

**MALTBY COLLIERY LIMITED: GENERAL CONDITIONS OF CONTRACT FOR EQUIPMENT HIRE**

1. These conditions (the "Conditions") are the only conditions upon which Maltby Colliery Limited ("Hirer"), (company registration number 06057412) with the registered address West Terrace, Esh Winning, Durham, County Durham, DH7 9PT, is prepared to deal with its suppliers of equipment and machinery ("Contractor") on a hire basis and they shall govern the Contract to the entire exclusion of any other express conditions.
2. In these Conditions unless the context otherwise requires:

"Charge" means the total agreed charge payable by the Hirer to the Contractor for the hire of the Equipment under the Contract including such Working Time Payments, Standing Time Payments and Overtime Payments as the parties shall agree are due from the Hirer in respect of the Hire Period;

"Contract" means:
  - a. in the case of a Period Agreement, together:
    - i. these Conditions (as modified in accordance with Condition 20);
    - ii. the Order;
    - iii. the Contractor's Tender; and
    - iv. the Hirer's acceptance thereof;
  - b. in the case of a Non-Period Agreement, together:
    - i. these Conditions (as modified in accordance with Condition 20);
    - ii. any Quotation provided by the Contractor; and
    - iii. the Order.

"Contractor's Representative" means in relation to any Site, the operator, attendant or other person nominated by the Contractor in writing to the Engineer to remain on the Site during Normal Working Hours and Overtime except in so far as his absence is allowed under Condition 10, and to accept instructions from the Engineer or from the Engineer's Representative;

"Contractor's Tender" means those documents of tender produced by the Contractor for the provision of the Equipment on a hire basis and any associated Services to the Hirer;

"Engineer" means in relation to any Site the person appointed from time to time by the Hirer to the Contract as shall be notified in writing to the Contractor;

"Engineer's Representative" means in relation to any Site the person appointed from time to time by the Hirer and notified in writing to the Contractor to perform the functions of the Engineer's Representative as indicated in these Conditions.

"Equipment" means any machinery, equipment or plant, together with any accessories thereto which the Contractor agrees to hire to the Hirer under the terms of the Contract and described on or by reference to the Order;

"Hire Period" means the period of hire of the Equipment by the Hirer as detailed in Condition 3, whether of specified duration or not;

"Hargreaves Group" means the Hirer and its subsidiaries from time to time and the ultimate holding company (if any) of the Hirer and every other subsidiary of the same ultimate holding company (if any) from time to time (and "holding company" and "subsidiary" shall have the meaning given to them in section 1159 of the Companies Act 2006);

"Intellectual Property Rights" means any and all intellectual property rights protected under the law anywhere in the world, including without limitation, patents, designs, copyright, trade marks, know-how, technical information, rights in data and database rights (whether registered or unregistered or any applications for registration) whether now known or future;

"Loss" means any and all loss, damage, penalties, costs and expenses (including legal expenses and disbursements) arising from any and all liabilities, obligations, awards, actions, claims and/or proceedings whatsoever and howsoever caused or arising and whether or not such losses were reasonably foreseeable at the time the Contract was made;

"Non-Period Agreement" means an agreement for the hire of Equipment by the Hirer from the Contractor which does not stipulate a Hire Period of specified duration;

"Normal Working Hours" means 08.30 to 17.30;

"Order" means the Hirer's written order form for the hire of Equipment from the Contractor;

"Overtime Payment" means such element of the Charge due from the Hirer to the Contractor in respect of Overtime;

"Period Agreement" means an agreement for the hire of Equipment by the Hirer from the Contractor which stipulates a Hire Period of specified duration;

"Quotation" means the price offered by the Contractor to the Hirer for the hire of Equipment;

"Personal Data" has the same meaning as the term 'personal data' under the Data Protection Act 1998;

"Services" means the services or work in respect of or in connection with the hire of Equipment and described on or by reference to the Order;

"Site" means any site owned or otherwise operated by the Hirer in respect of which Equipment is to be supplied for hire by the Contractor under the Contract and is stipulated on the Order;

"Standing Time" means such time during Normal Working Hours in the Hire Period when the Equipment remains ready (but is not used) for work and either Condition 10(i) or 10(ii) is met;

"Standing Time Payment" means such element of the Charge due from the Hirer to the Contractor in respect of the Equipment's Standing Time;

"Working Time" means such time during Normal Working Hours in the Hire Period when the Equipment is used for its intended purpose in accordance with the instructions of the Engineer or the Engineer's Representative at the Site; and

"Working Time Payment" means such element of the Charge due from the Hirer to the Contractor in respect of the Equipment's Working Time.

  - (i) A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
  - (ii) Nothing in these Conditions shall exclude or limit any statutory rights of the Hirer which may not be excluded or limited at law and, for the avoidance of doubt, any rights granted to the Hirer under these Conditions shall be in addition to the statutory terms implied in favour of the Hirer by, where applicable, the Sale of Goods Act 1979, Sale of Goods Act 1994 and Supply of Goods and Services Act 1982, together with any other statute.
  - (iii) These Conditions and the documents referred to herein set out the entire agreement between the parties in relation to the subject matter hereof and supersedes any previous agreement relating to the subject matter of this Contract, whether written or oral. For the avoidance of doubt, the Contract shall expressly exclude any standard terms and conditions of purchase that the Contractor may purport to apply under this Contract. Each party acknowledges that in entering into this Contract it is not relying upon any representation, warranty, promise or assurance made or given by the other party or any other person in any form whatsoever which is not expressly set out in this Contract.
  - (iv) The Contractor's Tender (in the case of a Period Agreement) and any Quotation (in the case of a Non-Period Agreement) shall be deemed to be an offer by the Contractor to the Hirer for the provision of Equipment on these Conditions. The Hirer's acceptance of the Contractor's Tender (in the case of a Period Agreement) or placing of an Order (in the case of a Non-Period Agreement) constitutes an acceptance on the part of the Hirer of the Contractor's offer and the Contract shall be deemed to be made on receipt by the Contractor of the acceptance of the Contractor's Tender (in the case of a Period Agreement) or the Order (in the case of a Non-Period Agreement) from the Hirer.
  - (v) The acceptance of the Contractor's Tender or the Order will not be binding upon the Hirer unless such document is signed by an authorised representative of the Hirer.
3.
  - (i) In the case of both a Period Agreement and a Non-Period Agreement, the Hirer shall take the Equipment on hire for the duration of the Hire Period, such duration to be determined in accordance with these Conditions.
  - (ii) The Hire Period for any Equipment:
    - a. shall commence on delivery of the Equipment to the Site; and
    - b. shall terminate, subject to the remainder of this Condition on the earlier of:
      - i. the Hirer confirming to the Contractor that it can collect and remove the Equipment from the Site;
      - ii. the time and date for termination of the Hire Period specified in the Order (the "Hire Period Termination Point"); or
      - iii. if no Hire Period Termination Point is specified, the end of the period of notice given by the Engineer to the Contractor terminating the Contract in accordance with its terms.
  - (iii) The Engineer may by agreement with the Contractor extend the Hire Period for Equipment already on a Site and shall confirm the extension in writing within a reasonable time of such agreement being reached.
4.
  - (i) The Equipment shall be delivered carriage paid to the Site, or any other such address as the Hirer may subsequently specify during the Hirer's normal receiving hours (as applicable) or at such other times as are specified by the Hirer on the Order. The Contractor shall be responsible for ensuring that in all cases deliveries are made by the Contractor or its carrier at the required location at a time which is convenient for the Hirer or the party authorised by the Hirer to receive the Equipment.
  - (ii) The Equipment shall be delivered on the date or within the period specified on the Order and time shall be of the essence with regard to delivery of the Equipment. Without prejudice to any other rights which it may have the Hirer reserves the right to:
    - a. cancel the Contract in the event that delivery is not made in accordance with this Condition 4;
    - b. carry no liability to pay the Charge in the event that delivery is not made in accordance with this Condition 4; and
    - c. refuse to accept any subsequent delivery of the Equipment which the Contractor attempts to make.
  - (iii) The Contractor shall supply the Hirer on delivery of the Equipment with all operating, maintenance and safety instructions and other information as are necessary for the safe operation and maintenance of the Equipment ("Necessary Instructions").
  - (iv) The Hirer shall not be obliged to return to the Contractor any packing materials for the Equipment.
  - (v) If the Equipment is delivered before the date for delivery specified in the Order, the Hirer shall be entitled at its sole discretion to refuse to take delivery or to charge the Contractor for insurance and storage of the Equipment until such date. For the avoidance of doubt, unless confirmed by the Hirer in writing, delivery of the Equipment in advance of the time for delivery stipulated in the Order shall not constitute commencement of the Hire Period in respect of such Equipment which shall remain as stipulated in the Order.
5.
  - (i) Risk in the Equipment shall pass to the Hirer on the commencement of the Hire Period.
  - (ii) Risk in the Equipment shall pass back to the Contractor on the earliest of:
    - a. the Hirer confirming to the Contractor that it can collect and remove the Equipment from the Site;
    - b. the Hire Period Termination Point; or
    - c. the end of the relevant period of notice given by the Engineer to the Contractor terminating the Contract in accordance with its terms.
  - (iii) Title to the Equipment shall remain at all times with the Contractor.
6.
  - (i) Except where any Equipment (or accessory thereto) is supplied with an operator or banksman, or where the Contract provides that lubrication and routine maintenance of the Equipment will be carried out by the Contractor, the Hirer shall be responsible for ensuring that lubrication and routine maintenance of the Equipment are carried out during the Hire Period in accordance with the Necessary Instructions.
  - (ii) For the avoidance of doubt, in the event that the Hirer is not provided with the Necessary Instructions, it shall be relieved of any obligation to ensure that any maintenance of the Equipment is carried out during the Hire Period.
7.
  - (i) Except in circumstances where the Charge is stated to be an estimated price (when Condition 7(iv) shall apply) the Charge shall be payable as stated on the Order and, unless otherwise stated, shall be:
    - a. exclusive of any applicable Value Added Tax ("VAT") (which shall be payable by the Hirer subject to receipt of a VAT invoice);
    - b. inclusive of any duties, imports or levies other than Value Added Tax; and
    - c. inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of Equipment to the Site.
  - (ii) No increase in the Charge may be made for any reason without the prior written consent of the Hirer and the Hirer shall not be responsible for any expenses, charges or price other than those set out in the Quotation or the Contractor's Tender.
  - (iii) The Hirer shall be entitled to any discount for prompt payment granted by the Contractor to any third party or offered by the Contractor to the Hirer, whether or not shown on the face of the Quotation or the Contractor's Tender.
  - (iv) Where the Charge is stated on the face of the Quotation or the Contractor's Tender to be an estimated price, the Charge payable for the Equipment shall be agreed between the parties as soon as practicable after the acceptance of the Contractor's Tender or the placing of an Order (as applicable) and a further acceptance of the Contractor's Tender or Order shall then be submitted to the Contractor stating the agreed Charge.
8.
  - (i) Unless otherwise agreed in writing the Hirer will pay the Charge no sooner than thirty (30) working days and no later than forty-five (45) working days from the last day of the month following the month in which the properly rendered invoice was received or the Hire Period expires in accordance with Condition 3(ii) whichever is the later. Time for payment shall not be of the essence for the purposes of the Contract.
  - (ii) The Hirer reserves the right to deduct from or offset against any monies due or becoming due to the Contractor in respect of the Contract any monies due from the Contractor on any account in respect of goods, equipment and materials supplied, services rendered or otherwise, including without limitation for the Contractor's breach of the Contract.
  - (iii) No invoice is to be dated or submitted by the Contractor prior to the commencement of the Hire Period.
  - (iv) If there is any invoice which is in dispute (whether in whole or in part), the Hirer shall be entitled to withhold payment of the relevant invoice in full. The parties shall then enter into discussions to resolve such dispute.
  - (v) Where any Equipment becomes Faulty Equipment in accordance with Condition 14, the Hirer shall not be liable to pay any element of the Charge in respect of the Hire Period from the point at which the Equipment becomes Faulty Equipment until such Equipment is replaced or repaired by the Contractor to the Hirer's reasonable satisfaction.
  - (vi) If the Hirer fails to make payment to the Contractor of any sums owed, the Contractor may charge interest to the Hirer on such sums at a rate of 2% (two per cent) above the base lending rate from time to time of the Bank of England until such payment has been made. Interest shall not be payable on any unpaid sums under Conditions 8(ii), 8(iv), 8(v) above.
  - (vii) Where, following the expiry of the Hire Period, any Equipment is moved by the Hirer with the consent of the Contractor (such consent not to be unreasonably withheld or delayed) from the Site to another Site (being known as the "New Site" and the "Old Site" respectively) and the parties agree that the Hirer shall hire such Equipment for an additional Hire Period at the New Site (a "Further Hire Period"), the parties agree that the Charge due in respect of the Further Hire Period shall, on a pro rata basis, be no more than 50% (fifty per cent) of the Charge due in respect of the Hire Period at the

- Old Site.
- (viii) Payment of the Charge shall not constitute acceptance by the Hirer of the Equipment or Services.
9. Subject to any express provision in the Contract to the contrary, the Working Time Payment shall only be due in respect of Working Time.
10. Subject to any express provision in the Contract to the contrary, the Standing Time Payment shall only be due in respect of Standing Time. For the purposes of the Contract, Standing Time shall be such time during Normal Working Hours of the Hire Period during which the Engineer or the Engineer's representative has ordered:
- (i) that the Equipment is to remain ready (but not used) for work and:
    - (a) the Equipment is capable of being used for work;
    - (b) where the Contract provides for an operator and/or banksman to be supplied by the Contractor in order to operate the Equipment, there is such an operator and/or banksman present at the Site to operate the Equipment; and
    - (c) where applicable the Contractor's Representative who is to accept orders for the Contractor is present at the Site; or
  - (ii) that the Equipment shall cease working and shall stand.
  - (iii) Where the Engineer or the Engineer's Representative orders that the Equipment shall cease working and shall stand (a "Stand-Down"), the operator and/or banksman (where they are supplied by the Contractor) and the Contractor's Representative (if any) shall remain on the Site to comply with the orders of the Engineer or the Engineer's Representative until the first mid-day break or the end of the working day following the Stand-Down whichever is the earlier. After the operator or the banksman or the Contractor's Representative has properly left the Site following a Stand-Down the Engineer or the Engineer's Representative shall not order the Equipment to be ready for work earlier than the beginning of Normal Working Hours on the following day.
11. The Hirer shall make such Overtime Payments as the Contract provides, such Overtime Payments to be included in the Charge and payable in respect of any period during the Hire Period which is not during Normal Working Hours during which, on instructions from the Engineer or the Engineer's Representative, the Equipment is on Standing Time or Working Time ("Overtime").
12.
  - (i) The Hirer shall not be liable to compensate the Contractor for any loss or damage which may be caused to any Equipment during the Hire Period except to the extent that such loss or damage is caused by the negligence of the Hirer or of its employees.
  - (ii) The Hirer shall not be held liable for any loss of or damage to any Equipment during the Hire Period unless such loss or damage has been acknowledged in writing by the Engineer before the Equipment is removed from the site.

Nothing in this Condition 12 or the other provisions of these Conditions is intended to or shall restrict or exclude either party's liability for death or personal injury resulting from its negligence, or any liability for fraud, fraudulent misrepresentation or any other liability that cannot be restricted by law.

13.
 
  - (i) The Contractor warrants to the Hirer that the Equipment:
    - (a) will be of the very best quality and fit for any purpose held out by the Contractor or made known to the Contractor by the Hirer;
    - (b) will comply with all statutory requirements and regulations and voluntary codes of conduct and industry standards relating to the Equipment;
    - (c) will be free from defects in design, material and workmanship;
    - (d) will comply in every respect with any and all specifications, drawings, samples or descriptions provided; and
    - (e) the use thereof (including the use of any software incorporated therein) will not in any way infringe any Intellectual Property Right of any other person.
  - (ii) The Contractor warrants to the Hirer that:
    - (a) any Services to be performed by the Contractor under or in connection with the Contract will be performed by appropriately qualified and trained personnel, with due care and diligence, to such high standard of quality as it is reasonable for the Hirer to expect in all the circumstances and will comply with all statutory requirements and regulations and voluntary codes of conduct relating to the provision of any Services;
    - (b) it has or will obtain prior to the commencement of such Services, any necessary licences, consents and permits required for the performance of such Services;
    - (c) it has full capacity and authority to enter into the Contract; and
    - (d) it has the necessary expertise to comply with the Contract and confirms the accuracy of all statements and representations made in respect of the Equipment and/or any Service given prior to and during the Hire Period.
  - (iii) If any Equipment and/or Services supplied under the Contract fail to comply with the warranties set out in Conditions 13(i) and 13(ii) the Hirer shall be entitled to avail itself of any one or more of the remedies listed in Condition 26 below. In addition to the foregoing in the event that the Contractor does not have the right to authorise the use by the Hirer of the Equipment in accordance with Condition 13(i)(e) the Contractor will use its best endeavours to procure forthwith for the Hirer the right to or a licence to use the Equipment (as appropriate) for the Hirer's intended purpose.
  - (iv) The Contractor shall indemnify, keep indemnified and hold the Hirer harmless in full from and against any and all Losses incurred or suffered by the Hirer as a result of a direct or indirect breach or negligent performance or failure in performance by the Contractor of the Contract and without limitation to the above as a result or in connection with:
    - (a) the breach of any warranty given by the Contractor in relation to the Equipment and/or the Services;
    - (b) any claim that the Equipment infringes, or its importation or use infringes, the Intellectual Property Rights of any other person;
    - (c) any liability under the Consumer Protection Act 1987 in respect of the Equipment;
    - (d) any act or omission of the Contractor or its employees, agents or authorised sub-contractors in supply, delivering and installing the Equipment; and
    - (e) any act or omission of any of the Contractor's employees, agents or authorised sub-contractors in connection with the performance of any Services.

The Contractor shall be responsible for paying any employee, officer, agent, representative and/or sub-contractor engaged by the Contractor to provide any Services in connection with the Contract and for making any deductions required by law in respect of income tax and National Insurance contributions or similar contributions relating to the provision of such Services. The Contractor agrees to indemnify, keep indemnified and hold the Hirer harmless in respect of any claims that may be made by HM Revenue and Customs and any other the relevant authorities against the Hirer in respect of tax demands or National Insurance or similar contributions relating to the provision of the Services by the Contractor.

14.
 
  - (i) If any Equipment fails to operate fully in accordance with the terms of the Contract ("Faulty Equipment"), the Contractor shall as soon as reasonably practicable repair or replace the Equipment. Except insofar as the breakdown has been caused by the negligence of the Hirer or of their servants or agents, no element of the Charge shall be due or payable to the Contractor on account of Working Time or Standing Time or Overtime for the Equipment in respect of the period from the time when the Equipment becomes Faulty Equipment until the Equipment or its replacement provided by the Contractor operates fully in accordance with the terms of the Contract.
  - (ii) If, as required by Condition 14(i), the Contractor fails to repair or replace the Faulty Equipment, the Hirer may, on not less than three (3) working days' notice or such lesser period of notice as may be specified in the Contract, hire from any third party such replacement Equipment as it sees fit.

15. The Contractor shall, at its own cost and risk, remove the Equipment from the Site upon termination of the Hire Period in respect thereof.

16. The Contractor shall obtain and maintain in force during the Hire Period adequate and suitable insurance with a reputable insurance company to cover its liabilities under the Contract (including product liability, professional indemnity insurance in relation to any Services provided, public liability insurance and employer's liability insurance cover) to a cover limit of not less than £10,000,000 per claim. The Contractor shall be liable under all provisions of these Conditions and the Contract whether or not it complies with this Condition 16.

17. The Contractor shall, subject to these Conditions, on reasonable notice, have access to the Site at any reasonable times to re-fuel, service, repair or carry out other work on the Equipment but shall not prevent any Equipment from being used during Normal Working Hours or Overtime without the prior consent of the Engineer or Engineer's Representative. Neither the Hirer nor the Engineer nor the Engineer's Representative shall operate, service or repair any Equipment or recover or give orders intended to effect recovery of any Equipment incapable of work without prior agreement with the Contractor except in an emergency.

18. The Engineer or the Engineer's Representative shall at their discretion, be entitled to object to and require the Contractor to remove from the Site any person employed by the Contractor who in the opinion of the Engineer or the Engineer's Representative misconducts himself or is incompetent or negligent in the proper performance of his duties and such person shall not be again employed on any Site to which the Contract applies.

19. The Contractor shall comply with all Acts of Parliament, Regulations and Bye-Laws of Local Authorities applicable to the execution of the Contract by the Contractor.

20. Save as expressly set out elsewhere in the Contract, these Conditions may only be modified by a variation in writing signed by an authorised representative on behalf of the Hirer and no other action on the part of the Hirer (whether acceptance of the Equipment or otherwise) shall be construed as an acceptance of any other conditions. Such variation shall be particular to the circumstances mentioned by such writing and shall not be regarded as a general variation.

21.
 
  - (i) The Contractor shall not assign, sub-let or otherwise dispose of any of its rights or obligations under the Contract or any part thereof without the prior consent, in writing, of the Hirer.
  - (ii) The Hirer shall not sub-let or lend any Equipment or any part thereof to any third party without the prior written consent of the Contractor.

22. The Hirer shall not remove any Equipment from the Site without the prior written consent of the Contractor.

23. The Contractor may affix its plate or mark to any Equipment indicating that it is its property and the Hirer shall not remove, deface, or cover up the plate or mark.

24.
 
  - (i) The Hirer shall have the right at any time by giving notice in writing to the Contractor to terminate the Contract forthwith in any of the following events:
    - a. if the Contractor commits a breach of any of the terms or conditions of the Contract; or
    - b. if the Contractor suffers an insolvency event. For the purposes of this Condition 24(i)(b), an insolvency event shall mean if the Contractor:
      - i. 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 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;
      - ii. makes or proposes to make an arrangement or composition with its creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors;
      - iii. is or proposes to become the subject of a bankruptcy petition or order;
      - iv. dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing its own affairs or become a patient under any mental health legislation;
      - v. being a company:
        1. is, or the Hirer reasonably considers it to be, unable to pay its debts when they fall due as defined in Section 123 of the Insolvency Act 1986;
        2. makes or proposes to make an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way;
        3. has a petition filed, a notice given, a resolution passed, or an order made, for or in connection with the winding up of it;
        4. has an application made to court, or an order made, for the appointment of an administrator, or a notice of intention to appoint an administrator given or an administrator is appointed over it;
        5. has a floating charge holder over its assets who has become entitled to appoint or has appointed an administrative receiver;
        6. has a person become entitled to appoint a receiver over its assets or a receiver appointed over its assets;
    - (i) suffers actions analogous to those described in this Condition 24(i)(b) in any jurisdiction; or
    - (ii) if the financial position of the Contractor shall deteriorate to such an extent that in the opinion of the Hirer the capability of the Contractor adequately to fulfil its obligations under the Contract has been placed in jeopardy.

25.
 
  - (i) The Contract may be terminated by the Hirer at any time in whole or part by delivery to the Contractor of a notice of termination. In the event of such notice being given the Contractor shall stop work forthwith and comply with any directions with regard to the Equipment and/or Services which may be given by the Hirer. The Hirer shall pay a fair and reasonable price for any element of the Hire Period during which the Equipment has been properly hired to the time of such termination. Such payment made for hire of the Equipment taken together with any sums paid or due or becoming due to the Contractor under the Contract shall not exceed the total Charge agreed as payable under the Contract and shall constitute the Hirer's sole liability in respect of termination of the Contract wholly or in part under this Condition.
  - (ii) The termination of the Contract however arising will be without prejudice to the rights and duties of either party accrued prior to termination. The Conditions which impliedly or expressly have effect after termination will continue to be enforceable notwithstanding termination.

26. If the Contractor breaches or fails to comply with any of the terms and conditions of the Contract the Hirer shall be entitled to avail itself of any one or more of the following remedies at its sole discretion:
 
  - (i) to terminate the Contract as indicated in Condition 24(i);
  - (ii) to return the Equipment to the Contractor at the cost of the Contractor on the basis that a full refund of any element of the Charge paid for Equipment so returned shall be paid forthwith by the Contractor;

- (iii) to return the Equipment to the Contractor at the Contractor's cost to give the Contractor the opportunity at the Contractor's expense to remedy defects in the Equipment and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (iv) to refuse to accept any further deliveries of the Equipment or the provision of any further Services without any liability to the Contractor;
- (v) to carry out at the Contractor's expense any work necessary to make the Equipment and/or Services comply with the Contract;
- (vi) to claim such damages as may have been sustained in consequence of the Contractor's breaches of contract.
- These rights shall be in addition to and without prejudice to any other rights which the Hirer may have.
27. (i) The Contractor warrants that it and such of its employees, officers, agents, representatives and sub-contractors who may be on the Site in connection with the hire of the Equipment and/or Services will at all times act and work with reasonable care and skill and comply with the lawful instructions of the Hirer's authorised representative.
- (ii) Any Equipment supplied or installed under the Contract shall be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- (iii) The Contractor agrees before delivery to furnish the Hirer in writing with a list by name and description of any harmful or potentially harmful properties or parts in the articles supplied whether in use or otherwise and thereafter information concerning any changes in such properties or ingredients. The Hirer will rely on the supply of such information from the Contractor in order to satisfy its own obligations under the Health and Safety at Work etc Act 1974 and the Control of Substances Hazardous to Health Regulations 2002 and any other applicable legislation.
28. Any plans, drawings, data or other information relating to the Equipment and/or Services ("Specification") supplied by the Hirer to the Contractor or specifically produced by the Contractor for the Hirer in connection with the Contract, together with the Intellectual Property Rights in the Specification, shall be the exclusive property of the Hirer and shall be handed over to the Hirer by the Contractor on demand at any time.
29. (i) Any Order placed by the Hirer shall be treated as confidential and in particular the Contractor shall not make use of the Hirer's name or the name of any of the Hirer's customers for publicity purposes without the prior written consent of the Hirer. Furthermore, all designs, drawings, specifications and information supplied in connection with the Contract are confidential and must only be used for the purpose of the Contract; the particulars contained therein must not be disclosed to anyone other than the Contractor's employees without the Hirer's prior written consent. They must be used solely for the purpose of supplying the Equipment and/or performing the Services. The Hirer shall retain ownership of all such designs, drawings, specifications and information and all copies thereof must be returned to the Hirer on completion of the Contract or earlier if the Hirer at any time demands their return.
- (ii) This Condition 29 shall apply during the continuance of the Contract and after its termination howsoever arising without limitation in time.
30. If the Contractor or any person or persons employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall offer, give or agree to give to any person, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do any act in relation to the obtaining or execution of the Contract, or any other Contract with the Hirer, or if in relation to any Contract with the Hirer, the Contractor or any person employed by him or acting on his behalf commits an offence under the Prevention of Corruption Acts 1889-1916, the Hirer shall be entitled to terminate the Contract, and the Contractor shall indemnify, keep indemnified and hold harmless the Hirer in respect of any Loss incurred by the Hirer as a result of such termination.
31. If any dispute or difference shall arise between the Hirer and the Contractor in connection with or arising out of the Contract and provided that either of them shall have given to the other notice in writing thereof such dispute or difference shall be referred to a single arbitrator to be agreed between the Hirer and the Contractor, or failing such agreement within fourteen (14) days from receipt of such notice in writing, such single arbitrator as is nominated by the President for the time being of the Institution of Mechanical Engineers on the application of either party. Such reference shall be deemed to be a submission for arbitration within the meaning of the Arbitration Act 1996.
32. The Hirer reserves the right to cancel or suspend the hire of the Equipment and/or the Services if it is prevented from or hindered in the carrying on of its business through any circumstances beyond its control including (but not limited to) industrial action, war, fire or prohibition or enactment of any kind, without incurring any liability for any loss or damage whatsoever resulting therefrom.
33. (i) No extension of time or other concessions granted by the Hirer shall in any way affect the Hirer's rights or the Contractor's obligations under the Contract.
- (ii) Any demand, notice or communication shall be made in writing or by fax addressed to the recipient at its registered office or its address stated in the Order (or such other address or fax number as may be notified in writing from time to time) and shall be marked for the attention of the Company Secretary.
- (iii) Any demand, notice or communication shall be deemed to have been duly served if

delivered by hand, when left at the proper address for service, if given or made by prepaid first class post, forty-eight (48) hours after being posted (excluding Saturdays, Sundays and public holidays), and if given or made by fax, immediately following transmission.

- (iv) The Contract (including these Conditions) and any non-contractual issues shall be governed by the laws of England and, subject to Condition 31, the English Courts (to the jurisdiction of which the Contractor hereby irrevocably submits) shall, save as provided below, have exclusive jurisdiction to resolve any disputes arising out of it. The provisions of this Condition shall not (and shall not be construed so as to) limit the right of the Hirer to issue proceedings against the Contractor in any jurisdictions which it deems appropriate nor shall the issuing of proceedings in any one or more jurisdictions preclude the issuing of proceedings in any other jurisdiction.
- (v) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and of these Conditions and the remainder of the provision in question shall not be affected thereby.
- (vi) The Contractor warrants to the Hirer that to the extent it processes any Personal Data in connection with the provision of the Contract, it shall comply with the provisions of the Data Protection Act 1998.
- (vii) Other than members of the Hargreaves Group, a person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. The Hirer may perform any of its obligations or exercise any of its rights hereunder through any member of the Hargreaves Group. Notwithstanding that members of the Hargreaves Group shall be entitled to enforce certain rights under this Contract which have been given for their benefit, the parties to this Contract may enter into any agreement or arrangement varying or amending any of the terms of this Contract, or compromising or settling any claim under this Contract (including in respect of such rights), without reference to the interests of, or the consent of, the other members of the Hargreaves Group not party to this Contract.

**[SPECIAL CONDITIONS OF CONTRACT WHEN THE SITE IS WITHIN OR INVOLVES THE CONTRACTOR'S WORKMEN GOING WITHIN THE CURTAILAGE OF A COLLIERY]**

A.

(i) For the purpose of this Condition the expression "the Act" shall mean the Mines and Quarries Act, 1954 and Regulations and Orders issued thereunder and the expression "Colliery Manager" shall mean the Manager for the time being of the Mine at which the Site is situated or any person who is duly appointed in pursuance of Section 7 of the Act to exercise the powers and perform the duties of the Manager or, in pursuance of Section 8 of the Act, to exercise daily personal supervision over the Mine.

(ii) Notwithstanding anything contained in the General Conditions of Contract the Contractor shall in matters arising in the performance of the Contract at his own expense take all such steps as may be necessary to ensure that the provisions of the Act are complied with in all respects and shall co-operate with the Colliery Manager for this purpose and in particular shall ensure compliance with instructions given by or on behalf of the Colliery Manager.

B.

The Contractor shall ensure that no workman is employed by him or his Sub-Contractors on any work on the colliery surface under this Contract unless he has been adequately instructed and trained in that work and is competent to do that work without supervision or he is working under the instruction and supervision of some person competent to give instruction in and supervision in the doing of that work.

C.

In the case of employees under eighteen (18) years of age (hereinafter call "young persons") the following additional provisions shall apply:-

(a)

Before any young person is employed on the colliery surface the Contractor shall ensure that he is taken by a responsible person employed by the Contractor on a conducted tour of the Site and any other area of the colliery surface which is to be made available to the Contractor in order that his attention may be drawn to points of danger and the correct methods of movement about the surface.

(b)

When a young person is put to his first job he shall receive adequate initial instruction in that job from a competent person of not less than twenty-one (21) years of age.

(c)

During his first twenty (20) days of employment on the colliery surface a young person shall be under the close personal supervision of a supervisor of not less than eighteen (18) years of age. Such a supervisor may be made responsible for more than one employee where the circumstances of the particular job make it possible for him to give close personal supervision adequately to the number for which he is made responsible.

(d)

On each fresh job on the colliery surface the young person shall receive adequate initial instruction from a competent person not less than 21 years of age.

D.

The Contractor shall ensure that his employees and agents and the employees and agents of his Sub-Contractors keep within the limits of:

(a)

The Site;

(b)

Any other area or premises made available to him in connection with the Contract;

(c)

Any proper and reasonable access on the Hirer's land to the Site or such area or premises as are mentioned in (a) and (b).

E.

The Contractor shall ensure that the contents of these Special Conditions are brought to the attention of his employees and agents and of the employees and agents of his Sub-Contractors.]