

KDC Paving and Landscapes: Terms and Conditions for Hiring of Plant

IMPORTANT SAFETY WARNING Before using any Plant and Equipment provided by us, we would draw your attention to the following points:

A You must ensure that all users of the Plant and Equipment, in particular electrical equipment, have been instructed in its safe use and operation and that such use is in accordance with any relevant operating and safety instructions supplied with the Plant and Equipment.

B You must ensure that all electrical equipment is connected to the correct supply via suitable plugs or sockets. Where a temporary change in electrical plugs or sockets is required, this must be carried out by a qualified electrician who must also reinstate the Plant and Equipment to its original condition. You must ensure that all electrical equipment is correctly earthed and insulated.

C You must ensure that all liquid fuels and compressed gases supplied for use with the Plant and Equipment are transported, stored and used in a safe manner in accordance with any safety instructions supplied, or as instructed by us.

D WE WILL PROVIDE YOU WITH SAFETY AND OPERATING INSTRUCTIONS FOR SAFE USE OF THE PLANT AND EQUIPMENT. YOU MUST ONLY OPERATE THE PLANT AND EQUIPMENT IN ACCORDANCE WITH THE OPERATING AND SAFETY INSTRUCTIONS SUPPLIED WITH IT OR ANY OTHER SAFETY INSTRUCTION GIVEN TO YOU BY US. IF YOU DO NOT UNDERSTAND ANY PART OF THE RELEVANT OPERATING AND SAFETY INSTRUCTIONS YOU MUST SEEK ASSISTANCE FROM A SUITABLY QUALIFIED PERSON OR US BEFORE USING THE PLANT AND EQUIPMENT. WE WILL NOT ACCEPT ANY RESPONSIBILITY FOR ANY DAMAGE AND/ OR INJURY CAUSED BY YOUR FAILURE TO COMPLY WITH OPERATING AND SAFETY INSTRUCTIONS SUPPLIED TO YOU. IT IS YOUR RESPONSIBILITY TO ENSURE THAT YOU ARE FULLY COVERED BY INSURANCE FOR ANY RISKS INVOLVED IN THE USE OF THE PLANT AND EQUIPMENT, SUCH AS PERSONAL INJURY OR DEATH TO USERS OF THE PLANT AND EQUIPMENT OR OTHER PERSONS.

E THIS SAFETY WARNING IS NOT IN ANY WAY INTENDED TO EXCLUDE OR LIMIT OUR LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE, BREACH OF CONTRACT OR OTHER DEFAULT.

1 DEFINITIONS In this Hire Agreement (the "Agreement"),

1.1 "Hire Charges" means the charges including the hire charges, delivery fee, Waiver Fee and other fees (as applicable) charged to you by us in respect of the hire of the Plant and Equipment.

1.2 "Outstanding Balance" means all amounts payable under this Agreement less the amount paid.

1.3 "Plant and Equipment" means the plant and equipment hired to you by us including any substitutions, replacements and additions made in accordance with the terms of this Agreement and any manuals, accessories or other item supplied with the Plant and Equipment.

1.4 "Site" means the location where you intend to use the Plant and Equipment.

1.5 "you", "your" means the hirer (or hirers) of the Plant and Equipment.

1.6 "Waiver Fee" means the fee to be paid by you in accordance with clause 5.2 , if applicable.

1.7 "we", "us", "our" - means the owner of the Plant and Equipment, its successors, its employees and agents, and any business or other person to whom the owner transfers (by absolute assignment, by way of novation or by way of security) any or all of its rights or its rights and responsibilities (whether legal or equitable) under the Agreement.

2 MAXIMUM PERIOD OF HIRE The term of this Agreement will not exceed three calendar months.

3 LIABILITY

3.1 If either you or we are in breach of any term of this Agreement, neither of us will be responsible for any losses that the other suffers as a result of such breach except losses which are a foreseeable consequence of the breach. **4.2** You have agreed to hire the Plant and Equipment for domestic and non-commercial purposes only. In the circumstances, if we are in breach of this Agreement we will not be liable to you for any claim relating to business expenses or losses, including but not limited to claims for loss of profit.

3.3 We will not accept any responsibility for any damage and/or injury caused by your failure to comply with operating and safety instructions supplied to you. It is your responsibility to ensure that you are fully covered by insurance for any risks involved in the use of the Plant and Equipment, such as personal injury or death to users of the Plant and Equipment or other persons. This clause does not exclude or limit our liability for death or personal injury caused by our negligence, breach of contract or other default.

3.4 If a third party makes a claim against us in relation to any loss or damage caused by the Plant and Equipment as a result of your breach of any term of this Agreement, you will indemnify us in full for all costs and/or losses suffered by us as result thereof including but not limited to payment of compensation (including interest where applicable) to the third party, our reasonable legal and other fees incurred as a result of any legal action resulting from the claim. You will not be responsible for such a claim to the extent that the loss or damage results from our negligence or breach of contract.

3.5 Subject to clause 4.7, our liability is limited as follows: Our liability for loss, destruction or damage to goods or property is limited to a total of £1 million whether due to our breach of contract, negligence or otherwise.

3.6 If you think that there is a possibility that goods or property could be damaged which have a value of more than the limit set out in clause 4.5, then you must notify us in writing before the Plant and Equipment is delivered to the Site. On receipt of such notification, we may choose to make additional coverage available and this will involve an increase in the Hire Charges. You will not be able to claim more than the amount set out in clause 4.5 if:

3.6.1 - you do not notify us that the damage could exceed the above limit;

3.6.2 - we choose not to have additional coverage made available;

3.6.3 - you do not agree to meet the extra charge for additional coverage; or

3.6.4 - the additional coverage fails for some reason that is not our fault. This will be so, even where we are at fault, except where your claim is for death or personal injury, as mentioned in paragraph 4.7 below.

3.7 The limit set out in paragraph 4.5 does not apply to claims for death or personal injury caused by our negligence. There is no limit on the amount of our liability for such claims.

4 LOSS, THEFT OF, OR DAMAGE TO THE PLANT AND EQUIPMENT

4.1 Subject to clause 5.3 below, if the Plant and Equipment is lost, damaged, destroyed or stolen whilst in your care, you will be liable for the full cost of repairing or replacing the Plant and Equipment.

4.2 We may take out insurance to cover the risk to our Plant and Equipment. If we do so and you pay the Waiver Fee, we will not pursue you for the costs of repairing or replacing the Plant and Equipment, but only to the extent that such costs are reimbursed to us by our insurers. You will still be liable to us, however, to the extent that the insurers do not reimburse us for the loss or damage. You must take reasonable care of the Plant and Equipment whilst it is in your custody, even if the Waiver Fee has been paid.

4.3 You will not be liable to pay us for any damage caused to the Plant and Equipment arising from any defect in the Plant and Equipment which was not apparent when it was hired to you. You will not be liable for any loss or theft of the Plant and Equipment resulting from a fault in the Plant and Equipment's security system which occurred before you took delivery of the Plant and Equipment. You must notify us immediately if there is a fault with the Plant and Equipment's security system, including but not limited to faulty locks or other security devices.

4.4 Where the Plant and Equipment or any part of it is lost, stolen, damaged or destroyed you must notify us immediately in order that we can notify our insurers. If the insurers refuse to pay us because of a delay in notification by you, you will be liable to us for what would have been recovered from the insurers if you had complied with this clause. You must provide our insurers and us with all reasonable assistance when so requested.

4.5 You must notify the police immediately if the Plant and Equipment, or any part of it, is stolen or has been criminally damaged.

5 DAMAGE TO SITE AND/OR ACCESS DURING DELIVERY AND COLLECTION

5.1 You acknowledge that the Plant and Equipment you have chosen to hire may cause superficial damage to the ground, particularly in wet weather (for example, ruts may be created or paving stones may be cracked). You further acknowledge that the Plant and Equipment may also cause damage to underground services such as drains and sewers. If you have chosen to have the Plant and Equipment delivered to you, our delivery driver will do his best to limit any such damage, but we cannot be held responsible for any damage of this sort. You are responsible for making good any damage caused to your property or adjoining land in obtaining access.

5.2 If you are particularly concerned to avoid superficial damage to the ground you must let us know as soon as possible. We may be able to provide extra protection, although there will be an additional cost in doing so, which we will pass on to you.

6 DELIVERY IN GOOD ORDER

6.1 We will ensure that the Plant and Equipment hired to you is in good working order and fit for the purpose for which the Plant and Equipment of that kind is normally used.

6.2 You must check the Plant and Equipment when it is provided to you and immediately notify us of any obvious faults or defects.

7 SAFETY

7.1 You warrant that you will use the Plant and Equipment in accordance with the safety warning at the beginning of this Agreement.

7.2 You must read any relevant operating and safety instructions supplied with the Plant and Equipment and you must only use (or permit the use of) the Plant and Equipment in accordance with the operating and safety instructions supplied with it or any other safety instruction given to you by us. If you do not understand any part of the relevant operating and safety instructions you must seek assistance from a suitably qualified person or us before using the Plant and Equipment.

7.3 You must also take your own sensible safety precautions (for example, you must take all reasonable measures to prevent children from playing on or near the Plant and Equipment at all times).

7.4 You must ensure that the Site itself is safe.

8 TRANSPORTATION, LOADING AND UNLOADING

8.1 If you would like us to deliver and collect the Plant and Equipment, we will provide this service at a reasonable cost, which we will confirm to you prior to the hire.

8.2 Unless we have agreed to deliver and collect the Plant and Equipment, you are responsible for collecting it from our premises, and for delivering it back to our premises.

8.3 Where you transport the Plant and Equipment yourself, you are responsible for loading at the time of collection from our premises and for unloading at the time of delivering it back to our premises.

8.4 If one of our employees helps you in the loading or unloading of the Plant and Equipment you must tell him what you want him to do and how you want him to help. If the Plant and Equipment is damaged, or causes damage, whilst being loaded or unloaded, you will be responsible for the damage unless the damage is caused by our employee's negligence.

9 UNAUTHORISED CHANGE OF SITE The Plant and Equipment must only be used at the Site. If you want to use the Plant and Equipment at any other place you must first get from us written confirmation that we allow you to do so.

10 UNAUTHORISED RE-HIRING OF EQUIPMENT You must not re-hire, sublet, or lend any of the Plant and Equipment to any third party or otherwise part with possession of the Plant and Equipment.

11 CONDITION OF EQUIPMENT

11.1 You must check the state and condition of the Plant and Equipment at reasonable intervals during the period of hire to ensure that it remains safe, serviceable and clean. We will not check the Plant and Equipment during the period of hire unless you bring it back to us and ask us to do so.

11.2 You must not use (or permit the use of) the Plant and Equipment for any purpose beyond its capacity or in a manner likely to result in excessive wear.

11.3 Other than arranging for the changing of plugs and sockets (if necessary) to be carried out by a qualified electrician you must not make any alterations or modifications to the Plant and Equipment.

12 FITTING OF ACCESSORIES

12.1 If the Plant and Equipment requires the fitting or re-fitting of any accessories (such as drills, wheels, discs, and blades etc), it is your responsibility to ensure that any such accessory is correctly fitted or re-fitted in accordance with any relevant operating and safety instructions that you are given.

12.2 If any injury or damage to persons or property or to the Plant and Equipment arises because you have incorrectly fitted or re-fitted any accessory, you will be responsible for that injury or damage (unless we have been negligent in any way). The only exception to this is where the injury/damage occurs as a result of a fault or defect in the Plant and Equipment, which you were not aware of.

13 ACCESS BY US FOR SERVICING AND INSPECTION AND RECOVERY OF EQUIPMENT You undertake that you will allow us to have access to your premises at any reasonable time to enable us to inspect, test, adjust, repair, or replace the Plant and Equipment as necessary while it is in your possession or to recover the Plant and Equipment if you fail to return the Plant and Equipment to us on termination of this Agreement.

14 FAULTS, DEFECTS OR BREAKDOWN OF PLANT AND EQUIPMENT

14.1 You must immediately notify us if the Plant and Equipment breaks down or suffers a fault or defect such that it is inoperable or unsafe to use.

14.2 The Plant and Equipment must be returned to us as soon as possible and in any event within the time agreed with us when you notify us of the problem. On return of the Plant and Equipment we will use our best endeavours to repair it or exchange it.

14.3 We will not charge you for the hire of the Plant and Equipment during the period that it is broken down. It is therefore important that you notify us as soon as the breakdown occurs.

14.4 In the case of wheeled Plant and Equipment, you will be responsible for repairing any punctures that occur and/or replacing any tyre damaged (fair wear and tear excepted) while the Plant and Equipment is in your possession. No refund of Hire Charges will be made by us in respect of stoppages caused by punctures or tyre damage occurring during the period of hire.

14.5 Except for the repair of punctures, you must not repair or attempt to repair the Plant and Equipment unless authorised to do so by us.

14.6 Where the Plant and Equipment has broken down or is faulty or defective and is not readily repairable, we will substitute it with plant and equipment of a similar type. If no suitable substitute is available immediately, we will suggest alternative dates when you can hire the substitute plant and equipment. If the suggested replacement or the suggested alternative dates are not satisfactory to you, you can terminate the hire and claim for a refund for the period during which you could not make use of the Plant and Equipment.

15 NOTIFICATION OF ACCIDENTS You must notify us immediately if there is any accident involving the Plant and Equipment which results in damage to the Plant and Equipment or to other property or injury to or the death of any person.

16 TERMINATION OF HIRE

16.1 You can bring this Agreement to an end at any time by returning the Plant and Equipment to us in accordance with clause 18 below and paying the Outstanding Balance.

16.2 If you breach any term of this Agreement, we may terminate this Agreement and require the immediate return of the Plant and Equipment to us. You undertake to return the Plant and Equipment to us upon termination of this Agreement. We will not ask you to return the Plant and Equipment before the end of the minimum or fixed period unless you are in default.

16.3 At the end of the minimum or fixed period agreed between the parties you must return the Plant and Equipment to us in accordance with clause 18 below. If you wish to extend the period of hire, you must contact us before the minimum or fixed period expires. We may agree an extension, up to a maximum of three months including the original minimum or fixed period of hire.

17 RETURN OF PLANT AND EQUIPMENT

17.1 You must return the Plant and Equipment to us in the same condition as when we supplied it to you although you will not be responsible for reasonable wear and tear which may occur during the period of hire.

17.2 You must clean the Plant and Equipment before you return it to us. If you have not made a reasonable attempt to clean it, you will be responsible for our reasonable costs for cleaning and restoration of the Plant and Equipment to enable it to be hired to someone else in a fit and proper condition.

18 PAYMENT

18.1 The Plant and Equipment can be hired by the day, for the weekend, by the working week, by the week or by the month. If you do not return the Plant and Equipment to us by the times set out below then we will be entitled to charge you for an additional day's (or days') hire. The latest times, by which the Plant and Equipment must be returned, unless we are collecting it, are as follows: Plant and Equipment hired for a day Must be returned within 24 hours Plant and Equipment hired for a weekend Must be returned by 8.30 am on Monday Plant and Equipment hired for a working week Must be returned by 3.30pm on Friday week (Monday - Friday) Plant and Equipment hired for a week Must be returned by 3.30 pm on the seventh consecutive day (so if you hire it on Wednesday it must be returned by 3.30 pm Tuesday) Plant and Equipment hired for a month Must be returned by 3.30 pm on the last day of the calendar month (so if you hire it on the 15th of the month you must return it by 3.30 pm on 14th of the next month).

18.2 You must pay Hire Charges for each day that you hire the Plant and Equipment, including Saturdays, Sundays and Public Holidays. If you agreed to take the Plant and Equipment for a minimum or a fixed period, you must pay the Hire Charges applicable for the whole of the minimum or the fixed period.

18.3 Hire Charges are due at the beginning and/or at the end of the hire. We will let you know when you must pay the Hire Charges at the time you hire the Plant and Equipment.

18.4 You must pay the Hire Charges in full and on the due dates, and time is of the essence for payment.

18.5 If any payment due under this Agreement is not paid in full and on the due date, interest will be charged from the due date to the date of payment at the base rate of the Bank of England plus 8% per annum.

19 CONSUMABLE ITEMS

19.1 We will supply fuel, oils and greases to you if you ask us to do so. We will make a charge for any fuel, oils and greases, which we supply. You may buy your own fuel, oils and greases but you must use the grade and type we specify.

19.2 You are responsible for the cost of re-sharpening drills, cutting edges and other tools.

19.3 If we supply you with any consumable items or ear and eye protectors for use with the Plant and Equipment, these are sold to you and you must pay for them. At our discretion, we may refund the price of any such items that are returned to us in a suitable condition for taking back into stock.

20 OUR NAMEPLATES You must not remove, deface or cover up any nameplate or identification mark or number on the Plant and Equipment, nor put any mark on the Plant and Equipment, which might indicate or suggest that the Plant and Equipment belongs to you.

21 DEPOSITS We may ask you to pay a reasonable deposit based on the value of the Plant and Equipment you hire. We will keep the deposit until the Plant and Equipment is returned to us. The deposit will be returned to you if the Plant and Equipment is returned in the same condition as it was when hired to you (fair wear and tear excepted). However, when we repay the deposit we will be allowed to deduct from it any monies you may owe us.

22 GENERAL

22.1 If any provision of this Agreement is held to be unlawful, void or unenforceable then that provision will be deemed severable and will not affect the validity and enforceability of the remaining provisions, to the extent permitted by law.

22.2 Notices from you to us should be sent to us at our principal office address. Notices from us to you will be sent to the address provided to us by you or to any other address which you have notified to us in writing. You will notify us immediately in writing of any change to your address.

22.3 This Agreement incorporates all of the terms agreed between you and us. It cannot be varied except by a document signed by you and us on or after the date of this Agreement.

22.4 A party who is not a party to this Agreement shall have no right to enforce any term of this Agreement under the Contracts (Rights of Third) Parties Act 1999.

22.5 If any amount is payable to you by us under this Agreement, we may withhold from those monies an amount equal to the total monies you owe us under this Agreement.