

**BRILLIANT IDEAS LTD  
TERMS AND CONDITIONS FOR THE HIRING OF PLANT**

- 1 **INTERPRETATION**  
The following definitions and rules of interpretation apply in these conditions unless the context requires otherwise:
- "Contract" any contract between the Owner and the Hirer for hire of the Plant, incorporating these conditions and created in accordance with condition 2;
  - "Hirer" the person, firm, company or public or statutory body taking the Owner's Plant on hire;
  - "Hire Charge" the total charge for the hire of the Plant over the Hire Period at the Hire Rate;
  - "Hire Period" has the meaning given in condition 12.1;
  - "Hire Rate" the rate charged for the hire of the Plant as specified in the Contract or if not specified, the Owners standard hire rate for the relevant plant from time to time;
  - "Order" the Owner's standard order form for the hire of Plant for the Hire Period into which these terms and conditions are incorporated;
  - "Owner" Brilliant Ideas Ltd of New House Farm, Belper Road, Bradley, Ashbourne, Derbyshire DE6 1LP;
  - "Plant" all plant, machinery, vehicles and equipment specified in the Contract or the Order which the Owner agrees to hire to the Hirer;
  - "Site" the address at which the Plant is to be used and which is specified in the Contract.
- 2 **CONTRACT FORMATION AND APPLICATION OF TERMS**
- 2.1 These conditions and the conditions contained in the Order or the Owners acknowledgement of Order shall apply to and be incorporated into the Contract and prevail over any inconsistent terms or conditions contained, or referred to, in any Order or other document issued or supplied by the Hirer.
- 2.2 Any Order or other similar document issued by the Hirer constitutes an offer by the Hirer to hire the Plant specified in it on these conditions. No offer placed by the Hirer shall be accepted by the Owner other than:
- 2.2.1 following the Hirer signing and returning to the Owner an Order;
  - 2.2.2 by a written acknowledgement issued and executed by the Owner; or
  - 2.2.3 (if earlier) by the Owner providing the Plant,
- when a contract for the hiring of the Plant on these conditions (a "Contract") will be established. The Hirer's standard terms and conditions (if any) attached to, enclosed with or referred to in any Order shall not govern the Contract.
- 2.3 The Owner's employees or agents are not authorised to make any representations concerning the Plant unless confirmed in writing and any advice or recommendation given by the Owner, its employees or agents to you as to the storage, application or use of the Plant which is not confirmed in writing is followed or acted upon entirely at the Hirer's own risk.
- 3 **UNLOADING AND LOADING**  
The Hirer shall be responsible for ensuring the unobstructed access to the Site and, unless otherwise agreed in writing, for unloading and loading of the Plant at the Site.
- 4 **FITNESS OF PLANT AND MAINTENANCE**
- 4.1 Unless the Hirer notifies the Owner in writing to the contrary upon receipt of the Plant when the Plant is collected or delivered to the Site, the Plant shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with the terms of the Contract and to the Hirer's satisfaction. The Hirer shall be responsible for the safe keeping of the Plant, and shall use the Plant in a workmanlike manner and in accordance with any instructions and guidelines provided by the Owner.
- 4.2 At the end of the Hire Period, the Hirer shall return the Plant in the same condition it was received by the Hirer under condition 4.1 (fair wear and tear excepted) and, following inspection of the Plant by the Owner, the Hirer shall sign the Owner's collection sheet confirming the condition of the Plant at the time of its return to the Owner.
- 4.3 The Hirer shall take all reasonable steps to keep himself acquainted with the state and condition of the Plant throughout the Hire Period. If any Plant is used in an unsafe or unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising therefrom.
- 5 **INSPECTION AND REPLACEMENT**  
The Hirer shall at all reasonable times allow the Owner, his agents or his insurers to have access to the Plant to inspect or replace the same. So far as reasonably possible, such activities will be carried out at times to suit the convenience of the Hirer.
- 6 **RISK, OWNERSHIP AND INSURANCE**
- 6.1 Risk in the Plant will pass to the Hirer immediately upon the Plant leaving the Owners physical possession or control or, when the Owner delivers the Plant to the Site, whichever occurs first.
- 6.2 Risk in the Plant will not pass back to the Owner until the Plant is returned to the Owners physical possession.
- 6.3 Ownership of the Plant remains with the Owner at all times. The Hirer has no right, title or interest in the Plant except that it is hired to them.
- 6.4 The Hirer shall keep the Plant insured against loss or damage and third party risks and shall produce evidence of such insurance to the Owner, who shall be entitled to withhold delivery until such production. The Hirer shall not do or omit to do anything which will or may be deemed to invalidate any policy of insurance related to the Plant.
- 7 **BREAKDOWN, REPAIRS AND ADJUSTMENT**
- 7.1 The Hirer shall report any defects or malfunction in the Plant to the Owner immediately upon becoming aware of them.
- 7.2 The Hirer shall not repair the Plant without the written authority of the Owner.
- 7.3 The Hirer shall be responsible for any expense arising from any breakdown and all loss or damage incurred by the Owner due to the Hirer's negligence, misdirection or misuse of the Plant, whether by the Hirer or his servants. The Hirer is responsible for the cost of repairs or replacements due to theft, loss or vandalism of the Plant and shall indemnify the Owner in full on demand from and against all costs, losses, expenses and penalties arising from the theft, loss, damage or vandalism of the Plant. The Owner will be responsible for the cost of repairs, inclusive of the cost of any spares, to the Plant involved in breakdown from all other causes.
- 8 **LIMITATION OF LIABILITY**
- 8.1 Except for liability on the part of the Owner which is expressly provided for in the Contract (including these conditions and save as specifically provided in condition 8.2):
- 8.1.1 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;
  - 8.1.2 the Owner 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) in connection with the hire, for any of the Hirer'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, 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;
  - 8.1.3 whenever the Contract (including these conditions) provides that any allowance is to be made against the Hire Charge, such allowance shall be the Hirer'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 the Hire Charge which would otherwise be or become due if the allowance in question had not been made;
  - 8.1.4 the Owner shall have no liability for stoppages through causes outside the Owner's control, including bad weather or ground conditions nor shall the Owner be responsible for the cost or expense of recovering any Plant from soft ground;
  - 8.1.5 the Owner shall have no liability to the Hirer if the Hirer provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract; and
  - 8.1.6 the aggregate liability of the Owner under the Contract whether in contract, tort or for breach of statutory duty or otherwise shall be limited to a sum not exceeding the lesser of:
    - a aggregate Hire Charge under the Contract during the Hire Period; and
    - b the sum of £5000.
- 8.2 Nothing in these conditions or in the Contract shall exclude or limit the liability of the Owner under the Contract:
- 8.2.1 for death or personal injury caused by the negligence of the Owner;
  - 8.2.2 for fraud or fraudulent misrepresentation;
  - 8.2.3 for any liability which cannot be excluded or limited by law.
- 9 Where the Hirer deals as a consumer, nothing in the Contract or in these conditions shall affect the statutory rights of the Hirer.
- 9 **HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE**
- 9.1 For the avoidance of doubt nothing in this condition 9 affects the operation of conditions 3, 4 and 7 of this Agreement.
- 9.2 During the continuance of the Hire Period the Hirer shall make good to the Owner all loss of or damage to the Plant from whatever cause the same may arise, fair wear and tear excepted, and except as provided in condition 7 herein and shall also fully and completely indemnify the Owner 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 Hire Period, and in respect of all costs and charges in connection therewith whether arising under statute or common law.
- 9.3 Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury due to or arising:
- 9.3.1 prior to delivery of the Plant to the Site where the Plant is in transit by transport of the Owner or as otherwise arranged by the Owner; or
  - 9.3.2 after the Plant has been removed from the Site by the transport of the Owner or as otherwise arranged by the Owner.
- 10 **NOTICE OF ACCIDENTS**  
If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notice must be given to the Owner by telephone and confirmed in writing to the Owner's office. In the event of any such accident the Hirer shall provide the Owner with immediate and unrestricted access to the Site and shall allow the Owner to conduct any assessments, reviews or tests on either the Plant or the Site as the Owner shall deem necessary in the circumstances. 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.
- 11 **PAYMENT**
- 11.1 Plant shall be hired out for the Hire Period at the Hire Rate and the Hire Charge shall be calculated accordingly.
- 11.2 The Owner shall invoice the Hirer for the Hire Charge on a monthly basis unless otherwise agreed in the Contract.
- 11.3 Unless otherwise agreed in the Contract payment of the Hire Charge shall be made within 30 days of the date of the invoice.
- 11.4 The Hire Charge shall be paid without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 11.5 All amounts stated are exclusive of VAT, which shall be charged in addition to the Hire Charge at the rate in force at the date of the invoice.
- 11.6 Subject to the Contract being terminated under condition 12.3.1, if payment of any part of the Hire Charge is not received by the due date, the Owner may charge interest on the outstanding amount at the rate of 3% per annum above the base lending rate of Barclays Bank plc, accruing daily.
- 12 **COMMENCEMENT AND TERMINATION OF HIRE**
- 12.1 The Hire period shall commence from the time when the Plant is collected or is delivered to the Site and unless terminated earlier in accordance with this condition 12 shall continue until the Plant is received back at the Owner's named depot or other agreed location or is collected by the Owner.
- 12.2 Where the Hire Period is indeterminate or having been defined becomes indeterminate the Contract may be terminated by either party by giving notification of termination to the other party before 1.00 pm on the day before the final day of hire. The Hirer's obligations under the Contract shall continue until the Owner has collected the Plant.
- 12.3 Without prejudice to any other right or remedy, the Owner may terminate this Agreement at any time by notice in writing to the Hirer, such notice to take effect as specified in the notice:
- 12.3.1 if the Hirer makes default in payment of any part of the Hire Charge by the due date;
  - 12.3.2 if the Hirer is in breach of any of the terms of the Contract other than those relating to payment of the Hire Charge;
  - 12.3.3 if the Hirer pledges, charges or creates any form of security over the Plant;
  - 12.3.4 if the Hirer ceases or threatens to cease to carry on business;
  - 12.3.5 if the Hirer becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Hirer (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Hirer's assets or business, or if the Hirer makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt; or
  - 12.3.6 if there are circumstances in which the Owner reasonably believes that the events mentioned in condition 12.3.6 are about to occur and the Owner notifies the Hirer of this belief.
- 12.4 On the termination of this Agreement for any reason the Hirer shall return or shall arrange for the return of all Plant to the Owner. In such circumstances it shall be lawful for the Owner to enter into or upon any premises where the same may be. The termination of the Hire Period under this condition 12 shall not affect the right of the Owner to recover from the Hirer any monies due to the Owner under the Contract or affect any of the Owner's other rights and remedies. In particular, without limitation, the Owner shall be entitled to claim any Hire Charge outstanding as at the date of termination of the Hire Period under this condition, return transport charges, and damages for the Hirer's actual or deemed breach of the Contract under this condition.
- 13 **PROTECTION OF OWNERS RIGHTS**
- 13.1 The Hirer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Plant without the written permission of the Owner, and shall protect the same against distress, execution or seizure and shall indemnify the Owner against all losses, damage, costs, charges and expenses arising as a direct result of any failure to observe and perform this condition except in the event of government requisition.
- 13.2 The Hirer shall be liable for the acts and/or omissions of their employees, agents, servants, and/or sub contractors as though they were the Hirer's own acts and/or omissions under the Contract.
- 13.3 The Hirer shall not remove, deface or cover up the Owner's name plate or mark on the Plant indicating that it is the Owner's property.
- 13.4 The Plant shall not be moved from the site to which it was delivered or consigned without the written permission of the Owner.
- 13.5 The Hirer will be responsible for compliance with all relevant regulations issued by the government or local authorities.
- 14 **FORCE MAJEURE**  
Neither party shall have any liability or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from circumstances beyond their reasonable control. If either party is affected by such circumstances they shall promptly notify the other in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- 15 **WAIVER**  
No failure or delay on the part of either party to exercise any right or remedy under the Contract shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.
- 16 **AMENDMENT**  
The terms of the Contract may only be amended in writing signed by duly authorised representatives of the Parties.
- 17 **ASSIGNMENT**  
Neither party shall assign, mortgage, charge or otherwise transfer any rights or obligations under the Contract, without the prior written consent of the other.
- 18 **INVALIDITY**  
If any provision or part of the Contract is held to be invalid, amendments to the Contract may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of the Contract to the maximum extent permissible under applicable law.
- 19 **AGENCY**  
Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.
- 20 **NOTICES**  
Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 21 **THIRD PARTIES**  
The Contract does not create any right enforceable by any person who is not a party to it ("Third Party") under the Contracts (Rights of Third Parties) Act 1999, but this condition does not affect any right or remedy of a Third Party which exists or is available apart from that Act.
- 22 **LAW AND JURISDICTION**  
The validity, construction and performance of the Contract shall be governed by English law and shall be subject to the non-exclusive jurisdiction of the English courts to which the parties submit