

Standard Terms & Conditions for Plant & Equipment Hire

1.0 Definitions

In these Terms & Conditions, ('the Terms') the following words shall have the following meanings

- 1.1 'Buyer' shall mean the Kentech entity identified in a Purchase Order;
- 1.2 'Delivery Date' means the date specified in a Purchase Order
- 1.3 'Plant & Equipment' means that set out in a Purchase Order
- 1.4 'Price' means the price set out in a Purchase Order
- 1.5 'Seller' means the vendor identified in the Purchase Order
- 1.6 'Seller's Provisions' has the meaning given in clause 3.4.1;
- 1.7 'Requirements of the Buyer' means the specification, standards and other stipulations set out in the Purchase Order, together with (where applicable) the Terms.

2.0 Orders

- 2.1 The Buyer orders, and the Seller agrees to rent to the Buyer, the Plant and Equipment at the Price & Rates specified in the Purchase Order.

3.0 Conditions applicable

- 3.1 The sale of the Goods & Services by the Seller to the Buyer procured through a Purchase Order which incorporates these Terms ('the Contract') shall be governed solely, throughout the performance of the Contract and for as long as obligations subsist under or in connection with the Contract, by the express provisions of these Terms.
- 3.2 Subject to clause 3.7:
 - 3.2.1 no provision other than a provision that is expressly set out in these Terms shall become a term of the Contract; and
 - 3.2.2 no provision that is not expressly set out in the Contract shall in any manner govern or affect the Contract or any obligation arising under or in connection with the Contract.
- 3.3 Clause 3.2 shall apply regardless of:
 - 3.3.1 the way or the time at which the Seller purports to proffer or incorporate any such other provision(s) into the Contract; or
 - 3.3.2 whether the Seller invokes, proffers or seeks to bring into effect such other provision(s) by way of contract term or notice.
- 3.4 For the avoidance of doubt, and in accordance with this clause 3 generally:
 - 3.4.1 the reference to a provision that is not set out in the Contract includes (without limitation or other prejudice to the general meaning of such reference) any provision emanating from standard terms or conditions routinely proffered or employed by the Seller in the course of the Seller's business or profession ('Seller's Provisions') that the Seller invokes, proffers, or purports to bring into effect as governing the Contract; and
 - 3.4.2 the Seller acknowledges and agrees that the Buyer shall not be bound by any of the Seller's Provisions.
- 3.5 The Seller's acknowledgement of a Purchase Order, delivery of Goods, performance of Services or any positive act with respect to fulfilling the supply of the Goods or Services shall constitute the acceptance of the Contract by the Buyer for the purposes of this clause 3.

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- 3.6 Acceptance of the Plant & Equipment by the Buyer shall not occur or be deemed to occur, and there shall not occur or be deemed to occur any binding expression of the Buyer's satisfaction with the Plant & Equipment, unless and until the requirements expressed in the Contract have been satisfied.
- 3.7 No purported variation of any of the provisions of the Contract, whether such purported variation purports to have been made or to be made before or after the conclusion of thereof, shall apply to or affect these Terms or any obligation arising under or in connection with these Terms nor become binding on the Buyer, unless and until the Buyer has agreed to it in writing and in terms that conform to clause 22.2
- 3.8 The rule of exclusion expressed in clause 3.7 applies (without limitation to its general scope) to any special terms and conditions that are agreed between the parties but not yet reduced to writing.

4.0 Quality of Plant & Equipment to be supplied

- 4.1 It shall be the responsibility of the Seller to ensure that the maintenance requirements as set out in the manufacturer's recommendations shall be met for all items of Plant & Equipment on offer. Furthermore, the Seller must be able to satisfy the Buyer that such standards are being met by producing maintenance records upon request. The operator of the Plant in conjunction with the Seller is responsible for undertaking regular maintenance, inspection, and the prompt carrying out of any/or subsequent repairs. Such inspections are to be logged in an appropriate logbook available with each Plant for spot inspections. In addition, the Seller must ensure that the Plant is maintained in accordance with good industry practice.
- 4.2 Bad work, done as a result of not competently working Plant, will be chargeable to the Sellers acc.
- 4.3 The Plant offered should be capable of carrying out the work for which it was made without any diminution of power or output from the minimum laid down by the makers of the machine. The Buyer's engineering staff may monitor the performance, efficiency & suitability of all Plant. Such inspections in no way exonerate the supplier/operator from their responsibility to inspect, maintain and at all times provide safe equipment, regardless of plant age. Removal charges for Plant deemed unsuitable after monitoring by engineering staff and delivery charges for Plant replacing such items will be at the Seller's own expense.
- 4.4 It should also be noted that any Plant tendered for and accepted for work by the Buyer might be dismissed from a work site, if found on examination not to comply with the current Road Traffic and Health & Safety Legislation, or by non-compliance of any terms and conditions, in any particular instance. This will be at the discretion of the Buyer.
- 4.5 The Buyer will not provide storage of materials/machinery and the Buyer will not accept any responsibility for any loss or damage to materials or Plant placed on or near any work site by the Seller or his agents. The Seller shall make his own arrangements for the protection of his Plant and materials. Plant or tools stored by the Buyer by prior agreement, for the Seller's convenience, will be stored at the Seller's own risk.
- 4.6 Where Plant is hired with an Operator, the Plant shall be at the risk of the Seller and the Buyer shall not be liable to compensate the Seller for damage sustained to the Plant, nor shall the Buyer be liable to pay any hire charge in respect of any Plant which shall remain idle or inoperable as a result of damage to same.
- 4.7 The Seller shall provide the names and addresses of all Operators of Plant hired.
- 4.8 Operator(s) in charge of Plant shall, at the date of hire and thereafter for the duration of the works -:
 - 4.8.1 hold the appropriate qualifications, licences and certificates
 - 4.8.2 demonstrate while operating the Plant, the necessary skills and competency required for safe operation of such Plant,
 - 4.8.3 be capable of completing the specified work outlined by the Buyer,
 - 4.8.4 shall not pose a Health & Safety risk to himself, other persons present on or near the site, nor to any member of the Public,
 - 4.8.5 shall not pose a Health & Safety risk when operating in the vicinity of existing services, and shall not be employed to work more than any one machine on any day
- 4.9 In the event that the Operator with the hired Plant fails to meet any of the above requirements, the Buyer reserves the right to seek immediate removal of said Operator from the site, to be replaced with a suitably competent Operator at the start of the next working day, or no later than 48 Hours. Failure of the supplier to address such a risk within this timeframe shall result in the immediate termination.

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- 4.10 The operator must remain in constant attendance on the Plant while it is employed and under no circumstances shall Plant be operated by any person other than those for whom the relevant documentation as required by these terms and conditions has been submitted.
- 4.11 All mechanically propelled Plant operating on public roads must have a valid registration plate applicable to that particular item of Plant.
- 4.12 Buyer reserve the right to seek proof of ownership prior to or during the hired period.
- 4.13 If the Buyer makes space available for storage, the Seller may use the space entirely at its own risk, without recourse to the Buyer in any circumstances whatsoever.

5.0 Price & Rates

- 5.1 The Rates for hired Plant & Equipment shall be those stated in the Purchase Order and will not be subject to change during the rental period.
- 5.2 The rental period shall commence from the day the Buyer (1) receives the Plant & Equipment to the designated place and (2) puts that Plant & Equipment into use.
- 5.3 The rental period shall cease at the earliest of (1) the agreed date for off hire or (2) when the Buyer notifies, in writing or otherwise, that the Plant & Equipment is to be off hired.

6 Payment

- 6.1 Payment for the Plant & Equipment shall be made within 60 days of delivery.
- 6.2 The time appointed for payment shall not be of the essence of the Contract.
- 6.3 All amounts stated are exclusive of VAT and any other applicable taxes or levies, which shall be charged in addition at the rate in force at the date any payment is required from the Buyer.

7 Cancellation

- 7.1 The Buyer shall have the right to cancel the order for Plant & Equipment (or for any part of the Goods) which have not yet been delivered to the Buyer without liability.
- 7.2 The cancellation shall be made in writing.

8 Guarantee of title

- 8.1 The Seller warrants that, at all times during the rental period, it has sufficient title to the Plant & Equipment so facilitate the Buyers rental and commercial use thereof.
- 8.2 The Seller will provide documentary evidence of this title at the Buyers request.

9 Risk

- 9.1 During the rental period, the Plant & equipment remains the Seller's property, and the Buyer will have no right, title or interest in or to the Plant & Equipment except the right to possession and use of the Plant & equipment under the Contract.
- 9.2 The risk of loss, theft, damage or destruction of the Plant & Equipment remains with the Seller during the rental period.

10 Deterioration of the Plant & Equipment

- 10.1 Without limitation, the Seller shall at all times be responsible and shall have no recourse against the buyer for depreciation, dilapidation or general wear & tear of the Plant & Equipment.

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11 Insurance

- 11.1 The Seller shall at all times during rental period, have the following insurances in place:
 - 11.1.1 Insurance of the Plant & Equipment: Full replacement value
 - 11.1.2 Public Liability Insurance: \$7 million USD (or local currency equivalent)
 - 11.1.3 Employers Liability Insurance: \$12 million USD for any one event (or local currency equivalent)
 - 11.1.4 Motor / Vehicle Insurance: \$7 million USD (or local currency equivalent)
 - 11.1.5 Workers Compensation Insurance: As per local laws
- 11.2 The Seller shall provide copies of the relevant insurances to the Seller, for the Seller's review. Failure to comply with this clause shall be a Material Breach of the Contract.
- 11.3 If requested by the Buyer, the Seller shall name the Buyer on its insurance policies at no cost to the Buyer.

12 Acceptance of the Plant & Equipment

- 12.1 Notwithstanding anything to the contrary; the buyer shall not be deemed to have accepted any Plant & Equipment until:
 - 12.1.1 The Plant & Equipment been inspected and checked to the satisfaction of the Buyer;
 - 12.1.2 immediately before or on delivery of the Plant & Equipment, the Seller shall either demonstrate how each item of Plant is operated or, subject to the Buyer's approval, shall provide the Buyer with a copy of the operating manual for each item of Plant.
- 12.2 Without prejudice to any other remedy that the Buyer may have if the Plant & Equipment is not supplied in accordance with the Contract, where the Seller has failed to deliver on time or to the correct location or where the Buyer has discovered defects or a discrepancy in the Plant & Equipment, the Seller may:
 - 12.2.1 require the Seller, at the Seller's expense, to fulfil its obligations in all respects within such period as is specified by the Buyer ; or
 - 12.2.2 require the Seller to provide the Buyer with a credit note for any part of the Price which has been paid in respect of such Services; or
 - 12.2.3 Hire substitute Plant & Equipment elsewhere and recover from the Seller any actual losses, cost and liabilities whatsoever incurred by the Buyer (including without limitation the costs of any replacement Services); or
 - 12.2.4 terminate the Contract
- 12.3 If the Seller delivers Plant, including supplies and an Operator, which is not specified in the Purchase Order, the Buyer may, in its absolute discretion refuse to accept delivery, in which case no payment whatsoever will be due to the Seller for the Plant.

13 Indemnities & Warranties

- 13.1 The Seller shall be responsible for and shall indemnify and keep indemnified the Buyer , its agents, employees, officers, subsidiaries, associated companies, assigns and, where the Buyer is acting as an agent, the Buyer 's principal, on demand and in full against any and all losses, costs, judgments, claims or liabilities in respect of:
 - 13.1.1 any death or personal injury to any person;
 - 13.1.2 any loss of or damage to any property (including property belonging to the Buyer or for which it is responsible);
 - 13.1.3 any breach of statutory duty;
 - 13.1.4 any losses, actions, claims or demands by third parties against the Buyer , and any costs, charges and expenses (including legal expenses) suffered or incurred by the Buyer in respect of same; and
 - 13.1.5 any losses, claims, expenses and liability that the Buyer may suffer as a result of the Buyer 's performance or non-performance of the Contract (excepting the Buyer 's obligation to pay the Rental Payment).in each case arising directly or indirectly out of, or in connection with any negligent act or omission, or breach of these terms and conditions committed by the Seller or its employees, agents or sub-Sellers

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13 Indemnities & Warranties (cont'd)

- 13.2 The Seller hereby warrants and undertakes to the Buyer that:
- 13.2.1 it has the appropriate skills and technical capacity, legal right and full power and authority to perform its obligations under the Contract;
 - 13.2.2 all Plant & Equipment is and will be fit for the purpose for which it is intended;
 - 13.2.3 all Plant & Equipment will conform to its specification, be of satisfactory quality, safe, and suitable for the purpose for which is normally used and the purpose disclosed by the Buyer ; and
 - 13.2.4 it shall not do anything to prejudice the name or reputation of the Buyer , or the Buyer 's business interests.
- 13.3 Any approval, testing or acceptance by the Buyer in accordance with the Contract shall not, in any way, limit the Seller's liability and obligations under these terms and conditions.

14 Termination

- 14.1 Without prejudice to any other right or remedy to which either the Buyer might be entitled, the Buyer may, in the events specified in clause 14.2, terminate the Contract at any time by notice in writing to the Seller, such notice to take effect as specified in the notice.
- 14.2 The events specified in clause 14.1 occur when:
- 14.2.1 The Seller is in breach of the Contract, and in the case of a breach capable of remedy within 10 days, the breach is not remedied within 10 days of the Seller receiving notice specifying the breach and requiring it to be remedied; or
 - 14.2.2 The Seller becomes insolvent, or an order is made or a resolution is passed for the winding up of the Seller (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or an administrator or administrative receiver is appointed in respect of the whole or any part of the Seller assets or business, or the Seller makes any composition with its creditors, or the Seller takes or suffers any similar or analogous action in consequence of debt.
 - 14.2.3 A breach of the Sellers warranties and undertakings contained in clause 13.
 - 14.2.4 A breach of the Sellers ethics & compliance undertakings
 - 14.2.5 A failure to provide evidence of insurances
 - 14.2.6 A HSSE violation.

15 Defences and variations

- 15.1 Force majeure
- 15.1.1 Neither party shall owe or incur any liability under or in connection with, or be deemed to be in breach of, the Contract by reason of any delays in, or revisions to, or failures in performance of the Contract that result from circumstances beyond the reasonable control of that party.
 - 15.1.2 The party affected by the circumstances referred to in clause 15.1.1 shall promptly notify the other party in writing:
 - 15.1.3 when the occurrence of any circumstance referred to in clause 15.1.1 causes, or can reasonably be expected to cause or to threaten to cause, a delay, revision or failure in performance; and
 - 15.1.4 when any such circumstance ceases to do so. If such circumstances continue for a continuous period of more than 60 days, either party may terminate the Contract by written notice to the other party.
- 15.2 Amendments
- 15.2.1 The Contract may be amended only by formal amendment in writing signed by duly authorised representatives of the parties.
- 15.3 Waiver
- 15.3.1 No inaction, omission, failure or delay by the Buyer in exercising or securing the enforcement or validity of any right, power, privilege or demand arising under or in connection with the Contract, and no single or partial exercise of any such right, power, privilege or demand, shall impair the existence, operation, content, effect and enforcement of the said right, power, privilege or demand, or operate as a waiver of it.
 - 15.3.2 The rights and remedies provided in the Contract are cumulative and not exclusive of any rights and remedies provided by law.

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15 Defences and variations (cont'd)

15.4 No agency or partnership

- 15.4.1 The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties, other than, and except as provided for in, the contractual relationship expressly provided for in the Contract.
- 15.4.2 Neither party shall have, nor shall either party represent that it has, any authority to make any commitments on the other party's behalf.

15.5 Co-operation

- 15.5.1 Each party to the Contract shall, at the reasonable request of the other party and at that other party's expense, perform or abstain from any act the performance of or abstention from which can reasonably be regarded as necessary to effect or facilitate the observance, implementation, clarification or enforcement of the provisions of the Contract.

16 Ethics & Compliance

- 16.1 The Buyer has a zero-tolerance policy towards bribery and corruption. This zero-tolerance policy extends to all companies and individuals who provide Plant & Equipment to the Buyer. The Seller warrants that, in connection with the Contract, the Seller (i) has complied and will comply with all anti-bribery and corruption, anti-money laundering laws, rules, and regulations (including, but not limited to, Bribery Act 2010 of the United Kingdom, Foreign Corrupt Practices Act 1977 of the United States of America, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions) applicable to the Seller or Buyer, and (ii) will not, directly or indirectly, make or allow facilitation payments, and (iii) will not, offer, give or agree to give any person whatsoever, or solicit, accept or agree to accept from any person, either directly or indirectly, anything of value in order to obtain, influence, induce or reward any improper advantage (the "Anti-Corruption Obligation").
- 16.2 The Seller agrees it shall on an on-going basis, and subject to any applicable data privacy law and the attorney-client or work product privileges, unless expressly prohibited by law:
 - 16.2.1 immediately disclose in writing to the Buyer details of any potential breach or alleged breach of the Anti-Corruption Obligation; and
 - 16.2.2 on reasonable request, use best endeavours to co-operate with the Buyer to ensure and monitor compliance with the Anti-Corruption Obligation, which shall include promptly responding in reasonable detail to any notice from the Buyer reasonably connected to the Anti-Corruption Obligation and making any relevant books, records, or personnel relating to the CONTRACT and SELLER'S compliance with the Anti-Corruption Obligation available for review by the Buyer.
- 16.3 SELLER shall throughout the term of the Contract:
 - 16.3.1 institute and maintain policies and procedures which are reasonably expected to ensure compliance with all applicable laws and the Anti-Corruption Obligation, including the maintenance of complete and accurate books and records and an effective system of internal accounting controls;
 - 16.3.2 maintain at its normal place of business, throughout the term of the Contract and for at least six (6) years following its expiration or termination, detailed books, records and accounts which accurately and fairly reflect all transactions and payments made by the Buyer in connection with the Contract;
 - 16.3.3 make clear, in its dealings connected to the Contract, that it is required to act, and is acting, in accordance with the Anti-Corruption Obligation; and
 - 16.3.4 on reasonable notice, and subject to any applicable data privacy law, legal privilege, or express legal prohibition, permit the Buyer or its duly appointed third party representatives to access, review, inspect and make copies of the Seller's books, records and accounts in order to audit the Seller's compliance with the Anti-Corruption Obligation.

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16 Ethics & Compliance (cont'd)

- 16.4 The Seller represents, warrants, and covenants that except as otherwise disclosed in writing to the Buyer, as of the date of the Contract
- 16.4.1 none of its directors, officers, employees, contractors or other service providers in connection with this contract is a public official; and
 - 16.4.2 no public official will have a direct or indirect interest in the Contract or have any legal or beneficial interest in any payments made by the buyer under the Contract; and
 - 16.4.3 it shall promptly notify the Buyer in writing of any change in the foregoing.
- 16.5 The Seller further agrees and undertakes that:
- 16.5.1 it shall conduct appropriate anti-corruption and other due diligence prior to appointing or engaging such third party providers to ensure that they are duly qualified to perform the tasks for which they have been engaged, that they are of good reputation, and that they would present no corruption-related or other compliance risk or liability to the Buyer;
 - 16.5.2 it shall cause all such third-party providers to agree, in writing, to compliance with laws and Anti-Corruption Obligations sufficient to satisfy a best practices compliance program, and where consistent with such program, materially equivalent as those set forth in this Clause.

17 Integrity, continuity, exclusivity and enforcement

- 17.1 Entire agreement
- 17.1.1 The Contract contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to the Goods. The parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract
 - 17.1.2 Nothing in the Contract excludes or restricts the liability of any party for fraud or bad faith.
- 17.2 Severance
- 17.2.1 If any provision of the Contract is prohibited by law, or is determined by any court of law or other binding adjudicatory authority or conceded by the parties to be unlawful, void or unenforceable, the provision:
 - 17.2.1.1 shall, to the extent required and as far as possible, be severed from the Contract and rendered ineffective without modifying the remaining provisions of the Contract; and
 - 17.2.1.2 shall not in any way affect any other provisions of the Contract or the validity or enforcement of the Contract generally.
- 17.3 Assignment
- 17.3.1 Subject to clause 17.3.2, neither party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under the Contract without the prior written agreement of the other party.
 - 17.3.2 A party may, however, assign and transfer all its rights and obligations under the Contract to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other party to be bound by the obligations of the assignor under this Contract.
- 17.4 Announcements
- 17.4.1 Neither party shall issue or make any public announcement or disclose any information regarding the Contract, unless before such public announcement or disclosure it furnishes the other party with a copy of such announcement or information and obtains the approval of the other party to its terms.
 - 17.4.2 Notwithstanding clause 17.4.1, neither party shall be prohibited from issuing or making any public announcement or disclosing any information if it is necessary to do so to comply with any applicable law or with the regulations of a recognised stock exchange or any other competent financial authority.

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17 Integrity, continuity, exclusivity and enforcement (cont'd)

17.5 Interpretation

In the Contract, unless the context otherwise requires:

- 17.5.1 words importing any gender include every gender;
- 17.5.2 words importing the singular number include the plural number and vice versa;
- 17.5.3 words importing persons include firms, companies and corporations and vice versa;
- 17.5.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to the Contract;
- 17.5.5 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 17.5.6 the headings to the clauses, schedules and paragraphs of the Contract are not to affect the interpretation;
- 17.5.7 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- 17.5.8 where the word 'including' is used in the Contract, it shall be understood as meaning 'including without limitation';

17.6 Notices

- 17.6.1 Any notice to be given under the Contract shall be in writing and shall be sent by email (confirmed by first-class mail or air mail), to the address of the relevant party set out in the Contract, or to such other address as that party may from time to time notify to the other party in accordance with this clause 23.6.
- 17.6.2 Notices sent as in clause 17.6.1 shall be deemed to have been received, when the email first appears in any email system that can reasonably be assumed to be used by the recipient and when the sender can confirm delivery.
- 17.6.3 In proving the giving of a notice, it shall be sufficient to prove that the notice was confirmed or acknowledged.

17.7 Law and jurisdiction

- 17.7.1 In the event of a dispute arising out of or relating to the Contract, including any question regarding its existence, validity or termination, the parties shall first seek settlement of that dispute by mediation in accordance with the Mediation Rules of the DIFC LCIA Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause.
- 17.7.2 If the dispute is not settled by mediation within 60 days of the commencement of the mediation, or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the Arbitration Rules of the DIFC-LCIA Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause.
 - 17.7.2.1 The language to be used in the mediation and in the arbitration shall be English.
 - 17.7.2.2 The governing law of the Contract shall be the substantive law of England & Wales.
- 17.7.3 In any arbitration commenced pursuant to this clause,
 - 17.7.3.1 the number of arbitrators shall be one; and
 - 17.7.3.2 the seat, or legal place, of arbitration shall be London

17.8 Third parties

- 17.8.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999], the Contract is not intended to, and does not, confer on any person who is not a party to the Contract:
 - 17.8.1.1 any right to enforce any of its provisions; or
 - 17.8.1.2 any right to avail itself of any defence expressed in the Contract.