

JOHN NIXON LTD – CONDITIONS OF HIRE

1. DEFINITIONS

- a) For the purposes of this hire John Nixon Limited trading as Nixon Hire, Nixon Sales, Nixon Hire Direct and Nixon Hire Extra shall be deemed to be the Owner of the Plant whether such is the fact or not and the expression "the Owner" shall mean John Nixon Ltd to the exclusion of any other company or person.
- b) The "Hirer" is the Company, firm, person, Corporation or public authority taking the Owner's Plant on hire and includes their successors or personal representatives.
- c) "Plant" covers all classes of plant, tools, machinery, accommodation, toilets, vehicles, equipment and accessories therefore, which the Owner agrees to hire to the Hirer.
- d) A "day" shall be 8 hours or if the day is a Friday it shall be 7 hours, unless otherwise specified in the Contract.
- e) A "working week" covers the period from starting time on Monday to finishing time on Friday.
- f) 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. The hire period includes Saturdays, Sundays or Bank or other statutory holidays
- g) A "Consumer Contract" is a contract entered into with a person acting in his own capacity and not for or on behalf of any business or trade entity.

2. EXTENT OF CONTRACT

No conditions other than specifically set forth shall be deemed to be incorporated in or to form part of the Contract or shall otherwise govern the relationship between the Owner and the Hirer in relation to the hire of any particular Plant. 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 Owner is deemed to become a party to the Contract after the date of succession or assignment (as the case may be).

3. ACCEPTANCE OF PLANT

Acceptance of the Plant on site implies unqualified acceptance of all terms and conditions herein unless otherwise agreed in writing by the Owner.

4. UNLOADING AND LOADING

The Hirer shall be responsible for the unobstructed access and, unless otherwise agreed in writing, for unloading and loading of the Plant at the site and any personnel supplied by the Owner for such unloading and/or loading shall be deemed to be under the direction and control of the Hirer. Such personnel shall for all purposes in connection with their employment in the unloading and/or loading of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of Clause 13) who alone shall be responsible for all claims arising in connection with unloading and/or loading of the Plant by, or with the assistance of, such personnel.

5. DELIVERY IN GOOD ORDER AND MAINTENANCE:

INSPECTION REPORTS

- a) Unless notification in writing to the contrary is received by the Owner from the Hirer within three working days, of the Plant being 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 terms of the Contract and to the Hirer's satisfaction, provided that where Plant requires to be erected on site, the periods above stated shall be calculated from the date of completed erection of Plant. The Hirer shall be responsible for its safe keeping, use in a workmanlike manner within the manufacturer's rated capacity and return on the completion of the hire in equal good order (fair wear and tear excepted).
- b) The Hirer shall when hiring Plant without Owner's operator or driver take all reasonable steps to keep himself acquainted with the state and condition of the Plant. If such Plant be continued at work or in use in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss or accidents whether directly or indirectly arising there from.
- c) The current Inspection Report required under the relevant legislation, or a copy thereof, shall be supplied by the Owner if requested by the Hirer and returned on completion of hire.

6. DELIVERY AND COLLECTION

Delivery or Collection undertaken by the Owner is not included in the hire charges and is charged as an extra. Where the Owner has agreed to provide transport for the Plant to or from the Hirer's site:

- a) The Hirer shall provide or ensure that access to and over the Hirer's site is in every respect suitable for the vehicle used for transporting the Plant.
- b) If the ground (including any private access road or track) is soft or unsuitable for the Plant to work on, travel, or be transported over without timbers or equivalents the Hirer shall supply and lay suitable timbers or equivalents in a suitable position for the Plant to travel over, work on, or be transported over, including for the purpose of delivery and collection.
- c) Where the hire is for lifting equipment, any sound timber or other material supplied by the Owner for use with outriggers/stabilisers is provided solely to assist the Hirer and expressly not to relieve him of his legal, regulatory or contractual obligations to ensure adequate stability of the lifting equipment under the imposed loading.
- d) The Hirer shall load or unload the Plant at the Hirer's site with reasonable diligence and shall not suffer or permit the transport vehicle to be unduly delayed on site. The Owner may make a charge for any delays on site.
- e) The Hirer shall indemnify the Owner against any claims for injury to persons or loss of or damage to property (including land), during loading or unloading of the Plant.
- f) The Owners shall not be liable for the consequences of any delay in the delivery or collection at the Hirer's site howsoever arising.
- g) Not less than 24 hours notice in writing must be given to the Owner if the Hirer wishes the Plant to be collected. When Plant out on hire is to be collected from its location by the Owner on the instructions of the Hirer, the Hirer remains responsible for the safekeeping of the Plant until collection is effected being not more than ten working days after the date the Plant is placed off hire.
- h) When Plant is delivered by the Owner's in the absence of the Hirer or his representative, the Hire Delivery Note shall be forwarded to the Hirer's address and deemed to be conclusive proof of delivery of the Plant listed thereon in good clean working order.

7. 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. So far as reasonably possible, such work will be carried out at times to suit the convenience of the Hirer.

8. HANDLING / USE OF PLANT

- a) The Plant shall be used only for the purpose for which it is designed by the makers. The Hirer shall be responsible for ensuring the observance of all proper safeguards and precautions against accidents in connection with the use of the

Plant, and for ensuring its use by authorised persons only.

- b) The Hirer shall use the Plant in a skilful and proper manner and the Hirer shall be responsible for its greasing, oiling, etc. The Hirer must ensure the correct grade of fuel, oil and grease is used in the Plant and shall be solely responsible for and shall indemnify the Owner in respect of all damages, losses, costs and expenses arising as a result of the wrong grade of fuel, oil or grease being used.
- c) The Hirer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including regulations under the Factories Acts, Health and Safety at Work Act etc and observance of the Road Traffic Acts 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 full or part journey from Owner to site and site to Owner under its own power with a driver supplied by the Owner, the Owner and not the Hirer shall be responsible as aforesaid.
- d) The Hirer is responsible for checking the calibration of the Plant on each occasion before use. Final determination of the suitability of the Plant for any specific use is the Hirer's responsibility and the Hirer assumes all risk and liability in this regard.
- e) The Hirer shall indemnify the Owner for injury to persons or loss of or damage to property caused by the Hirer's use of the Plant or the Hirer's failure to operate the Plant in a safe and proper manner.
- f) When a driver or operator or any person is supplied by the Owner with the Plant, the Owner shall supply a person competent in operating the Plant or for such purpose for which the person is supplied and such shall be under the direction and control of the Hirer. Such drivers or operators or persons shall for all purposes in connection with their employment in the working of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of Clause 13) who also shall be responsible for all claims arising in connection with the operation of the Plant by the said drivers/operators/persons. The Hirer shall not allow any other person to operate such Plant without the Owner's previous consent to be confirmed in writing.

9. BREAKDOWN SERVICING AND REPAIRS

- a) When the Plant is hired without the Owner's driver or operator the Hirer shall inform the Owner of any breakdown or unsatisfactory working of the Plant. The Owner undertakes to deal with necessary repairs as quickly as is reasonably possible. Claims for breakdown allowance shall only be allowed from the date and time that notice is received, providing that such a breakdown is advised immediately by the Hirer and confirmed within three days in writing.
- b) Full allowance for the hire charges and for the reasonable cost of repairs that have been authorised by the Owner will be made to the Hirer for any stoppage due to breakdown of Plant 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.
- c) The Hirer shall not, except for the changing of any tyre and repair of punctures, repair the Plant without the written authority of the Owner. The changing of any tyre and repair of punctures are however the responsibility of the Hirer who should arrange for them to be changed/repared without awaiting authorisation from the Owner. The Hirer is responsible for all costs incurred in the changing or replacement of any tyre and the repair of any puncture.
- d) The Hirer shall take all reasonable steps to keep acquainted with the state and condition of the Plant. If Plant be continued at work or in use after it is known by the Hirer to be in an unsafe or unsatisfactory state the Hirer shall be solely responsible for any further damage, loss or accident.
- e) The Hirer shall be responsible for all expense involved arising from any breakdown and all loss or damage incurred by the Owner due to negligence, misdirection or misuse of the Plant whether by the Hirer or other persons and for the payment of hire charges at the Owner's standard rate during the period the Plant is necessarily idle due to such breakdowns or damage.
- f) The Owner will be responsible for the cost of repairs to the Plant involved in breakdowns as a result of fair wear and tear.
- g) Where Plant has been in the possession of the Hirer for a period in excess of the recommended service interval for that item, howsoever that interval is expressed i.e. hours, time etc it is the responsibility of the Hirer to inform the Owner of the need for the Plant to be serviced. In the event of the Hirer failing to inform the Owner of the need for the Plant to be serviced the Hirer hereby indemnifies the Owner against any claim howsoever arising as a result of the Hirer's continued use of the Plant, beyond the recommended service interval.

10. STOPPAGES

No claims will be admitted (other than those allowed for under "Breakdown" as herein provided), 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.

11. 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 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, provided that where two or more items of Plant are expressly hired together as a unit, such items shall be deemed a unit for the purpose of breakdown.

12. LIMITATION OF LIABILITY

Except for liability on the part of the Owner which is expressly provided for in the Contract (including these Clauses):

- a) 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 including late or non arrival of the Plant at the location of hire.
- b) 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; and
- c) whenever the Contract (including these Clauses) provides that any allowance is to be made against hire charges, 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 hire charges which would otherwise be or become due if the allowance in question had not been made.

13. HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE

- a) For the avoidance of doubt it is hereby declared and agreed that nothing in this Clause affects the operation of Clauses 4, 5, 8 and 12 of this Agreement.
- b) During the continuance of the hire period the Hirer shall subject to the provisions referred to in sub paragraph (a) make good to the Owner all loss of or damage to

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the Plant from whatever cause the same may arise, fair wear and tear excepted, and except as provided in Clause 9 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. In the event of loss of or damage to the Plant, hire charges shall be continued until settlement has been effected.

- c) Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury due to or arising:
- prior to delivery of any Plant to the site (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving such highway) where the Plant is in transit by transport of the Owner or as otherwise arranged by the Owner,
 - after the Plant has been removed from the site and is in transit on a highway maintainable at the public expense (or where the site is not immediately adjacent to a highway maintainable at the public expense after it has joined such highway) to the Owner by transport of the Owner or as otherwise arranged by the Owner,
 - where Plant is travelling to or from a site on a highway maintainable at the public expense (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving or after its joining such highway) under its own power with a driver supplied by the Owner.

14. LOST, NON-RETURNED, DAMAGED OR UNCLEAN PLANT

When Plant is lost or stolen or cannot be retrieved by the Owner, the hire will be deemed to end when the Hirer pays to the Owner the Owner's invoiced charges for the loss of the Plant. Charges for loss of or damage to Plant will be based on current replacement values with due allowance for fair wear and tear. Plant deemed by the Owner to be damaged or returned in a "dirty condition" will be held for three days for the Hirer to inspect. After the expiration of the third day necessary repairs, servicing or cleaning will be carried out. The Hirer agrees to pay to the Owner all costs incurred by the Owner in rectifying the condition of Plant returned damaged or unclean. Hire charges will continue until such rectification is complete and the Owner's invoiced charges for the rectification have been paid. The Hirer is responsible for all costs the Owner may incur in tracking or recovering any lost or stolen Plant.

15. 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 within three working days. 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.

16. RE-HIRING ETC.

The Plant or any part thereof shall not be re-hired, sub-let, or lent to any third party without the written permission of the Owner.

17. CHANGE OF SITE

The Plant shall not be moved from the site to which it was delivered or consigned without the written permission of the Owner.

18. RETURN OF PLANT FOR REPAIRS

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. In that event the Owner shall be obliged to replace the Plant with similar Plant if available, the Owner (but without prejudice to any of the provisions of Clauses 9 and/or 13) paying all transport charges involved. In the event of the Owner being unable to replace the Plant he shall be entitled to terminate the Contract forthwith (but without prejudice to any of the provisions of Clauses 9 and/or 13) by giving written notice to the Hirer. If such termination occurs:

- within three months from the commencement of hire, the Owner (but without prejudice to any of the provisions of Clauses 9 and/or 13) shall pay all transport charges involved, or,
- more than three months from the commencement of hire, the Owner (but without prejudice to any of the provisions of Clauses 9 and/or 13) shall be liable only for the cost of reloading and return transport.

19. COMMENCEMENT AND TERMINATION OF HIRING

- Hire will commence on the date the Plant leaves the Owner's premises and will terminate on the day it is returned to the Owner's premises. The day of hiring and the day of return will be charged respectively as whole days. 24 hours notice of termination of hire must be given by the Hirer to the Owner in writing.
- The Owner shall not charge the Hirer any hire charges for any period for which an off-hire number has been obtained, but the Hirer shall still be responsible for such hire charges for those items if he is unable to provide the off-hire number to the Owner for that item of Plant. In the event that any item of Plant which is off-hired, is not made available for collection when the Owner attends the site to collect it, such Plant shall be deemed with immediate effect to be placed back on hire, and all hire charges shall be due in accordance with these conditions. The Hirer shall be responsible for the reasonable costs and expenses incurred by the Owner in seeking to collect such off-hired items.

20. TOOLS AND LEADS

Tools and leads are supplied to the Hirer in good condition. Tools damaged or used beyond re-sharpening and leads cut or damaged will be charged to the Hirer at current list prices.

21. PROTECTION OF OWNER'S RIGHTS

- The Hirer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Plant 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.
- If the Hirer make default in punctual payment of any sum due to the Owner for hire of Plant or other charges or shall fail to observe and perform the terms and conditions of this Contract, or if the Hirer shall suffer any distress or execution to be levied against him or make or propose to make any arrangement with his creditors or 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 or put into jeopardy, this Contract may forthwith be determined by notice from the Owner to the Hirer (notwithstanding that the Owner may have waived some previous default or matter of the same or a like nature). The Contract shall thereupon be deemed determined by reason of the Hirer's breach and it shall be lawful for the Owner to retake possession of the said Plant and for that purpose enter into or upon any premises where the same 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, and damages for the Hirer's actual or deemed breach of the Contract under this Clause.

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

22. MAXIMUM PERIOD OF HIRE FOR UNINCORPORATED BODIES

In accordance with the Consumer Credit Act, if the Hirer is a partnership, sole trader or other unincorporated body, then the contract of hire will not be more than three consecutive calendar months; and the Hirer shall return the Tools and Equipment to the Owner on or before the last day of the aforementioned three calendar month period.

23. ELECTRICAL EQUIPMENT

Where the Plant comprises electrical equipment in part or in whole the same should normally be used with plugs and/or sockets as fitted but if temporarily replaced with other suitable plugs or sockets, this must be carried out by a qualified electrician who must also reinstate to original condition. Under no circumstances should electrical Plant be used without it being correctly earthed unless it is of double insulated construction. Such electrical equipment must be connected by a qualified electrician to an adequate electrical supply of the correct voltage.

24. DETERMINATION OF HIRE

The Owner shall be entitled at any time and for any reason whatsoever, without explanation, to terminate this contract (such termination to be effective immediately) and to repossess the Plant or any part thereof. The Owner shall be entitled to enter upon the premises or site of the Hirer for the purpose of repossessing the Plant and the Hirer shall pay the cost of recovering and collecting the Plant.

25. PAYMENT TERMS

Unless a credit facility has been granted by the Owner to the Hirer, all hire charges are payable in advance and all other charges are due and payable immediately upon issue of invoice. The Hirer shall pay all sums due to the Owner under this Contract without any set-off, deduction, counter claim and/or any other withholding of monies. Prompt payment of the Owners invoices shall be of the essence and the Owner may terminate the hire in the event that the Hirer fails to comply with the owners payment terms. Payment shall not be deemed to be made until the Owners have received either cash or cleared funds in respect of the full amount outstanding.

26. RESPONSIBILITIES OF PERSON SIGNING

The person signing the contract warrants that he has authority of the Hirer to make this contract on the Hirer's behalf. The said person hereby indemnifies the Owner against all losses and costs that may be incurred by the Owner if this is not so. The said person hereby acknowledges that he has been instructed in the operation and use of the Plant. The said person and the Hirer jointly and severally hereby undertake to ensure that no one uses the Plant who is not properly instructed and shall not allow the Plant to be misused.

27. HIRE CHARGE CALCULATION

Where in the case of hiring by the day the Plant is used for more than eight hours a day or where in the case of a hiring by the week the Plant is used for more than 60 hours a week the Hirer shall pay to the Owner an extra hiring charge proportionate to the extra hours for which the Plant was used. The Owners standard minimum period of hire is 1 week for Plant & tools, 4 weeks for site accommodation and 2 weeks for portable toilets unless stated otherwise in a quotation or price proposal document or agreed by the Owner in writing.

28. ADVICE

If advice or information is sought from and given by any representative of the Owner, the Hirer understands and accepts that such advice or information is given in good faith and does not relieve or reduce the Hirer's requirement to make his own independent assessment as outlined above.

29. HOLIDAY PERIODS

It is the responsibility of the Hirer to ensure the safekeeping of all Plant hired which is not returned to the Owner before the start of any holiday period. The Plant will be deemed to be in use during the holiday period and will be charged in accordance with the terms of the Contract. For the avoidance of doubt, the Plant is deemed to be on-hire during public/bank holidays and the Hirer is responsible for its safekeeping.

30. SUSPENSIONS

All requests for the suspension of hire charges must be made seven days in advance to the Owners in writing. The Owners will confirm their agreement or otherwise in writing. No suspension allowance will be made unless confirmed in writing by the Owner. For the avoidance of doubt, the Plant is deemed to be on-hire during weekends, public/bank holidays or other holiday periods and the Hirer is responsible for its safekeeping. Alternatively, the Owners may agree to charge an agreed weekly surcharge for an all-inclusive rate but this must be confirmed in writing by the Owner at the commencement of the hire.

31. AVAILABILITY

Plant is offered for hire subject to availability at the time of order. The Owner will not be liable for any loss as a result of the Equipment being unavailable for hire.

32. INSURANCE

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

33. FUEL

All mechanical Plant is supplied with a full tank of fuel at commencement of hire. Upon termination of hire, we will top up the tank and any difference will be charged at the prevailing Owners rate per litre.

34. INVOICE QUERIES

All invoice queries must be notified in writing to Head Office within 21 days of invoice date.

35. HIRE CHARGE ALTERATIONS

The Owner shall be entitled to revise or increase the hire rate for any item of Plant by giving seven days written notice to the Hirer's address as detailed in the Contract.

36. VAT

All prices shown on delivery or advice notes exclude VAT.

37. HEADINGS

The headings used in these Conditions of Hire are for convenience only and shall not affect the construction thereof.

38. SEPARATE TERM VALIDITY

In the event that any clause (or part thereof) of these conditions is held to be unlawful, unenforceable or invalid by any court or other competent body, this shall not in any way affect the validity of the remainder of such clause and the remainder of the other clauses in these conditions.

39. JURISDICTION

If the original site is in England or Wales, the proper law of the Contract shall be English law. If the original site is in Scotland, the Contract shall in all respects be construed and operated as a Scottish contract, and shall be interpreted in accordance with Scots law. If the original site is in Northern Ireland, the proper law of the Contract shall be Northern Ireland law.