FDS (CAMBRIDGE) LTD

PLANT HIRE

HAULAGE

MUCK AWAY

CONTRACTING

AGGREGATE SUPPLIES

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Standard Conditions of Hire

1 INTERPRETATION

1.1 In these conditions the following words have the following meanings:

"Contract" means a contract which incorporates these conditions and made between you and us for the hire of Hire Goods;

"Deposit" means any advance payment required by us in relation to the Hire Goods which is to be held by us as security;

"Force Majeure" means any event outside a party's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, sub-contractors, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions and any other similar events;

"Hire Goods" means any machine, article, tool and/or device, together with any accessories specified in a Contract which are hired to you;

"Hire Period" means the period commencing when you hold the Hire Goods on hire (including Saturdays Sundays and Bank Holidays) and ending upon the happening of any of the following events: (i) the physical return of the Hire Goods by you into our possession; or (ii) the physical repossession or collection of Hire Goods by us;

"Liability" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;

"Rental" means our charging rate for the hire of the Hire Goods which is current from time to time during the Hire Period;

"Services" means the services and/or work (if any) to be performed by us for you in conjunction with the hire of Hire Goods including any delivery and/or collection.

"We" or "us" means any member company of FDS (Cambridge) Limited, as specified in the Contract and will include its employees, agents and/or duly authorised representatives;

"You" means the person, firm, company or other organisation hiring Hire Goods, and "your" shall be construed accordingly;

2 BASIS OF CONTRACT

2.1 Hire Goods are hired subject to them being available for hire at the time required by you. We will not be liable for any loss suffered by you because the Hire Goods are unavailable for hire where this is due to circumstances beyond our control.

2.2 If you are an individual and the hire would be covered by the Consumer Credit Act 1974 the Hire Period shall not exceed 3 months, after which time the Contract shall be deemed to have automatically terminated. Accordingly the hire of any Hire Goods is not covered by the Consumer Credit Act 1974.

2.3 Nothing in this Contract shall exclude or limit any of your statutory rights to the extent they may not be excluded or limited because you are acting as a consumer. Where you are acting as a consumer any provision which is marked with an asterisk (*) may, subject to determination by the Courts or any applicable legislation, have no force or effect and if any provision is under the applicable law of the Contract unenforceable in whole or in part or shall have no force or effect the Contract shall be deemed not to include such provisions but this shall not effect the enforceability of the remainder of the Contract. For further information about your statutory rights contact your local authority Trading Standards Department or Citizens Advice Bureau.

3 PAYMENT

3.1 The amount of any Deposit, Rental and/or charges for any Services shall be as quoted to you or otherwise as shown in our current price list from time to time. Where a Deposit is required, it must be paid in advance of you hiring the Hire Goods. We may also require an initial payment on account of the Rental in advance of you hiring the Hire Goods.

3.2 You shall pay to us the Rental, charges for any Services, and/or any other sums payable under the Contract at the time and in the manner agreed. Our prices are, unless otherwise stated, exclusive of any applicable VAT which you shall also be liable to pay.

3.3 Payments by you on time are an essential condition of the Contract. Payment shall not be deemed to be made until we have received either cash or cleared funds in respect of the full amount outstanding.

3.4 *If you fail to make any payment in full on the due date we may charge you interest (both before and after judgment) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable) or at the rate of 4% above the base rate from time to time of National Westminster Bank plc whichever is higher. This interest shall be compounded with quarterly rests.

3.5 *You shall pay all sums due to us without any set-off, deduction, counterclaim and/or any other withholding of monies.

3.6 We may set a reasonable credit limit for you. We reserve the right to terminate or suspend the Contract if allowing it to continue would result in you exceeding your credit limit or the credit limit is already exceeded.

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3.7 We reserve the right to store your credit card details on our password protected customer account system and further reserve the right to use such details to collect payment for future Rentals made by you.

4. RISK OWNERSHIP AND INSURANCE

4.1 Risk in the Hire Goods will pass immediately to you when they leave our physical possession or control.

4.2 Risk in the Hire Goods will not pass back to us until they are back in our physical possession. This shall apply even if we have agreed to cease charging the Rental.

4.3 Ownership of the Hire Goods remains with us at all times. You have no right, title or interest in the Hire Goods except that they are hired to you.

4.4 You must not deal with the ownership or any interest in the Hire Goods. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending. However you may re-hire the Hire Goods to a third party with our prior written consent.

4.5 We may provide reasonably priced insurance in respect of the Hire Goods at additional cost to the Rental. Alternatively we may require you to insure the Hire Goods on such reasonable terms and for such reasonable risks as we may specify. The proceeds of any such insurance shall be held by you in trust for us and be paid to us on demand. You must not compromise any claim in respect of the Hire Goods and/or any associated insurance without our written consent.

5 DELIVERY, COLLECTION AND SERVICES

5.1 It is your responsibility to collect the Hire Goods from us and return them to us at the end of the Hire Period. If we agree to deliver or collect the Hire Goods to and/or from you, we will do so at our standard delivery cost and such delivery and/or collection will form part of the Services.

5.2 Where we provide Services the persons performing the Services are deemed to be your servants or agents and they are under your direction and control. You shall be solely responsible for any instruction, guidance and/or advice given by you to any such person and for any damage which occurs as a result of such person following your instructions, guidance and/or advice except to the extent that such person is negligent.

5.3 You will allow and/or procure sufficient access to and from the relevant site and sufficient unloading space, facilities, equipment and access to power supplies and utilities for our employees, sub-contractors and/or agents to allow them to carry out the Services. You will ensure that the site where the Services are to be performed is, where necessary, cleared and prepared before the Services are due to commence.

5.4 If any Services are delayed, postponed and/or cancelled due to you failing to comply with your obligations you will be liable to pay our additional standard charges from time to time for such delay, postponement and/or cancellation except where you are acting as a consumer and the delay is due to a Force Majeure event.

6 CARE OF HIRE GOODS

6.1 You shall:-

6.1.1 not remove any labels from and/or interfere with the Hire Goods, their working mechanisms or any other parts of them and take reasonable care of the Hire Goods and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided or supplied to you;

6.1.2 notify us immediately after any breakdown, loss and/or damage to the Hire Goods;

6.1.3 take adequate and proper measures to protect the Hire Goods from theft, damage and/or other risks;

6.1.4 notify us of any change of your address and upon our request provide details of the location of the Hire Goods;

6.1.5 permit us at all reasonable times to inspect the Hire Goods including procuring access to any property where the Hire Goods are situated;

6.1.6 keep the Hire Goods at all times in your possession and control and not remove the Hire Goods from the United Kingdom without our prior written consent;

6.1.7 be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the Hire Goods required by any legislation, best practice and/or operating instructions except to the extent that we have agreed to provide them as part of any Services;

6.1.8 not do or omit to do anything which will or may be deemed to invalidate any policy of insurance related to the Hire Goods which is notified to you;

6.1.9 not continue to use Hire Goods where they have been damaged and will notify us immediately if the Hire Goods are involved in an accident resulting in damage to the Hire Goods, other property and/or injury to any person;

6.1.10 where the Hire Goods require fuel, oil and/or electricity ensure that the proper type and/or voltage is used and that, where appropriate, the Hire Goods are properly installed by a qualified and competent person; and

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6.1.11 ensure that any employees, agents or contractors that operate the Hire Goods are, if applicable, adequately and sufficiently qualified and trained to operate the Hire Goods in accordance with all current and applicable legislation.

6.2 The Hire Goods must be returned by you in good working order and condition (fair wear and tear excepted) and in a clean condition together with all insurance policies, licences, registration and other documents relating to the Hire Goods.

7 BREAKDOWN

7.1 Allowance will be made in the Rental for any non-use of the Hire Goods due to breakdown caused by an inherent fault and/or fair wear and tear on condition that you inform us as soon as practicable of the breakdown and we are unable to repair or replace the Hire Goods within a reasonable time.

7.2 You shall be responsible for all expenses, loss (including loss of Rental) and/or damage suffered by us arising from any breakdown of the Hire Goods due to your negligence, misdirection and/or misuse of the Hire Goods.

7.3 We will at our cost carry out all routine maintenance and repairs to the Hire Goods during the Hire Period and all repairs which are required due to fair wear and tear and/or an inherent fault in the Hire Goods. You will be responsible for the cost of all repairs necessary to Hire Goods during the Hire Period which arise otherwise than as a result of fair wear and tear, an inherent fault and/or our negligence while carrying out routine maintenance and/or repairs.

7.4 You must not repair or attempt to repair the Hire Goods unless authorised to do so by us in writing.

8 LOSS OR DAMAGE TO THE HIRE GOODS

8.1 If the Hire Goods are returned in damaged, unclean and/or defective state except where due to fair wear and tear and/or an inherent fault, you shall be liable to pay us for the cost of any repair and/or cleaning required to return the Hire Goods to a condition fit for re-hire and to pay the Rental, in accordance with clause 8.3, until such repairs and/or cleaning have been completed.

8.2 You will pay to us the new replacement cost of any Hire Goods, which are lost, stolen and/or damaged beyond economic repair during the Hire Period less the amount paid to us under any policy of insurance taken out in accordance with these conditions.

8.3 You shall pay the Rental up to and including the date you notify us that the Hire Goods have been lost, stolen and/or damaged beyond economic repair. From that date until we have replaced such Hire Goods you shall pay, as a genuine pre-estimate of lost rental profit, a sum as liquidated damages equal to two thirds of the Rental that would have applied for such Hire Goods for that period. We shall use our reasonable commercial endeavours to purchase replacements for such Hire Goods as quickly as possible using the monies paid under clause 8.2.

9 TERMINATION BY NOTICE

9.1 If the Hire Period has a fixed duration, subject to clause 10 neither we nor you may terminate the Contract before the expiry of that fixed period unless you and we agree.

9.2 If the Hire Period does not have a fixed duration either you or we may terminate the Contract upon giving to the other party any agreed period of notice.

9.3 If no period of notice has been agreed or specified you may terminate the Hire Period by the physical return of the Hire Goods to us and we may terminate the contract by giving not less than 14 days' notice to you.

10 DEFAULT

10.1 If you:-

10.1.1 fail to make any payment to us when due without just cause;

10.1.2 breach the terms of the Contract and, where the breach is capable of remedy, have not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;

10.1.3 persistently breach the terms of the Contract;

10.1.4 provide incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;

10.1.5 pledge, charge or create any form of security over any Hire Goods, or cease or threaten to cease to carry on business, or propose to compound with your creditors, create a trust deed for your creditors, apply for an interim moratorium in respect of claims and/or proceedings, any distress/diligence, execution or other legal process is levied on any of your property, have a Bankruptcy Petition/Petition for Sequestration presented against you or you take or suffer any similar action in any jurisdiction;

10.1.6 being a company, cease or threaten to cease to carry on business, enter into voluntary or compulsory liquidation, have a receiver, administrator or administrative receiver or in the Republic of Ireland an examiner appointed over all or any of your assets, any attachment order/arrestment is made against you, any distress, execution or other legal process is levied on any of your property or you take or suffer any similar action in any jurisdiction;

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10.1.7 appear reasonably to us due to your credit rating to be financially inadequate to meet your obligations under the Contract; and/or

10.1.8 appear reasonably to us to be about to suffer any of the above events, then we shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 10.2 below.

10.2 If any of the events set out in clause 10.1 above occurs in relation to you then:-

10.2.1 except where you are acting as a consumer we may enter, without prior notice, any of your premises (or premises of third parties with their consent) where Hire Goods may be and repossess any Hire Goods;

10.2.2 we may withhold the performance of any Services and cease any Services in progress under this and/or any other Contract with you;

10.2.3 we may immediately cancel, terminate and/or suspend without Liability to you the Contract and/or any other contract with you; and/or

10.2.4 *all monies owed by you to us shall immediately become due and payable.

10.3 Any repossession of the Hire Goods shall not affect our right to recover from you any monies due under the Contract and/or any damages in respect of any breach which occurred prior to repossession of the Hire Goods.

10.4 Upon termination of the Contract you shall immediately:

10.4.1 return the Hire Goods to us or make the Hire Goods available for collection by us as requested by us; and

10.4.2 pay to us all arrears for Rentals, charges for any Services, and/or any other sums payable under the Contract.

11 LIMITATIONS OF LIABILITY

11.1 *All warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.

11.2 *If we are found to be liable in respect of any loss or damage to your property the extent of our Liability will be limited to the retail cost of replacement of the damaged property.

11.3 Any defective Hire Goods must be returned to us for inspection if requested by us before we will have any Liability for defective Hire Goods.

11.4 *We shall have no Liability to you if, without just cause, any monies due in respect of the Hire Goods and/or the Services has not been paid in full by the due date for payment.

11.5 We shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by your continued use of defective Hire Goods and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to you.

11.6 You shall give us a reasonable opportunity to remedy any matter for which we are liable before you incur any costs and/or expenses in remedying the matter. If you do not do so we shall have no Liability to you.

11.7 *We shall have no Liability to you to the extent that you are covered by any policy of insurance arranged as a result of the Contract and you shall ensure that your insurers waive any and all rights of subrogation they may have against us.

11.8 We shall have no Liability to you for any of the following losses (whether direct or indirect):-

11.8.1 *consequential losses (including loss of profits and/or damage to goodwill);

11.8.2 economic and/or other similar losses

11.8.3 special damages and indirect losses; and/or

11.8.4 business interruption, loss of business, contracts and/or opportunity.

11.9 *Our total Liability to you under and/or arising out of any Contract shall not exceed 5 times the amount of the Rental and charges for Services (if any) under that Contract or the sum of £1,000 (or Euro equivalent) whichever is the higher. To the extent that any Liability of us to you would be met by any insurance held by us then our Liability shall be extended to the extent that such Liability is met by such insurance.

11.10 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:

11.10.1 Liability for breach of contract;

11.10.2 *Liability in tort (including negligence); and

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11.10.3 *Liability for breach of statutory and/or common law duty;

except clause 11.9 above which shall apply once only in respect of all the said types of Liability.

11.11 Nothing in this Contract shall exclude or limit our Liability for fraud, death or personal injury due to our negligence nor exclude or limit any other type of Liability which it is not permitted to exclude or limit as a matter of law.

12 GENERAL

12.1 Upon termination of the Contract the provisions of clauses 3.2, 3.4, 3.5, 6 8.1, 8.2 and 8.3 shall continue in full force and effect.

12.2 Each hire of an item of Hire Goods shall form a distinct Contract which shall be separate to any other Contract relating to other Hire Goods.

12.3 You shall be liable for the acts and/or omissions of your employees, agents, and/or subcontractors as though they were your own acts and/or omissions under this Contract.

12.4 *You agree to indemnify and keep indemnified us against any and all losses, lost profits, damages, claims, costs (including legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by us and arising from any breach of contract, any tortious/delictual act and/or omission and/or any breach of statutory duty by you.

12.5 *No waiver by us of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same or any other provision. If any provision is held by any competent authority to be unenforceable in whole or in part the validity of the other provisions and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.

12.6 We shall have no Liability to you for any delay and/or non performance of a Contract to the extent that such delay is due to any Force Majeure event. If we are affected by any such event then time for performance shall be extended for a period equal to the period that such event delayed such performance.

12.7 All third party rights are excluded and no third parties shall have any rights to enforce the Contract. This shall not apply to any finance company with whom we have an outstanding finance agreement relating to the Hire Goods. Such finance company shall, subject to our consent, have the right to enforce this Contract as if they were us. This Contract is governed by and interpreted in accordance with English law and we and you agree to submit to the non-exclusive jurisdiction of the English courts.

Date: March 2019