



1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**Conditions**).

Contract: the Customer's hire order and the Supplier's acceptance of it, or the Customer's acceptance of a quotation for hire of the Plant from the Supplier and the Supplier's acknowledgement of it under condition 2.2.

Customer: the person, firm or company who hires the Plant from the Supplier.

Day: From Monday to Thursday (inclusive) a Day consists of 9 hours and on Friday a Day consists of 8 hours.

Rate per Day: the daily rate of supply of the Services as set out in the Quotation

In-put Material: detailed information relating to the Site setting out all expected working conditions including buried service media (pipes, wires, cables, fibre optics) and underground structures and ground conditions

Operators: no less than two persons employed by the Supplier to operate the Plant and the Supplier's Equipment

Plant: a suction excavator hired to the Customer as part of the Services

Quotation: the Supplier's quotation for the Services addressed to the Customer

Services: the hire to the Customer of the Plant, together with the Operators and the Supplier's Equipment, as specified in the Quotation together with any other services which the Supplier provides, or agrees to provide, to the Customer.

Site: the location under the control of the Customer at which the Services are to be carried out.

Supplier: Force One Utilities Limited (Co Reg No 5293964 registered in England and Wales) Registered office: Unit 19 South Fens Business Centre, Fenton Way Chatteris Cambridgeshire PE16 6TT.

Supplier's Equipment: any equipment, support vehicle(s), tools, systems, or facilities, provided by the Supplier and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Headings in these conditions shall not affect their interpretation.

Force One Utilities Limited

Plant Hire Terms & Conditions (Suction Excavator) 2008(1)

- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of the Contract.
- 1.5 A reference to **writing** or **written** includes faxes and e-mail (subject to Clause 19.4).
- 1.6 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.7 References to conditions and schedules are to the conditions and schedules of the Contract.

2. APPLICATION OF CONDITIONS

- 2.1 These Conditions shall:
- (a) apply to and be incorporated into the Contract; and
 - (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's acceptance of the Quotation, or any hire order, purchase order, confirmation of order, or specification or other Document supplied by the Customer, or implied by trade custom, practice or course of dealing.
- 2.2 The Customer's acceptance of the Quotation for Services by the Supplier, or the Customer's hire order or purchase order, constitutes an offer by the Customer to obtain the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:
- (a) by a written acknowledgement issued by the Supplier; or
 - (b) (if earlier) by the Supplier starting to provide the Services,

when a contract for the supply of the Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any hire order, purchase order or other Document shall not govern the Contract.

- 2.3 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any Quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.

Force One Utilities Limited

Plant Hire Terms & Conditions (Suction Excavator)
2008(1)

3. COMMENCEMENT AND DURATION

- 3.1 The Services supplied under the Contract shall be provided by the Supplier to the Customer from the date specified in the Quotation.
- 3.2 Subject to condition 10, the Services supplied under the Contract shall continue to be supplied for the period specified in the Quotation.

4. SUPPLIER'S OBLIGATIONS

- 4.1 The Supplier shall use reasonable endeavours to provide the Services, in accordance in all material respects with the Quotation.
- 4.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.3 The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at the Customer's Site and that have been communicated to it under condition 5.1(e), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
 - (b) provide the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Site, and other facilities as reasonably required by the Supplier;
 - (c) provide to the Supplier, in a timely manner, such In-put Material and other information as the Supplier may require and ensure that it is accurate in all material respects;
 - (d) be responsible (at its own cost) for preparing and maintaining the Site for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from the Site in accordance with all applicable laws, before and during the supply of the Services at Site, and informing the Supplier of all of the Customer's obligations and actions under this condition 5.1(d);

Force One Utilities Limited

Plant Hire Terms & Conditions (Suction Excavator)

2008(1)

- (e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Site;
- (f) obtain and maintain all necessary licences and consents in relation to the Services, and the use of the Plant and the Supplier's Equipment, in all cases before the date on which the Services are to start;
- (g) keep, maintain and insure the Plant and the Supplier's Equipment in good condition where the Supplier's Equipment (or any part of it) remains on the Site after normal working hours or overnight, and shall not dispose of or use the Plant and the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation; and
- (h) sign the Operators' time sheets on a daily basis or on such other basis as the Supplier may request;
- (i) not remove, deface or cover the Supplier's nameplate or mark on the Plant or on the Supplier's Equipment;
- (j) give full directions and instruction to the Operators' in relation to the carrying out of the Services (but not in relation to the operation of the Plant).

5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

5.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

5.4 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the last date of supply of the Services, solicit or entice away from the Supplier or employ (or attempt to employ) any person who is, or has been, engaged as an employee of the Supplier in the provision of the Services.

Force One Utilities Limited

Plant Hire Terms & Conditions (Suction Excavator)
2008(1)

6. CHARGES AND PAYMENT

6.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in the Quotation.

6.2 Any charges as set out in Quotation exclude:

- (a) the cost of fuel for the Supplier's Equipment. Fuel used in the provision of the Services shall be invoiced by the Supplier to the Customer at cost plus 15%; and
- (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.

6.3 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 28 days of receipt to a bank account nominated in writing by the Supplier.

6.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended); and
- (b) suspend all Services until payment has been made in full.

6.5 Time for payment shall be of the essence of the Contract.

6.6 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

7. BREAKDOWNS AND DAMAGE

7.1 In the event that the Services cannot be performed due to any mechanical or electrical fault affecting the Plant or the absence of the Operators ("a Cause") the Supplier shall use all reasonable endeavours to remedy the Cause without delay. The parties agree that the performance of the Services shall be suspended until the Cause has been remedied.

Force One Utilities Limited

Plant Hire Terms & Conditions (Suction Excavator)

2008(1)

- 7.2 Subject to Clause 7.4 and Clause 11, the Customer may give notice to the Supplier that the Contract will terminate with immediate effect in the event that the Cause is not remedied within 5 Days.
- 7.3 In the event of termination under Clause 7.2 the Supplier shall make an allowance to the Customer for the balance of the Contract price from the time of commencement of the Cause at the Rate per Day divided by the number of hours in the relevant Days.
- 7.4 The Contract may not be terminated by the Customer and no allowance shall be made in the event of breakdown due to acts or omissions of the Customer, its employees or agents, or third parties, or due to change of tyres or repair of punctures, arising while the Plant and the Supplier's Equipment is at the Site.
- 7.5 The Customer shall be responsible for, and shall indemnify the Supplier against
- (a) the cost of all repairs and replacement (including the cost of spare parts and materials) required to the Plant and the Supplier's Equipment arising from:
 - (i) theft, loss, vandalism or damage caused while the Plant and the Supplier's Equipment is at the Site
 - (ii) incomplete In-put Material
 - (b) damage to tyres occurring while the Plant is at the Site
 - (c) hire charges of the Plant and the Supplier's Equipment at the Rate per Day for so long as the Supplier is unable to use the Plant due to acts or omissions of the Customer, its employees or agents, or third parties, or due to change of tyres or repair of punctures, arising while the Plant and/or the Supplier's Equipment is at the Site

8. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 8.1 This condition 8 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:
- (a) any breach of the Contract;
 - (b) any use made by the Customer of the Services or any part of them; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 8.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

Force One Utilities Limited

Plant Hire Terms & Conditions (Suction Excavator) 2008(1)

- 8.3 Nothing in these Conditions limits or excludes the liability of the Supplier:
- (a) for death or personal injury resulting from negligence; or
 - (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier.
- 8.4 Subject to condition 8.2 and condition 8.3
- (a) the Supplier shall not be liable for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
 - (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Services.

9. INDEMNITY

- 9.1 The Supplier shall indemnify the Customer against all liability to third parties arising from negligent use of the Plant and the Supplier's Equipment by the Operators
- 9.2 The Customer shall indemnify the Supplier against all liability to third parties (other than liability referred to in Clause 9.1) arising from the use or presence of the Plant and the Supplier's Equipment on the Site.

10. TERMINATION

- 10.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

Force One Utilities Limited

Plant Hire Terms & Conditions (Suction Excavator)

2008(1)

- (a) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 3 days of that party being notified in writing of the breach; or
- (b) the other party repeatedly breaches any of the terms of the 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 the Contract; or
- (c) the other party 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) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) 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; or
- (d) the other party 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 other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) 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 other party; or
- (g) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (i) a creditor or encumbrancer of the other party 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 its assets and such attachment or process is not discharged within 14 days; or
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar

Force One Utilities Limited

Plant Hire Terms & Conditions (Suction Excavator) 2008(1)

to any of the events mentioned in condition 10.1(c) to condition 10.1(i) (inclusive); or

- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) there is a change of control of the other party.

10.2 The parties acknowledge and agree that any breach of conditions 4, 5 and 6 shall constitute a material breach for the purposes of this condition 10.

10.3 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall forthwith return all of the Plant and the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Site and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

10.4 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect:

- (a) condition 8;
- (b) condition 10; and
- (c) condition 20.

11. FORCE MAJEURE

The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or

Force One Utilities Limited

Plant Hire Terms & Conditions (Suction Excavator)

2008(1)

direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

12. VARIATION

12.1 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.

12.2 Subject to condition 12.1, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

13. WAIVER

13.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

13.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14. SEVERANCE

14.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

14.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15. ENTIRE AGREEMENT

15.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

Force One Utilities Limited

Plant Hire Terms & Conditions (Suction Excavator)

2008(1)

15.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), as provided in the Contract.

15.3 Nothing in this condition shall limit or exclude any liability for fraud.

16. ASSIGNMENT

16.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract, or deal in any manner with all or any of its rights or obligations under the Contract.

16.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

16.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

17. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

18. RIGHTS OF THIRD PARTIES

A person who is not a party to the Contract shall not have any rights under or in connection with it.

19. NOTICES

19.1 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in Schedule 2, or as otherwise specified by the relevant party by notice in writing to the other party.

Force One Utilities Limited

Plant Hire Terms & Conditions (Suction Excavator) 2008(1)

- 19.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to in Schedule 2 or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 19.3 This condition 19 shall not apply to the service of any in any proceedings or other documents in any legal action.
- 19.4 A notice required to be given under or in connection with the Contract shall not be validly served if sent by e-mail.

20. GOVERNING LAW AND JURISDICTION

- 20.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.
- 20.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.