

## General Terms & Conditions of Hire

### 1 DEFINITIONS

- a) The "Owner" is egeplast Ireland Ltd or where the context so requires its successors.
- b) The "Hirer" is the Company, firm, person, corporation or public authority named as such on the first page of the Contract and also any company, firm, person, corporation or public authority taking the owners equipment on hire.
- c) The "Contract" means the contract of hire entered into between the Owner and the Hirer, of which these terms and conditions shall form part.
- d) "Equipment" covers all machinery and accessories and auxiliary equipment, which the Owner agrees to hire to the Hirer.
- e) "Regulations" means any act of the Oireachtas, ministerial order, statutory instrument, regulation, bye-law or other similar instrument whether national or local or being a provision of the E.C as applicable in Ireland and including any amendments or reenactments or replacements of any thereof.
- f) The "Hire Period" means the period of hire specified in the Contract.
- g) The "Hirer Rate" is the rate at which the equipment will be charged to the hirer by the owner, which is specified on the quote.
- h) The "Site" means the location at which the Equipment is operated by the Hirer.
- i) The "Operator(s)" means an employee(s) of the Owner who shall be seconded to the Hirer for the duration of the Hire Period for the purposes of operating the Equipment.

### 2 ACCEPTANCE

- (a) The Hirer's order, whether oral or in writing, for the supply of Equipment shall be construed as an express acceptance of these General Terms and Conditions of Hire, and in so far as any provision of the Hirer's said order is inconsistent herewith, these General Terms and Conditions of Hire shall be deemed to prevail.
- (b) Any purported variation of this Agreement shall have no effect unless confirmed in writing by the Owner and the Hirer.
- (c) Subject to the provisions of **clause 18** of these conditions the Hirer warrants to the Owner that no representations have been made to him concerning the Equipment and in particular concerning its suitability for any particular purpose or for work in any particular place and that in entering into the Contract the Hirer does not rely upon any such representation and has satisfied himself independently upon all such matters; and accordingly the Hirer shall seek no relief in respect of any such representation and in particular shall bring no proceedings for misrepresentations whether under the Sale of Goods and Supply of Services Act, 1980 or otherwise. Subject to the provisions of **clause 18** no conditions or warranty other than herein specifically set forth shall be implied or deemed to be incorporated in or to form part of the Contract.

### 3 AVAILABILITY OF EQUIPMENT

The Equipment is offered subject to such Equipment being available to the Owner when the Hirer's acceptance of the Contract is received by the Owner.

### 4 UNLOADING AND LOADING

The Hirer shall be responsible for un/off-loading and reloading Equipment on Site. Equipment is to be re-packed returned in a similar/same fashion as delivered using pallets if sent on pallets.

### 5 MAINTENANCE AND REPAIR

#### Owner's Obligations

- (a) The Owner shall ensure that at the commencement of the Hire Period the Equipment shall be

in good working order and properly maintained and that at that time all Regulations (applicable to the Equipment) regarding construction, maintenance testing and inspection have been complied with. All equipment is certified to comply with the respective regulation inclusive WIS. Unless notification to the contrary in writing is received by the Owner within 24 hours of delivery to the Site, the Equipment shall be deemed to have been delivered in good working order.

(b) The Hirer shall at all reasonable times allow the Owner, his agents to have access to the Equipment if so required for whatever reason. The Hirer shall not repair or attempt to repair the Equipment unless so authorised by the Owner in writing. The Owner undertakes to deal with all necessary repairs as quickly as reasonably possible.

#### **Hirer's Obligations.**

(a) The Hirer shall forthwith notify the Owner if the Equipment breaks down or fails to work properly, or if any repairs or replacements are necessary. If notification is of an oral nature it shall be confirmed in writing within 48 hours of original occurrence of such breakdowns. The Hirer is to ensure the equipment is cleaned on a daily basis and that it is in proper working order to ensure compliance with health and safety regulations and that it can operate in line with applicable welding regulations.

#### **6 COMMENCEMENT OF HIRE**

Subject to the other provisions of this Contract, the Owner shall supply the Equipment on the delivery date and at the Site stated in the Contract. The Hire Period shall start on the date of such delivery unless differently agreed in writing by the owner. Hire Charges shall commence on delivery unless otherwise stated on the face of this Contract. Responsibility for loss or damage to the Equipment is accepted by the Hirer from the time the Equipment is delivered to the Site until it is removed from the Site by, or on the instruction of, the Owner. This responsibility will also apply whilst the Equipment is on Site during any period prior to the commencement of the Hire Period or after its termination whilst the Equipment is awaiting collection.

#### **7 HIRER'S LIABILITY FOR LOSS OR DAMAGE**

(a) The Hirer accepts full responsibility to the Owner for loss of or damage to or destruction of the Equipment suffered during the Hire Period from whatever cause the same may arise (fair wear and tear excepted) and is fully responsible to the Owner for the safe keeping of the Equipment and its return in good condition and repair to the Owner (fair wear and tear excepted) at the end of the Hire Period.

(b) The Hirer accepts all liability and responsibility in respect of, and shall fully and completely indemnify the Owner against, all third party claims and losses howsoever arising in respect of damage to or loss or destruction of any property or in respect of the personal injury or death of anybody in any way caused by or relating to the Equipment or its use or operation (including but not limited to the payment of all damages costs and charges in connection therewith) except insofar as any such damage, loss, destruction, injury or death directly results from the wilful neglect or default of the Owner, its employees or agents.

(c) The Owner shall not be liable to the Hirer in respect of any damage to or loss or destruction of the Hirer's Property or death or injury to the persons of the Hirer or his employees or contractors or other persons in any way caused by or relating to the Equipment or its use, howsoever such damage, loss, destruction injury or death shall be caused.

#### **8 SYSTEM OF PAYMENT**

(a) The Owner agrees to provide the Equipment to the Hirer subject to an open valid account with the Owner and or having paid the deposit as individually required in line with the equipment value. The Hirer shall render his invoice(s) payable on a strictly net 30 days payment basis from date of invoice; the invoicing is immediately after laps of hire or on a monthly basis for longer rental periods.

(b) Where breakdown time is referred to herein all breakdown periods are covered which involve the Equipment being inoperative through breakdown arising from development of an inherent fault, fair wear and tear or absence of Operator supplied by the Owner.

(c) Equipment shall be hired out for a minimum period of one week or such other longer periods as may be mutually agreed between the Owner and the Hirer. Odd days at the beginning and at

the end of the Hire Period shall be charged on a pro rata basis.

(d) No allowance will be given for stoppages due to routine maintenance, servicing or inspection or for standing time whilst the Equipment is standing available for work to the Hirer's instructions.

(e) Transport charges will be included in the hire invoiced for the amount confirmed on the Owner's quotation submitted to the Hirer. If the amount of the transport charge is not confirmed or otherwise agreed, the Hirer agrees to pay a reasonable sum in respect thereof.

(f) All hire and transport charges quoted are exclusive of Value Added Tax, which will be included on the Owners Invoice to the Hirer at the rate and tax point applicable.

(g) Immediately upon the Hire Period being terminated by the Owner in accordance with Clause 14(b) hereof the Hirer shall pay to the Owner (in addition to any damages payable hereunder) all monies then due under this Contract and any monies which the Owner may be liable to pay to any third party or expenses incurred by the Owner by reason of any seizure and removal of the Equipment from the Site.

(h) The Hirer shall pay the Owner forthwith for all repairs and replacements to the Equipment, except for the repairs and replacements arising from fair wear and tear or from notification (given under the proviso to paragraphs (a) of the Owners Obligations) under Clause 5 hereof.

## **9 VARIATION OF HIRE RATES**

All quotations are based on prices and conditions, which are applicable at the date of quoting, and should, in the opinion of the Owner, any change in marketing conditions subsequently occur the Owner reserves the right to apply in writing to the Hirer for a variation in the Hirer Rate. If such right is exercised and no agreement is reached within seven days of the said application both the Hirer and the Owner shall have the option to:

(a) Terminate the Hire Period on one month's notice in writing if the Equipment has commenced hire or

(b) Cancel the Contract in writing if the hire of the Equipment has not commenced.

## **10 HANDLING OF EQUIPMENT**

(a) The Equipment shall remain the property of the Owner at all times, but shall at all times after delivery to the Site be under the direction or control of the Hirer only. The Hirer is fully responsible to the Owner for the use of the Equipment and shall use it for purposes and in places for which it is suitable and for its/his own business and in a skilful safe and workmanlike manner and in accordance with all relevant regulations. The Hirer shall and shall procure that his employees and every other person working with, near or using the Equipment shall comply in full with the instructions and recommendations made in the Handbook. If the Equipment should become bogged down or should for any other reason require recovery, then the Hirer shall be responsible for all costs incurred.

(b) The Hirer shall employ a suitably trained and experienced driver (not being less than 18 years of age) to operate the Equipment in a safe and proper manner and in accordance with the Handbook.

(c) The Hirer shall notify the Owner immediately in the event of any accident, loss or damage arising and in any way caused by or relating to the use of the Equipment howsoever caused. Oral notification shall be confirmed in writing to the Owner within 48 hours of the occurrence.

## **11 CHANGES OF SITE**

The Hirer shall not move nor permit the Equipment to be moved from the Site specified as the delivery address in the Contract without the Owner's prior consent in writing. Any consent given by the Owner is without prejudice to all the other obligations of the Hirer under this contract.

## **12 TERMINATION OF SHORT TERM HIRE**

a) Where the Hire Period is indeterminate or having been defined becomes indeterminate the Contract shall be determinable by seven (7) days notice in writing given by either party to the other. Notice given by the Hirer to the Operator shall not be deemed to constitute compliance with the provisions of this Clause. A hiring on a daily, weekly, monthly or other periodic basis shall be treated as indeterminate for the purpose of this Clause provided that if the parties have agreed in writing in the case of any hiring to a length of notice other than seven days then that

length of notice shall be substituted for the seven days notice referred to in this sub-clause.

b) Without prejudice to the other provisions of this Contract, should the Hirer:

- (i) withhold payment of the Hire Charges for fourteen days, or
  - (ii) fail to observe and perform any of the other terms and conditions of this Contract, or
  - (iii) do or cause to be done or permit or suffer anything whereby the Owner's rights in the Equipment are prejudiced or put into jeopardy, or
  - (iv) commit any act of bankruptcy or have a receiver appointed or make any arrangement or composition with his creditors, or being a company becomes subject to an administration order or go into liquidation whether compulsory or voluntary (except for reconstruction or amalgamation only) or suffer any distress or execution upon his property, the Owner shall be entitled to terminate the Contract forthwith and the notice requirements in Clause 12 (a) shall not apply.
- c) When the Hire Period is terminated it shall be the responsibility of the Owner to collect the Equipment from the site.
- d) In the event that the Equipment is not collected at the termination of the Hire Period the Hirer shall continue to accept full responsibility and liability as set out in Clause 7 of this Contract until the Equipment is so collected.

### **13 TERMINATION OF FIXED TERM HIRE CONTRACTS**

If the Hirer,

- (a) fails to pay any rental or
- (b) fails to perform or observe any of the terms and conditions of this agreement or
- (c) shall permit any Judgement or Order to remain unsatisfied or abandon the Equipment or cause or permit to be done any act or thing which may prejudice the Owner's property or rights in the said Equipment or
- (d) provides any information that is incorrect, incomplete, inaccurate or untrue or
- (e) causes or permits to be done any act or thing whereby in the opinion of the Owner the Owner's rights in the Equipment or under this agreement may be materially or adversely affected or
- (f) being an individual dies or becomes insolvent or has an interim bankruptcy order made against him or has an award of sequestration made against him or
- (g) being a corporation petitions or has a petition made in respect of it for a compulsory winding up order or suffers such an order to be made or an effective resolution to be passed for its winding up (other than for the purpose of a scheme of reconstruction or amalgamation previously approved in writing by the Owner) or convenes a meeting of its members or creditors for the purpose of approving the passing of such a resolution or making composition or arrangement with or any assignment for the benefit of its creditors or makes such a composition arrangement or assignment or an encumbrancer takes possession or a Receiver or Examiner is appointed of all or any undertaking or asset of the Hirer is deemed by virtue of Section 214 of the Companies Act 1965 to be unable to pay its debts

then and in every such case the events referred to above will be deemed to constitute a repudiatory breach of this Agreement by the Hire and an Event of Default shall be deemed to have occurred for the purpose of this Agreement. On the occurrence of an Event of Default the Owner may by notice in writing to the Hirer immediately or at any time thereafter and for all purposes terminate this Agreement.

### **14 CONSEQUENCE OF TERMINATION OF FIXED TERM HIRE CONTRACTS**

- (a) On termination for any reason, the Hirer will no longer be in possession of the Equipment with the Owner's consent and will return the Equipment to the Owner at the place designated by the Owner and at the Hirer's own expense.
- (b) Where the hiring of the Equipment under this Agreement is determined or comes to an end pursuant to the provisions of this Agreement, the Hirer shall thereupon be liable to pay to the Owner the aggregate of:
  - (i) All rentals and interest accrued due on the date on which the Agreement is determined or comes to an end and
  - (ii) The balance of the rentals payable on foot of this Agreement from the date on which the hiring is determined or comes to an end, less a rebate of interest on all rentals falling due after the date of termination, at the discount rate of 5%

(c) Where the hiring of the Equipment under this Agreement is determined or comes to an end pursuant to the provisions contained in this Agreement, the Hirer shall, unless the Equipment is returned by him in good and merchantable condition to the place designated by the Owner, in addition be liable to pay to the Owner any costs or expenses associated with the collection, repossession or repair of the Equipment.

(d) Interest shall be payable by the Hirer from the date of termination until payment or judgement on the balance of the amount due by the Hirer under clause 14 (b) hereof at the rate of 1 month Euribor plus 3,5% or if there be no such rate the nearest equivalent rate.

## **15 ALLOWANCES AND LIABILITY**

(a) Without prejudice to the provisions for payment herein, the Hirer shall be fully liable to the Owner for damages for any breach of this Contract.

(b) The Owner shall not be liable to the Hirer for any loss of profits or indirect loss or damage arising from or caused by any breach of this Contract.

(c) The Owner shall not be liable to the Hirer for any loss or damage caused by delay in delivery or non-delivery of the Equipment or by delay in repairing or replacing the Equipment if such delay or non-delivery is caused by an industrial dispute (including but not limited to strikes and lockouts), by force majeure, or by other circumstances beyond the Owners control.

(d) Hire Charges shall continue during any stoppage whether or not the Equipment is returned to the Owner's premises and whether or not a replacement of the Equipment is supplied for the period of the stoppage save that at the Owner's sole discretion the Owner may give credit against Hire Charges for any stoppage due to a breakdown of the Equipment caused by an inherent fault or fair wear and tear as notified to the Owner by the Hirer under Clause 5 (a) hereof.

(e) The Hirer shall be liable for Hire Charges at the Hire Rate in respect of any period after the termination of the Contract during which the Equipment or any part thereof cannot be removed from the Site owing to an industrial dispute (including but not limited to strikes or lockouts) affecting the Site.

## **16 INSURANCE**

(a) The Hirer is advised to insure the equipment on rent from the Owner:

(i) Equipment replacement prices can be provided for insurance purpose at the Hirer's special request

(ii) In respect of all the Hirer's liability (or responsibility and indemnity) to the Owner within Clause 7 (a) and Clause 7 (b) above and.

## **17 PROTECTION OF OWNER'S RIGHTS**

The Hirer shall not rehire, sell, sub-let, mortgage, assign, charge, pledge, part with possession of or otherwise deal with the Equipment or his rights hereunder, and shall protect the same against distress, execution, or seizure and shall indemnify the Owner against all losses, damage, costs, charges and expenses that may be occasioned by any failure to observe and perform this condition unless resulting from Government requisition.

The strict rights of the Owner under this agreement shall not be prejudiced by any time granted or any negligence, indulgence or forbearance in enforcing any of these terms and any waiver by the Owner of any breach by the Hirer of these terms and conditions shall not operate as a waiver of any subsequent breach by the Hirer.

## **18 CONDITIONS AND WARRANTIES**

Subject as expressly provided in these Conditions, and except where the Hirer deals as a consumer (within the meaning of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.