

## CONDITIONS OF SALE

**PAYMENT:** Strictly nett at 30 days to approve accounts only, otherwise cash prior to despatch. **CONDITIONS:** This quotation is made on and is subject to the conditions of sale which appear below and which forms part of all contracts. **ALL PRICES ARE SUBJECT TO CHANGE!**

### Terms and Conditions

#### 1. Interpretation

1.1 The following definitions and rules of interpretation apply in this Contract.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: the date that the Hirer takes Delivery of the Equipment.

Company: M. J. Church (Plant) Limited (registered in England and Wales with company number 01856955).

Delivery: the transfer of physical possession of the Equipment to the Hirer at the Site.

Deposit: the deposit amount set out in [the Company's acceptance of the Order].

Equipment: the skip(s) or vehicle(s) set out in the Order, substitutions, replacements or renewals of such skip(s) or vehicle(s) and all related accessories, manuals and instructions provided for it or them.

Hirer: the person or firm who hires the Equipment from the Company.

Order: the Hirer's order for the Equipment, as set out in the Hirer's purchase order form, the Hirer's written acceptance of the Company's quotation, or overleaf, as the case may be. [Site: the Hirer's premises at [LOCATION].]

Rental Payments: the payments made by or on behalf of Hirer for hire of the Equipment.

Rental Period: the period of hire as set out in the Order, unless this Contract is terminated earlier in accordance with its terms.

Total Loss: due to the Hirer's default the Equipment is, in the Company's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

VAT: value added tax chargeable under the Value Added Tax Act 1994.

#### 2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Hirer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Hirer to hire the Equipment in accordance with these Conditions. The Hirer is responsible for ensuring that the terms of the Order submitted by the Hirer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 Any advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Equipment referred to in them. They shall not form part of the Contract nor have any contractual force.

2.5 A quotation for the Equipment given by the Company shall not constitute an offer. A quotation shall only be valid for a period of [20] Business Days from its date of issue.

#### 2A. Duty of Care – Trade waste

There is an annual charge of £85.00 applied to the account each February for Duty of Care. This is a legal document providing you with full transparency for where your waste is disposed of for the year ahead. This is applied each year on 1<sup>st</sup> February.

#### 3. Equipment hire

3.1 The Company shall hire the Equipment to the Hirer [for use at the Site] subject to the terms and conditions of this Contract.

3.2 The Company shall not, other than in the exercise of its rights under this Contract or applicable law, interfere with the Hirer's quiet possession of the Equipment.

#### 4. Rental Payments and Deposit

4.1 The Hirer shall pay the Rental Payments to the Company in accordance with [the Payment Schedule set out in the Order.]

4.2 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the manner from time to time prescribed by law.

4.3 All amounts due under this Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4.4 If the Hirer fails to make any payment due to the Company under this Contract by the due date for payment, then, without limiting the Company's remedies under clause 11, the Hirer shall pay interest on the overdue amount at the rate of [4]% per annum above HSBC Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Hirer shall pay the interest together with the overdue amount.

4.5 The Deposit is a deposit against default by the Hirer of payment of any Rental Payments or any loss of or damage caused to the Equipment. [The Hirer shall, on the date of this Contract, pay a deposit of £[AMOUNT] to the Company.] If the Hirer fails to make any Rental Payments in accordance with the Payment Schedule, or causes any loss or damage to the Equipment (in whole or in part), the Company shall be entitled to apply the Deposit against such default, loss or damage. The Hirer shall pay to the Company any sums deducted from the Deposit within ten (10) Business Days of a demand for the same. The Deposit (or balance thereof) shall be refundable within [five (5)] Business Days of the end of the Rental Period.

#### 5. Delivery [and installation]

5.1 Delivery of the Equipment shall be made by the Company. The Company shall use reasonable endeavours to effect Delivery by the date and time agreed between the parties.

Title and risk shall transfer in accordance with clause 6 of this Contract.

5.2 [The Hirer shall procure that a duly authorised representative of the Hirer shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Hirer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended [(save as regards any latent defects not reasonably apparent on inspection)]. If required by the Company, the Hirer's duly authorised representative shall sign a receipt confirming such acceptance.]

5.3 [The Company shall at the Hirer's expense install the Equipment at the Site. The Hirer shall procure that a duly authorised representative of the Hirer shall be present at the installation of the Equipment. Acceptance by such representative of installation shall constitute conclusive evidence that the Hirer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended [(save as regards any latent defects not reasonably apparent on inspection)]. If required by the Company, the Hirer's duly authorised representative shall sign a receipt confirming such acceptance.] [NB/THIS WILL ONLY BE RELEVANT FOR SKIPS].

5.4 To facilitate Delivery [and installation], the Hirer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Delivery [and installation] to be carried out safely and expeditiously.

#### 6. Title, risk and insurance

6.1 The Equipment shall at all times remain the property of the Company, and the Hirer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Contract).

6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on Delivery. The Equipment shall remain at the sole risk of the Hirer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Hirer (Risk Period) until such time as the Equipment is redelivered to the Company. During the Rental Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain the following insurances:

(a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing;

(b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Company may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and

(c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Company may from time to time consider reasonably necessary and advise to the Hirer.

6.3 All insurance policies procured by the Hirer shall be endorsed to provide the Company with at least [twenty (20)] Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Company's request name the Company on the policies as a loss payee in relation to any claim relating to the Equipment. The Hirer shall be responsible for paying any deductibles due on any claims under such insurance policies.

6.4 The Hirer shall give immediate written notice to the Company in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Hirer's possession or use of the Equipment.

6.5 If the Hirer fails to effect or maintain any of the insurances required under this Contract, the Company shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Hirer.

6.6 The Hirer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Company and proof of premium payment to the Company to confirm the insurance arrangements.

#### 7. Hirer's responsibilities

7.1 The Hirer shall during the term of this Contract:

(a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the Company;

(b) take such steps (including compliance with all safety and usage instructions provided by the Company) as may be necessary to ensure, so far as is reasonably practicable, that

the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;

(c) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was at the time of Delivery including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;

(d) make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of the Company unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Company immediately upon installation;

(e) keep the Company fully informed of all material matters relating to the Equipment;

(f) at all times keep the Equipment in the possession or control of the Hirer and keep the Company informed of its location;

(g) permit the Company or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;

(h) maintain operating and maintenance records of the Equipment and make copies of such records readily available to the Company, together with such additional information as the Company may reasonably require;

(i) not, without the prior written consent of the Company, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

(j) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Company in the Equipment;

(k) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Hirer shall notify the Company and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

(l) not use the Equipment for any unlawful purpose;

(m) ensure that at all times the Equipment remains identifiable as being the Company's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;

(n) deliver up the Equipment at the end of the Rental Period or on earlier termination of this Contract at such address as the Company requires, or if necessary allow the Company or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and

(o) not do or permit to be done anything which could invalidate the insurances referred to in clause 6.

7.2 The Hirer acknowledges that the Company shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Hirer or its officers, employees, agents and contractors, and the Hirer undertakes to indemnify the Company on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Hirer to comply with the terms of this Contract.

## 8. Hirer's additional responsibilities in relation to skips

8.1 The Hirer agrees:

- (a) to provide and maintain all approach roads and the Site for the purpose of Delivery of the skip(s);
- (b) to rely on their own skill and judgment and to satisfy themselves on the suitability of all approach roads, tracks or ground for the purpose of Delivery, siting and collection of the skip(s);
- (c) not to move the skip(s) from the Site without the consent of the Company and where necessary the Highway Authority;
- (d) that no fires are lit in the skip(s); and
- (e) that no liquids, corrosive, explosive, toxic or dangerous materials including but not limited to asbestos, solvents, concrete, minerals or greases will be placed in the skip(s).

8.2 The Hirer agrees to ensure that:

- (a) the skip(s) is/are properly sited in accordance with any relevant permission and instruction from the Company and that all conditions thereof are observed and performed at all times;
- (b) the skip(s) is/are properly coned during the hours of daylight and coned and continually lit during the hours of darkness;
- (c) the skip(s) is/are filled no higher than the top of its/their sides and in such manner as to prevent spillage of material both whilst the skip container is stationary or in transit; and
- (d) no danger is caused by the skip(s) or its contents to any third party.

## 9. Warranty

The Company warrants that the Equipment shall substantially conform to its specification (as made available by the Company), be of satisfactory quality and fit for any purpose held out by the Company.

## 10. Liability

10.1 Without prejudice to clause 10.2, the Company's maximum aggregate liability for breach of this Contract (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed £[AMOUNT].

10.2 Nothing in this Contract shall exclude or in any way limit:

- (a) either party's liability for death or personal injury caused by its own negligence;
- (b) either party's liability for fraud or fraudulent misrepresentation; or
- (c) liability for any breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973 or any other liability which cannot be excluded by law.

10.3 This Contract sets forth the full extent of the Company's obligations and liabilities in respect of the Equipment and its hiring to the Hirer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Company except as specifically stated in this Contract. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this Contract, whether by statute, common law or otherwise, is expressly excluded.

10.4 Without prejudice to clause 10.2, neither party shall be liable under this Contract for any:

- (a) loss of profit;
  - (b) loss of revenue
  - (c) loss of business; or
  - (d) indirect or consequential loss or damage,
- in each case, however caused, even if foreseeable.

## 11. Termination

11.1 Without affecting any other right or remedy available to it, the Company may terminate this Contract with immediate effect by giving written notice to the Hirer if:

- (a) the Hirer fails to pay any amount due under this Contract on the due date for payment;
- (b) the Hirer commits a material breach of any other term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 Business Days after being notified in writing to do so;
- (c) the Hirer repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- (d) the Hirer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (e) the Hirer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Hirer (being a company);
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Hirer (being a company);
- (h) the holder of a qualifying floating charge over the assets of the Hirer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Hirer or a receiver is appointed over the assets of the Hirer;
- (j) a creditor or encumbrancer of the Hirer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Hirer's assets and such attachment or process is not discharged within 14 days;
- (k) the Hirer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (l) the Hirer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

11.2 This Contract shall automatically terminate if a Total Loss occurs in relation to the Equipment.

## 12. Consequences of termination

12.1 Upon termination of this Contract, however caused:

- (a) the Company's consent to the Hirer's possession of the Equipment shall terminate and the Company may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; and
  - (b) without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to the Company on demand:
- (i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 4.4;

(ii) any costs and expenses incurred by the Company in recovering the Equipment and/or in collecting any sums due under this Contract (including any storage, insurance, repair, transport, legal and remarketing costs).

12.2 [Upon termination of this Contract pursuant to clause 11.1, any other repudiation of this Contract by the Hirer which is accepted by the Company or pursuant to clause 11.2, without prejudice to any other rights or remedies of the Company, the Hirer shall pay to the Company on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the end of the Rental Period, less:

(a) a discount for accelerated payment at the percentage rate set out in the Payment Schedule; and

(b) [the Company's reasonable assessment of the market value of the Equipment on sale.]

12.3 [The sums payable pursuant to clause 12.2 shall be agreed compensation for the Company's loss and shall be payable in addition to the sums payable pursuant to clause 12.1(b). Such sums may be partly or wholly recovered from any Deposit.]

12.4 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

### 13. Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for [4] weeks, the party not affected may terminate this Contract by giving [5] days' written notice to the affected party.

### 14. General

14.1 Assignment. The Hirer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

14.2 Entire Agreement. This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous Contracts, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.

14.3 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.4 Waiver. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not (a) waive that or any other right or remedy; nor (b) prevent or restrict the further exercise of that or any other right or remedy.

14.5 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.6 Notices. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be sent by pre-paid first class post or other next working day delivery service. A notice or other communication shall be deemed to have been received at 9.00am on the second Business Day after posting. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.