

**GROVE MECHANICAL SERVICES LIMITED
STANDARD TERMS & CONDITIONS
PLANT HIRE**



1 Grove Lane, Brough Road, Castledawson, BT45 8EN

Definitions

1. 'Grove' shall mean Grove Mechanical Services Limited as set out in the Contract Purchase Order.
2. The 'Supplier' shall mean the person, firm or company to whom Grove's Order is issued.
3. The 'Plant' shall mean the equipment specified in Grove's Order and any replacement or replacements thereof, together with such accessories for the same as let by the Supplier to Grove.
4. The 'Contract' shall mean the contract between Grove and the Supplier consisting of the Grove Order, these conditions and any other documents (or parts thereof) specified in Grove's Order. Should there be any inconsistency between the documents comprising the Contract they shall have precedence in the order listed within the Order.
5. 'Hire Charges' shall mean the Supplier's rate, price or charge for the hire of the Plant (and operator where one is to be supplied)
6. The 'Site' shall mean the place or places specified at which the Plant is to be employed for the purposes of the Contract.
7. The 'Period of Hire' shall mean the period commencing when the Plant arrives on the Site and ending on the date when Grove gives verbal or written notice that the Plant is to be removed from the Site.
8. 'Hirer's Order' or 'Order' shall mean Grove's Contract Purchase Order for the Plant.
9. 'Statutory Requirements' shall mean each and every obligation imposed by law relevant to the Contract including without prejudice to the generality of the foregoing all statutes, statutory instruments, regulations and by-laws and any requirements of any statutory bodies or local authorities.
10. "Grove Policies" shall mean all relevant policies and site rules of Grove, or that Grove is bound to observe and/or comply with in relation to the Purchase Order including without prejudice to the generality of the foregoing, health, safety, environmental and sustainability rules and energy conservation obligations.
11. 'The Construction Act' means part II of the Housing Grants, Construction and Regeneration Act 1996.
12. 'Construction Contract' means a construction contract within the meaning of the Construction Act.
13. The 'Operator' shall mean the person or persons in the employment of the Supplier who are assigned to the Plant for the purpose of the Contract if so required by Grove.

Inspection of site

14. The Supplier shall be deemed to have visited and inspected the Site (including ground conditions) and methods of access and to have understood the nature and extent of the work for which the Plant is to be employed and to have willingly accepted all the risk therein. Grove shall grant such access as may be reasonable for this purpose. The Supplier shall take all reasonable precautions to ensure that the ground is in a satisfactory condition to take the weight of the Plant and shall, where necessary, supply and lay suitable timbers or equivalents for mobile Plant to travel over at no extra cost to Grove.

Delivery of plant

15. The date of delivery of the Plant shall be that specified in the Order unless otherwise agreed in writing between Grove and the Supplier and time shall be of the essence in this respect.
16. If the Plant is incorrectly delivered, the Supplier shall be responsible for any additional expense incurred in delivering it to the correct destination.

Delivery in good order

17. The Supplier shall ensure that the Plant is of sound construction and condition, has been properly maintained, and is in good working order at the commencement of the Period of Hire. In particular the Supplier shall ensure that all Statutory Requirements, British Standards and Codes of Practice (where applicable) concerning transportation, construction, maintenance, testing and inspection applicable to the Plant have been complied with and:
 - a) Shall produce to Grove, if so requested, the current certificate of inspection required under any Statutory Requirements, and
 - b) Shall indemnify Grove from liability for any kind of breach of any such Statutory Requirements.

Loading and off-loading arrangements

18. The Supplier shall be responsible for the proper and safe loading and off-loading of the Plant at Grove's Site and for the provision of all equipment and personnel necessary for this purpose.

Removal of plant, termination and suspension

19. The Supplier shall remove the Plant from the Site as soon as possible on receipt of Grove's instructions to such effect. In the event that the Supplier fails to remove the Plant from the Site within 24 hours of the removal date given in such instructions then the Plant shall thereupon become the Supplier's own risk and expense. If the Supplier fails to remove the Plant within 24 hours of the end of the Period of Hire, Grove may, if it so chooses, return the Plant to the Supplier, and the Supplier shall be liable for any costs incurred by Grove in removing and returning the Plant.
20. Where the Supplier is obliged to supply the Operator, and the Operator does not attend Site, the Period of Hire shall be deemed to be suspended until the Operator arrives on Site and no Hire Charges shall be payable during this period of suspension. If such suspension shall last for one working day Grove shall be entitled to terminate the Period of Hire and the Plant shall thereupon become the Supplier's own risk and expense.

Identification

21. The Plant shall at all times remain the property of the Supplier and it shall mark it in such a manner as to make it easily identifiable. Such identification shall not be removed, defaced or covered up by Grove.

Assignment and sub-letting

22. Grove shall not transfer possession of or lend the Plant or any of the accessories or equipment supplied therewith to any third party unless the Supplier's prior written consent has been obtained (such consent not to be unreasonably withheld).
23. The Contract shall not be assigned by the Supplier. The Supplier shall not sub-let any portion of the Contract without the consent in writing of Grove, but such consent shall not relieve the Supplier from any obligations under the Contract.
24. Where Grove has consented to the placing of sub-contracts, a copy of each sub-order shall be sent to Grove immediately on request.
25. Grove may freely assign or charge all or part of the benefit of the Contract

Payment

26. Unless otherwise stated in Grove's Order, all Hire Charges are firm and fixed and the Hire Charges shall be inclusive of all services and materials necessary for the performance of the Contract by the Supplier, and all taxes and duties, but excluding value added tax.
27. The Supplier shall procure that invoices shall include the following particulars as a condition precedent to Grove's obligation to pay the Hire Charges to the Supplier:
 - Grove's Order number;
 - Invoice date and number;
 - Supplier's name and address;
 - The name of the Site;
 - The period to which the Hire Charges invoiced relate;
 - The Plant to which the Hire Charges invoiced relate;
 - The Hire Charges the subject of the invoice;
 - Value added tax payable by Grove (where applicable to the transaction) stated separately from the Hire Charges; and
 - The Supplier's VAT number and any other particulars required by law or regulation from time to time,and an invoice which includes each of the above particulars is hereinafter called a "valid invoice".
28. The Supplier shall deliver a valid invoice for the Hire Charges promptly after (but not before) the end of each calendar month for all items of Plant on hire during that month less any adjustments to the Hire Charges required in accordance with Clauses 20 and 40.
29. Subject to Clause 30, unless otherwise stated in Grove's Order, and subject to the delivery of a valid invoice by the Supplier to Grove in accordance with Clause 28, Grove shall pay the Hire Charges for the relevant Plant together with value added tax (where applicable to the transaction) to the Supplier not later than 60 days after the end of the calendar month during which the valid invoice is received by Grove.
30. Where the Contract is a Construction Contract:
 - (a) The due date for payment is 45 days after the end of the calendar month during which a valid invoice is received by Grove;
 - (b) The final date for payment is 60 days after the end of the calendar month during which a valid invoice is received by Grove;
 - (c) Any notice of payment due shall be given 5 days after the due date and any notice to withhold payment shall be given no later than 1 day before the final date for payment.For the avoidance of doubt, any failure by Grove to give notices under Section 110 or Section 111 of the Construction Act shall not necessarily mean the amount invoiced by the Supplier is due.
31. If Grove shall fail to make payment in accordance with Clause 29 or 30, the Supplier shall be entitled to simple interest at the rate of 2% per annum above the base lending rate from time to time of Barclays Bank plc calculated on the unpaid sum from the due date for payment until payment is made.

Statutory duties and safety where supplier supplies operator

32. Where the Plant is to be operated by the Operator, the Supplier shall ensure that such Operator is fully trained, qualified and competent to operate the Plant. The Supplier shall be responsible for the payment of all wages, national insurance and other outgoings usually payable by a plant hire company to or on behalf of an employee in respect of the Operator.
33. All work shall be carried out with proper regard to safety. The Supplier shall observe and conform to all Statutory Requirements applicable to the work and to the Site where the work is carried out, the cost of compliance being deemed to be included in the Hire Charges. No additional expenses incurred by the Supplier in conforming with any such Statutory Requirement made subsequently to the Supplier's tender shall be added to the Hire Charges.

Site regulations

34. The Supplier shall not commence work on Site before obtaining the consent of Grove.
35. The Supplier shall comply with the Grove Policies and Grove's current Health, Safety and Environmental Rules for Suppliers ('HSE Rules') (available on request) and all other safety requirements applicable to the Site and shall ensure that its employees and sub-Suppliers so comply.
36. Grove shall have the right to require the removal of any person brought to the Site by the Supplier who has:
 - a) Failed to comply with the SHE Rules, or
 - b) Has, in the opinion of Grove, misconducted himself or been negligent or incompetent.

Things found on the site

37. All minerals, metals, objects and other things found or discovered on, under or around the Site shall as between the Supplier and Grove be the property of Grove and shall be dealt with as Grove may direct.

Repairs and adjustments

38. If at any time during the Period of Hire the Supplier is of the opinion that the Plant is in need of repair or adjustment the Supplier may stop the use of the said Plant until repairs or adjustments have been made on the Site or, at the Supplier's own expense, supply with all reasonable speed such replacement Plant as is necessary for the purposes of the Contract.
39. If at any time during the Period of Hire Grove is of the opinion that the Plant is in need of repair or adjustment, Grove shall advise the Supplier and may suspend the operation of the Contract until the Supplier has carried out such repairs or adjustments on the Site or has, at the Supplier's own expense, supplied such replacement Plant as is necessary for the purposes of the Contract.
40. The Hire Charges shall be reduced in proportion to the time lost due to any stoppage or suspension of use of the Plant during the Period of Hire, under the provisions of clauses 38 or 39 above and the Supplier shall indemnify Grove for any losses suffered as a result of such suspension or stoppage.
41. No adjustment to the Hire Charges can be claimed where damage to the Plant is due to the neglect or default of Grove, its servants or agents. However, if the Plant or an item thereof is agreed to be beyond repair the Supplier shall with all reasonable speed provide such replacement as is necessary for the purposes of the Contract.
42. Grove shall at all reasonable times permit the Supplier, its servants, agents or insurers, to have access to the Plant for the purpose of inspecting, testing, adjusting, repairing or replacing the same. Similarly, Grove shall permit the Supplier to inspect the work being carried out by the Operator. So far as is reasonably practicable any such inspection etc shall be carried out at times convenient to Grove.

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Loss or damage to plant

43. Grove shall notify the Supplier immediately in the event of any accident, breakdown of, loss or of damage to the Plant, howsoever caused, for which an adjustment to the Hire Charges might be claimed in accordance with Clauses 38 to 42. Such notification shall be confirmed in writing to the Supplier.
44. Where, during the Period of Hire, such loss or damage occurs and is due to the neglect or default of Grove, its servants or agents, Grove shall pay all reasonable costs incurred by the Supplier in effecting the necessary repairs or, where the Plant or item thereof is agreed by the parties to be beyond repair, shall compensate the Supplier with an amount which in default of agreement shall in no case exceed the market value current at the time for Plant or items thereof of like age and condition.
45. Save as aforesaid and save in respect of any claim for personal injury or death (but subject to Clause 46), Grove shall be under no other liability to the Supplier including for any consequential loss suffered by the Supplier resulting from any accident or damage, howsoever caused.

Indemnity and insurance

46. The Supplier shall keep Grove indemnified against:
- (i) any liability or claim in respect of loss or damage to any moveable or immovable property of any nature or type whatever of Grove or any third party; and
 - (ii) any liability or claim in respect of the death or personal injury to any person whether in contract or tort or otherwise arising under common law, statute or otherwise caused by an act or omission on the part of the Supplier or any of its employees, sub-contractors, assignees or agents and the Supplier shall also indemnify Grove in respect of any legal fees incurred by Grove in connection therewith.
47. The Supplier shall fully indemnify Grove against all loss, damages, costs or expense arising out of or connected with any breach of the Contract and the Supplier shall also indemnify Grove in respect of any legal fees incurred in connection therewith.

Insurances

48. The Supplier shall have in force and shall require any sub-Supplier employed by the Supplier to have in force the following Insurances which shall extend to indemnify Grove against any claim for which the Supplier or sub-Supplier may be legally liable under the Contract:
- a) Employer's Liability Insurance with an indemnity of not less than £10million, and
 - b) Public Liability (Third Party) Insurance for not less than £5million for any one accident; and
 - c) Third Party Motor Insurance (if appropriate) as may be legally required.
49. Grove shall maintain Employer's Liability and Public Liability Insurance in respect of its own liabilities.
50. The Supplier shall, if so required, promptly and accurately complete any insurance questionnaire of Grove, and Grove shall be entitled to withhold payment of all or part of the Hire Charges until it has been fully and accurately completed and returned to Grove.

Notification of accidents

51. If the Plant is involved in any accident or other occurrence resulting in injury, loss or damage to persons or property, the parties shall give prompt notification thereof to the other.

Transportation of the plant to and from site

52. The Supplier shall use every reasonable means to prevent any loss or damage in respect of the highways or bridges communicating with or on the routes to the Site. In particular it shall select routes and use vehicles and restrict and distribute loads so that no loss or damage may result from the use of such highways and bridges.
53. The Supplier shall indemnify Grove against all claims for loss or damage in respect of any highway or bridge caused by the transportation of the Plant to and from the Site including, without limitation, such claims as may be made by any competent authority directly against Grove pursuant to any Statutory Requirements.
54. If, notwithstanding clause 52 above, any loss or damage shall occur in respect of any highway or bridge arising from the transportation of the Plant, the Supplier shall notify Grove as soon as it becomes aware of such loss or damage or receives any claim in respect thereof.

Confidentiality

55. The Supplier shall treat as confidential and shall not disclose to any third party without the prior written consent of Grove the terms of the Contract and any information obtained from Grove or otherwise obtained in connection with the Contract ("Confidential Information").
56. The Supplier shall not use the Confidential Information for any purpose other than performance of its obligations under the Contract.
57. Clauses 55 and 56 shall not apply to any information to the extent that it:
- (a) is or shall become part of the public domain otherwise than in consequence of any breach of the obligations in this clause or any other duty or obligation of confidence; or
 - (b) is already in the Supplier's possession and not under any obligation or duty of confidence.
58. The obligations of confidence contained in this clause 58 shall continue after expiry or earlier termination of the Contract.

Termination

59. Without prejudice to any other rights or remedies of Grove, Grove may by notice in writing terminate the Contract forthwith if the Supplier: (a) shall go into liquidation whether voluntary or otherwise (except for the purposes of and followed by an amalgamation or reconstruction) or shall become bankrupt or shall cease to trade or threaten to cease to trade or shall have a receiver or administrative receiver of the whole or any part of its assets appointed or shall enter into any composition or arrangement with or for the benefit of its creditors or shall be the subject of an administration order, or (b) shall be in breach of any term of the Contract. The Supplier shall indemnify Grove for all losses suffered by it as a consequence of such termination.
60. The Buyer shall have the right to terminate the contract by not less than one month's notice at any time without prejudice to the buyers rights and remedies in respect of any antecedent breaching of the Contract committed by the Seller.

Conditions of contract

61. No conditions submitted or referred to by the Supplier in any document shall form part of the Contract unless otherwise agreed to in writing by Grove.
62. Grove shall not be liable under the Contract unless:-
- a) Grove has issued an official Order; and
 - b) Either the Supplier confirms in writing acceptance of it or takes any steps to comply with the Contract without indicating it does not accept the Order and these conditions.
63. Grove shall not be bound by any variation, waiver of or addition to the Contract except as agreed in writing and signed by a duly authorised representative of Grove.
64. If the performance of the Contract requires Grove to have any permit or licence from any government or other authority, the Contract shall be conditional upon such permit or licence being available at the required time.
65. Nothing in these Conditions shall prejudice any conditions or warranties (express or implied) or right or remedy to which Grove is entitled in relation to the Contract by virtue of statute or common law. The rights and remedies conferred on Grove by these Conditions are in addition to and in no way in substitution for any conditions, warranties or any other rights or remedies conferred on Grove or implied by the law.

Construction of contract

66. The construction, validity and performance of the Contract shall be governed by the laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.
67. Reference to any statute or statutory provision shall be construed as a reference to that statute or provision as from time to time amended, consolidated, extended, re-enacted or replaced.

Dispute resolution

Mediation

68. In the event of any dispute arising between the parties in connection with the Contract, the parties will in good faith seek to resolve that dispute through mediation under the auspices of the ADR Group. The Mediator shall be agreed upon within 21 days of one party requesting mediation, failing which either party may apply to the President of the Law Society to appoint a Mediator. Unless otherwise agreed each party shall share equally the costs of the Mediator, the ADR Group and the President of the Law Society and each party shall bear their own legal and other fees and expenses incurred in relation to the mediation. If the dispute is not resolved within 28 days of the Mediator's appointment, then either party may commence Court proceedings, but provided that nothing in this clause 68 shall prevent either party seeking an injunction or other interim relief at any time if it reasonably believes such action is necessary to prevent irreparable damage.

Adjudication

69. Where the Contract is a Construction Contract Grove and the Supplier each has the right to refer any dispute under the Contract to Adjudication and either party may at any time give notice in writing (hereinafter called the Notice of Adjudication) to the other of its intention to refer the dispute to Adjudication. Any dispute referred to Adjudication shall be conducted in accordance with the TeCSA Adjudication Rules current at the time of the Notice of Adjudication. The Chairman of TeCSA shall nominate an Adjudicator in default of agreement between the parties. The decision of the Adjudicator shall be binding until the dispute is finally determined by Court proceedings.

Third party rights

70. A legal or natural person which is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause 70 does not affect any right or remedies of any person or body which exists or is available otherwise than pursuant to that Act.

Set off

71. Any debt or claim against the Supplier on the part of Grove or any of its subsidiary, associated or holding companies with or against the Supplier, whether arising out of the Contract or otherwise howsoever, and whether liquidated or not, may be set off against any sum due to the Supplier under this contract or any other contract between the Parties.

Notices

72. Any notice to be given to a party under the Contract shall be given in writing in the English language and delivered by hand or sent by first class prepaid post or by facsimile to the other party.
73. Any notice to be given to Grove shall be addressed to the Company Secretary and sent to its registered office or such other address as Grove may have notified to the Supplier as its proper address for service.
74. Any notice to be given to the Supplier shall be sent to its registered office or the address of the Supplier stated on the last Purchase order or the last known address or facsimile number notified in writing to Grove by the Supplier as being its proper address or facsimile number for service.
75. Notices given in accordance with this Clause 75 shall be deemed to have been received:
- (i) 48 hours after posting (exclusive of the day of posting) if sent by first class prepaid post;
 - (ii) on the day of delivery if delivered by hand; or
 - (iii) at the time of transmission if sent by facsimile provided that a confirming copy is sent by first class prepaid post to the other party within 24 hours after transmission.

Waiver

76. No delay or omission by Grove in exercising any of its rights or remedies under the Contract or under any applicable law on any occasion shall be deemed a waiver of, or bar to, the exercise of such right or remedy or any other right or remedy upon any other occasion.

Headings

77. The headings herein are for ease of reference only and shall not affect the construction thereof.

Severance

78. In the event that any provision of the Contract shall be void or unenforceable by reason of any provision of applicable law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the spirit of the Contract so far as possible.