

Elite Tree Services (EA) Ltd Terms and Conditions of Plant Hire (Non-Consumer)

1. DEFINITIONS

- 1.1 The 'Owner' means Elite Tree Services (East Anglia) Ltd of which Elite Plant Hire is a trading name of, whose registered office is at 306 Main Road, Kesgrave, Suffolk IP5 2PS.
- 1.2 The 'Hirer' is the company, firm, person, corporation or public authority taking the Owner's plant on hire named on page one of this agreement.
- 1.3 'Plant' means the plant and equipment which the Owner agrees to hire to the Hirer, details of which are set out in the Schedule of Plant.
- 1.4 'Working Day' shall mean between the hours of 8am and 4pm only on any day other than a Saturday, Sunday or Bank Holiday.
- 1.5 'Working week' means the period from 9.00 a.m. on Monday to 3.00 p.m. on Friday.
- 1.6 'Hire Period' means the time the Plant is on hire to the Hirer in accordance with clause 16.
- 1.7 'Site' means the premises specified in the Schedule.
- 1.8 "Weekend" means the period from 4:00pm Friday until 7:00am on the following Monday.

2. EXTENT OF CONTRACT

The Hirer shall hire the Plant from the Owner on the terms set out in this agreement to the exclusion of any other terms to which the hire is purported to be made.

3. UNLOADING AND LOADING

1. Where the Owner delivers or collects the Plant to the Site the Hirer shall be responsible for providing unobstructed access to the Site at the time specified by the Owner for delivery/ collection and for providing a suitable space and surface for loading and unloading at the Site and, unless otherwise agreed in writing, for the unloading and loading of the Plant at the Site.
2. Where the Hirer agrees to collect the Plant the Hirer shall collect the Plant from the location and at the time specified by the Owner.
3. The Hirer shall pay to the Owner all reasonable costs incurred by the owner caused by failure of the Hirer to comply fully with the requirements set out in clause 3.1.

4. DELIVERY IN GOOD ORDER AND MAINTENANCE

- 4.1 The Hirer shall inspect the Plant on delivery in accordance with clause 3(a) at the Site or in accordance with clause 3(2) on collection and shall notify the Owner immediately of any defect in the Plant. On delivery to the Site, the Hirer shall request any necessary instruction (subject to clause 4.4) for the operation of the Plant from the Owner or the Owner's representative. The Hirer's signature on the schedule of condition signed at the time of delivery shall be conclusive proof that the Plant is delivered in full working order, (save for either an inherent fault or a fault not ascertainable by reasonable examination) and that the Hirer has received all instruction necessary to operate the Plant safely and correctly.
- 4.2 The Hirer shall be responsible for the safe keeping of the Plant, its use in a workmanlike manner within the manufacturer's rated capacity and in accordance with the manufacturer's instructions and return on the completion of the hire undamaged and in full working order.
- 4.3 The Hirer shall take all reasonable steps to regularly check the condition of the plant and to carry out routine maintenance in accordance with the manufacturer's instructions. If the Plant is used in an unsafe and unsatisfactory state, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising therefrom and whether caused to the Plant or to any third party object or person.
- 4.4 The obligation of the Owner in clause 4.1 to provide instructions on the operation of the Plant shall be restricted to familiarising the Hirer with the controls of the Plant. The Hirer shall be responsible for ensuring that it provides an operator with the appropriate qualifications to operate the Plant safely and in accordance with all regulations.

5. SERVICING AND INSPECTION

The Hirer shall at all reasonable times allow the Owner, his agents or his insurers to have access to the Plant to inspect, test, adjust, repair or replace the same.

6. BREAKDOWN, REPAIRS AND ADJUSTMENT

- 6.1 During the Hire Period any breakdown or malfunction of any part of the Plant must be notified immediately to the Owner. Any claim for breakdown time will only be considered from the time and date of notification.
- 6.2 The Hirer shall not repair the Plant without the written authority of the Owner.
- 6.3 On receipt of notification of breakdown of the Plant, the Owner shall use his reasonable endeavours to repair the Plant as quickly as reasonably practicable (on the next Working Day if the breakdown occurs outside a Working Day) or (at the Hirer's absolute discretion) authorise the Hirer to carry out the repair.
- 6.4 The Hirer shall be liable for all expense arising from any breakdown and all loss or damage incurred by the Owner which occurs due to the Hirer's negligence, misdirection or misuse of the Plant, vandalism to the Plant or theft during the Hire Period. For the avoidance of doubt, the Hirer shall be liable for the full charge set out in the Schedule for the period during which the Plant is unusable for any reason set out in this subclause 6.4. The Hirer shall be responsible for repairing punctures to any Plant.
- 6.5 In the case of breakdown other than for a reason set out in clause 6.4, the Hire Charge shall not be payable for any period during which the Plant is unusable. The Owner shall also make allowance to the Hirer for the cost of all repairs authorised by the Owner and carried out by the Hirer and shall bear the cost of other repair charges.

7. OTHER STOPPAGES

If the Plant is unusable for any reason other than set out in clause 6 above, including but not limited to bad weather, poor ground conditions or failure of other machinery the Hire Charge shall be payable in full.

8. LOSS OF OTHER PLANT DUE TO BREAKDOWN

Each item of Plant specified in the Schedule is hired as a separate unit and the breakdown or stoppage of one or more units or vehicles (whether the property of the Owner or otherwise) through any cause whatsoever, shall not entitle the Hirer to compensation or allowance for the loss of working time by any other unit or units of Plant working in conjunction therewith.

9. LIMITATION OF LIABILITY

Except for liability on the part of the Owner which is expressly provided for in this agreement:

- 9.1 the Owner shall have no liability or responsibility for any loss or damage of whatever nature due to or arising through any cause beyond his reasonable control;
- 9.2 the Owner shall have no liability, whether by way of indemnity or by reason of any breach of the contract, breach of statutory duty or misrepresentation (unless fraudulent) or by reason of the commission of any tort (including but not limited to negligence) in connection with the hire, for any of the Hirer's loss of production 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; and
- 9.3 the Owner's total liability under this agreement (except in respect of death or personal injury) shall be limited to the Hire Charge.

10. INDEMNITY

- 10 The Hirer shall indemnify the Owner in respect of any loss damage or fires as a result of an event during the Hire Period resulting in:
 - 10.1 Loss or damage to the Plant except as for any reason set out in clause 6.5.
 - 10.2 All claims from any person other than the Hirer for personal injury or damage to property and any costs incurred by the Owner in connection with such claims.
 - 10.3.1 The Hirer shall maintain third party liability insurance during the Hire Period of not less than two million pounds and shall insure the plant against all risks usually covered by a reasonably prudent owner of equivalent plant to its full replacement value.
 - 10.3.2 The Hirer shall on request by the Owner provide the owner with evidence that the policies of insurance in clause 10.3.1 are in force.

11. NOTICE OF ACCIDENTS

If the Plant is involved in any accident resulting in injury to persons or damage to property, the Hirer shall immediately give notice to the Owner by telephone. In relation to any claim in respect of which the Hirer is not bound fully to indemnify the Owner, no admission, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's consent in writing.

12. RE-HIRING

The Plant or any part thereof shall not be re-hired, sub-let, or lent to any third party during the Hire Period.

13. CHANGE OF SITE

The Plant shall not be moved from the Site without the written permission of the Owner.

14. RETURN OF PLANT FOR REPAIRS

- 14.1 If, during the Hire Period the Owner decides that urgent repairs to the Plant are necessary he may arrange for such repairs to be carried out on Site or at any location of his nomination (transport of the Plant to be at the Owner's cost unless repairs are necessary due to the Hirer's negligence in accordance with clause 6.4.
- 14.2 If the repairs cannot be made within a reasonable period the Owner shall replace the Plant with similar plant, if available, and the Owner shall pay all transport charges for moving the Plant. In the event that the Owner is unable to replace the Plant he shall be entitled to determine the contract forthwith (but without prejudice to any rights accruing to either party) by giving written notice to the Hirer. If such determination occurs:
 - 14.2.1 within twenty eight days from the commencement of hire, the Owner shall pay all transport charges involved, or
 - 14.2.2 more than twenty eight days from the commencement of hire, the Owner shall be liable only for the cost of reloading and return transport.

15. 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 worked except in the case of breakdown for which the Owner is responsible, when the actual hours worked will be charged pro rata of the average Working Day.

16. PLANT HIRED BY THE WEEKEND WEEK OR MONTH WITHOUT QUALIFICATION AS TO HOURS

The weekend weekly or monthly rate shall be charged irrespective of the number of hours worked, except in the case of breakdown for which the Owner is responsible when 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.

17. COMMENCEMENT AND TERMINATION OF HIRE (TRANSPORT OF PLANT)

The Hire Period shall commence from the time when the Plant leaves the Owner's depot or place where last employed and shall continue until the Plant is received back at the Owner's named depot or other agreed location.

18. NOTICE OF TERMINATION OF CONTRACT

- 18.1 Where the Hire Period is longer than fourteen days, is indeterminate or having been defined becomes indeterminate the Contract shall be determinable by fourteen days notice in writing given by either party to the other except in cases where the Plant has been lost or damaged. The Hirer's obligations under clause 6 shall continue until the plant is returned to the Owner in accordance with clause 16.
- 18.2 The Hirer must give not less than fourteen days notice of cancellation prior to the start of the Hire Period. If less than fourteen days notice is given prior to the start of the Hire Period or during the Hire Period, the Hirer shall pay the Hire Charges pro rata from the start of the Hire Period, or (if the Hire Period has already started) the date of receipt of notice of termination of the contract by the owner to the date fourteen days after the date of receipt of notice of termination by the Owner.

19. FUEL, OIL AND GREASE

The Hirer shall be responsible for replenishing the Plant with fuel, oil and grease which shall be of a grade or type specified by the Owner and in accordance with the operator's manual for the plant. If the Plant is returned without a full tank of fuel, the Owner shall charge the then pertaining rate to refill the Plant in addition to the Hire Charge.

20. OWNER'S NAME PLATES

The Hirer shall not remove, deface or cover up the Owner's name plate or mark on the plant indicating that it is his property.

21. TRANSPORT

The Hirer shall pay the cost of transport of the Plant from the Owner's depot or other agreed location to the Site and return to named depot or other agreed location on completion of the Hire Period.

22. PAYMENT

- 2.2.1 All charges quoted to the Hirer shall be exclusive of VAT, which shall be added at the appropriate rate.
- 2.2.2 At the discretion of the Owner the Hire charge shall be payable either:
 - 2.2.2.1 before the start of Hire; or
 - 2.2.2.2 within 14 days of a valid VAT invoice.
- 2.2.3 For Hire periods over 1 week the Owner reserves the right to raise interim accounts at its discretion during the Hire Period.
- 2.2.4 Without prejudice to any other right or remedy that it may have, if the Hirer fails to pay any sum due under this agreement, the Owner may:
 - 2.2.4.1 charge interest on such sums from the due date for payment at the annual rate of 8% above the base rate from time to time of Barclays Bank Plc accruing on a daily basis and compounded monthly whether before or after my judgement and the Owner may claim interest under the Late Payment of Commercial Debts (interest) Act 1998.
 - 2.2.4.2 suspend all continuing Hire agreements until payment has been made in full.

23. PROTECTION OF OWNER'S RIGHTS

If the Hirer fails to pay any sum due to the Owner for the hire of Plant or other charges or fails to observe and perform the terms and conditions of this Contract, or if the Hirer shall suffer any distress or execution to be levied against him or make or propose to make any arrangement with his creditors or 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; or shall do or cause to be done or permit or suffer any act or thing whereby the Owner's rights in the Plant may be prejudiced, this Contract shall forthwith be determined by notice from the Owner to the Hirer. The Contract shall thereupon be determined and the Hirer agrees that the Owner may enter into or upon any premises where the Plant may be and the determination of the hiring under this condition shall not affect the right of the Owner to recover from the Hirer any monies due to the Owner under the Contract or any of the Owner's rights and remedies. In particular, without limitation, the Owner shall be entitled to claim the hire charges outstanding as at the date of determination of the hire under this clause, return transport charges under clause 20, and damages for the Hirer's breach of the Contract under this clause.

24. DISPUTE RESOLUTION

This agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.