

# **SUPPLEMENTARY CONDITIONS APPLICABLE TO RAIL PLANT HIRE 2011**

## **TO BE READ IN CONJUNCTION WITH THE CPA MODEL CONDITIONS FOR THE HIRING OF PLANT 2011**

**EXPLANATORY NOTE:** The purpose of these Supplementary Conditions is, partly, to raise awareness of the Hirer's responsibilities for the Safe Use of Rail Plant and partly to define contractually the extent of the Owner's and Hirer's responsibilities as between themselves.

For the avoidance of doubt, when the hire is subject to the CPA's Model Conditions for the Hiring of Plant 2011 ("CPA Model Conditions"), the Owner is not a specialist sub-contractor and/or sub-contractor of the Hirer. The Owner will supply Plant pursuant to the CPA Model Conditions together with these Supplementary Conditions to form the Contract between the Owner and the Hirer.

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 These Supplementary Conditions are applicable to the hiring of rail plant only and shall be referred to as the "Supplementary Conditions".
- 1.2 Unless the context suggests otherwise words and terms in the Supplementary Conditions shall have the same meaning as in the CPA Model Conditions.
- 1.3 Any reference in these Supplementary Conditions to a statute, statutory instrument, guidance document, standard or protocol shall be a reference to whatever statute, statutory instrument, guidance document, standard or protocol is currently in force in respect of the relevant issue or is regarded as constituting the accepted industry guidance.
- 1.4 If any conflict shall appear between any provisions of the Supplementary Conditions and the provisions of the CPA Model Conditions then the former shall prevail.

### **2. WORKING HOURS AND CHARGES**

Notwithstanding Clause 1 of the CPA Model Conditions and without prejudice to the terms of Clause 19 of the CPA Model Conditions the following definitions will apply to these Supplementary Conditions:

- 2.1 "Weekday" working hours shall mean any shift between Monday to Friday commencing at 7 a.m., the first 8 hours of which shall be chargeable at "Weekday" rates and all hours in excess of 8 hours shall be chargeable at "Weeknight" rates.
- 2.2 "Weeknight" working hours shall mean any shift from Monday to Thursday commencing at 4 p.m. and shall be chargeable at "Weeknight" rates. "Weeknight" working hours shall also include any other hours worked in excess of the 8 hour "Weekday" shift described in 2.1 above and shall be chargeable at "Weeknight" rates.
- 2.3 "Weekend" working hours shall mean any shift between 4 p.m. on a Friday and 7 a.m. on a Monday and shall be chargeable at "Weekend" rates. "Weekend" working hours shall also include any hours not specifically defined within "Weekday" or "Weeknight" working hours, including any public and/or bank holidays.

### **3. DELIVERY, MAINTENANCE AND INSPECTION REPORTS**

Without prejudice to the terms of Clauses 5 and 28 of the CPA Model Conditions the Owner shall be responsible for ensuring that:

- 3.1 At the time of delivery to the Hirer, the Plant supplied is in good working order so that the Plant can be used safely and without risk to health.
- 3.2 The full particulars of the last and next service dates for the Plant together with the type and schedule of maintenance is either provided to the Hirer or made available for inspection at the commencement of the Hire Period.
- 3.3 The Hirer is informed of the type and schedule of maintenance for the Plant required to be carried out during the Hire Period.
- 3.4 Operations and safety checks have been carried out on the Plant supplied before delivery, in order to ensure that the Plant is in safe working order and that all

statutory requirements have been complied with, including without limitation, any requirements under the Health and Safety at Work etc. Act 1974 and any regulations issued thereunder.

- 3.5 All Statutory certificates and inspection reports relating to the Plant are either provided to the Hirer or made available for inspection at the commencement of the Hire Period.
- 3.6 The Plant supplied is maintained, tested and examined within the Hire Period in accordance with the maintenance schedule.
- 3.7 Where the Plant supplied is fitted with radiators, that adequate anti-freeze mixture is contained in the radiators to protect them from damage due to low temperatures.
- 3.8 Where applicable, the Plant supplied shall have a recognised Certificate of Engineering Acceptance and / or compliance certificate for design of On-Track Plant. Copies of such certificates shall be provided to the Hirer and / or made available for inspection at the commencement of the Hire Period.
- 3.9 The Owner warrants that the Plant will be supplied with adequate fuel oil, engine sump oil and hydraulic oil and that the tyres are maintained to a reasonable and satisfactory condition and to the specified pressures.

#### **4. HANDLING OF PLANT**

Without prejudice to the terms of Clause 8 of the CPA Model Conditions the Owner shall be responsible for ensuring that, where supplied by the Owner;

- 4.1 The operator or driver of the Plant is fully competent to a recognised standard and deemed to be so by a qualified assessor. The operator or driver must have PTS including AC/DC electrified lines unless the Contract specifically states PTS is not required.
- 4.2 The operator or driver is authorised by the Owner to operate the type of Plant for the purposes for which the Plant is to be used. The operator or driver must carry the appropriate proficiency certificate whilst operating the Plant.
- 4.3 The operator or driver complies with current standards relating to hours of work and all records relating to the operator's or driver's working hours are kept and made available for inspection at the request of the Hirer.
- 4.4 A Drugs and Alcohol policy compatible with current railway standards is maintained and that records of testing and screening is kept for a minimum 3 years and is available for inspection by the Hirer.
- 4.5 Where requested, a fully qualified and competent emergency fitter who holds a current PTS certificate is available to attend the site at any reasonable time.
- 4.6 At the commencement of the Hire Period, an "emergency arrangements" information sheet is supplied to the Hirer which lists, for example, but without limitation, the location of stop controls and fire extinguishers together with emergency contact telephone numbers.
- 4.7 Any operator, driver or emergency fitter supplied by the Owner shall be provided with suitable protective equipment for use on site.
- 4.8 Any operator, driver or emergency fitter supplied by the Owner shall have agreed to be screened for the use of alcohol and drugs in accordance with the current standards for the application of "for cause" alcohol and drugs screening when requested to do so by the Hirer.

#### **5. BRIEFING**

Without prejudice to the terms of Clause 8 of the CPA Model Conditions any operator or driver supplied by the Owner shall be under the control and supervision of the Hirer from the commencement of the Hire Period. The operator or driver shall be informed of the name of the Hirer's authorised representative who shall brief the operator or driver as to the tasks the operator or driver is to undertake to ensure that he fully understands any hazards to his or others health, safety and welfare on site. The Hirer shall not allow any other person to operate such Plant without the Owner's prior written consent.

## **6. CANCELLATION CHARGES**

- 6.1 When any Hire Period cancelled includes weekday and weeknight rates then:
- 6.1.1 Provided the Hirer informs the Owner of their intention to cancel at least 24 hours before the commencement of the Hire Period the Hirer shall incur no charges.
  - 6.1.2 If the Hirer informs the Owner of their intention to cancel less than 24 hours before the commencement of the Hire Period, the Hirer shall incur full transportation charges where the Plant has left the Owner's premises together with standing time to include costs of all attachments and accessories. A reasonable reduction to these charges shall be made if the Owner is able to re-book the Plant within the cancellation period.
- 6.2 When the Hire Period cancelled includes weekend rates then:
- 6.2.1 Providing the Hirer informs the Owner of their intention to cancel prior to 5 p.m. on the Thursday prior to the Hire Period commencing the Hirer shall incur no charge.
  - 6.2.2 If the Hirer informs the Owner of their intention to cancel between Thursday 5 p.m. and Friday 12 noon the Hirer shall incur full transportation charges where the Plant has left the Owner's premises together with standing time to include costs of all attachments and accessories. A reasonable reduction to these charges shall be made if the Owner is able to re-book the Plant within the cancellation period.
  - 6.2.3 If the Hirer informs the Owner of their intention to cancel after Friday 12 noon, the Hirer shall incur full charges. A reasonable reduction to these charges shall be made if the Owner is able to re-book the Plant within the cancellation period.
- 6.3 If the work cannot be carried out due to any default of the Owner then the Hirer shall incur no charge for the specific item of Plant the subject of such default.

## **7. DELIVERY AND COLLECTION OF PLANT**

- 7.1 The Owner and the Hirer shall determine a designated time and place for the delivery of the Plant prior to the commencement of the Hire Period.
- 7.2 The Owner shall ensure that no Plant shall encroach upon any railway line unless the Hirer so authorises.
- 7.3 The Owner and Hirer shall determine a designated time and place for collection of the Plant on completion of the Hire Period.

## **8. INDEMNITIES**

On delivery of the Plant to the designated place determined by the Owner and Hirer, throughout the Hire Period and the period prior to collection, the Hirer shall indemnify the Owner and hold the Owner harmless against any loss, damage, liability, cost (including legal cost) and expense incurred by the Owner, caused or contributed to by the Hirer's breach of these Supplementary Conditions or the CPA Model Conditions.

## **9. INSURANCE**

The Hirer shall take out and maintain insurance against any, and all liabilities the Hirer may incur under the Contract. The Owner reserves the right at any reasonable time to require confirmation that the Hirer is complying with its insurance obligations.