

SD5 - SFEG Terms and Conditions of Hire

1. EXISTENCE AND SCOPE OF CONTRACT

1.1 These terms and conditions together with SFEG verbal or written quotation and the Hirer's acceptance thereof set out all the rights and obligations of the parties each to the other and no other terms or conditions shall be implied save to the extent that such terms and conditions are implied by statute.

1.2 Unless otherwise expressly agreed collection or acceptance of Equipment or Services by the Hirer shall signify acceptance of these terms and conditions. For the avoidance of doubt SFEG do not intend to enter into contract on any terms and conditions other than those set out herein.

1.3 All quotations by SFEG shall be open for acceptance for 30 days unless expressly stated otherwise or unless withdrawn or revised by SFEG.

1.4 All quotations by SFEG are conditional on availability of Equipment.

2. DEFINITIONS

"**SFEG**" refers to companies within the Surface Finishing Equipment Group including Hogg Blasting & Finishing Equipment Ltd - who's office is at 10 Armstrong Road, Armstrong Industrial Estate, Washington. NE37 1PR, and Abraclean Ltd who's office is at Manchester. M11 2QA.

"**Equipment**" means any plant, machinery or equipment hired to the hirer by SFEG including ancillary equipment and accessories in connection therewith but excluding fuel and other consumables;

"**Hirer**" is the customer of SFEG to whom this document is addressed and includes successors or others for whom the said customer is responsible;

"**Hire Period**" is the period from when Equipment leaves SFEG depot until it is received back at SFEG depot or such other time notified to SFEG under Clause 4;

"**Irreparable Damage**" means damage to Equipment which is not Repairable Damage;

"**Lost Equipment**" means Equipment which is not delivered up to SFEG at the end of the Hire Period, and which is no longer in possession of the Hirer because it has been lost or stolen;

"**Repairable Damage**" means damage which has occurred to the Equipment and which in the opinion of SFEG can be repaired by SFEG at an aggregate cost for all damaged Equipment hired under each hire contract of the lesser of (i) 60% of the replacement cost of the Equipment calculated by reference to the Equipment Manufacturers current list prices for the nearest equivalent replacement models and applying the SFEG then current published charging rates for its repair engineers, together with material, at cost plus 15% and (ii) £3,000; "**Site**" means the place at which the Hirer wishes to use Equipment hired or Services rendered by SFEG, and which place has been notified in writing to as before commencement of the hire period;

"**Variation**" means any of the following provided it is agreed between the Parties:

- (i) Change of specification of Equipment
- (ii) Additional Equipment
- (iii) Extension of any Hire Period previously agreed between the Parties
- (iv) Supply of labour to operate maintain or otherwise perform services in connection with the Equipment.
- (v) Provision of carriage from or to SFEG depot unless expressly included in SFEG quotation.

3. HIRE PERIOD

3.1 The Hire Period shall start at the time when Equipment leaves SFEG depot and end when it is received back at SFEG depot provided always that if SFEG are obliged to arrange carriage the Hire Period may be ended by the Hirer on the receipt by SFEG of a notice from the Hirer setting out details of the end of the Hire Period.

3.2 The customer shall give to SFEG not less than 2 days notice of the customer's intent to terminate the hire of the equipment, such notice to be effective and to run from the date when it is

actually received by SFEG ("the notice period") The Hirer will terminate all hires verbally and an off-hire number must be obtained and retained. The equipment shall remain at the risk of the hirer for the notice period, two working days. It is the hirer's responsibility to ensure that the equipment is available for collection. Following an aborted collection the equipment will remain on hire and be the responsibility of the hirer. Charges for an aborted collection will be levied. In the event that the previously agreed Hire Period is terminated prematurely, charges for the full contract hire period will be levied.

4. VARIATIONS

4.1 All Variations shall be in writing and signed by both parties, or shall be requested in writing by the Hirer and accepted expressly as a Variation in writing by SFEG 4.2 No Variation shall vitiate the Contract

4.3 SFEG may require the basis of charging any Variation to be agreed in writing before any Equipment or any service comprising a Variation is provided to the Hirer.

4.4 In the event that the basis of charging a Variation is not agreed as provided in **Clause 4.3** SFEG may at its absolute discretion refuse to accept the Variation or may require the subject of the proposed variation to be supplied under a separate contract

4.5 If SFEG accepts a Variation without first having agreed the basis of charging, then the Hirer shall pay a reasonable amount for the Variation having regard to all relevant circumstances including the prices or basis in the Contract of charging for Equipment or Services.

4.6 SFEG reserves the right to increase the hire rates on the anniversary of any hire, at the time of cost increase or the 1st January every year, to cover any increase in operating costs including without limitation European or domestic regulatory changes, labour costs, taxation, insurance, updated equipment etc. such increases will be reflected in the monthly invoices.

4.7 SFEG reserves the right to modify and or vary its terms and conditions as and when necessary.

4.8 SFEG reserves the right to apply additional charges at the point of equipment collection.

5. HIRE CHARGES AND PAYMENT

5.1 Hire charges shall accrue throughout the Hire Period and may be calculated daily or weekly.

5.2 Charges for Variations supplied under **Clause 5** shall be added to Hire Charges.

5.3 The basis of hire and the provision of Variations shall be as stated on the face hereof.

5.4 SFEG will submit its invoice for hire services and/or variations provided under the contract or for any other amounts due from the Hirer to SFEG under the contract at the end of each month commencing after the start of the Hire Period and throughout and at the end of the Hire Period. If the hire starts within 5 days of the first month end, the first invoice will be submitted at the end of the following month or at the end of the Hire Period whichever comes first.

5.5 If Credit Facilities have been granted payment of the invoice amount is due by the end of month following the month of invoice, unless otherwise agreed.

5.6 The Customer shall raise any dispute relating to the invoice, in writing, no later than 7 days following the date of the invoice.

5.7 SFEG reserves the right to apply late payment charges and interest, in accordance with s5A and/or s6 of the Late Payment Commercial Debt (Interest) Act 1998 or any subsequent enactment. In addition, all invoices will become due and payable immediately and will be treated as overdue items, with appropriate charges applied and all costs reasonably incurred in collecting the debt payable by the Buyer

5.8 The Hirer indemnifies SFEG against all direct legal and other costs including but not limited to the cost of SFEG employees

SD5 - SFEG Terms and Conditions of Hire

incurred in the recovery of hire charges or other sums, which become overdue for payment.

6. COUNTERCLAIMS AND SET OFF

6.1 Under no circumstances shall monies owed by SFEG to the Hirer under this or any other contract between the parties be set off against monies properly due to SFEG under this contract.

7. TRANSPORT AND HANDLING OF EQUIPMENT

7.1 The Hirer shall, unless otherwise expressly agreed, arrange and be responsible for all transport of Equipment from SFEG depot at commencement of the Hire Period and for return to SFEG store on completion or termination of the Hire Period.

7.2 The Hirer shall be responsible for unloading and loading the Equipment at its Site.

7.3 When an SFEG engineer is required at the Site to assist in the set up of the equipment:

7.3.1 Such person shall be under the direction and control of the Hirer and shall for all purposes in connection with this contract be regarded as a servant or agent of the Hirer.

7.3.2 The Hirer shall indemnify SFEG against all claims arising out of actions or negligence of such person(s) provided always that this clause shall not be construed to exclude or limit liability for death or personal injury resulting from negligence by SFEG its servants or others for whom it is responsible.

8. REPAIR AND MAINTENANCE

8.1 The Hirer shall at all reasonable times allow SFEG or its representatives or insurers access to the Site to inspect maintain or repair the Equipment.

8.2 The Hirer shall not test adjust or repair the equipment or attempt to do so without written authority from SFEG.

8.3 If at any time during the Hire Period the Equipment, in SFEG opinion, is in need of repair or adjustment, SFEG may at its discretion either stop further use of the equipment until such repairs have been carried out or replace the equipment with other similar equipment.

8.4 In the event that the Equipment (following permission given under **Clause 13** of these Conditions) is removed from the Site to which it is delivered SFEG reserves the right to recharge to the customer all costs of repair or adjustment arising after such removal howsoever caused during the remainder of the Hire Period.

9. CLEANING & EMPTYING

9.1 It is the Hirers responsibility to return the hired equipment in the same condition as it was supplied at the start of the Hire Period. If the equipment is not returned in an empty and clean condition then the Hirer will be charged an emptying and/or a cleaning charge.

10. DAMAGE TO EQUIPMENT

10.1 The Hirer accepts full responsibility for all damage and loss arising from the Hirer's hire of the Equipment including all Repairable Damage, Irreparable Damage and Lost Equipment and hereby undertakes to indemnify and to keep indemnified SFEG from and against all such damage and loss. Any such damage or loss shall be payable to SFEG within 7 days of the date of the invoices during which period the Hirer may inspect any repaired or replaced items of Equipment.

10.2 The Hirer shall be liable to pay to SFEG two-thirds of the hire charges, from the date of off-hire, or damage, or loss, for the Equipment until the Hirer or its insurer has paid to SFEG the full replacement cost or the cost of repairing the equipment to full hireable condition.

10.3 Failure of the Equipment from whatever cause shall not entitle the Hirer to any allowance for loss of hire.

11. ACCIDENT ON SITE

11.1 If the Equipment is involved in any accident resulting in injury or death to persons or damage to property, the Hirer shall immediately notify SFEG orally, and shall confirm such notification in writing within 2 days.

12. OWNERSHIP AND SUB-LETTING

12.1 The Equipment remains the property of SFEG at all times.

12.2 The Hirer shall not sub-let sell, mortgage charge pledge or part with possession of the Equipment or any part thereof without prior consent in writing from SFEG and shall at all times protect the Equipment against seizure, distress or execution.

13. SITING OF EQUIPMENT

13.1 The Hirer shall not remove the Equipment or permit the Equipment to be removed from the site without prior consent in writing from SFEG.

13.2 The Hirer shall indemnify SFEG against all losses costs, damage, charges and expenses arising as a direct result of failure to observe and perform this condition.

13.3 The Hirer shall not remove, deface or cover any name plate or mark on the Equipment indicating that it is the property of an SFEG company.

14. SUITABILITY OF EQUIPMENT

14.1 The choice of Equipment shall be the sole responsibility of the Hirer. No warranty is given or implied by SFEG as to suitability of Equipment for any particular purpose whether or not such purpose is made known to SFEG.

14.2 It is the Hirer's responsibility to ensure that a suitable power supply or compressed air supply is available on site for the correct operation of the Equipment.

15. EXCLUSION OF LIABILITY

15.1 SFEG shall not be liable under any circumstances whatsoever for losses incurred by the hirer due to faulty or non functioning equipment during the period of hire. SFEG will however take all steps to ensure that equipment is repaired or replaced as soon as possible with same or similar equipment.

15.2 The hirer will indemnify SFEG at all times fully against any liabilities, demands, actions, claims or proceedings arising from or in connection with the equipment hired.

15.3 In the event that the hirer shall create, use with or in conjunction to any equipment hired any unique or original material or matter SFEG shall have no liability whatsoever in respect of the loss, damage or imperfection of any such material and the hirer will be fully indemnify SFEG in respect of any such claims by a third party

15.4 SFEG shall not be liable for any advice or opinion whether given gratuitously or otherwise by it, its employees, agents, or others for whom it is responsible, to the Hirer. To the extent that the Hirer relies on such advice or opinion it does so at the Hirers own risk.

15.5 Except as expressly provided elsewhere in these Conditions. SFEG will be under no liability under the contract for any personal injury, death loss or damage of any kind whatsoever (other than death or personal injury resulting from SFEG negligence) whether consequential or otherwise including but not limited to loss of production and loss of profits and SFEG hereby excludes all conditions warranties and stipulations express or implied statutory customary or otherwise which but for such exclusion would or might subsist in favour of the Hirer except that such exclusion shall not apply to any implied term as to quality or fitness of the Equipment for a particular purpose where the Hirer deals as Consumer as defined in Section 12 of the Unfair Contract Terms Act 1977.

15.6 In no circumstance will SFEG or its employees, agents or others for whom its responsible be liable for any loss or damage of any kind whatsoever (other than death or personal injury

SD5 - SFEG Terms and Conditions of Hire

resulting from SFEG negligence) whether consequential or otherwise caused directly or indirectly by any negligence on the part of SFEG or on the part of any of its employees agents or others for whom it is responsible in connection with or arising out of the manufacture supply of hire of the Equipment or the installation repair or maintenance of the Equipment or in connection with any statement given or made, or failure to give advice or warning, by or on behalf of SFEG.

15.7 In any case where the Equipment is installed or connected to any property of the Hirer or to a third party, and, notwithstanding that the installation and connection of such equipment was carried out by SFEG, SFEG shall not be liable for any damage caused to any property of the Hirer or any third party and resulting from such installation or connection and the Hirer shall indemnify SFEG in respect of all and any liability of SFEG so incurred.

16. TERMINATION

16.1 If the Hirer makes default in punctual payment of any hire charges or other sums due to SFEG under the contract or fails to observe and perform any of the terms and conditions of the contract or if the Hirer suffers any distress or execution to be levied against it or makes, or proposes to make any arrangement with its creditors or becomes bankrupt or (being a company) goes into liquidation or has an Administrative Receiver or Administrator appointed of the whole or part of its assets or undertaking, or shall do or cause to be done or permit or suffer any act or thing whereby SFEG rights and the Equipment may be prejudiced or put in jeopardy then in any such case SFEG may at its discretion terminate the contract and the hire of the Equipment without any notice to the customer and retake possession of the Equipment and for that purpose enter into or upon the Site or any site or premises where the equipment may be and the termination of the contract shall not affect the rights of SFEG to recover from the customer any monies due to SFEG under the contract or damages for breach thereof.

17. INDEMNITY AND INSURANCE

17.1 The Hirer accepts full liability and responsibility in respect of and shall fully and completely indemnify SFEG 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 including but not limited to the payment of all damages costs and charges in connection therewith, except insofar as the damage loss destruction injury or death directly results from negligence of SFEG its employees or agents.

17.2 The hirer shall throughout the Hire Period including the notice period at the Hirer's expense fully insure with a reputable insurance office in the joint names of the Hirer and SFEG:

17.2.1 The Equipment for the full replacement value thereof against loss or damage or destruction howsoever arising.

17.2.2 The Hirer's liability to SFEG under **Clause 16.1** hereof.

17.3 The Hirer shall:-

17.3.1 Produce the policy or policies effected under this condition for inspection by SFEG on demand, and

17.3.2 Hold the proceeds of any claim under the policy or policies in trust for SFEG.

18. STATUTORY COMPLIANCE

18.1 The Hirer warrants and represents to SFEG that it will obtain every necessary licence or permit required and/or complies with any legal requirements for or relating to the use or installation of the Equipment.

19. FORCE MAJEURE

19.1 SFEG shall not be liable for any failure in the performance of any of its obligations under the contract caused by factors outside its control.

20. NOTICES

20.1 To be served effectively, any notice or communication in writing to SFEG shall be sent to its address on the face hereof and shall in the case of a notice or communication to the Hirer be sent to the Hirer at its registered office or the address of the Hirer last known to SFEG. Any such notice or communication may be given by registered or recorded delivery post or facsimile transmission. To prove service in the case of a notice given by facsimile transmission it shall be sufficient to show that it was dispatched to the correct facsimile number. Service shall be deemed to have been effected 24 hours after dispatch by post or facsimile transmission.

21. SETTLEMENT OF DISPUTES

21.1 Should any dispute or difference arise between the parties under contract at any time then either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions. Nothing in this clause shall be construed to deprive either party of its rights to commence proceedings in the Courts.

21.2 If any such dispute or difference arises then one party ("the Applicant") may serve upon the other ("the Respondent") a notice in writing ("the Notice") which shall state in sufficient detail the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication.

21.3 The notice under **Clause 21.2** shall also be served forthwith by the Applicant on the Adjudicator either upon his identity being agreed.

21.4 The parties shall within seven days of the Notice being served upon the Respondent agree upon a suitable Adjudicator. Failing agreement the Applicant shall and the Respondent may apply for an appointment to the Academy of Construction Adjudicators (whilst at the same time serving a copy of the application on the other party) whose written notification of an appointment of an Adjudicator shall be served on both parties and shall be binding on both parties.

22. GENERAL

22.1 If any provisions contained in these Conditions shall be deemed to be invalid for any reason the condition shall be read as if the invalid provision had to that extent been deleted therefrom and the validity of the remaining provisions of these Conditions shall not be affected thereby.

23. LAW

23.1 The Contract shall be governed by English law and the Customer consents to the exclusive jurisdiction of the English courts in matters regarding the contract except to the extent that SFEG invokes the jurisdiction of the Courts of any other country.