

# AGREEMENT STANDARD TERMS & CONDITIONS OF HIRE OR SALE

Registered number:7622405 | Established: May 2011

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## 1. DEFINITIONS

- a) The **Owner** means ECO Track & Access Ltd
- b) The **Owner's Representative** means the Owner's employees, servants, agents, insurers and/or duly authorised representatives.
- c) The **Hirer** means the person, firm, company, public authority or other organisation hiring and/or purchasing the Equipment.
- d) The **Hirer's Representative** means the Hirer's employees, servants, agents and/or duly authorised representatives.
- e) The **Equipment** means the temporary access roadway panels, walk-way panels, flooring and all accessories detailed in the Quotation.
- f) The **Contract** means any contract between the Owner and the Hirer detailed in the Quotation made between the Hirer and the Owner for the hire and/or purchasing of the Equipment and the provision of the Services.
- g) The **Services** mean the services to be performed by the Owner for the Hirer in conjunction with the hire of Equipment including and delivery and/or sale of Equipment and/or provision of Services to the Hirer by the Owner.
- h) The **Site** means the location or place where the Hirer notifies the Owner that the Hirer requires the hired Equipment to be delivered and/or positioned.
- i) The **Quotation** means the written quotation detailing the hire and/or sale of Equipment and/or provision of Services to the Hirer.
- j) The **Hire Period** means the period during which the Owner hires the Equipment and provides the Services to the Hirer.
- k) The **Weekly Hire Rate** means the rate for hire of the Equipment for a minimum period of one week comprising seven consecutive days.
- l) A **Working Day** means Monday to Friday excluding any bank or other statutory holiday and commencing at 9.00am and ending at 6.00pm.
- m) **Force Majeure** means any event outside the Owner's reasonable control including but not limited to acts of God, war, flood, fire, strike, labour disputes, lock outs, riots, civil commotion, Health & Safety Executive orders, DEFRA orders, malicious damage, explosion, terrorism, government action.
- n) **All costs** means all costs incurred by the Owner in relation to the hire and/or sale of Equipment and/or provision of Services, including but not limited to all labour, plant, materials, equipment, transport, overheads, expenses, legal, professional, debt recovery costs, loss of profit and consequential losses incurred by the Owner and interest.

## 2. BASIS OF CONTRACT AND QUOTATIONS

- a) These terms and condition shall govern the agreement between the Owner and the Hirer to the exclusion of any other terms and conditions for the hire and/or sale of Equipment and/or provision of Services. These terms and conditions supersede all previous terms and conditions and shall replace any terms and conditions previously notified to the Hirer.
- b) Orders placed by the Hirer leading to a contract is not expressed to be subject to these terms and conditions shall still be subject to them.
- c) In entering into the Contract the Hirer has not relied upon any representations, statements or warranties whether verbal or written made by the Owner and/or the Owner's Representative. All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.
- d) No variation to these terms and conditions shall be binding on the Owner unless contained in the Quotation or agreed in writing between the Hirer and the Owner.
- e) The Quotation is not binding and may be withdrawn by the Owner at any time.
- f) The Contract shall become binding when the Owner has accepted the Hirer's purchase order which accepts, without qualification, the Quotation and all terms and conditions therein.

- g) The Equipment is hired subject to it being available for hire at the time that the Hirer's purchase order is received by the Owner. No liability is accepted for any loss suffered by the Hirer as a result of the Equipment being unavailable for hire as the Owner has the right to refuse to accept orders.

## 3. PAYMENT

- a) The Owner may issue invoices to the Hirer before, during and after the Hire Period.
- b) Payment of the Owner's invoices may be made in cash, by credit card, bank transfer or cheque. Time for payment shall be of the essence and payment shall not be deemed to be made until the Owner has received cash or cleared fund in respect of the full amount outstanding.
- c) Unless other stated, all amounts due under the Contract are exclusive of VAT which shall be payable by the Hirer at the applicable rate.
- d) The Hirer shall make payment of all amounts due under the Contract in full without any set-off, deduction or counterclaim and/or any other withholding of monies.
- e) Without prejudice to any of the Owner's other rights, should the Hirer fail to make payment in full on the due date, the Owner shall be entitled to charge interest (both before and after judgement ) on the amount unpaid in accordance with Late Payment of Commercial Debts (Interest) Act 1998.
- f) Should the Owner be unable to recover and collect the Equipment or part thereof on hire from the Hirer for any reason whatsoever, it shall be deemed that the Equipment has been sold to the Hirer at the date of recovery or attempted recovery at the full replacement cost together with All Costs in such abortive recovery and collection action.

## 4. OWNERSHIP

- a) Despite delivery of the Equipment and the passing of risk, ownership of the Equipment remains with the Owner at all times and the Hirer has no right, title or interest in the Equipment except that it is hired to the Hirer.
- b) Ownership of all Equipment sold to the Hirer remains with the Owner until all amounts due under the Contract have been paid in full and funds cleared.
- c) The Hirer must not deal with the ownership of or any interest in the Equipment. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, disposing of and/or lending.

## 5. BASIS OF HIRE CHARGES

- a) Equipment shall be hired for a minimum period of one week and the Weekly Hire Rate shall apply to the Hire Period.
- b) Equipment hired for more than one week shall be charged at the Weekly Hire Rate for each week or part thereof as detailed in the Quotation.
- c) In the event of any breakdown, delay, loss or damage for which the Owner is responsible, an allowance of one seventh of the Weekly Hire Rate as detailed in the Quotation will be made to the Hirer for each full Working Day of lost hire. No allowance will be made for less than an complete Working Day of lost hire.
- d) In the event of breakdown, delay, loss or damage for which the Hirer is responsible, the Hirer will be charged as detailed in clauses 10 and 14 of these terms and conditions.
- e) Hire of the Equipment shall continue through periods of statutory holidays or standard industry holidays unless specifically agreed otherwise by the Owner in writing.

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### 6. PROVISION OF SERVICES

- a) The Hirer shall allow and procure sufficient access, unloading space and facilities to allow the Owner to deliver the Equipment.
- b) Should the Hirer for any reason is unable to receive the Equipment immediately upon its arrival at site, the Hirer shall be responsible for any delay and All Costs.
- c) Should any vehicle supplied by the Owner be required to leave the public highway for the purpose of delivering, repositioning, recovery or collection of the Equipment, the Hirer shall be responsible for all injury, loss and damage howsoever caused, whether negligent or otherwise to the Owners Representatives, vehicles, Equipment or to the Site and anything on, above or below the Site and the Hirer shall indemnify the Owner against any and all such injury, loss of or damage provided that nothing in this clause shall exclude liability of the Owner for personal injury or death caused as a result of the negligence of the Owner.
- d) Should any vehicle supplied by the Owner for the purpose of delivering, repositioning, recovery or collection of the Equipment encounter any soft or rough ground conditions, access restrictions, obstructions or otherwise prior to or upon reaching the place at which the Equipment is to be positioned, the Hirer shall be responsible for making good the ground and/or access conditions and/or removal of obstructions in order to permit the Owner's vehicles' safe and unrestricted access to and from the Site and the Hirer shall be responsible for any delay and All Costs.
- e) Should any delivery, repositioning, recovery or collection of the Equipment be delayed or have to be aborted, once commenced, as a result of the Hirer changing any pre-agreed arrangements or as a result of other restrictions at the Site or for any other reason for which the Hirer is responsible, the Hirer shall be responsible for any delay and All Costs.
- f) All delivery, repositioning, recovery and collection dates and times stated by the Owner are estimates only and not guaranteed and time shall not be of the essence for such.
- g) The Equipment recovered and collected from the Site shall be returned to the Owner's premises by the Owner whereupon it shall be fully inspected and all damage and defects found in the Equipment (fair wear and tear excepted) shall be scheduled, notified and charged to the Hirer in accordance with clause 10 of these terms and conditions.
- h) The Owner shall not be liable for any delay or failure in performing its obligations under a Contract as a result of Force Majeure.

### 7. HANDLING AND USE OF EQUIPMENT

- a) The Hirer shall satisfy himself as to the suitability of the Equipment and shall be responsible for the security and safekeeping of the Equipment hired and shall not permit the Equipment to be used, and the Owner shall have no liability for Equipment used, in excess of the Owner's specified capacity as detailed in the Quotation.
- b) The Hirer must not position or reposition the Equipment without the express written permission of the Owner.
- c) In the event of the Hirer for any reason requiring the Equipment to be repositioned after the initial delivery and positioning by the Owner, the Hirer shall confirm such instruction to the Owner's Representative immediately in writing and shall pay additional charges to the Owner. Should the Hirer fail to confirm such instruction in writing, the Owner's Representative shall provide to the Hirer or Hirer's Representative a receipt confirming such verbal instruction has been given to the Owner and the Owner's Representative's signature shall be conclusive evidence that the repositioning of the Equipment is required by the Hirer and the Hirer shall be charged and pay for the repositioning.

- d) The Hirer shall provide at his own expense any and all resources including labour, materials, plant, tools and protective measures that may be necessary for preparation of the Site including but not limited to removal of obstructions to permit entry to the Site and access routes around and exit from the Site, removal of obstructions to permit operation of track-laying, preparing the ground surfaces ready to receive the Equipment including making good any unsuitable ground conditions prior to the positioning of the Equipment.
- e) The Hirer shall provide at his own expense any and all resources including labour, materials, plant and tools that may be necessary to repair and/or restore the surfaces and anything above or beneath such surfaces that may be damaged or disturbed by the installation, use of and recovery of the Equipment.
- f) The Hirer shall not permit use of the Equipment by any vehicles whether belonging to the Hirer or otherwise in excess of five miles per hour.
- g) The Hirer shall not permit use of the Equipment by any vehicles whether belonging to the Hirer or otherwise in excess of the point loads or evenly distributed loads as detailed in the Product Specification.
- h) The Hirer shall not permit use of the Equipment by any tracked vehicles whether belonging to the Hirer or otherwise without the express written permission of the Owner.
- i) The Hirer shall not attempt to dismantle or reposition the Equipment nor to clean, remove accumulated soil, mud of the like from the Equipment.
- j) The Hirer shall not remove, deface or cover up the Owner's name plates, identification marks or signs indicating the Equipment are the property of the Owner.

### 8. INSPECTION SERVICING ADJUSTMENTS AND REPAIR

- a) The Hirer shall at all reasonable times allow the Owner's Representative access to the Site for the purpose of inspection, servicing, adjustment, repair and/or replacement of the Equipment.
- b) The Hirer under no circumstances is to effect servicing, adjustment or repairs to the Equipment.
- c) The Hirer shall take all reasonable steps to monitor the use of the Equipment and to monitor the state and condition of the Equipment while at the Site and the Hirers shall indemnify the Owner against all breakdown, damage, additional hire charges and/or loss to the Equipment resulting from the Hirer's negligence, misdirection or misuse of the Equipment.
- d) In the event any item of the Equipment, in the sole opinion of the Owner's Representative, suffers a breakdown or is in need of servicing, adjustment and/or repair as a result of fair wear and tear, the Owner reserves the right to suspend the further use of Equipment by the Hirer until such time that the servicing, adjustment and/or repair has been carried out (whether at the Site or away from the Site) at the Owner's cost and/or to replace the affected Equipment at the Owner's cost and/or to terminate the Contract forthwith without any liability for consequential loss and/or damages incurred by the Hirer if replacement Equipment is unavailable.

### 9. BREAKDOWN AND DELAY

- a) If ground conditions at the Site deteriorate to the extent that, in the sole opinion of the Owner's Representative the Equipment is no longer fit for use, the Owner reserves the right to suspend and/or terminate the use and/or hire of the Equipment.
- b) Where the use and/or hire of the Equipment is suspended by the Owner, the Hirer shall be liable for and pay standing charges for the Equipment until such time that the ground conditions at the Site, in the sole opinion of the Owner's Representative, become fit for use of the Equipment again.

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- c) Each item of Equipment detailed in the Quotation is hired as a separate item and the breakdown and/or failure of one of more items of Equipment, by any reason whatsoever, shall not enter the Hirer to compensation and/or reduction in hire charges for the loss of use of any item of Equipment and/or any other item (whether owned by the Owner or otherwise) which may be used in conjunction with and/or subsequently used after the Equipment is delivered and/or positioned.
- d) The Owner accepts no responsibility or liability whatsoever for loss and/or expense including consequential loss and/or damage howsoever caused resulting from servicing, adjustment, repair, breakdown, late or non-delivery of the Equipment, inclement weather, unfit ground conditions or any other reason beyond the reasonable control of the Owner.

### 10. RESPONSIBILITY FOR LOSS AND DAMAGE

- a) The Hirer shall indemnify and keep indemnified the Owner against all liabilities on a full indemnity basis, including but not limited to death, injury or disease to any persons or loss of, or damage to any property and against all claims, proceedings, damages, costs, charges and expenses provided that the Hirer shall not be liable for, nor be required to indemnify the Owner for any injury, loss or damage to the extent that such injury, loss or damage is caused by any wrongful act, default or negligence on the part of the Owner or the Owner's Representatives.
- b) The Hirer shall indemnify the Owner and shall be liable and pay for all loss and/or damage howsoever caused to the Equipment (fair wear and tear accepted) whilst the Equipment is at the Site whether or not the Equipment has been positioned or otherwise and whether or not the Hire Period has commenced or expired. In the event of loss and/or damage to the Equipment, hire charges shall continue pro rata the amount detailed in the Quotation until such time that settlement has been agreed and payment has been made.
- c) The Hirer shall insure the Equipment at all times that the Equipment is on site (whether or not the Hire Period has commenced or expired), such insurance to provide cover at full replacement value as new including all associated costs and expenses incurred by the owner in effecting such replacement. The Hirer shall provide evidence to the Owner that suitable insurance cover is in place prior to the Owner's acceptance of the Hirer's purchase order or when requested by the Owner.
- d) Charges for replacement of Equipment are as detailed in the terms and conditions unless charges for replacement on a full indemnity basis is higher in which case the latter shall prevail.
- e) If the Equipment is lost or not available for recover and/or collection upon expiry of the Hire Period, the Hirer shall be liable and pay for the full replacement value as new.
- f) If the Equipment is damaged and/or requires excessive cleaning but available for recovery and/or collection upon expiry of the Hire Period, the Equipment shall be returned to the Owner's premises where a full inspection shall be carried out by the Owner and full details of such damage and/or excessive cleaning including the costs of replacement (the "Owner's Schedule"), shall be notified to the Hirer in writing within ten Working Days of the Equipment being returned to the Owner's premises. The Hirer shall have five Working Days following receipt of the Owner's Schedule to inspect the damaged Equipment and to dispute the Owner's Schedule failing which the Owner's Schedule shall be final and binding. Charges for excessive cleaning of the Equipment are as detailed in the terms and conditions.
- g) The Hirer shall be responsible for the provision of twenty-four hour manned or other security at the Site in addition to providing insurance and at the Hirer's own cost all to the Owner's satisfaction. Failure by the Hirer to provide adequate and effective security arrangements at the Site may incur premium hire charges to reflect the increased risk of theft and/or loss of the Equipment.

- h) The Owner shall have no liability for damage, loss, liability, claims, costs or expenses caused or contributed to the Hirer's continued use of defective Equipment and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Hirer.
- i) The Owner shall have no liability to the Hirer to the extent that the Hirer is covered by any policy of insurance.
- j) The Owner shall have no liability to the Hirer for any:
  - i. Expenses, loss of profits and/or damage to goodwill;
  - ii. Pure economic and/or other similar losses;
  - iii. Special damages;
  - iv. Aggravated, punitive and/or exemplary damages;
  - v. Damage to vehicles and/or the Site;
  - vi. Consequential losses and/or indirect losses; and/or
  - vii. Business interruption, loss of business, loss of contracts, loss of opportunity and/or production
- a) Each of the limitations and/or exclusions in these terms and conditions shall be deemed to be repeated and apply as a separate provision for each of liability in contract (including fundamental breach), liability in tort (including negligence), liability for breach of statutory duty and liability for breach of Common Law and/or under any other legal basis except that the clause above placing financial caps on the Owner's liability shall apply once in respect of all the said types of liability.

### 11. ACCIDENTS

- a) In the event of an accident at the Site involving the Equipment resulting in death and/or injury to persons and/or damage to vehicles or property, the Hirer must notify the Owner immediately by telephone and confirmed in writing to the OWNER'S ADDRESS.
- b) No admission, offer, promise or payment shall be made by the Hirer without written consent of the Owner.

### 12. CANCELLATION CHARGES

- a) Following acceptance by the Owner of the Contract which is the Hirer's Purchase Order and which contract may be written or oral, the Hirer may terminate the Contract at any time before commencement of the Hire Period by serving written notice to the Owner at the Owners address and subject to payment of the Owners cancellation charges set out below :
  - i. Less than seven days prior to the commencement of Hire Period – 100% of the Quotation price.
  - ii. Between eight and fourteen days' notice prior to commencement of Hire Period – 75% of the Quotation price.
  - iii. Between fifteen and twenty eight days' notice prior to commencement of Hire Period – 50% of Quotation price.
  - iv. Over twenty eight days' notice prior to commencement of Hire Period – 30% of the Quotation price.
- a) If the Hirer fails to serve notice of cancellation in accordance with this Contract, the hire shall continue for the Hire Period.

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### 13. TERMINATION OF EACH CONTRACT

- a) The Hire Period cannot be fixed at the commencement of the Contract and all Hire Periods are for an indefinite period of time and any reference to a fixed period of time detailed in the Quotation shall be of no binding effect and shall be for guidance only as to the anticipated duration of hire of the Equipment.
- b) The Owner may without prejudice to any of its other rights arising hereunder or as a result of any breach by the Hirer of its obligations, forthwith upon serving written notice to the Hirer, terminate the Contract if the Hirer:-
- c) Breaches one of these terms and conditions which is not remediable or if remediable the breach has not been remedied within five days of receiving notice requiring it to be remedied;
  - ii Persistently breaches any one or more of these terms and conditions;
  - iii Ceases or threatens to cease to carry on business; and/or
  - iv is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application of the giving of any notice) by it or by any other person in respect of any of these circumstances; and/or
  - v Undergoes a change of control as defined in section 416 of the Income and Corporation Taxes Act 1988.

- c) In the event of termination of the Contract for any reason the Hirer shall ensure full and unrestricted access to the Owner for the recovery and/or collection of the Equipment from the Site for a period of 10 Working Days following the end of the Hire Period. The Hirer shall remain fully liable for and responsible for the security and insurance of the Equipment and shall not use the Equipment until such time that the Owner recovers and/or collects the Equipment from the Site.

### 14. LAW

- a) These terms and conditions shall be governed by the laws of England and Wales and each party agrees to submit to the non-exclusive jurisdiction of the courts of England and Wales.

### 15. MARKETING

- a) As part of the appointment of ECO Track & Access Ltd as the trackway supplier, you agree on behalf of the Hirer, to grant the Owner worldwide right in perpetuity, without approval or compensation, to use photographic or video image or likeness for the Owner's reasonable commercial purposes.