

J H Kemp Limited

Terms and Conditions of Trade (Plant Hire Services Plant Hire)

- 1. Interpretation**
 - 1.1 In these Conditions, the definitions in schedule 1 shall apply.
 - 1.2 In these Conditions, the following rules apply:
 - 1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
 - 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
 - 1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
 - 1.2.4 The terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
 - 1.2.5 A reference to writing or written includes faxes and e-mails.
- 2. Information about us**
 - 2.1 We are J H Kemp Limited, a company registered in England and Wales under company number 03924219 and with our registered office at c/o Michael Kay & Company, 2 Water Court, Birmingham, B3 1HP. Our main trading address is Unit 44-50 Plume Street, Aston, Birmingham, B6 7RT. Our VAT number is 753782208.
- 3. How the Agreement is formed between you and us**
 - 3.1 You appoint us to provide plant hire services, which may include the services described in these Conditions and which are more particularly described in the Hire Particulars ('the Hire Services').
 - 3.2 You are a hirer of the Plant from the date that you and we agree ('the Service Commencement Date') until your rights are terminated under these Conditions. The Agreement between us will only be formed when (i) you sign these Conditions or (ii) you accept delivery of the Plant at your Site or (iii) you or your agents collect the Plant from our Depot.
 - 3.3 The Agreement will relate only to the Services which we agree to perform as detailed in the Hire Particulars. We will not be obliged to supply any other services.
 - 3.4 We can sub-contract any and all of our obligations to other people.
- 4. Unloading/loading**
 - 4.1 Where Plant is delivered by us to the Site, or collected by us from the Site, you shall ensure that we have free and unobstructed access to the Site for such purpose. Where we are unable to effect delivery of the Plant because the Site is obstructed or we are otherwise unable to gain access at the agreed time of delivery, we reserve the right to charge a reasonable fee for the cost of such failed delivery.
 - 4.2 Where your Personnel participate in the loading or unloading of the Plant, they will be deemed to act at your direction and under your control. Subject to clause 26, you shall be responsible for any claims arising in connection with the unloading or loading of the Plant by you and/or your Personnel.
- 5. Condition of Plant**
 - 5.1 Subject to clause 5.2, where Plant is supplied with an Operator, the Plant will be deemed to be in good working order unless within 2 working days of delivery (day one being the working day immediately following delivery or if applicable erection of the Plant by us) you have given us written notification stating the problems with the Plant. Where Plant is supplied without an Operator, the Plant will be deemed to be in good working order unless within 3 working days of delivery (day one being the working day immediately following delivery or if applicable erection of the Plant by us) you have given us written notification stating the problems with the Plant.
 - 5.2 Clause 5.1 shall not apply to defects which are inherent or not easily identified on reasonable examination of the Plant.
- 6. Taking good care of the Plant and breakdowns**
 - 6.1 Where the Plant is hired without an Operator, you shall be responsible for:
 - 6.1.1 using the Plant in a safe workmanlike manner;
 - 6.1.2 using the Plant only for its intended purpose and within the manufacturers working capacity;
 - 6.1.3 taking all reasonable care in the operation and use of the Plant so as to avoid the Plant being damaged (save for normal wear and tear).
 - 6.2 In all cases, you shall be responsible for:
 - 6.2.1 taking all reasonable steps to prevent the Plant from being damaged or stolen;
 - 6.2.2 the return of the Plant to us in the same condition (save for normal wear and tear) as it was hired to you;
 - 6.2.3 any adverse consequences of any instructions given to any Operator.
 - 6.3 If the Plant develops a fault which makes it unsafe to operate, and/or which will result in avoidable damage to the Plant if it continues to be used, you (unless we have supplied an Operator) must tell us immediately so that we can arrange for the Plant to be repaired. Any claim for a Credit on account of a Breakdown will only be considered from the time and date that we are notified of the relevant Breakdown.
 - 6.4 You shall at all reasonable times allow us (including our appointed contractors or insurers) access to the Plant for the purpose of carrying out an inspection, test, repair or adjustment, or for the purpose of removing the Plant from Site in order to undertake the same.
 - 6.5 Save as otherwise provided, you shall not repair the Plant without our prior written authority. You shall be responsible for the repair of any tyre and the repair of punctures using only a reputable third party repairer and without awaiting our authorisation.
- 6.6 Where we are notified of a Breakdown which we reasonable conclude is not due to any mistreatment or use of the Plant during the Hire period (a 'Refundable Breakdown'), we will credit to your account:
 - 6.6.1 an amount equal to the hire charges for the period commencing from the valid notice of Breakdown to the time that the Plant is returned to substantial working order; and
 - 6.6.2 the reasonable cost of repairs incurred by you which we have authorised you to incur.
- 6.7 Where any breakdown is in our reasonable opinion the result of mistreatment or mis-use of the Plant (including but not limited to a failure by you or your Personnel to fulfill your obligations in clause 6.1 and 6.2) you shall be responsible for:
 - 6.7.1 all expenses arising from the breakdown and all loss or damage which you suffer or incur as a consequence;
 - 6.7.2 the continuing cost of hire during the period of breakdown up to the end of the intended Hire Period;
 - 6.7.3 the cost of all necessary repairs.
- 7. Other stoppages**
 - 7.1 Save as otherwise provided, you will not be entitled to any refund in relation to any periods of Hire which the Plant is unavailable for use, including bad weather, repairs for which you are responsible and poor ground conditions.
- 8. Ground Conditions**
 - 8.1 You must notify us in advance if the ground conditions on Site will make it difficult to effect delivery, unloading, operation and/or erection of the Plant.
 - 8.2 Any timbers or other material supplied by us with lifting equipment for use for example with outriggers/stabilisers is provided solely to assist you and you must exercise your own skill and judgement to determine whether such items are suitable for the intended use.
 - 8.3 We will not be responsible for the recovery of Plant from soft ground. If we become aware that Plant is stranded in soft ground and we ask you to recover the same and you fail to do so in a reasonable period of time (being not more than 48 hours), we may arrange for such recovery and you will be liable for the cost that we incur in doing so.
- 9. Operators**
 - 9.1 Any Operator supplied by us will be competent to operate the same for the purpose for which the Plant has been hired, as notified by you to us in writing either in the Hire Particulars or otherwise.
 - 9.2 Where the Plant is hired to you without an Operator, you must notify us in writing of who the Operator will be, and represent and warrant to us that the named Operator (and any replacement Operator) is competent, and where applicable holds a current valid licence or other qualification, to do so.
 - 9.3 The Operator will (subject to clause 26) be deemed to be your servant and/or agent for whose acts and omissions (whether negligent or otherwise) you will be responsible for. You shall (subject to clause 26) be responsible for all claims arising in connection with the operation of the Plant by the Operator.
 - 9.4 You shall not permit any person other than the Operator to operate the Plant unless we have consented in writing to another named individual operating the machine. Such consent given by us shall in no way constitute an endorsement of the replacement Operator's competence to operate the Plant.
- 10. Charge and Payment**
 - 10.1 Our Charges for the Services will be payable by you and will be notified to you from time to time.
 - 10.2 At our discretion, we may invoice you at any time after commencement of the Services.
 - 10.3 You shall pay the invoice in full and in cleared funds in accordance with these Conditions. Payment shall be made to the bank account nominated in writing by us. Time of payment is of the essence.
 - 10.4 Save as otherwise provided, you will pay all amounts due under the Agreement in full without any deduction or withholding except as required by law and you will not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may at any time, without limiting any other rights or remedies we may have, set off, against any monies owing by us to you, any amount owing by you to us.
 - 10.5 In the event of a dispute arising in relation to an invoice, you will ensure that during the period of dispute unrelated invoices are paid on or before their date and you will only be entitled to withhold payment in respect of invoiced amounts in dispute. You must notify us in writing of any such disputed amount prior to the date on which it becomes due and payable and in any event not later than 10 Business Days after the relevant invoice date. We and you will attempt to resolve the dispute within 20 Business Days of you duly notifying us of the dispute in accordance with this clause. In the absence of any such resolution, either you or we (with the approval of the other) can ask that an expert determine the matter. If you and we cannot agree on an expert, The President of the Institute of Chartered Accountants can be asked by either you or us to appoint an expert. The fees of any such expert shall be shared between you and us equally or otherwise as the expert may determine is fair taking into account the conduct of each party.
 - 10.6 If you fail to make any undisputed payment on the due date then, without prejudice to any other right or remedy available to us, we will

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	be entitled to suspend the provision of Services to you. In doing so, we shall be entitled to charge you for such additional costs that we may incur as a result of suspending the provisions of the Services including any other additional costs as may reasonably be incurred including the collection and re-delivery of Plant.				acts of parliament, and other laws relating to the use, operation, storage and transportation of the Plant.
10.7	You acknowledge that our Charges are based on the scope of services (including any time scales for the provision of the Services, approximate or otherwise) as set out in the Hire Particulars. Any variation to the Hire Particulars will accordingly result in additional Charges.				
11.	Calculation of Hire Charges				
11.1	Plant shall be hired out either:				
11.1.1	for a stated minimum number of hours, days or weeks;				
11.1.2	without any qualifications as to minimum time;				
11.1.3	on such other basis as may be set out in the Hire Particulars.				
11.2	Part days at the beginning and at the end of the Hire Period shall be charged pro rata.				
11.3	Where the Plant is hired without an Operator, at the beginning of each week, you shall render to us for the previous week a statement of the number of hours the Plant has worked each day. Where the Plant is hired with an Operator, you shall sign the Operator's Time Record by way of confirmation that the information contained therein is correct.				
11.4	A credit (a 'Credit') against our Charges will be provided:				
11.4.1	in relation to a Refundable Breakdown;				
11.4.2	where the Plant is supplied with an Operator, any period of absenteeism of the Operator during Normal Working Hours.				
11.5	The Credit to which you are entitled under clause 11.4 shall be an amount equal to the charges that would have otherwise applied on a pro rata basis:				
11.5.1	from the time of you notify us of the Breakdown to the time that the Plant is put back into a substantially usable condition; and/or				
11.5.2	from the time that the Operator should have been on Site to the time an Operator arrives on Site.				
11.6	Stoppages due to changing of tyres and repairs to punctures will be chargeable as working time.				
11.7	In the case of the Plant which requires to be assembled on Site and dismantled after use, we may agree a special rate for the first and last day of hire which shall be set out in the Hire Particulars.				
11.8	Each item of Plant, hired under this Agreement is hired, unless otherwise expressly stated, as a separate unit and the breakdown or stoppage of one item of Plant shall not entitle you to compensation or allowance for the loss of working time by any other unit or units of Plant. Where two or more items of Plant are expressly hired together as two interdependent items, such items shall be treated as a single unit for the purpose of any term of this Agreement relating to breakdown.				
12.	Daily charges (no hours restriction)				
12.1	(Subject to any Credit) the daily rate will be charged each day no matter how many hours the Plant is in use. Hire charges will not apply for Saturday or Sunday unless the Plant is operated or unless otherwise stated in the Hire Particulars.				
13.	Weekly or monthly hire (no hours restriction)				
13.1	(Subject to any Credit) the weekly or monthly rate shall be charged no matter how many hours the Plant is in use.				
14.	Plant Hired by the hour (minimum of 39 hours per week)				
15.	(Subject to any Credit) We will charge an hourly rate but subject to a minimum charge for 39 hours per week.				
16.	All Inclusive				
16.1	We may agree with you an all inclusive rate which shall be set out in the Hire Particulars.				
17.	The Hire Period (and transport)				
17.1	Save as otherwise provided, the period of hire ('the Hire Period') shall begin from the time when the Plant leaves the Depot or the place where the Plant was last used and shall (subject to clause 17.2) continue until the end date specified in the Hire Particulars (or as otherwise brought to an end under this agreement). The Plant is received back at the Depot or at another agreed location. All rates will take into account the idle time in transporting and where necessary assembling the Plant.				
17.2	Where Breakdowns occur during the period of hire, the time of hire will be deemed to be suspended unless it is one for which you are responsible under clause 6.7 in which event the period of hire will not be suspended.				
18.	Ending the Hire Period (for indefinite hire periods)				
18.1	Where the period of hire is, or during the course of the Agreement becomes, indefinite, the Agreement may be terminated (and the Hire Period brought to an end) by either party giving to the other not less than 5 Business Days written notice. Notice given orally shall not be sufficient.				
19.	Other costs				
19.1	You will be liable for:				
19.2	the hourly charges (as specified in the Hire Particulars) for each Operator supplied by us to operate the Plant;				
19.3	any consumables we supply including fuel, oil and other lubricants at an estimated net cost;				
19.4	the cost of transporting the Plant between locations and which are not provided for in the Hire Particulars.				
20.	Compliance				
20.1	You will ensure that you comply in all respects with all regulations,				
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- upon the basis of such amended terms.
- 26. Our liability and your responsibility to insure (IMPORTANT)**
- 26.1 This clause 26 sets out your sole and exclusive remedies, and the entire financial liability of us and our, in respect of:
- 26.1.1 the performance, non-performance or purported performance of this Agreement;
- 26.1.2 the Services provided under or in connection with this Agreement;
- 26.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement; and
- 26.1.4 under any other legal obligation whatsoever.
- 26.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 26.3 Nothing in this agreement limits or excludes the liability of us (or our Personnel):
- 26.3.1 for death or personal injury resulting from negligence (as defined in the Contract Terms Act 1977); or
- 26.3.2 for any damage or liability incurred by you or your Personnel as a result of fraud or fraudulent misrepresentation by us or our Personnel; or
- 26.3.3 for any matter which it would be illegal for the Supplier to exclude or attempt to exclude its liability.
- 26.4 The Supplier does not exclude (but the avoidance of doubt does limit) liability for any fundamental misrepresentation, including misrepresentation as to a matter fundamental to its ability to perform its obligations under this Agreement.
- 26.5 Only you know the full purpose for which the Plant is being hired and will be used, and the Personnel who will have access to the Plant whilst on hire and whether they are properly trained and (where applicable) licenced to use the same. Accordingly you agree to:
- 26.5.1 insure for all risks to do with the operation of the Plant and;
- 26.5.2 to waive all rights against us and our Personnel to claim for damages caused by any risks for which you are insured.
- 26.6 Subject to clause 26.3, our liability for losses that you suffer as a result of our breach of the Agreement, in negligence or otherwise in connection with the Services will be subject to a maximum amount equal to the sum of £5,000,000 (Five Million Pounds).
- 26.7 Subject to clause 26.3, we will not be liable for losses that you suffer as a result of our breach of the Agreement (in negligence or otherwise in connection with the Services or services) that fall into the following categories:
- 26.7.1 loss of income or revenue;
- 26.7.2 loss of business;
- 26.7.3 disruption to the carrying on of business at the Site or elsewhere;
- 26.7.4 loss of profits;
- 26.7.5 loss of anticipated savings;
- 26.7.6 loss of data; or
- 26.7.7 waste of management or office time.
- 26.8 We are not liable for any loss or damage arising from:
- 26.8.1 Force Majeure;
- 26.8.2 your errors, acts, omissions, misstatements or misrepresentations or any breach by you of your obligations under this Agreement;
- 26.8.3 wastage, defect, or deterioration of any Item.
- 26.9 You acknowledge that the exclusions and limitations in this paragraph are reasonable in all the circumstances.
- 27. Time limits for claims and claims procedure**
- 27.1 We will not be liable for any claim by you under the Agreement unless you give us written notice of your claim within 20 Business Days of the end of the Hire Period.
- 28. Termination**
- 28.1 If you do not comply with your obligations under this Agreement, and having been given a reasonable opportunity to rectify any breach fail to do so, we may terminate this Agreement and you will immediately pay to us the full amount of the Charges and immediately return to our Depot or (at our discretion) make available for collection the Plant and Equipment. In particular, without limitation, we shall be entitled to claim:
- 28.1.1 the Charges outstanding as at the date of determination of the hire under this clause;
- 28.1.2 the Charges that would have otherwise been payable to the end of the Hire Period;
- 28.1.3 the return transport charges;
- 28.1.4 damages for the Hirer's actual or deemed breach of the Contract under this Clause.
- 28.2 If non-performance of any obligation under the Agreement caused by any Force Majeure shall continue for more than six weeks then you or we may terminate this Agreement immediately by giving notice in writing to the other. In which event, you will be liable to pay to us the Charges for the period of hire (where appropriate on a pro rata basis).
- 29. Time not of the essence**
- 29.1 We will undertake to supply to you the Plant and (if included in the Hire Particulars) any Operators as far as we are able in accordance with any specific time scales notified to you or agreed, and otherwise within a reasonable period of time. However there will always be factors outside our control which effect the speed with which we can undertake the Services and for that reason time for performance shall not be of the essence. If our Services are suspended under these
- Conditions, the time scales agreed or notified to you relating to the performance of the Services shall be adjusted as may be reasonably necessary as a result of such suspension.
- 30. Written communications**
- 30.1 For contractual purposes, you agree to electronic means of communication and you acknowledge that all Agreements, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing. This condition does not affect your statutory rights.
- 31. Notices**
- 31.1 All notices given by you to us must be given to J H Kemp Limited at info@jhkemp.co.uk or to Unit 44-50 Plume Street, Aston, Birmingham, B6 7RT. We may give notice to you at either the e-mail or postal address you provide to us when placing an order. Notice will be deemed received and properly served 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.
- 32. Transfer of rights and obligations**
- 32.1 The Agreement between you and us is binding on you and us and on our respective successors and assignees.
- 32.2 You may not transfer, assign, charge or otherwise dispose of this Agreement, or any of your rights or obligations arising under it, without our prior written consent.
- 32.3 We may transfer, assign, charge, sub-contract or otherwise dispose of this Agreement, or any of our rights or obligations arising under it, at any time during the term of the Agreement.
- 33. Events outside our control**
- 33.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Agreement that is caused by a Force Majeure Event.
- 33.2 Our performance under the Agreement is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Agreement may be performed despite the Force Majeure Event.
- 34. Waiver**
- 34.1 If we fail, at any time during the term of the Agreement, to insist upon strict performance of any of your obligations under the Agreement, or if we fail to exercise any of the rights or remedies to which we are entitled under the Agreement, this will not constitute a waiver of such rights or remedies and will not relieve you from compliance with such obligations.
- 34.2 A waiver by us of any default will not constitute a waiver of any subsequent default.
- 34.3 No waiver by us of any of the terms and conditions of this Agreement will be effective unless it is expressly stated to be a waiver and is communicated to you in writing in accordance with paragraph 31 above.
- 35. Severability**
- 35.1 If any of the terms and conditions of the Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.
- 36. Entire agreement**
- 36.1 These terms and conditions and any document expressly referred to in them constitute the whole agreement between us and you and supersede all previous discussions, correspondence, negotiations, previous arrangement, understanding or agreement between us and you relating to the subject matter of any Agreement.
- 36.2 We each acknowledge that, in entering into this Agreement, neither of us relies on, or will have any remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in these terms and conditions or the documents referred to in them.
- 36.3 Each of us agrees that our only liability in respect of representations and warranties (whether made innocently or negligently) will be for breach of the Agreement.
- 36.4 Nothing in this clause limits or excludes any liability for fraud.
- 37. Our right to vary these terms and conditions**
- 37.1 We have the right to revise and amend these terms and conditions from time to time to reflect changes in market conditions affecting our business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in our system's capabilities.
- 38. Our relationship**
- 38.1 You and us are not partners, joint venturers, employers, employees or, save as provided otherwise.
- 39. Law and jurisdiction**
- 39.1 This Agreement for the purchase of hire services and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) will be governed by English law. Any dispute or claim arising out of or in

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connection with the Agreement or their formation (including non-contractual disputes or claims) will be subject to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1 – Interpretation

Agreement:	the agreement between us and you for the sale and purchase of Services, in accordance with these Conditions;
Breakdown:	
Business Day:	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
Charge:	the charges for the Service details of which are set out in the Hire Particulars or otherwise agreed in writing by you, plus VAT;
Depot:	means Unit 44-50 Plume Street, Aston, Birmingham, B6 7RT;
Conditions:	the terms and conditions set out in this document as amended from time to time including any special conditions agreed between you and us;
Force Majeure:	any event beyond our reasonable control including (without limit) acts of god, adverse weather conditions, fire, flood or any other natural disaster, interruption or failure of utility services including but not limited to electric power, gas or water, road traffic accident, traffic immobilisation, war, invasion, foreign enemy, hostilities, terrorism, civil commotion, revolution, rebellion, riot, insurrection, forfeiture under legal process, industrial action, strike, lockout, stoppage or restraint of labour from whatever cause;
Hire Particulars:	means a document which accompanies these Conditions detailing the scope of the Plant Hire Services to be provided by us to you;
Hire Period:	has the meaning set out in clause 17;
Hire Services:	has the meaning set out in clause 3.1;
Normal Working Hours:	means 8 hours per day Monday to Thursday and not more than 7 hours on Friday;
Operator:	means a person engaged to drive/operate the Plant;
Personnel:	all employees, staff, other workers, agents, contractors and consultants;
Plant:	means the plant, machinery, equipment and other accessories that you have asked us to hire to you in accordance with the Hire Particulars and these Conditions;
Refundable Breakdown:	has the meaning set out in clause 6.6;
Service Commencement Date:	has the meaning set out in clause 3.2;
Services:	means the services provide by us to you under our Agreement and these Conditions including the Hire Services;
Site:	means the construction site where the Plant is to located during its period of hire;
VAT:	Value Added Tax chargeable under English law for the time being and any similar additional tax;
Valid Notification:	[[[
'we' 'us' and 'our':	means JH Kemps Limited (crn 03924219);
'you' and 'your':	the individual, company, partnership or similar business organisation whose details appear on the Hire Particulars as our customer or who is otherwise a party to whom we provide the Services;