

# TERMS AND CONDITIONS FOR HIRING OF EQUIPMENT

## 1. Definitions and general

- 1.1 The Owner means Marubeni-Komatsu Limited trading as “**MDiG**” and includes its successors or assigns.
- 1.2 The Hirer means the company, firm, person or public authority taking the Owner’s Equipment on hire and includes their successors or personal representatives.
- 1.3 “Equipment” means all classes of equipment, which the Owner agrees to hire to the Hirer.
- 1.4 The term “Owner’s Employee” shall mean any employee of the Owner whose job is either to operate the Equipment or to provide any other services in connection with the Equipment.
- 1.5 “Advice” means any designs, drawings or specifications in relation to the Equipment or any information or advice as to the planning supervision or control of the Hirer’s operations or the installation of the Equipment.
- 1.6 Hire rates are the Owner’s current standard rates unless otherwise agreed.
- 1.7 Weekly rates are for a 40-hour 5-day week. Additional charges will be made for shift work and weekend work.
- 1.8 These terms and conditions shall apply to the hire of all Equipment by the Owner to the Hirer and shall not be overridden by any terms and conditions of the Hirer.
- 1.9 No variation of these terms and conditions will be effective unless agreed in writing by a director of the Owner. All terms other than those expressly set out in these terms and conditions are hereby excluded.
- 1.10 Acceptance of the Equipment on site by the Hirer or its delivery on site in accordance with the Hirer’s instructions signifies acceptance of these terms and conditions unless otherwise agreed in writing.
- 1.11 Where the Hirer deals with the Owner as a consumer these terms and conditions do not and will not affect his statutory rights.
- 1.12 These terms and conditions shall be governed by and construed according to the laws of England.

## 2. Basis of charging

The Equipment is hired to the Hirer subject to these terms and conditions and to the terms set out overleaf. The Hirer agrees to pay the hire charges which will commence from the time and at the rate(s) shown overleaf and continue until the Equipment is returned to or collected by the Owner and a receipt issued by the Owner. Telephone off-hires will not be accepted unless validated by an off-hire number notified by the Owner to the Hirer.

## 3. Other charges

Hire charges relate solely to the hire of the Equipment. They do not include fuel and power supplied with the Equipment, carriage to and from the Owner’s premises, charges in relation to the supply of an Owner’s Employee, or any other costs incurred by the Owner, all or which will be charged separately to the Hirer.

When carriage charges are quoted by the Owner, such charges will include a charge for a maximum of 30 minutes attendance by the Owner’s vehicle at the address specified by the Hirer. Further time will be paid for by the Hirer.

#### **4. Wages and other charges relating to Owner's Employees**

The Hirer shall pay the agreed hourly rates for each Owner's Employee supplied with the Equipment and such rates are payable whether or not the Owner's Employee is actually engaged operating the Equipment or providing any other service in connection with the Equipment. The Hirer shall sign the time record sheets of the Owner's Employee daily or weekly. The signature of the Hirer's representative shall bind the Hirer to accept the hours shown on the time record sheets. All travelling time and fares for Owner's Employees whether during, at the beginning or the end of the hire period are payable by the Hirer in accordance with the appropriate national agreement.

#### **5. Payment terms**

All charges are payable on demand except that payment terms for authorised credit customers are 30 days net from the date of invoice. The Owner shall be entitled to charge interest at the rate of 2% per month from the due date to the date of settlement. Should the Hirer fail to settle any invoice by the due date other than for a valid reason, then all other invoices become payable immediately by the Hirer.

#### **6. Responsibility for Owner's Employees**

When an Owner's Employee is supplied by the owner with the Equipment, the Owner shall supply a competent person but such person shall be under the direction and control of the Hirer. The Owner's Employee shall for all purposes connected with such employment be regarded as the servant of the Hirer who alone shall be responsible for all claims arising in connection with the delivery, preparation or operation of the Equipment.

The Owner shall have no liability for any loss or damage caused by any act or omission whatsoever of an Owner's Employee or the consequences thereof. The Hirer shall fully and completely indemnify the Owner in respect of all claims by any person whatsoever for injury to person or loss or damage to property howsoever caused including all costs and charges in connection therewith and arising out of or in connection with any act or omission of the Owner's Employee whilst the Hirer is responsible for him and whether or not arising under statute or common law or from the negligence or breach of duty or other wrongful act or omission of the Owner or any of the Owner's Employees.

#### **7. Advice**

If the Owner or any of the Owner's Employees give any Advice it is provided strictly on the basis that it is for guidance only, and without any responsibility being accepted. The onus is on the Hirer to verify the accuracy and/or appropriateness of such Advice and to accept or reject accordingly. If any such Advice is given it is given on the basis that no legal liability shall attach to the Owner or any of the Owner's Employees.

The Hirer shall fully and completely indemnify the Owner and the Owner's Employees against all claims by any person whatsoever for injury to person or loss or damage to property howsoever caused including all costs and charges in connection therewith and arising from the giving of such Advice whether arising under statute or common law or from the negligence or breach of duty or other wrongful act or omission of the Owner or any of the Owner's Employees.

## **8. Lost, non-returned, damaged or unclean Equipment**

The Hirer must immediately notify both the Owner and the police of any loss or theft of the Equipment. When the Equipment is not returned or is returned incomplete the liability of the Hirer shall only cease when the Hirer pays to the Owner the manufacturer's current list price for the missing or incomplete item of Equipment. In the event that Equipment is manufactured to the Owner's design the cost of the missing or incomplete item is the current price charged by the Owner to a customer who wishes to purchase that item of Equipment. The Hirer agrees to pay to the Owner all costs incurred by the Owner in rectifying the condition of the Equipment if it is returned damaged unclean or incomplete. Hire charges will continue until such rectification is complete.

## **9. Maintenance of Equipment and breakdown procedures**

The Hirer shall ensure that the Equipment remains safe, serviceable and clean. Any breakdown or any unsatisfactory working of Equipment must be immediately notified to the Owner. Under no circumstances shall the Hirer repair the Equipment, except for punctures, unless authorised by the Owner. Such Equipment must be returned to the Owner's premises for examination or when rectification elsewhere is requested, the Hirer agrees to pay carriage if required by the Owner.

## **10. Security of the Equipment**

The Hirer shall not sell or otherwise part with possession and/or control of the Equipment and shall remain responsible for the Equipment and its safekeeping during the hire period. Equipment must not be removed without the authority of the Owner from the site specified by the Hirer if the Equipment is collected by the Hirer, or from the address to which the Owner has delivered the Equipment. The Hirer shall keep the site at which the Equipment is located safe and secure.

## **11. Hirer's responsibility - third parties**

The Hirer shall fully and completely indemnify the Owner in respect of all claims by any person whatsoever for injury to person or loss or damage to property howsoever caused including all costs and charges in connection therewith and arising from or in connection with the use of the Equipment and whether or not arising under statute or common law or from the negligence or breach of duty or other wrongful act or omission of the Owner or any of the Owner's Employees.

## **12. Consequential losses**

The Owner shall not be liable for any consequential expenses, liabilities, losses, claims or proceedings whatsoever caused by, or arising out of, the late delivery, nondelivery, unsuitability or repossession of the Equipment, or any breakdown or defect in the Equipment.

## **13. Insurance and notification or accidents**

The Hirer shall be responsible for obtaining all prudent insurance cover, including third party liability and cover against loss or damage to the Equipment. The Hirer shall produce on demand to the Owner a copy of the policy or policies. The Hirer shall hold on trust for the owner all policy proceeds in or towards satisfaction of the Hirer's obligations under paragraph 8 above. If the Equipment 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. The Hirer shall not admit any liability or compromise any claim relating to the Equipment without the consent in writing of the Owner.

#### **14. Period and determination of hire**

If the Hirer is an individual within the meaning of the Consumer Credit Act 1974 the maximum period of hire shall be 3 months.

The Owner shall be entitled at any time and for any reason whatsoever and without explanation to terminate with immediate effect the hire contract and to repossess the Equipment.

#### **15. Right of access**

The Hirer shall allow the Owner access to the Equipment at all reasonable times for the purpose of inspection, maintenance, replacement or repossession.

#### **16. Invalidation**

Should any of these terms and conditions be held to be invalid such invalidation will not affect the validity of the remaining terms and conditions.

