERMS & CONDITIONS 2023

These conditions are not to be used for consumer contracts, and only apply to rail-related work carried out by the Company on behalf of the Customer.

**I) SECTION (A) - GENERAL CONDITIONS are also applicable to:**

- **SECTION (B) - CONDITIONS FOR HIRING COMPANY'S PLANT AND PERSONNEL and to**
- **SECTION (C) - CONDITIONS FOR THE PROVISION OF POS SERVICES.**

**II) SECTION (B) - CONDITIONS FOR HIRING COMPANY'S PLANT AND PERSONNEL work in conjunction to SECTION (A) - GENERAL CONDITIONS.**

**III) SECTION (C) - CONDITIONS FOR THE PROVISION OF POS SERVICES work in conjunction to SECTION (A) - GENERAL CONDITIONS.**

**SECTION (A) - GENERAL CONDITIONS**

1. DEFINITIONS
2. THE EXTENT OF CONTRACT
3. COMPOUND & SITE AND ACCESS SUITABILITY
4. CUSTOMER'S OBLIGATIONS
5. COMPANY'S GENERAL PERSONNEL STATUS
6. WAGES AND OTHER CHARGEABLE ITEMS RELATING TO COMPANY'S PERSONNEL SUPPLIED TO THE CUSTOMER
7. TRAVELLING TIME AND FARES
8. CHANGES IN NORMAL WORKING WEEK
9. PERMITS TO WORK
10. POINTS MANAGEMENT RESPONSIBILITY
11. GOVERNMENT REGULATIONS
12. TITLE, RISK AND INSURANCE
13. NOTICE OF ACCIDENTS
14. PROTECTION OF COMPANY'S RIGHTS
15. PAYMENT OF CHARGES
16. LATE PAYMENTS
17. FORCE MAJEURE
18. CANCELLATION OF CONTRACT
19. TERMINATION AND SUSPENSION
20. DISPUTE RESOLUTION
21. LIMITATION OF LIABILITY
22. SEVERABILITY
23. CONFIDENTIALITY
24. DATA PROTECTION
25. NO PARTNERSHIP OR AGENCY
26. JURISDICTION

**SECTION (B) - CONDITIONS FOR HIRING COMPANY'S PLANT AND PERSONNEL**

27. COMPOUND/SITE DELIVERIES AND COLLECTIONS BY THE COMPANY
28. PLANT SUITABILITY AFTER SITE DELIVERY
29. CUSTOMER RESPONSIBILITIES FOR PLANT
30. RELINQUISHMENT OF COMPANY'S PLANT
31. COMPANY'S NAME PLATES
32. PLANT REMOVAL FROM SITE
33. FUEL, OIL AND POWER
34. PLANT SERVICING AND INSPECTION
35. BREAKDOWN, REPAIRS AND ADJUSTMENT
36. RECALL OF PLANT FOR REPAIRS
37. LOSS OF OTHER PLANT DUE TO BREAKDOWN
38. OTHER STOPPAGES
39. CUSTOMER'S RESPONSIBILITY FOR LOSS AND DAMAGE
40. COMPANY'S SPECIFIC PERSONNEL STATUS
41. BASIS OF CHARGING
42. PERIOD OF CHARGING
43. CUSTOMER'S COSTS IN CONSUMABLE/ANCILLIARY SHARPENING OR REPAIRS/REPLACEMENTS
44. PLANT HIRED ON A DAILY BASIS WITHOUT QUALIFICATION AS TO HOURS

45. PLANT HIRED BY THE WEEK OR MONTH WITHOUT QUALIFICATION AS TO HOURS
46. PLANT HIRED BY THE WEEK OR MONTH WITH QUALIFICATION AS TO HOURS
47. "ALL-IN" RATES
48. IDLE TIME
49. CUSTOMER'S LIABILITY DURING CONTRACT TERMINATION NOTICE PERIOD

**SECTION (C) - CONDITIONS FOR THE PROVISION OF POS SERVICES**

50. DEFINITIONS
51. QUOTATIONS AND CONTRACT PRICE
52. REGULATIONS AND CODES OF PRACTICE FOR PROVISION OF POS SERVICES
53. TRANSPORTATION OF CONTRACT GOODS

**FOOTNOTES**

**SECTION (A) - GENERAL CONDITIONS**

1. DEFINITIONS
  - 1.1 "All-In Rates" is where the Customer is charged one 'all-in' fee for the hire of Plant with Personnel for that Plant. The Customer will pay for the service i.e., for the Plant and its Personnel as one single fee.
  - 1.2 "Bank/Public Holidays" will include the Christmas and Easter period, as well as any Bank or Public Holidays, and the Contract Price will be reflected for the supply of any services during these times, and agreed between the Company and Customer before any services commence.
  - 1.3 "Cessation Period" covers any period of time where the Plant remains on the Site or Compound but is not operationally required.
  - 1.4 "Company" is the Company, firm or person providing the Plant on hire or charging for services to the Customer and includes the Company's successors, assignees, or personal representatives.
  - 1.5 "Compound" is the Customer's designated area agreed between the Company and the Customer where the Company's Plant will be delivered or collected during the Contract Term. The Customer's responsibility for the Plant will begin when delivered to either the Compound or Site and ends when collected from either the Compound or Site.
  - 1.6 'Confidential Information' means all information disclosed (whether orally, in writing or in any other form) by one party ('Disclosing Party') to the other party ('Recipient') in connection with the Contract, which is identified as being confidential (or which reasonably ought to be considered confidential by the Recipient), and all copies, notes and records and all related information based on or arising out of any such disclosure which is not:
    - (a) in the public domain (otherwise than as a result of a breach of this Contract) in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of this Contract or any other obligations of confidentiality;
    - (b) is or was lawfully received from a third party not under an obligation of confidentiality with respect thereto;
    - (c) is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required);
    - (d) is approved for disclosure in writing; or
    - (e) was developed independently of and without reference to confidential information disclosed by the other party.
  - 1.7 "Contract" is the Contract between the Company and the Customer for the hire of Plant, hire of Personnel or the Provision

- of POS Services, which is governed by these conditions and may incorporate bespoke terms agreed between the Company and the Customer in writing which may be set out in an order form or similar document.
- 1.8 “Contract Goods” means the goods which are to be lifted by the Company in accordance with these terms and conditions.
- 1.9 “Contract Price” means the price agreed by the Company and the Customer as payment for the Services which may include the provision of Plant and/or Personnel and which may be paid by the Customer as a lump-sum price or a time related schedule of rates.
- 1.10 “Contract Term” is the term of the Contract as agreed between the Company and the Customer in writing.
- 1.11 “Crane Controller” is a competent person supplied by the Company to the Customer who controls the lifting operation for the Plant.
- 1.12 “Customer” is the Company, firm, person, Corporation, or public authority taking the Company’s Plant on hire or the Company’s Provision of Services and includes the Company’s successors or personal representatives.
- 1.13 “Fair Wear and Tear” means the deterioration of an item due to age and normal use.
- 1.14 “Idle Time” will apply when the Plant is prevented from working for a complete Working Day or Working Shift, the charges shall be outlined in the Contract by the Company for the period during which the Plant is not in use. If the Plant works for any time during the Working Day or Working Shift, then the whole of that Working Day or Working Shift shall be charged as working time. In any case no period less than one Working Day or Working Shift shall be reckoned as Idle Time save for as provided for in clause 41.5. Where an “All-In” rate is charged, Idle Time is calculated on the machine element only. Full rate will be charged for any Personnel supplied by the Company to the Customer.
- 1.15 “Legislation” referenced in this document would refer to a statute, statutory instrument, guidance document, standard or protocol shall be a reference to whatever statute, statutory instrument, guidance document, standard or protocol is currently in force in respect of the relevant issue or is regarded as constituting the accepted industry guidance.
- 1.16 “Machine Controller” is a competent person who has been supplied by the Company or the Customer to control the movement of the Plant.
- 1.17 “Personnel” means any Personnel supplied by the Company to the Customer as part of the Services, including employees, agents, consultants and subcontractors.
- 1.18 “Plant Operator” is a competent person who has been supplied by the Company or the Customer to operate the plant.
- 1.19 “Plant” covers all classes of Plant, Road-Rail Vehicles (RRVs) or replacement Plant, machinery, vehicles, equipment including any tools, accessories, and any ancillary items, welfare units, vehicles, or equipment therefor, which the Company agrees to hire or provide to the Customer including any Personnel, or anything which is supplied by the Company to effect the hire or the Provision of Services supplied, and anything supplied by the Company for the safe operation, routine inspection and maintenance of the Plant.
- 1.20 The “Provision of Services” will include “POS Contract Operations” which oversees the planning and supervision of Plant on the Customer’s Site or Compound and in accordance with NR/L2/RMVP/0200/P521 version 3 or subsequent version.
- 1.21 A “Recall” is a safety critical action implemented by the manufacturer due to design or construction tolerance which may affect the safe operation of the Plant.
- 1.22 “Services” are the services to be provided by the Company to the Customer as agreed between the Company and the Customer and expressly defined in the Contract.
- 1.23 “Site” is defined as where the Company’s Plant will be utilised, stored, delivered or collected or where the provision of Services supplied by the Company will be carried out.
- 1.24 “T-Minus” is used to indicate the specified amount of time that remains before an event is scheduled or expected to take place.
- 1.25 “Time Window” is a 2-hour window where the Plant will be delivered and/or collected from the Compound or Site at a time which is agreed in advance and in writing between the Company and Customer. The parties may agree to vary the Time Window in writing in advance of delivery.
- 1.26 Unless agreed otherwise by the Customer and the Company in writing, a “Working Day” or “Working Shift” means:
- If the Plant is supplied on a daily or weekly basis, then a “Working Shift” or “Working Day” shall be the hours the Personnel are hired to work on the Site or Compound by the Customer as agreed between the parties and as set out in the Contract. Any Working Shift or Working Day will include break times. Personnel will be paid for breaks which are classed as “Standard Breaks”. “Standard Breaks” is defined as standard refreshment breaks, which may include, food, drinks and toilet breaks, in which Personnel usually remain on Site or Compound and within proximity of the Plant and are available to assist with the Services if necessary. Time taken for Standard Breaks shall not be deducted from the Contract Price and shall be paid in full by the Customer. The Customer may only deduct breaks from the Working Shift Contract Price if the break is classed as a “Non-Standard Break”. “Non-Standard Breaks” is defined as breaks taken by Personnel in a designated break area. The designated break area shall be set up by the Customer and shall be located off Site or Compound and Personnel will not be available to assist with the Services and will not be within proximity of the Plant when in the designated break area. The Customer may only deduct Non-Standard break time from the Working Day or Working Shift Contract Price if the Customer has expressly informed the Personnel in writing and in advance, that breaks taken in the designated break area will be classed as Non-Standard Breaks and will be unpaid. The Customer must maintain an accurate record of Personnel breaks which are taken in the designated Non-Standard break area. The Company reserves the right to request from the Customer, all documentary evidence of Personnel usage of the designated break area at any time and the Customer must comply with such request within 24 hours.
  - If the Plant is supplied on a shift basis, then “Weekday” working hours shall mean any shift between Monday to Friday commencing at or after 8am, the first 8 hours of which shall be chargeable at “Weekday” rates and all hours in excess of 8 hours shall be chargeable at “Weeknight” rates.
  - If the Plant is supplied on a shift basis, then “Weeknight” working hours shall mean any shift from Monday to Thursday commencing at or after 4 p.m. and shall be chargeable at “Weeknight” rates. “Weeknight” working hours shall also include any other hours worked in excess of the 8 hour “Weekday” shift described in clause 1.26(b) above and shall be chargeable at “Weeknight” rates.
  - If the Plant is supplied on a shift basis, then “Weekend” working hours shall mean any shift between 3:30 p.m. on or after a Friday and 8 a.m. on a Monday and shall be chargeable at “Weekend” rates. “Weekend” working hours shall also include any hours not specifically defined within “Weekday” or “Weeknight” working hours, e.g., Bank/Public Holidays.
  - If the Company’s Personnel and/or Plant is utilised for more than one work pattern as outlined in clauses 1.26(a)-(d), then the Customer will be charged at the appropriate rate for each amount of time in that work pattern.
  - Where a “Working Day” or “Working Shift” is less than 8 hours’ duration, the Customer will be charged a minimum 8-hour “Working Day” or “Working Shift”.
- 1.27 A “Working Week” will be determined whether the Plant is supplied on a “Working Day or Working Shift” basis.
- A “Working Week” for Plant supplied on a Working Day basis, as per clause 1.26(a), covers the period from 8.00 am on Monday to 3.30 pm on Friday, unless otherwise specified in the Contract.
  - A “Working Week” for Plant supplied on a Working Shift basis - as per clauses 1.26(b) - (d) covers the period from 00.01 Friday to 00.00 Friday, unless otherwise specified in the Contract.
- ## 2. THE EXTENT OF CONTRACT
- 2.1 The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. No terms, conditions, or warranties other than as specifically set forth in the Contract shall be deemed to be incorporated or to form part of

- the Contract or shall otherwise govern the relationship between the Company and the Customer in relation to the Services unless expressly agreed in writing between the Company and the Customer. This excludes all other terms or conditions which the Customer may seek to apply under any order or acknowledgement or acceptance or similar document and supersedes all prior negotiations, representations, or agreements, whether written or oral unless and to the extent that they are expressly accepted in writing and signed by the Company. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 2.2 For the avoidance of doubt, no contract is created before the Company accepts a written order or instruction for the Services. The entering into the Contract by the Customer and the Company constitutes an agreement to these terms and conditions and implies acceptance of all terms and conditions herein unless otherwise previously agreed in writing between the parties.
- 2.3 No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 2.4 Unless otherwise agreed by the Company and the Customer, these terms and conditions also apply to any additional work that the Company may agree to carry out for the Customer.
- 2.5 The notice period for any prior works given from the Customer to the Company is recommended to be T-4 (four weeks) to ensure best practice for safe delivery and completion, however, it may be less than T-4 (four weeks) subject to the Company's written agreement and subject to clause 21.7 and 21.8. For the avoidance of doubt for Christmas and New Year Working - a written order or instruction is to be received by the Company on or before 24th November for any Christmas or New Year Premium Shift Works.
- 2.6 The Company and the Customer do not intend that any of the terms of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Contract, except that a person who is a successor to or an assignee of the rights of the Company is deemed to become a party to the Contract after the date of succession or assignment (as the case may be).
- 2.7 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 3. COMPOUND & SITE AND ACCESS SUITABILITY**
- 3.1 The Customer is deemed to have knowledge of the Compound & Site, the Compound's & Site's access road(s), the property or land where the Plant is to be delivered or collected, loaded or unloaded, to work on, travel over, be transported over, be erected or dismantled on, and confirm that it is suitable for the use of such Plant, and any electronic interference which may affect the Plant.
- 3.2 Subject to clause 3.1, if, in the opinion of the Customer, the ground (including any private access road or track) is soft or unsuitable for the Plant, then the Customer shall supply and lay suitable support in a suitable position for the Plant.
- 3.3 Any suitable support supplied by the Company is provided solely to assist the Customer under their duties within clause 3.2 and does not expressly relieve the Customer of their legal, regulatory, or contractual obligations to ensure adequate stability of the Plant.
- 3.4 The Customer is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas pipes and any pavements, bridges, tunnels, and roadways on or adjacent to the Compound & Site and the Customer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.
- 3.5 The Customer will ensure that there are no changes to Compound or Site conditions or requirements which result in the Contract operation being aborted either through these failure(s), or other circumstances beyond the Company's control.
- 3.6 All information provided by the Customer is complete, true, and accurate. Any omissions made by the Customer and documented as such by the Company are deemed to be the Customer's responsibility. The Company will take no responsibility for a lack of information supplied or incorrect information supplied by the Customer to the Company.

- 3.7 Where all or any of the above circumstances apply, the Company may issue a revised quotation fee for the Contract operations. If the revised quotation fee is not accepted by the Customer, then all costs incurred by the Company to date will become due for payment and the Company may elect to terminate the Contract without further liability to the Customer.
- 4. CUSTOMER'S OBLIGATIONS**
- 4.1 The Customer shall:
- (a) ensure that the terms of any order form or similar documentation and any information it provides in any applicable specification are complete and accurate;
  - (b) co-operate with the Company in all matters relating to the Services;
  - (c) provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company;
  - (d) provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - (f) keep all materials, equipment, documents and other property of the Company (Company Materials) at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation; and
  - (g) comply with any additional obligations as set out in the Contract including any order form, specification or similar document.
- 4.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- (a) without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
  - (b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations as set out in this clause 4; and
  - (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.
- 5. COMPANY'S GENERAL PERSONNEL STATUS**
- 5.1 Where applicable to the supply of the Services by the Company Personnel to the Customer, that Company Personnel shall be fully competent to a recognised standard and deemed to be so by a qualified assessor and must have Personal Track Safety Certification (PTS) including AC/DC electrified lines unless the Contract specifically states otherwise.
- 5.2 Any Personnel supplied by the Company shall be under the direction and control of the Customer for the duration they are on Site or Compound.
- 5.3 Any Personnel supplied by the Company shall be informed of the name of the Customer's authorised representative who shall brief the individual as to the tasks the Personnel is to undertake to ensure that they fully understand any hazards to themselves or to others health, safety and welfare on Site or Compound.
- 5.4 The Crane/Machine Controller or Plant Operator will comply with current standards relating to hours of work, which will be limited to a maximum of a 12-hour Working Day or Working Shift whilst on Site or Compound, and that all records relating to Personnel working hours are kept and made available for inspection at the request of the Customer. Personnel will be given the option of



staying in hotel accommodation of a standard deemed reasonable by the Company when:

- (a) the Personnel are required to work a number of shifts beyond 10 hours each day; and
- (b) travel time to the Site or Compound by the Personnel would be greater than one hour each way.

The Customer shall be responsible for the payment of all hotel accommodation fees on behalf of the Personnel.

- 5.5 The Company will provide all general personal protection equipment (PPE) for all Company Personnel on Site or at the Compound. The Customer will ensure that where necessary, any Company Personnel on Site or Compound shall be provided with suitable task specific protective equipment. Where the Customer requires the Company's Personnel to wear the Customer's branded PPE, this will be supplied at the Customer's cost.
- 5.6 Any Personnel supplied by the Company shall have agreed to be screened for the use of alcohol and drugs in accordance with the current standards for the application of "random" or "for cause" alcohol and drugs screening when requested to do so by the Customer.
- 5.7 The Company should maintain a drugs and alcohol policy compatible with current railway standards and that records of testing and screening is kept for a minimum of 3 years and is available for inspection by the Customer.

## **6. WAGES AND OTHER CHARGEABLE ITEMS RELATING TO COMPANY'S PERSONNEL SUPPLIED TO THE CUSTOMER**

- 6.1 All chargeable items shall be paid by the Customer at the rates set out in the Contract save that any subsequent increases before and/or during the Contract arising from awards under any wage agreements and/or any increases imposed by the Government and/or from increases in the Company's statutory contribution shall be charged as additions at cost by the Company and shall be admitted and paid by the Customer.
- 6.2 Where any bonus is owed to the Personnel, the Customer shall increase this sum to reflect the National Insurance Contribution (NIC)/tax deduction that the Company incurs.
- 6.3 Where the Contract covers a period of more than 12 months, then all charges will increase by the Consumer Price Index (CPI) on the anniversary of when the Contract commenced.

## **7. TRAVELLING TIME AND FARES**

- 7.1 Travelling time will be chargeable as defined in the Contract.
- 7.2 Travelling time, public transport fares and similar expenses incurred by any Personnel supplied by the Company to the Customer at the beginning and end of the Contract will be chargeable to the Customer. No charge shall be made by the Company for any such expenses incurred by other Company Personnel for the purpose of servicing, repair, or maintenance of Plant, unless necessitated by the Customer's negligence, misdirection, or misuse of the Plant.
- 7.3 The Customer will be charged the appropriate rate as detailed in the Contract for any Company Personnel travelling by the Company's vehicle to or from Site or Compound.

## **8. CHANGES IN NORMAL WORKING WEEK**

The clauses within this document have been framed upon the basis of the Customer agreeing to utilise the Company's Plant and/or Personnel as per the contracted hours within the Contract. Should there be a change to those contracted/daily/weekly/shift hours, which are mutually agreed between the Company and Customer, then the following clauses will be modified accordingly to reflect that change: 1.26, 1.27, 41.3, 45, and 46.

## **9. PERMITS TO WORK**

- 9.1 The Customer must have or obtain the necessary authorisation to issue a 'Permit to Break Ground' to the Company for any excavation work which is to be carried out by the Company on the Customer's behalf.
- 9.2 As part of issuing the 'Permit to Break Ground', the Customer will:
  - (a) provide clear written evidence that the area of excavation has been investigated and confirms no debris or other hazards lie beneath the work's area.
  - (b) If clause 9.2(a) proves incorrect, then clause 21 takes effect in full.
  - (c) ensure that they have completed "Form 'C' - Permit to Work

*under Overhead lines"* prior to the work commencing and a copy is available upon request by the Company.

## **10. POINTS MANAGEMENT RESPONSIBILITY**

- 10.1 The hierarchical responsibility for points management is defined in clauses 10.1 to 10.3.
- 10.2 Responsibility for the Points Management does not rest with the Company. The Customer will ensure that the appropriate points management protocols are in place.
- 10.3 The Customer's engineering supervisor, or where applicable, the person in charge must give authority for the Plant to travel over the points. (This authorisation can be included in their briefing to the Machine Controller(s) and/or, the Crane Controller(s) at the commencement of the Working Day or Working Shift.)
- 10.4 Before any movement is made over points, the Crane/Machine Controller must check them to make sure they are in the correct position for the movement.

## **11. GOVERNMENT REGULATIONS**

- 11.1 The Customer will be responsible for compliance with all relevant Legislation, regulations, instructions, or guidance issued by the Government, Government Agencies, Local Authorities, statutory regulators, and Public/Corporate Bodies established by Parliament/Government including (without limitation) regulations under the Bribery Act, the Civil Aviation Act, the Construction (Design and Management) Regulations, the Environmental Acts, Factories Acts, the General Data Protection Regulation (GDPR), the Health and Safety at Work, etc. Act and observance of the Road Traffic Acts or road related acts, including but not limited to any 'movement orders' should they apply, including the cost of road fund licences and any insurances made necessary thereby, save that if and during such time as the Plant is travelling, whether for the full or part of the journey from Company to Site or Compound and Site or Compound to Company under its own power with a driver supplied by the Company, the Company and not the Customer shall be responsible as aforesaid.
- 11.2 For the avoidance of doubt, the Customer shall indemnify the Company against any and all charges, fines, or losses that the Company may become liable for as a result of the Customer utilising the Plant during the Contract.
- 11.3 Where the Government implements a new or amends existing Legislation, regulations, instructions, or guidance issued by the Government, Government Agencies, Local Authorities, statutory regulators, and Public/Corporate Bodies established by Parliament/Government including (without limitation) regulations which impacts on this Contract, then that change will take immediate effect and any additional costs incurred by the Company will be borne by the Customer.

## **12. TITLE, RISK AND INSURANCE**

- 12.1 The Plant shall at all times remain the property of the Company, and the Customer shall have no right, title or interest in or to the Plant (save the right to possession and use of the Plant subject to the terms and conditions of the Contract).
- 12.2 The risk of loss, theft, damage or destruction of the Plant shall pass to the Customer on delivery to the Site or Compound. The Plant shall remain at the sole risk of the Customer during the Contract Term and any further term during which the Plant is in the possession, custody or control of the Customer (Risk Period) until such time as the Plant is redelivered to or collected by the Company. During the Contract Term and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:
  - (a) insurance of the Plant to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing. Such insurance shall cover all loss, damage and injury of any nature caused by or to the Plant or Personnel or anyone in lawful occupation of the Site or Compound and this shall include any representative, agents or subcontractor appointed by the Company in the delivery of the Services. Such insurance shall take effect on delivery of the Plant and/or Personnel at the specified Site or Compound as per clause 27.5 and such insurance shall be maintained for the duration of the Contract Term, for the period of time when the Plant is held at the Customer's risk and until the Plant has been collected and removed by the Company;

- (b) insurance for such amounts as a prudent owner or operator of the Plant would insure for, or such amount as the Company may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Plant; and
  - (c) insurance against such other or further risks relating to the Plant as may be required by law, together with such other insurance as the Company may from time to time consider reasonably necessary and advise to the Customer in writing.
- 12.3 The Company reserves the right to request from the Customer, all documentary evidence as to the insurance cover it holds in relation to the Plant and/or Personnel (as applicable) and evidence that all premiums in relation thereto have been fully paid up. The Customer shall on the Company's request name the Company on the policies as a loss payee in relation to any claim relating to the Plant. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 12.4 Where applicable, the Company and/or the Customer will carry insurance, including professional indemnity insurance and employers' liability insurance when carrying out the Provision of POS Services to cover its potential liability under the Contract having regard to the maximum amounts referred to in clause 21.
- 12.5 The Customer agrees to indemnify the Company against:
- (a) any claim arising from or connected with the Company's work on the Site (or Compound), in preparing the Site or performing the Contract, including claims of nuisance and claims of trespass to persons, property or land;
  - (b) all other losses, damages or claims in respect of any matters arising from or in connection with the Contract and for which, under these terms and conditions, the Customer is liable or for which under clause 21 the Company is not liable; and
  - (c) Any liability arising from or in connection with the Contract to pay any amount in excess of the relevant limits referred to in clause 21.
- 13. NOTICE OF ACCIDENTS**
- 13.1 If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notification must be given by the Customer to the Company by telephone and confirmed in writing to the Company no later than 24 hours after such telephone notification. In relation to any claim made against the Customer, no admission of liability, offer, promise of payment or indemnity shall be made by the Customer without the Company's prior written permission. If the Company accepts liability for such claim the Company will hold harmless the Customer.
- 13.2 As a result of clause 13.1, should the Office of Rail Regulator (ORR) or the Rail Accident Investigation Board (RAIB) need to quarantine the Plant for any reason, then the Plant is held at the Customer's risk, and the Customer will be charged at the Idle Time rate until such time as the Plant is returned to the Company. In the event that the incident is deemed to be the sole responsibility of the Company then all charges relating to the quarantine will be rebated/waived.
- 14. PROTECTION OF COMPANY'S RIGHTS**
- The Customer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Plant except as provided under clause 29 and shall protect the same against distress, execution or seizure and shall indemnify the Company against all losses, damage, costs, charges, and expenses arising as a result of any failure to observe and comply with this clause 14 except in the event of Government requisition. The Company has the right to immediately recover the Plant should clause 19 take effect.
- 15. PAYMENT OF CHARGES**
- 15.1 The Company's Contract Price is set out in the Contract. The Contract Price is exclusive of amounts in respect of value added tax (VAT) chargeable from time to time.
- 15.2 The Customer shall pay all charges in full and in cleared funds to a bank account nominated in writing by the Company.
- 15.3 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 15.4 Undisputed invoices shall be payable within 30 days of receipt of the invoice by the Customer. The Customer shall notify the Company within 14 calendar days, if it disputes the whole or any part of any invoice and shall pay any undisputed part in accordance with clause 15.2. The parties shall meet to discuss in good faith any disputed amount. If any disputed amount is found to be payable (following the terms of clause 20) it shall be paid by the Customer within 30 days of such finding together with any interest due thereon.
- 15.5 Any query regarding the Company's invoice must be raised in writing by the Customer within 14 calendar days of receiving the invoice.
- 15.6 The Company shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Company engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials.
- 16. LATE PAYMENTS**
- If the Customer fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 19, the Company reserves the right to charge the Customer for the late payment of any outstanding invoices under the Late Payment of Commercial Debts (Interest) Act 1998, or any subsequent Legislation which will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 17. FORCE MAJEURE**
- In the event of Force Majeure (an event beyond a party's reasonable control which may include, but is not limited to civil unrest/rioting, industrial action, a state event, Acts of God or extreme weather e.g., flooding/hurricane) neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract. In the event of Force Majeure, the Contract may be terminated by either party upon two weeks' (14 calendar days') written notice. The Customer is liable for all costs that the Company has incurred up to the termination following the Force Majeure event, as per clause 18.
- 18. CANCELLATION OF CONTRACT**
- 18.1 Should the Customer terminate the Contract before the Services have commenced, then (unless agreed otherwise by the parties in writing), the Customer is liable to the Company for the following:
- (a) 20% of the Contract Price if between 22-31 days' notice is provided.
  - (b) 40% of the Contract Price if between 15-21 days' notice is provided.
  - (c) 60% of the Contract Price if between 8-14 days' notice is provided.
  - (d) 80% of the Contract Price if less than 7 days' notice is provided.
  - (e) 100% of the Contract Price if less than 48 hours' notice is provided.
- 18.2 Should the Customer terminate the Contract after the Services have commenced, then (unless agreed otherwise by the parties in writing, with regard to the class of Plant and type of Services hired by the Customer), the Customer is liable to the Company for the following:
- (a) 100% of the Contract Price if less than 48 hours' notice is provided.
  - (b) 80% of the Contract Price if less than 7 days' notice is provided.
  - (c) 60% of the Contract Price if between 8-14 days' notice is provided.
  - (d) 40% of the Contract Price if between 15-21 days' notice is provided.
  - (e) 20% of the Contract Price if between 22-31 days' notice is provided.
- 18.3 Where specialist third party Plant has been ordered at the Customer's request, the Customer will be liable to reimburse the Company for any and all payments (including cancellation payments) to the third-party.

- 18.4 Where clauses 18.1-18.3 apply, then the Company may elect to be discharged from the Contract without further liability to the Customer.

## **19. TERMINATION AND SUSPENSION**

- 19.1 Without affecting any other right or remedy available to it, the Company may terminate the Contract forthwith by written notice to the Customer if one or more of the following events occur:
- (a) the Customer defaults in punctual payment of any sum due to the Company for Services provided or other charges payable pursuant to these conditions and fails to remedy such default within 14 calendar days upon receiving written notice requiring it to do so;
  - (b) the Customer fails to observe and perform the terms and conditions of the Contract and fails to remedy such default within 14 calendar days of receiving written notice requiring it to do so;
  - (c) the Customer suffers, or the Company reasonably believes that the Customer shall suffer, any distress or execution to be levied against them;
  - (d) the Customer makes or proposes to make any arrangement with their creditors or becomes insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof for the time being in force;
  - (e) the Customer does or causes to be done or permit or suffer any act or thing whereby the Company's rights in the Plant may be prejudiced or put into jeopardy;
  - (f) The Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
  - (g) The Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 19.2 In the event of termination under clause 19.1 above:
- (a) The Customer must give the Company or the Company's agents, immediate unobstructed access to recover the Plant.
  - (b) The Company shall be entitled to claim the charges outstanding as at the date of termination of the Contract under this clause and return transport charges under clause 27.1.
- 19.3 The Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt. The rights under sub-paragraph 19.1 above:
- (a) may be exercised notwithstanding that the Company may have waived some previous default or matter of the same or a like nature;
  - (b) shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 19.4 If the Customer does not make payment of a sum by the final date on which payment is due to be made, the Company has the right to suspend performance of its obligations under the Contract. The right to suspend may not be exercised without first giving to the Customer at least 7 calendar days' notice in writing of the Company's intention to suspend performance, stating the ground or grounds on which the Company intends to suspend performance. The right to suspend performance will cease when the Customer makes payment in full of the amount due.

## **20. DISPUTE RESOLUTION**

- 20.1 All disputes must be resolved as set out in this clause 20. Nothing in this clause 20 prevents either party from instituting proceedings to seek interim, injunctive, interlocutory or declaratory relief; or affects a party's right to terminate the Contract.
- 20.2 A party claiming that a dispute has arisen must give notice to the other party in writing giving details of the dispute and stating that the notification is given pursuant to this clause 20.
- 20.3 The parties will attempt to resolve all disputes by negotiations using the following escalation procedure:
- (a) for disputes in connection with the day-to-day operation of the Contract:
    - (i) the managers of the Service delivery must attempt to resolve the dispute within 5 Working Days of referral; and
    - (ii) if the managers of the Service delivery do not resolve the dispute, they may refer that dispute to the executives with commercial responsibility 'Commercial Managers' for the Contract;
  - (b) for disputes that are escalated in accordance with clause (a):
    - (i) the Commercial Managers must attempt to resolve the dispute within 5 Working Days of referral to them; and
    - (ii) if the Commercial Managers do not resolve the dispute, then the provisions of clause 20.4 shall apply.
  - (c) The parties may agree to the extension or restriction of any of the time periods set out in this clause 20 for the sending of any notice or the doing of any act.
- 20.4 If the parties fail to resolve the dispute in accordance with clause 20.3, each party to the Contract has a right to refer any difference or dispute arising under or in connection with the Contract to adjudication and the procedure set out in Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (or such equivalent legislation which confers on the parties the statutory right to adjudicate within the relevant jurisdiction (or any amendment or re-enactment thereof for the time being in force) will apply. The person (if any) specified in the Contract to act as adjudicator may be named in the Offer. The specified nominating body to select adjudicators shall be the Board of RPA Directors.
- 20.5 In the event of a dispute between Customer and the Company, each party will continue to perform its obligations under the Contract in accordance with the terms of the Contract during the resolution of such dispute unless and until the Contract is terminated in accordance with its terms.

## **21. LIMITATION OF LIABILITY**

- 21.1 Except for liability on the part of the Company which is expressly provided for in the Contract (including these clauses):
- 21.2 The limits and exclusions in this clause 21 reflect the insurance cover the Company has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.
- 21.3 References to liability in this clause 21 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- (a) the Company shall have no liability or responsibility for any loss, or damage of whatever nature due to or arising through any cause beyond the Company's reasonable control;
  - (b) the Company shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of the Contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) for any of the Customer's loss of profit, loss of use of the Plant or any other asset or facility, loss of production or productivity, loss of contracts with any third party, loss of or damage to goodwill, loss of sales or business, loss of anticipated savings and liabilities of whatever nature to any third party, and/or any other financial or economic loss or indirect or consequential loss or damage of whatever nature; and
  - (c) whenever the Contract (including these clauses) provides that any reduction/allowance is to be made against charges, such allowance shall be the Customer's sole and exclusive remedy in respect of the circumstances giving rise to the allowance, and such remedy shall be limited to the amount of



- charges which would otherwise be or become due if the allowance in question had not been made.
- 21.4 Subject to clause 21.9, the Company's total contractual liability shall not exceed the value of the Contract Price.
- 21.5 Subject to clause 21.9, the Company's total liability for damage to property shall not exceed £5,000,000 (five million pounds sterling).
- 21.6 Subject to clause 21.9, all implied terms and conditions as to the quality or performance of the Plant and any other goods or services provided under the Contract are, to the fullest extent permitted by law, excluded from the Contract.
- 21.7 Specifically in relation to POS Services, subject to clauses 21.8 and 21.9, if the Customer provides at least T-4 (28 days) written notice to the Company before the commencement of POS Services, the Company's liability to the Customer will be subject to the following financial caps (notwithstanding the limitations in clauses 21.3 and 21.11 or the exclusion in clause 21.11):
- (a) If the Contract Goods have a value of £25,000 (twenty-five thousand pounds sterling) or less, then the Company's liability (per claim) for the Contract Goods shall be the value of the Contract Goods irrespective of the number of items being lifted or moved.
  - (b) If the Contract Goods have a value of more than £25,000 (twenty-five thousand pounds sterling) either:
    - (i) the Customer shall maintain insurance to cover the risk of loss or damage to the Contract Goods and the Company's liability (per claim) will be limited to the insurance excess capped at £25,000 (twenty-five thousand pounds sterling). The Customer will apply the insurance proceeds directly to the lost or damaged Contract Goods; or
    - (ii) the Customer may request that the Company make the Customer a loss payee under the Company's insurance policy relating to the risk of loss or damage to the Contract Goods, in which case, the parties shall agree a set of key terms in writing, including, the type and level of insurance applicable. In any case, the Company's liability (per claim) will be limited to £25,000 (twenty-five thousand pounds sterling) and if the aggregate of the insurance charges (including, but not limited to, any policy fees, premium or excess) exceeds £25,000 (twenty-five thousand pounds sterling) for any one claim, the Customer will be liable for the excess payment to make good the loss or damage to the Contract Goods, unless agreed otherwise in writing by the parties.
  - (c) For any other loss, damage or injury shall be limited to a contractual maximum sum of £5,000,000 (five million pounds sterling).
- Unless a different amount is agreed in writing by the Company and the Customer prior to the commencement of the Contract.
- 21.8 If the Customer orders POS Services and receives less than T-4 (28 days') written notice to terminate the Contract, the Company's liability to the Customer will be subject to the financial caps set out in clause 21.7 which will be reduced further in accordance with clause 21.8. The financial cap in clause 21.9 reduces the Company's liability in line with the number of days' notice the Customer provides before the commencement of the Services in order to account for the increased risk borne by the Company if it has a reduced time period in which to prepare.
- 21.9 Notwithstanding the limitations in clauses 21.3 and 21.11, the financial caps in clause 21.7 shall be reduced on a calculated basis in the following way:  $((28 - a) / 28) \times b$  capped at c': (a) represents the number of days' notice provided to the Company by the Customer before the commencement date for the Services, (b) represents the financial loss, and (c) represents the monetary cap in accordance with clause 21.7.
- 21.10 Full details of any loss, damage, or injury, which is or may be the subject of a claim by the Customer against the Company shall be notified by the Customer to the Company within 7 calendar days of the date of discovery thereof. Any proceedings to enforce any such claim by the Customer against the Company must be commenced not later than 12 months after the date of occurrence of the event giving rise to the loss, damage, or injury.
- 21.11 The Company shall not be liable for any loss, damage or injury caused by, or arising from or as the result of, any of the following:
- (a) any defect in the Contract Goods, including any design defect and/or any defect relating to the lifting points on any items

the Customer wants positioned during the "Provision of POS Services".

- (b) inaccurate or incomplete information given by the Customer. Any omissions made by the Customer and documented as such by the Company are deemed to be the Customer's responsibility. The Company will take no responsibility for a lack of information supplied or incorrect information supplied by the Customer to the Company.
- (c) any instructions given by the Customer to the Company's Personnel.
- (d) any defect with any Plant provided by the Customer.
- (e) any act or omission of any Personnel supplied by the Customer, or by any person under contract to the Customer in connection with the "Provision of POS Services", except when correctly following the Company's instructions for the purpose of performing the Company's Services under the Contract.
- (f) unexpected or unforeseen ground conditions.
- (g) the Company is not liable for any charges relating to 'Schedule 8' or subsequent version in the contract between Network Rail and the Train Operating Companies for overrun charges.

21.12 For the avoidance of doubt, nothing in these conditions limits or seeks to exclude the Company's liability for claims of death or personal injury caused by the Company's negligence, fraud or fraudulent misrepresentation for any other liability for which it is not permitted to seek to limit or exclude by operation of law.

## 22. SEVERABILITY

If any of the clauses within sections (A), (B) or (C) of these conditions are held to be unlawful, void, or unenforceable, then that clause will be deemed severable and will not affect the validity and enforceability of the remaining clauses within this document, to the extent permitted by law.

## 23. CONFIDENTIALITY

- 23.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 23.2 .
- 23.2 Each party may disclose the other party's Confidential Information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 23 and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 23.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

## 24. DATA PROTECTION

- 24.1 From time to time during the term of the Contract either party "the Provider" may share personal data with the other party "the Recipient" for the purpose of providing the Services and which may include, but is not limited to, the processing of Personnel data on the Personnel's Sentinel card, including a photograph of the Personnel, the full name of the Personnel and details of the qualification and competency status of the Personnel (the Purpose).
- 24.2 Where and to the extent that any personal data is shared in connection with the Contract (Shared Data):
- (a) each party acts as controller in its own right in respect of the Shared Data and neither party is processing the Shared Data on the other's behalf;
  - (b) the Provider warrants that it is lawfully entitled to share that Shared Data with the Recipient for the Purpose;
  - (c) the Recipient warrants that it will only use the Shared Data for the Purpose; and
  - (d) the Recipient shall be responsible for ensuring that any

processing of the Shared Data is carried out in accordance with the UK General Data Protection Regulation, the Data Protection Act 2018 and any other law applicable to the protection of personal data in effect from time to time, and that it otherwise complies at all times with its obligations under applicable law.

## **25. NO PARTNERSHIP OR AGENCY**

- 25.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into an commitments for or on behalf of any other party.
- 25.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **26. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract.

---

## **SECTION (B) - CONDITIONS FOR HIRING COMPANY'S PLANT AND PERSONNEL**

### **27. COMPOUND/SITE DELIVERIES AND COLLECTIONS BY THE COMPANY**

- 27.1 The Customer shall pay the cost of, and if required by the Company, arrange, transport of the Plant from the Company's depot or other agreed location to the Compound or Site and return the same to the Company's named depot or other agreed location on completion of the Contract. The Customer will comply with clauses 3 and 27 at all times.
- 27.2 All deliveries and collections will be carried out in compliance with NR/L2/RMVP/0200/P521 version 3 or subsequent versions.
- 27.3 The Company and the Customer shall determine a designated Time Window, place and the number of Personnel the Company should supply for any deliveries to or collections from the Compound or Site.
- 27.4 The Customer shall be solely responsible for the unobstructed access and egress to the Compound or Site, and where applicable, the Compound's or Site's access road, and where necessary, supply the appropriate traffic management system to facilitate all deliveries or collections at no charge to the Company.
- 27.5 The Customer shall ensure that a suitably qualified representative from the Customer is present at the Compound or on Site for the 'meet and greet' with the Company's delivery driver, during deliveries to and collections from the Compound or Site. The Customer's insurance as set out in clause 12, shall take effect following the delivery of the Plant and/or arrival of Personnel to the Customer. Acceptance by such representative of the Plant shall constitute conclusive evidence that the Customer has examined the Plant and has found it to be in good condition and to be complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by the Company, the Customer's duly authorised representative shall sign a receipt confirming such acceptance. If the Customer does not want a representative present, then the Company will provide a second person to assist with the delivery or collection of the Plant and the Customer will be charged accordingly in both instances. If a suitably qualified representative from the Customer is not present at the Compound or Site upon the agreed delivery date and time the Customer may be charged a fee for the failed delivery.
- 27.6 The Customer shall have overall responsibility in directing and controlling the Company's Personnel whilst they are unloading or loading any Plant at the Compound or Site.
- 27.7 The Company shall ensure that no Plant or Personnel supplied shall encroach upon any railway line unless the Customer (or their representative) so authorises.
- 27.8 The Customer shall ensure that all appropriate safety measures are in place to protect the Plant and/or any Personnel at the Compound or Site.
- 27.9 Should the Customer fail to comply with any aspect of clauses 27.2 to 27.8, or if there are any Compound or Site issues or irregularities which result in the delivery or collection of the Plant and/or Personnel being aborted either through these failure(s),

or other circumstances beyond the Company's control, then the Customer will be charged for all these costs.

### **28. PLANT SUITABILITY AFTER SITE DELIVERY**

- 28.1 At the time of delivery to the Customer, the Plant will be in good working order (save for Fair Wear and Tear and/or minor defects) which are not ascertainable upon reasonable inspection, fully compliant with all relevant Legislation and will operate in a safe manner. If requested by the Customer, the Company will supply copies of any recognised engineering/safety certificates relevant to the Plant. If the Plant is not compliant with the requirements of this clause 28.1, the Company shall notify the Customer 24 hours before the intended commencement date of the Term of the Contract.
- 28.2 The Company shall ensure that there is a '24/7' helpline available to the Customer, to cover any defective or damaged Plant whilst it is in the Customer's care. Where requested by the Customer, the Company shall provide an on Site fitter, which will be a service chargeable to the Customer.

### **29. CUSTOMER RESPONSIBILITIES FOR PLANT**

- 29.1 The Customer shall be responsible for the safe keeping of the Plant and use it within the manufacturer's rated capacity and in accordance with the manufacturer's and/or the Company's recommendations. Upon completion of the Contract Term, the Customer should return the Plant in equal good order (Fair Wear and Tear excepted).
- 29.2 The Customer shall at all times when hiring Plant without the Company's Crane/Machine Controller or Plant Operator undertake daily, weekly and shift checks of the Plant and take all reasonable steps to maintain, test and examine the Plant as per the Plant's maintenance schedule (including compliance with all safety and usage instructions provided by the Company) as may be necessary to ensure, so far as is reasonably practicable, that the Plant is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work.
- 29.3 The Customer shall ensure that the Plant is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions, including any instructions provided by the Company. If such Plant is operated in an unsafe and unsatisfactory state or environment, the Customer shall be solely responsible for any damage, loss, cost, expense, or accidents whether directly or indirectly arising therefrom.
- 29.4 The Company shall ensure that the Plant is supplied with adequate fuel oil, engine sump oil, hydraulic oil, radiator anti-freeze and where applicable, the tyres are maintained in a condition that is compliant with applicable standards and specified pressures.
- 29.5 Any inspection report which will include the full particulars of the last and next service dates for the Plant as required under the relevant Legislation, or a copy thereof, shall be supplied by the Company, if requested by the Customer, and returned on completion of the Contract Term. The type and schedule of the Plant's maintenance is either provided to the Customer on the commencement of the Contract Term or made available for inspection by the Company at the request of the Customer and should be returned to the Company on the conclusion of the Contract Term.
- 29.6 The Customer shall maintain operating and maintenance records of the Plant and make copies of such records readily available to the Company, together with such additional information as the Company may reasonably require.
- 29.7 The Customer shall not without the prior written consent of the Company, attach the Plant to any land or building so as to cause the Plant to become a permanent or immovable fixture on such land or building. If the Plant does become affixed to any land or building then the Plant must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Plant from any land or building and indemnify the Company against all losses, costs or expenses incurred as a result of such affixation or removal.
- 29.8 The Customer shall not do or permit to be done anything which could invalidate the insurances referred to in clause 12.
- 29.9 The Customer shall not use the Plant for any unlawful purpose;
- 29.10 The Customer shall not suffer or permit the Plant to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Plant is so confiscated,

seized or taken, the Customer shall notify the Company and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Plant and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

- 29.11 The Customer acknowledges that the Company shall not be responsible for any loss of or damage to the Plant arising out of or in connection with any negligence, misuse, mishandling of the Plant or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer shall indemnify the Company in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Company arising out of, or in connection with any failure by the Customer to comply with its obligations in this clause 29.

### **30. RELINQUISHMENT OF COMPANY'S PLANT**

The Customer may not relinquish responsibility for the Company's Plant to any third party, whether any fees apply or not, without the prior written permission of the Company.

### **31. COMPANY'S NAME PLATES**

The Customer shall not remove, deface, or cover up the Company's name plate or mark on the Plant indicating that it is the Customer's property, without the prior written permission of the Company.

### **32. PLANT REMOVAL FROM SITE OR COMPOUND**

The Customer shall not remove the Company's Plant from the Site or Compound to which it was delivered or consigned without the prior written permission of the Company.

### **33. FUEL, OIL AND POWER**

- 33.1 Fuel, fuel additives or power which is supplied by the Customer for use in the Plant shall be of the grade and type specified by the Company. The Customer shall be solely responsible for all damages, losses, costs, and expenses incurred by the Company if the Customer uses an incorrect/contaminated fuel or fuel additive; or fails to supply/maintain the Plant's correct power rating. Fuel, fuel additives or power which is supplied by the Company will be charged to the Customer at a cost agreed by the parties.
- 33.2 The Customer and Company shall carry out a joint risk assessment, which the Customer will pay for, to ensure adequate security is provided to protect any fuel stores on Site or at the Compound which may be stored in the Plant, bowser or other storage means. Any additional security required to ensure the safekeeping of the fuel will be paid for by the Customer.
- 33.3 If the Plant requires an electrical supply to either safely operate or recharge, then the Customer will be responsible for the cost of providing the correct electrical supply, which will be available prior to the Plant's delivery, and continue until the Plant has left the Site or Compound. The Customer shall ensure that all current health and safety and other applicable Legislation and industry guidance relating to the electrical supply is complied with including fitting, testing and inspection of the supply. The Customer will indemnify the Company against any and all damages, losses, or claims should the Customer fail to do so.

### **34. PLANT SERVICING AND INSPECTION**

The Customer shall at all reasonable times allow the Company or its duly authorised representative, or insurers to have access to the Plant to inspect, test, adjust, repair, or replace the Plant. The Customer shall allow such access during the Working Day or Working Shift. The Company reserves the right to charge the Customer for any inspection or maintenance work carried out on the Plant during the Contract.

### **35. BREAKDOWN, REPAIRS AND ADJUSTMENT**

- 35.1 The Customer shall maintain, at its own expense, the Plant in good and substantial repair in order to keep it in as good an operating condition as it was on the delivery date to the Site or Compound with the exception of Fair Wear and Tear, including replacement of worn, damaged and lost parts, and shall make good any damage to the Plant.
- 35.2 Any breakdown or the unsatisfactory working of or damage to any part of the Plant must be notified immediately to the Company and confirmed in writing

within 24 hours. Any claim for breakdown time will only be considered from the time and date at which written notification is received and acknowledged by the Company.

- 35.3 Full allowance for the charges set out in the Contract will be made to the Customer for any stoppage due to breakdown of the Plant which is not caused by any act or omission of the Customer and which is caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or Fair Wear and Tear and for all stoppages for normal running repairs in accordance with the terms of the Contract.
- 35.4 The Customer shall not repair, modify, or alter the Plant without the prior written permission of the Company (including, without limitation the changing or repair of any tyre/puncture). The Customer shall not remove any existing component (or components) from the Plant without the prior written consent of the Company unless to comply with any mandatory modifications required by law or any regulatory authority. Title in all substitutions, replacements, renewals made in or to the Plant shall vest in the Company immediately on installation. Where qualifying Plant is supplied, the Customer is responsible for all costs incurred in the changing or replacement of any tyre (which must be of an equivalent specification as approved by the Company) and for the repair of any puncture.
- 35.5 The Customer shall be responsible for all expense involved arising from any breakdown, unsatisfactory working of or damage to any part of the Plant due to the Customer's negligence, misdirection, or misuse of the Plant, whether by the Customer or their representatives, and for the payment of charges at the Idle Time rate as defined in clause 48, during the period the Plant is necessarily Idle due to such breakdown, unsatisfactory working or damage. The Customer is responsible for the cost of spares and/or repairs due to theft, loss, or vandalism of the Plant. Notwithstanding, the Company will be responsible for the cost of general repairs, including the cost of any spare parts used to repair the Plant caused by Fair Wear and Tear.
- 35.6 The Customer shall keep the Company fully informed of all material matters relating to the Plant.

### **36. RECALL OF PLANT FOR REPAIRS**

If during the Contract the Company decides that urgent repairs to the Plant are necessary, then the Company may arrange for such repairs to be carried out on Site, Compound or at any location of the Company's nomination. In the event that urgent repairs to the Plant are necessary, the Company shall be obliged to replace the Plant with similar Plant if available, whereupon the Company will pay the transport charges unless clauses 35 and/or 39 take effect whereupon the Customer will instead pay the transport charges. In the event of the Company being unable to replace the Plant, the Company shall be entitled to terminate the Contract forthwith (but without prejudice to any of the provisions of clauses 35 and/or 39) by giving written notice to the Customer.

### **37. LOSS OF OTHER PLANT DUE TO BREAKDOWN**

Each item of Plant specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units (whether the property of the Company 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 to be one unit for the purpose of breakdown.

### **38. OTHER STOPPAGES**

No claims will be admitted (other than those allowed for under "Breakdown" (clause 35) or for "Idle Time" (clause 48), as herein provided), for stoppages through causes outside the Company's control, including but not limited to adverse weather and/or ground conditions nor shall the Company be responsible for the cost or expense of recovering any Plant from soft or unsuitable ground, or a hazardous environment. For the avoidance of doubt, the Customer shall be responsible for the cost and expense of recovering any Plant from soft or unsuitable ground or a hazardous environment.

### **39. CUSTOMER'S RESPONSIBILITY FOR LOSS AND DAMAGE**

- 39.1 For the avoidance of doubt, it is hereby declared and agreed that nothing in this clause affects the operation of clauses 3, 27, 28, 35, and 40 of these conditions.



39.2 For the duration of the Contract (which for the avoidance of doubt includes the time Plant is left on Site or at the Compound during a Cessation Period) the Customer shall, subject to the provisions referred to in clause 39.1 be liable for all loss of or damage to the Plant, and shall also fully and completely indemnify the Company and any Personnel supplied by the Company in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the Plant during the continuance of the Contract, and in connection therewith, whether arising under Legislation or common law. In the event of loss of or damage to the Plant, the relevant Contract Price for that item of Plant shall be continued at Idle Time rates as defined in clause 48 until the settlement has been agreed. Payment of the settlement must be made within 21 calendar days of the date of the agreement or Idle Time charges can be reinstated from the date of that agreement. Should Idle Time charges be re-instated, the agreed settlement figure remains payable in full.

39.3 For the avoidance of doubt, notwithstanding any agreement by the Company to waive charges after any agreed period of use of the Plant, the Customer's obligations specified under clause 39.2 shall continue for the duration of the Contract.

39.4 Notwithstanding the above the Customer shall not be responsible for damage, loss, or injury, subject to clauses 3, 4 and 29:

- (a) prior to delivery of any Plant to the Compound/Site (or, where the Compound/Site is not immediately adjacent to a highway maintainable at the public expense, prior to it leaving such highway) where the Plant is in transit by transport of the Company or as otherwise arranged by the Company;
- (b) during the erection and/or dismantling of any Plant where such Plant requires to be completely physically erected/dismantled on the Compound/Site, provided always that such erection/dismantling is under the exclusive control of the Company or their agent;
- (c) after the Plant has safely been removed from the Compound/Site, and not until the Plant is in transit on a highway maintainable at the public expense (or where the Compound/Site is not immediately adjacent to a highway maintainable at the public expense including the Compound/Site's access road, after it has safely joined such highway) transported by the Company to the Company's premises or as otherwise arranged by the Company (excluding always on such occasion that the Plant is on a public highway (or access road) during the Term of the Contract and is being utilised by the Customer);
- (d) where the Plant is travelling to or from a Compound/Site on a highway maintainable at the public expense (or, where the Compound/Site is not immediately adjacent to a highway maintainable at the public expense including the Compound/Site's access road, prior to its leaving or after its joining such highway) under the control of a representative of the Company (expressly excluding occasions when the Plant is on a public highway (or access road) during the Term of the Contract and when the Plant is being utilised by the Customer under the control of the Customer or any third party nominated by the Customer).

#### **40. COMPANY'S SPECIFIC PERSONNEL STATUS**

40.1 The Personnel must carry the appropriate proficiency certificate whilst utilising the Plant.

40.2 The Customer shall not allow any other person to operate such Plant without the Company's prior written consent.

40.3 Such Crane/Machine Controller or Plant Operators or other Personnel supplied by the Company shall not operate any other Plant or undertake work other than that for which they are supplied by the Company unless previously agreed in writing between the Company and the Customer.

40.4 In accordance with clause 28.2, where requested, a fully qualified and competent emergency fitter who holds a current PTS certificate is available to attend the Site at any reasonable time.

40.5 If the Customer orders Plant from the Company in absence of Company Personnel to operate that Plant, the Company shall provide the Customer with an information sheet which lists, for example, but without limitation, the location of stop controls and fire extinguishers together with emergency contact telephone numbers.

40.6 The Customer shall be solely responsible for all Site or Compound costs and claims arising in connection with the utilisation of the Plant by the Crane/Machine Controller or Plant Operator.

#### **41. BASIS OF CHARGING**

41.1 The Customer shall supply to the Company for each Working Week, an accurate statement of the number of hours the Plant has worked each day. When Personnel is supplied by the Company, the Customer shall sign their time record sheets. The signature of the Customer's representative shall bind the Customer to accept the hours shown on the time record sheets. Where applicable, the Plant's telematics may be checked against the Customer's statement or the Crane/Machine Controller's or Plant Operator's signed timesheet and in the event of conflict, the telematics will take precedence over all other records. (If there is any conflict between the signed timesheet and any other record taken, then the signed timesheet takes precedence.)

41.2 The Customer shall be charged for any toolbox talks, briefings, inductions, mandatory training which the Company's Personnel have to attend prior to or when working on the Customer's Site/Compound.

41.3 Full allowance will be made for periods when the Plant is broken and not functioning as a result of mechanical or electrical faults or absence of the Crane/Machine Controller or Plant Operator supplied by the Company, except where breakdown is due to acts or omissions of third parties and/or the Customer's misuse, misdirection or negligent use of the Plant, subject however to the provisions of clause 35 of these conditions. If the Plant is broken down and not functioning, the charges payable by the Customer for hire of the Plant will be adjusted accordingly in respect of such periods and shall be calculated on an hourly rate basis at the Working Day or Working Shift rate as applicable, being the hours that the Plant is broken down, less the actual hours worked by the Plant during that Working Day or Working Shift. If the Customer has hired more than one item of Plant and one item of Plant breaks down, which results in a delay to the working of the remaining Plant, the Customer shall pay for the remaining unbroken Plant at the full Contract Price and the Contract Price for the specific broken Plant will be adjusted accordingly.

41.4 Plant shall be hired out either:

- (a) for a stated minimum number of hours per Working Day, Working Shift or per Working Week; or
- (b) On an ad-hoc basis without any qualification as to minimum hours per Working Day, Working Shift or per Working Week and in which case charges will be prorated.

41.5 Where qualifying Plant is supplied, 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 at the appropriate Idle Time rates.

41.6 In the case of Plant which is required to be dismantled for the purpose of transportation, if the Company agrees to a modification of the Contract Price for the period required for assembling on Site or Compound and dismantling upon completion of the Contract, such modification of the Contract Price for that particular item of Plant and the Contract for which it shall apply shall be stated in the Contract.

41.7 The Company in its absolute discretion may agree to accept electronic records and data as an alternative to written statements of the number of hours, time record sheets and other information related to charging that the Customer is required to provide to the Company. Such electronic records and data may include but is not limited to telematics automatically generated by the Plant and electronic logbooks.

#### **42. PERIOD OF CHARGING**

42.1 Of the charge set out in the Contract Price, an allowance may be made of not more than 24 hours Contract Price charge each way for travelling time. If the Plant is used on the day of travelling, full Contract Price charge rates shall be paid for the period of use on that day. If more than 24 hours is properly and unavoidably occupied in transporting the Plant, a charge at Idle Time rates shall be payable for such transportation time beyond 24 hours from commencement of delivery, provided that where the Contract Term for the Plant is for a total period of less than one Working Week, the full Contract Price shall be paid from the date of despatch to the date of return to the Company's named depot or other agreed location.



42.2 Should the Customer delay the commencement of the Contract for whatever reason, then the Company reserves the right to charge the Customer the Idle Time rate as defined in clause 48 for the intervening period.

42.3 If the Plant is not made available for collection as agreed between the parties, the Plant remains at the Customer's risk until the Plant has been removed from the Site or Compound by the Company and such Plant shall be deemed with immediate effect to be placed back under Contract at the full Contract Price. The Customer shall be responsible for the safekeeping of the Plant in accordance with clause 39, and for all the reasonable costs and expenses incurred by the Company in seeking to collect such Plant, and will be charged at the full rate of the Contract for that class of Plant until it is, or they are collected.

42.4 Upon the completion of the Contract, the Customer shall clean and where necessary, decontaminate the Plant. All fuel and contaminants will be removed from bunds, storage tanks and bowzers. The Customer shall be liable for any costs, liabilities and expenses incurred by the Company should the Customer fail to comply with this clause.

#### **43. CUSTOMER'S COSTS IN CONSUMABLE/ANCILLIARY SHARPENING OR REPAIRS/REPLACEMENTS**

43.1 The Customer will be charged for all consumable items supplied by the Company, e.g., drill bits and blades.

43.2 The Customer may be liable for the cost of re-sharpening or repairing/replacing of bucket teeth or other ancillary items supplied by the Company as a result of excessive 'Fair Wear and Tear' of the Plant during the Contract.

#### **44. PLANT HIRED ON A DAILY BASIS WITHOUT QUALIFICATION AS TO HOURS**

The full daily rate will be charged on a daily basis irrespective of the hours that the Plant is actively used by the Customer. If the Plant breaks down and does not function for reasons not attributable to the acts or omissions of the Customer or a third party of the Customer, the fees payable by the Customer will be prorated in accordance with clause 41.3 unless at the Customer's request, the Plant is actually worked or has been delivered to Site or Compound or is on standby. The Customer must inform the Company if the Plant is going to be used at these times. For the avoidance of doubt the Customer is responsible for any loss or damage to the Plant during non-working days (as defined in clause 39.2).

#### **45. PLANT HIRED BY THE WEEK OR MONTH WITHOUT QUALIFICATION AS TO HOURS**

The weekly or monthly rate shall be charged irrespective of the number of hours the Plant is actively worked, except in the case of breakdown of the Plant for which the Company is responsible (expressly excluding break down of the Plant caused by the Customer or third-party of the Customer) and in such a circumstance an allowance pro rata of the agreed weekly rate or pro rata of the agreed monthly rate will be made for each full Working Day broken down calculated to the nearest half Working Day and calculated in accordance with clause 41.3.

#### **46. PLANT HIRED BY THE WEEK OR MONTH WITH QUALIFICATION AS TO HOURS**

The full hire charges for the period in the Contract will be charged as per the Working Day or Working Week and an additional pro rata charge will be made for hours worked in excess of such period. An allowance will be made for breakdowns which the Company is responsible for (expressly excluding break down of the Plant caused by the Customer or third-party of the Customer) for up to the entirety of that Working Day providing always that the actual hours worked for that Working Day are in excess of the breakdown time and in such circumstance the actual hours worked shall be chargeable. Idle Time for this purpose shall be treated as actual working time subject to clause 48.2. An allowance may be made for any Cessation Period that falls within the Working Day or Working Week, provided that the Plant is not available for the Customer to use during that time.

#### **47. "ALL-IN" RATES**

Where "All-In" rates are charged for the Plant and Personnel, the minimum period shall be as defined in the Contract and in accordance with the Contract Price and terms contained therein, subject to the provisions of clause 6. If inclement weather impacts the delivery of the 'All-in' Service, the charges for each of

the Plant and the Personnel will be separated and the charge for the Plant will be reduced to two-thirds of it the original charge, whereas, the charge for the Personnel will not be reduced and the full Working Shift rate will be payable by the Customer.

#### **48. IDLE TIME**

48.1 As per clause 1.14, when the Plant is prevented from working for a complete Working Day or Working Shift, the charges shall be outlined in the Contract by the Company for the period during which the Plant is not in use. If the Plant works for any time during the Working Day or Working Shift, then the whole of that Working Day or Working Shift shall be charged as working time. In any case no period less than one Working Day or Working Shift shall be determined Idle Time save for as provided for in clause 41.5. Where an "All-In" rate is charged, Idle Time is calculated for the Plant only and full rates will be charged for any Personnel supplied by the Company to the Customer.

48.2 If the Customer is found to have inaccurately reported the Plant to be idle when it was being used by the Customer, the Company reserves the right to charge the Customer the full Contract Price for use of the Plant during the time at which it was inaccurately reported to be idle.

48.3 When the Plant is prevented from working for a complete Working Day or Working Shift due to inclement weather, then the Plant and any Personnel supplied by the Company will be charged as defined in clause 48.1.

#### **49. CUSTOMER'S LIABILITY DURING CONTRACT TERMINATION NOTICE PERIOD**

49.1 If the Contract does not have a fixed term, it shall be terminable by 7 calendar 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 Company may have agreed to accept less than 7 calendar days' notice of termination, the Customer's obligations under clauses 28, 29, 39 shall continue until the Plant is returned to the Company in accordance with clause 27 or until the Company has collected the Plant within the 7 calendar days following the acceptance of short notice. Oral notice given by the Customer to the Company's Personnel shall not be deemed to constitute compliance with the provisions of this clause.

49.2 Without prejudice to clause 48.1, should the Customer fail to make the Plant available for collection by the Company before the end of the 7 calendar days' notice, the Customer's obligations under clauses 28, 29, 37, 41 and 42 shall continue until such time as the Plant is made available for collection and the Company has collected the Plant. For the avoidance of doubt, where the Customer gives a notice pursuant to clause 49.1 but subsequently and with the consent of the Company, withdraws such notice, the obligations of clause 28, 29, 37, 41 and 42 shall continue to apply and the requirements of clause 19 will apply to any later termination of the Contract.

49.3 Should the Customer terminate the Contract once the Contract has commenced, the Company reserves the right to charge the Customer the balance of the Contract.

49.4 The Customer may off-hire (defined as hiring Plant for an undefined term) the Plant by written notification via an electronic device or application (app.). This off-hire will only be accepted by the Company, provided the Company issues an off-hire confirmation to the Customer.

---

### **SECTION (C) - CONDITIONS FOR THE PROVISION OF POS SERVICES**

#### **50. DEFINITIONS**

50.1 "Provision of POS Services" means overseeing the planning and supervision of Plant on the Customer's Site or Compound as per clauses 50.2(d) and 50.2(e) in accordance with NR/L2/RMVP/0200/P521 version 3 or subsequent version.

50.2 The following words and phrases used in these terms and conditions have the meanings indicated:

- (a) "Contract Equipment" means any Lifting Appliance and other equipment and accessories used or intended to be used by the Company in performing, or in connection with, the Contract Lifting Services.
- (b) "Provision of POS Services" means overseeing the planning and supervision of Contract Equipment on the Customer's Site or Compound as per clauses 50.2(d) and 50.2(e) in accordance with NR/L2/RMVP/0200/P521 version 3 or subsequent version.

- (c) “POS/Lift Planner” means the Network Rail competency identifier for the person fulfilling the role of Appointed Person (Lifting Operations) on Network Rail managed infrastructure as defined in 4.1 of NR/L2/RMVP/0200/P521 or subsequent version.
- (d) “POS Representative(s)” is a person or persons working directly for the POS service provider who is on site to undertake an assurance role, but this is not a management position or position responsible for production, with duties that include:
- monitoring On Track Plant ‘OTP’ activities on Site to check they are aligned with the OTP Plan.
  - to be a single point of contact on Site for the Customer, to assist with OTP issues.
  - to be a point of contact on Site for the OTP operators and Machine/Crane Controllers who may face operational issues or pressures.
  - to contribute to the control of the following risks:
    - risk of runaway, uncontrolled movement, and collisions by on-track plant (OTP) with infrastructure, workforce, other plant, or vehicles
    - risk of personal injury within a work site associated with the Plant, e.g., slips, trips and falls, or being struck by on-track plant.
    - risk of implementing ineffective management control and supervision of on-track plant operations.
- (e) “Regulations and Codes of Practice” means NR/L2/RMVP/0200/P521 version 3, or subsequent version.

## 51. QUOTATIONS AND CONTRACT PRICE

- 51.1 Unless otherwise specified by the Company in writing, every quotation is open for acceptance for a period of 30 calendar days, after which the quotation will be subject to review by the Company.
- 51.2 Unless otherwise specifically noted by the Company in writing, every quotation is based on the assumption that the following circumstances apply:
- (a) the work will be carried out in compliance with NR/L2/RMVP/0200/P521 version 3, or subsequent version, under the Company’s direction without interruption and on a clear Site or Compound with adequate approaches suitable for the set-up and completion of the “Provision of POS Services”;
- (b) the Company will not be responsible for the Any Line Open (ALO) operations, unless specifically provided for in the quotation to the Customer.
- 51.3 Where all or any of the above circumstances do not apply, the Company may issue a revised quotation for the “Provision of POS Services”. If the revised quotation is not accepted by the Customer, then all costs incurred by the Company to date will become due for payment and the Company may elect to be discharged from the Contract without further liability to the Customer.
- 51.4 Any additional work which the Company is required to perform must be authorised by the Customer in writing and will involve an extra charge, additional to the Contract Price.

## 52. REGULATIONS AND CODES OF PRACTICE FOR PROVISION OF POS SERVICES

- 52.1 The Company will perform the “Provision of POS Services” in accordance with NR/L2/RMVP/0200/P521 version 3 or subsequent version.
- 52.2 The Customer shall supply, or confirm, in writing all information available to the Customer, which is requested by the Company and/or the POS/Lift Planner or which the Customer should be reasonably aware may be necessary, or useful, to facilitate compliance with NR/L2/RMVP/0200/P521 version 3, or subsequent version. This includes, but is not limited to, the location of anything on or near the Site or Compound, above or below the ground, which is likely to be damaged by, or cause damage to the Plant, or which is likely to affect the health or safety of any Personnel involved in the work.

## 53. TRANSPORTATION OF CONTRACT GOODS

- 53.1 The Company is not a common carrier.
- 53.2 If the Contract Goods or any part of them require movement during the “Provision of POS Services”, the Customer will arrange the necessary transportation, and comply with all relevant road legislation.
- 53.3 Subject to clause 53.2, the Company may agree to undertake the necessary transportation on behalf of the Customer or arrange transportation by some other person or organisation for an additional charge whilst ensuring that all relevant road legislation is complied with. Should this arise and unless otherwise agreed in writing by the Company, the Company’s liability to the Customer shall be limited to the amounts stipulated in clause 21 or to the sums recoverable from that other person or organisation who carried out the transportation.

## FOOTNOTES

- 1) Acceptance of the Plant on Site or Compound implies acceptance of all of these terms and conditions.
- 2) These standard terms and conditions for the Rail Plant Association (RPA) Conditions 2023 are the copyright of the Rail Plant Association (RPA) and the Construction Plant-hire Association (CPA) and must NOT be reproduced, stored in any retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise unless they are current members of the RPA/CPA.
- 3) Copies of these standard terms and conditions are only available from the RPA or CPA.

# **SUPPLEMENTARY CONDITIONS APPLICABLE TO RAIL PLANT HIRE 2011**

## **TO BE READ IN CONJUNCTION WITH THE CPA MODEL CONDITIONS FOR THE HIRING OF PLANT 2011**

**EXPLANATORY NOTE:** The purpose of these Supplementary Conditions is, partly, to raise awareness of the Hirer's responsibilities for the Safe Use of Rail Plant and partly to define contractually the extent of the Owner's and Hirer's responsibilities as between themselves.

For the avoidance of doubt, when the hire is subject to the CPA's Model Conditions for the Hiring of Plant 2011 ("CPA Model Conditions"), the Owner is not a specialist sub-contractor and/or sub-contractor of the Hirer. The Owner will supply Plant pursuant to the CPA Model Conditions together with these Supplementary Conditions to form the Contract between the Owner and the Hirer.

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 These Supplementary Conditions are applicable to the hiring of rail plant only and shall be referred to as the "Supplementary Conditions".
- 1.2 Unless the context suggests otherwise words and terms in the Supplementary Conditions shall have the same meaning as in the CPA Model Conditions.
- 1.3 Any reference in these Supplementary Conditions to a statute, statutory instrument, guidance document, standard or protocol shall be a reference to whatever statute, statutory instrument, guidance document, standard or protocol is currently in force in respect of the relevant issue or is regarded as constituting the accepted industry guidance.
- 1.4 If any conflict shall appear between any provisions of the Supplementary Conditions and the provisions of the CPA Model Conditions then the former shall prevail.

### **2. WORKING HOURS AND CHARGES**

Notwithstanding Clause 1 of the CPA Model Conditions and without prejudice to the terms of Clause 19 of the CPA Model Conditions the following definitions will apply to these Supplementary Conditions:

- 2.1 "Weekday" working hours shall mean any shift between Monday to Friday commencing at 7 a.m., the first 8 hours of which shall be chargeable at "Weekday" rates and all hours in excess of 8 hours shall be chargeable at "Weeknight" rates.
- 2.2 "Weeknight" working hours shall mean any shift from Monday to Thursday commencing at 4 p.m. and shall be chargeable at "Weeknight" rates. "Weeknight" working hours shall also include any other hours worked in excess of the 8 hour "Weekday" shift described in 2.1 above and shall be chargeable at "Weeknight" rates.
- 2.3 "Weekend" working hours shall mean any shift between 4 p.m. on a Friday and 7 a.m. on a Monday and shall be chargeable at "Weekend" rates. "Weekend" working hours shall also include any hours not specifically defined within "Weekday" or "Weeknight" working hours, including any public and/or bank holidays.

### **3. DELIVERY, MAINTENANCE AND INSPECTION REPORTS**

Without prejudice to the terms of Clauses 5 and 28 of the CPA Model Conditions the Owner shall be responsible for ensuring that:

- 3.1 At the time of delivery to the Hirer, the Plant supplied is in good working order so that the Plant can be used safely and without risk to health.
- 3.2 The full particulars of the last and next service dates for the Plant together with the type and schedule of maintenance is either provided to the Hirer or made available for inspection at the commencement of the Hire Period.
- 3.3 The Hirer is informed of the type and schedule of maintenance for the Plant required to be carried out during the Hire Period.
- 3.4 Operations and safety checks have been carried out on the Plant supplied before delivery, in order to ensure that the Plant is in safe working order and that all

statutory requirements have been complied with, including without limitation, any requirements under the Health and Safety at Work etc. Act 1974 and any regulations issued thereunder.

- 3.5 All Statutory certificates and inspection reports relating to the Plant are either provided to the Hirer or made available for inspection at the commencement of the Hire Period.
- 3.6 The Plant supplied is maintained, tested and examined within the Hire Period in accordance with the maintenance schedule.
- 3.7 Where the Plant supplied is fitted with radiators, that adequate anti-freeze mixture is contained in the radiators to protect them from damage due to low temperatures.
- 3.8 Where applicable, the Plant supplied shall have a recognised Certificate of Engineering Acceptance and / or compliance certificate for design of On-Track Plant. Copies of such certificates shall be provided to the Hirer and / or made available for inspection at the commencement of the Hire Period.
- 3.9 The Owner warrants that the Plant will be supplied with adequate fuel oil, engine sump oil and hydraulic oil and that the tyres are maintained to a reasonable and satisfactory condition and to the specified pressures.

#### **4. HANDLING OF PLANT**

Without prejudice to the terms of Clause 8 of the CPA Model Conditions the Owner shall be responsible for ensuring that, where supplied by the Owner;

- 4.1 The operator or driver of the Plant is fully competent to a recognised standard and deemed to be so by a qualified assessor. The operator or driver must have PTS including AC/DC electrified lines unless the Contract specifically states PTS is not required.
- 4.2 The operator or driver is authorised by the Owner to operate the type of Plant for the purposes for which the Plant is to be used. The operator or driver must carry the appropriate proficiency certificate whilst operating the Plant.
- 4.3 The operator or driver complies with current standards relating to hours of work and all records relating to the operator's or driver's working hours are kept and made available for inspection at the request of the Hirer.
- 4.4 A Drugs and Alcohol policy compatible with current railway standards is maintained and that records of testing and screening is kept for a minimum 3 years and is available for inspection by the Hirer.
- 4.5 Where requested, a fully qualified and competent emergency fitter who holds a current PTS certificate is available to attend the site at any reasonable time.
- 4.6 At the commencement of the Hire Period, an "emergency arrangements" information sheet is supplied to the Hirer which lists, for example, but without limitation, the location of stop controls and fire extinguishers together with emergency contact telephone numbers.
- 4.7 Any operator, driver or emergency fitter supplied by the Owner shall be provided with suitable protective equipment for use on site.
- 4.8 Any operator, driver or emergency fitter supplied by the Owner shall have agreed to be screened for the use of alcohol and drugs in accordance with the current standards for the application of "for cause" alcohol and drugs screening when requested to do so by the Hirer.

#### **5. BRIEFING**

Without prejudice to the terms of Clause 8 of the CPA Model Conditions any operator or driver supplied by the Owner shall be under the control and supervision of the Hirer from the commencement of the Hire Period. The operator or driver shall be informed of the name of the Hirer's authorised representative who shall brief the operator or driver as to the tasks the operator or driver is to undertake to ensure that he fully understands any hazards to his or others health, safety and welfare on site. The Hirer shall not allow any other person to operate such Plant without the Owner's prior written consent.



## **6. CANCELLATION CHARGES**

- 6.1 When any Hire Period cancelled includes weekday and weeknight rates then:
  - 6.1.1 Provided the Hirer informs the Owner of their intention to cancel at least 24 hours before the commencement of the Hire Period the Hirer shall incur no charges.
  - 6.1.2 If the Hirer informs the Owner of their intention to cancel less than 24 hours before the commencement of the Hire Period, the Hirer shall incur full transportation charges where the Plant has left the Owner's premises together with standing time to include costs of all attachments and accessories. A reasonable reduction to these charges shall be made if the Owner is able to re-book the Plant within the cancellation period.
- 6.2 When the Hire Period cancelled includes weekend rates then:
  - 6.2.1 Providing the Hirer informs the Owner of their intention to cancel prior to 5 p.m. on the Thursday prior to the Hire Period commencing the Hirer shall incur no charge.
  - 6.2.2 If the Hirer informs the Owner of their intention to cancel between Thursday 5 p.m. and Friday 12 noon the Hirer shall incur full transportation charges where the Plant has left the Owner's premises together with standing time to include costs of all attachments and accessories. A reasonable reduction to these charges shall be made if the Owner is able to re-book the Plant within the cancellation period.
  - 6.2.3 If the Hirer informs the Owner of their intention to cancel after Friday 12 noon, the Hirer shall incur full charges. A reasonable reduction to these charges shall be made if the Owner is able to re-book the Plant within the cancellation period.
- 6.3 If the work cannot be carried out due to any default of the Owner then the Hirer shall incur no charge for the specific item of Plant the subject of such default.

## **7. DELIVERY AND COLLECTION OF PLANT**

- 7.1 The Owner and the Hirer shall determine a designated time and place for the delivery of the Plant prior to the commencement of the Hire Period.
- 7.2 The Owner shall ensure that no Plant shall encroach upon any railway line unless the Hirer so authorises.
- 7.3 The Owner and Hirer shall determine a designated time and place for collection of the Plant on completion of the Hire Period.

## **8. INDEMNITIES**

On delivery of the Plant to the designated place determined by the Owner and Hirer, throughout the Hire Period and the period prior to collection, the Hirer shall indemnify the Owner and hold the Owner harmless against any loss, damage, liability, cost (including legal cost) and expense incurred by the Owner, caused or contributed to by the Hirer's breach of these Supplementary Conditions or the CPA Model Conditions.

## **9. INSURANCE**

The Hirer shall take out and maintain insurance against any, and all liabilities the Hirer may incur under the Contract. The Owner reserves the right at any reasonable time to require confirmation that the Hirer is complying with its insurance obligations.

# STANDARD TERMS AND CONDITIONS FOR POS OPERATIONS

**(THESE CONDITIONS ARE NOT TO BE USED FOR CONSUMER CONTRACTS)**

## 1. SCOPE AND DEFINITIONS

- 1.1 The terms and conditions set out in this document describe the trading policy and practice of the Company for its “POS Contract Operations”, as distinct from the supply of rail plant and equipment, and form the Standard Contract Terms and Conditions for any planning and supervision of Contract Equipment on site by the Company.
- 1.2 These terms and conditions shall not be varied except with the Company's written agreement.
- 1.3 No other terms and conditions shall apply to any POS Contract Operations entered into by the Company unless expressly agreed in writing by means of a quotation or otherwise between the Company and the Customer. In particular, any terms and conditions specified by the Customer on an order form or otherwise, shall not be binding on the Company and shall not apply to any POS Contract Operations contract unless agreed in writing by the Company prior to the commencement of the planned works. The contract does not create any right enforceable by or purport to confer any benefit on any person not a party to it except that a person who is a successor to or an assignee of the rights of the Company is deemed to become a party to the contract after the date of succession or assignment (as the case may be).
- 1.4 Unless otherwise agreed by the Company and the Customer, these terms and conditions also apply to any additional work that the Company may agree to carry out for the Customer, and which may arise from or is connected with any POS Contract Operations.
- 1.5 The following words and phrases used in these terms and conditions have the meanings indicated:
  - 1.5.1 “Company” means the company or firm agreeing to carry out the POS Contract Operations on behalf of the Customer.
  - 1.5.2. “Contract Equipment” means any classes of plant, or replacement plant, machinery, vehicles, equipment, accessories, and any ancillary items, vehicles including haulage/delivery vehicles, or equipment which the Company uses or intends to use to complete the POS Contract Operations.
  - 1.5.3 “Contract Goods” means the Customer's goods which are to be moved by the Company in accordance with these terms and conditions.
  - 1.5.4 “Contract Price” means the price agreed by the Company and the Customer as payment for the performance by the Company of the POS Contract Operations, which may be a lump-sum price or a time related schedule of rates.
  - 1.5.5 “Crane Controller” means the competent person who controls the lifting operation.
  - 1.5.6 “Customer” means the person or organisation requiring the Company to carry out the POS Contract Operations.
  - 1.5.7 “Machine/Plant Controller” means the person controlling the movement of the plant/Contract Equipment.
  - 1.5.8 “POS Contract Operations” means overseeing the planning and supervision of Contract Equipment on the Customer's site as per 5.11.2 and 5.11.3 in accordance with NR/L2/RMVP/0200/P521.
  - 1.5.9 “POS/Lift Planner” means the Network Rail competency identifier for the person fulfilling the role of Appointed Person (Lifting Operations) on Network

Rail managed infrastructure as defined in 4.1 of NR/L2/RMVP/0200/P521.

1.5.10 “POS Representative(s)” is a person or persons working directly for the POS service provider who is on site to undertake an assurance role, with duties that include:

- monitoring OTP activities on site to check they are aligned with the OTP Plan.
- to be a single point of contact on site for the customer, to assist with OTP issues.
- to be a point of contact on site for the OTP operators and machine controllers who may face operational issues or pressures.
- to ‘contribute to the control of the following risks:
  - *risk of runaway, uncontrolled movement, and collisions by on-track plant (OTP) with infrastructure, workforce, or other vehicles*
  - *risk of personal injury within a work site: slips, trips and falls, or being struck by on-track plant.*
  - *risk of implementing ineffective management control and supervision of on-track plant operations.’*

This is not a management position or position responsible for production.

1.5.11 “Regulations and Codes of Practice” means NR/L2/RMVP/0200/P521 current version 3, or current version which supersedes this.

## **2. QUOTATIONS AND CONTRACT PRICE**

- 2.1 Unless otherwise specified by the Company in writing, every quotation is open for acceptance for a period of 30 calendar days, after which the quotation will be subject to confirmation.
- 2.2 Unless otherwise specifically noted by the Company in writing, every quotation is based on the assumption that the following circumstances apply:
  - 2.2.1. The work will be carried out in compliance with NR/L2/RMVP/0200/P521 under the Company’s direction without interruption and on a clear site with adequate approaches suitable for the set-up and completion of the POS Contract Operations.
  - 2.2.2 The Company will not be responsible for the Any Line Open (ALO), unless specifically provided for in the quotation to the Customer.
  - 2.2.3 The Customer will ensure that there are no changes to site conditions or requirements which result in the POS Contract Operation being aborted either through these failure(s), or other circumstances beyond the Company’s control.
  - 2.2.4 The Customer is responsible for ensuring that the ground will provide proper support for any loads imposed by any Contract Equipment necessary to complete the POS Contract Operations.
  - 2.2.5 All information provided by the Customer is complete, true, and accurate.
- 2.3 Where all or any of the above circumstances do not apply, the Company may issue a revised quotation for the POS Contract Operations. If the revised quotation is not accepted by the Customer, then all costs incurred by the Company to date will become due for payment and the Company may elect to be discharged from the contract without further liability to the Customer.
- 2.4 Any additional work which the Company is required to perform must be authorised by the Customer in writing and will involve an extra charge, additional to the Contract Price.

## **3. FORMATION AND TERMINATION OF THE CONTRACT**

- 3.1 No contract is created before the Company accepts a written order or instruction for the carrying out of the POS Contract Operations. The commencement of the contract will be subject to confirmation by the Company.
- 3.2 The notice period for any prior works given from the Customer to the Company:

- 3.2.1 is recommended to be T-4 (four weeks) to ensure best practice for safe delivery and completion.
- 3.2.2 may be less than T-4 (four weeks) subject to the Company's written agreement.
- 3.3 Subject to clause 3.2, if the Customer terminates the contract:
  - 3.3.1 without the Company's written agreement, or where specialist third party Contract Equipment has been ordered at the Customer's request, the Customer will be liable for the full Contract Price.
  - 3.3.2 with the Company's written agreement, the Customer's liability for the Contract Price is subject to the written cancellation notice received by the Company before the contract commences:
    - within 4 weeks but more than 3 weeks - 25% of the price
    - within 3 weeks but more than 2 weeks - 50% of the price
    - within 2 weeks but more than 1 week - 75% of the price
    - in less than 1 week - the full contract price
  - 3.3.3 Christmas and New Year Working – A written order or instruction is to be received by the Company on or before 24th November for any Christmas or New Year Premium Shift Works. The Customer's liability will be the full Contract Price for any cancellation notice received by the Company before the contract commences unless clause 2.3 takes effect.

#### **4. STATUS AND AUTHORITY OF CUSTOMER AND COMPANY**

- 4.1 The Customer requires and authorises the Company to assume the POS Contract Operations in conjunction with NR/L2/RMVP/0200/P521.
- 4.2 The Customer must have or obtain the necessary authorisation to issue a 'Permit to Dig' licence to the Company for any excavation work which is to be carried out as part of the POS Contract Operations.
- 4.3 As part of issuing the 'Permit to Dig' licence, the Customer will:
  - 4.3.1 provide clear written evidence that the area of excavation has been investigated and confirms no debris or other hazards lie beneath the work's area.
  - 4.3.2 If clause 4.3.1 proves incorrect, then clause 9 takes effect in full.

#### **5. DELIVERY POINT MANAGEMENT**

The Customer shall undertake to:

- 5.1 clear the contract site, including public highways and access roads where necessary, of all vehicles and plant to facilitate the delivery, unloading, loading, and collection of the Contract Equipment; and where necessary, set up barricades, tapes, or cones, to the extent that the Company may at its discretion require for the performance of the POS Contract Operations.
- 5.2 where necessary, ensure road closures, bus lane closures etc. are in place, irrespective of whether the Company has arranged these on behalf of the Client, the Client is ultimately responsible.
- 5.3 ensure that the Customer's representative(s) are present on site for the 'meet and greet' with the Company's delivery driver, during deliveries and collections at site, at which point the Client's insurance(s) takes effect for the Contract Equipment as per clause 10.3.
- 5.4 settle all costs to the Company, should the Customer fail to comply with any aspect of clause(s) 5.1 to 5.3, or if there are any site issues or irregularities which results in the POS Contract Operation being aborted either through these failure(s), or other circumstances beyond the Company's control.

#### **6. REGULATIONS AND CODES OF PRACTICE**

- 6.1 The Company will perform the POS Contract Operations in accordance with NR/L2/RMVP/0200/P521.
- 6.2 The Customer shall supply, or confirm, in writing all information available to the



Customer, which is requested by the Company and/or the POS/Lift Planner or which the Customer should be reasonably aware may be necessary, or useful, to facilitate compliance with NR/L2/RMVP/0200/P521. This includes, but is not limited to, the location of anything on or near the site, above or below the ground, which is likely to be damaged by, or cause damage to the Contract Equipment, or which is likely to affect the health or safety of any person involved in the work.

## **7. POINTS MANAGEMENT RESPONSIBILITY**

- 7.1 Responsibility for the Points Management will rest with the Principal Contractor, or where applicable, the Customer. It will not apply to the Company.
- 7.2 The Engineering Supervisor, or where applicable, the Safe Work Leader must give authority for the machine(s) to travel over the points. (This authorisation can be included in their briefing to the Machine Controller(s) and/or the Crane Controller(s) at the commencement of the shift.)
- 7.3 Before any movement is made over points, the Machine Controller must check them to make sure they are in the correct position for the movement.

## **8. LIABILITY OF THE COMPANY**

- 8.1 The Company's total liability will be calculated on the number of days' notice received from the Customer for contract commencement against T-4 (four weeks) notice and calculated on a x/28th basis of the Contract Price.
  - 8.2 The Company's liability shall be subject to clause 8.1 for loss or for damage or injury to persons or property when caused solely by the Company's negligence in the performance of the contract and shall not be liable for any such loss, or damage or injury due in whole or in part to any negligence on the part of the Client or any third party.
  - 8.3 The Company's liability, if any, during any lifting operation arising from or in connection with the POS contract will be subject to clause 8.1:
    - 8.3.1 For any loss or destruction of or damage to the Contract Goods shall be limited to a maximum of £25,000 (twenty-five thousand pounds sterling) irrespective of the number of items being lifted or moved.
    - 8.3.2 For any other loss, damage or injury shall be limited to a maximum sum of £5,000,000 (five million pounds sterling)
- Unless a different amount is agreed in writing by the Company and the Customer prior to the commencement of the contract.
- 8.4 Full details of any loss, damage, or injury, which is or may be the subject of a claim by the Customer against the Company shall be notified by the Customer to the Company within 7 calendar days of the date of discovery thereof. Any proceedings to enforce any such claim by the Customer against the Company must be commenced not later than 12 months after the date of occurrence of the event giving rise to the loss, damage, or injury.

## **9. EXCLUSION OF THE COMPANY'S LIABILITY**

- 9.1 The Company shall not be liable for any loss, damage or injury caused by, or arising from or as the result of, any of the following:
  - 9.1.1. Any defect in the Contract Goods, including any design defect and/or any defect relating to the lifting points on any items the Customer wants positioned during the POS Contract Operations.
  - 9.1.2. Inaccurate or incomplete information given by the Customer.
  - 9.1.3. Any instructions given by the Customer to the Company's employees.
  - 9.1.4 Any defect with any Contract Equipment provided by the Customer.
  - 9.1.5 Any act or omission of any personnel supplied by the Customer, or by any body or person under contract to the Customer in connection with the POS Contract Operations, except when correctly following the Company's instructions for the purpose of performing the Company's work under the contract.

9.1.6 Unexpected or unforeseen ground conditions.

9.2 The Company shall not be liable or responsible for any of the following, however arising:

9.2.1 Loss or damage of whatever nature due to or arising through any cause beyond the Company's reasonable control.

9.2.2 Whether by way of indemnity or by reason of any breach of the contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the contract, for any of the Customer's loss of profit or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party, and/or any other financial or economic loss or indirect or consequential loss or damage of whatever nature.

## **10. INSURANCE**

10.1. The Company will carry insurance, including Professional Indemnity insurance, to cover its potential liability under the contract having regard to the maximum amounts referred to in clause 8.

10.2. If the value of any item that is at risk during the POS Contract Operations exceeds the Company's liability limits referred to in clause 8, then the Customer will require the Company to either:

10.2.1 increase the Company's liability limits under clause 8 to an acceptable level agreed by both parties prior to the contract commencing, where upon the Customer will be charged; or,

10.2.2 exclude the Company's existing policy, and for the Company to obtain a specific policy to address its liabilities under the contract, where upon the Customer will be charged.

The Customer must give sufficient written notice to the Company should either of the above points arise.

10.3 The Customer's insurance policies will cover their liabilities under the contract, including theft or damage to the Contract Equipment, and take effect from the 'meet and greet' as per clause 5.3 and until the agreed Contract Equipment's collection time. If the Contract Equipment is unavailable at the agreed collection time, then it will remain the Customer's responsibility, and will be charged at two-thirds of the Contract Price until collected.

10.4 The Customer agrees to indemnify the Company against -

10.4.1 Any claim arising from or connected with the Company's work on the contract site, in preparing the site or performing the contract, including claims of nuisance and claims of trespass to persons, property or land.

10.4.2 All other losses, damages or claims in respect of any matters arising from or in connection with the contract and for which, under these terms and conditions, the Customer is liable or for which under clause 9 the Company is not liable; and

10.4.3 Any liability arising from or in connection with the contract to pay any amount in excess of the relevant limits referred to in clause 8.

10.5 The Customer shall insure against its liability to indemnify the Company and all other liabilities of the Customer under the contract.

10.6 If requested by the Company, the Customer shall produce a copy of any insurance policy together with evidence of the premium having been paid, held by the Customer and relevant to the contract.

## **11. TRANSPORTATION OF CONTRACT GOODS**

11.1 The Company is not a common carrier.

11.2 If the Contract Goods or any part of them require movement during the POS Contract Operation, the Customer will arrange the necessary transportation.

11.3 Subject to 11.2, the Company may agree to undertake the necessary transportation on behalf of the Customer or arrange transportation by some other

person or organisation for an additional fee. Should this arise and unless otherwise agreed in writing by the Company, the Company's liability to the Customer shall be limited to the amounts stipulated in clause 8.3 or to the sums recoverable from that other person or organisation who carried out the transportation.

## **12. PAYMENT OF CHARGES**

- 12.1 All prices quoted are exclusive of VAT, which will be charged at the rate prevailing at the date of invoice.
- 12.2 All charges by the Company are payable on the agreed contract terms from the date of the Company's invoice or as set out in the contract offer.
- 12.3 All charges are payable in full, and the Customer shall not withhold payment as retention or discount or for any reason whatsoever, regardless of any arrangements for payment to the Customer by another party under any other contract.
- 12.4 The Company shall be entitled to enforce its right to add interest and administration costs for late payments under the Late Payment of Commercial Debts Regulations 2002 or any other subsequent Regulations that supersede them.

## **13. LAW OF THE CONTRACT**

- 13.1 The Company will determine which court will have exclusive jurisdiction and interpretation of the law for this Contract be it governed by the country where the Company's Head Office or site is located.
- 13.2 Both parties to the Contract have a right to refer any difference or dispute arising under or in connection with the Contract to adjudication and the procedure set out in Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (or such equivalent legislation which confers on the parties the statutory right to adjudicate within the relevant jurisdiction (or any amendment or re enactment thereof for the time being in force) will apply. The person (if any) specified in the contract to act as adjudicator may be named in the quotation. The specified nominating body to select adjudicators shall be the Construction Plant-hire Association acting by its President or Chief Executive for the time being.
- 13.3 The Company and the Customer shall comply forthwith with any decision of the adjudicator; and shall submit to summary judgment and enforcement (and/or, under Scottish law, shall consent to a motion for summary decree and submit to enforcement) in respect of all such decisions; in each case, without any defence, set-off, counterclaim, abatement, or deduction. Where, under Scottish law, the Company, the Customer, or the adjudicator, wishes to register a decision of the adjudicator for execution in the Books of Council and Session, any other party shall, on being requested to do so, forthwith consent to such registration by subscribing the decision before a witness.

## **FOOTNOTES**

- 1) Acceptance of the Contract Equipment on site implies acceptance of all these terms and conditions.
- 2) These standard terms and conditions for POS Contract Operations are the copyright of the Rail Plant Association and Construction Plant-hire Association and must NOT be reproduced, stored in any retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise unless they are current members of the Rail Plant Association and Construction Plant-hire Association.
- 3) Copies of these standard terms and conditions are only available from the Rail Plant Association and Construction Plant-hire Association.