

# **RWE Renewables UK**

## **General Conditions of Contract for Plant Hire**

Version	4.0
Date	July 2020
Document Control	Procurement

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## 1. Definitions and Interpretation

1.1 In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

<b>"Business Day"</b>	a day (other than a Saturday, Sunday or a public holiday in England) when the banks in London are open for business, but excluding any days on which the Site is not open for business.
<b>"CIS Regulations"</b>	the Finance Act 2004 and any regulations made under Section 74 of the Finance Act; the Income Tax (Construction Industry Scheme) Regulations 2005 (CIS 2004/2005) and the Income Tax (Construction Industry Scheme) (Amendments) Regulations 2007 (CIS 2004/672) and 2015 (CIS 2015/429) and any other statute or subordinate legislation relating to the construction industry scheme as modified from time to time or replaced whether before or after the date of the Contract.
<b>"Commencement Date"</b>	the date specified in the Purchase Order.
<b>"Conditions"</b>	means these general conditions of contract.
<b>"Contract"</b>	means the contract comprising the Purchase Order and these Conditions.
<b>"Contract Price"</b>	the price for hiring the Plant as set out in the Purchase Order.
<b>"Contractor"</b>	the entity which is named as the Contractor in the Purchase Order.
<b>"Employer"</b>	the company from within the RWE Group which is named as the contracting entity in the Purchase Order.
<b>"Employer's Contact"</b>	means all or any one of the individuals identified on the Purchase Order.
<b>"Event of Force Majeure"</b>	as defined in condition 11.
<b>"Good and Serviceable Condition"</b>	in relation to each Item, at least the standard and condition which that Item is in at the beginning of the Hire Period but subject to fair wear and tear during the Hire Period.
<b>"Hire Period"</b>	the period from the Commencement Date until the Contractor is notified by the Employer that the Plant is available for collection from the Site.
<b>"Holiday Period"</b>	covers any cessation of work over Easter, Christmas

; as well as any other Bank or Public holidays.

<b>"Idle Time Rate"</b>	the agreed hire charges should the Plant be prevented from working for a complete working week as defined by the Contractor.
<b>"RWE Group"</b>	RWE Aktiengesellschaft and its subsidiaries with "subsidiary" having the meaning ascribed to such term in Section 1159 of the Companies Act 2006.
<b>"RWE Group Policy Document"</b>	any relevant rules, policies or standard techniques used by the RWE Group including without limitation the provisions of the Employer's Sustainability Schedule attached as an appendix to the Purchase Order, the relevant Employer's health and safety requirements for working on the Employer's sites, the Employer's Code of Conduct and such other policies as the Employer may notify to the Contractor from time to time, copies of which shall be available for inspection at the Employer's offices.
<b>"Item"</b>	each item of Plant.
<b>"Manufacturer"</b>	the relevant manufacturer of each Item.
<b>"Manufacturers' Recommendations"</b>	the recommendations issued by the Manufacturer as to the operation, storage, maintenance and repair of the Plant.
<b>"Operator(s)"</b>	any employee, agent or contractor of the Contractor who is provided to operate the Plant.
<b>"Pay Less Notice"</b>	has the meaning given in condition 9.8.
<b>"Plant"</b>	means the plant, machinery, equipment and accessories set out in the Purchase Order which the Contractor agrees to hire to the Employer.
<b>"Plant Report Sheet"</b>	means the information on the daily performance of each Item to be prepared by the Employer.
<b>"Purchase Order"</b>	means the letter issued by the Employer to the Contractor setting out details of the Plant hire services to be provided by the Contractor.
<b>"Requirements"</b>	all general or local Acts of Parliament and the regulations and bye-laws of any local or other statutory authority which may be applicable to the Plant or its operation and the rules and regulations of all public bodies and companies whose property or rights are or may be affected in any way by the operation of the Plant, all British Standards (including but not limited to BS7121) and the

Manufacturer's Recommendations.

<b>"RIDDDOR"</b>	the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.
<b>"Safety Incident"</b>	an accident, incident or near-miss, whether or not death or personal injury or other property damage is caused.
<b>"Serious Incident"</b>	(a) a fatal accident; or (b) an accident involving a serious injury, such as an amputation, fracture, electrical shock or burn, loss of sight (temporary or permanent), or any injury resulting in admittance to hospital for more than 24 hours.
<b>"Serviceability"</b>	means in relation to each Item the produce of a/b multiplied by 100 where a is the total number of hours that an Item is available for use during Site Hours in any one week (and whether or not repairs have been made pursuant to condition 6.1 the down time shall be included in assessing availability of that Item) and b is the number of Site Hours during the same week, but in each case excluding non-availability due to the negligence or improper use of that Item by the Employer.
<b>"Serviceability Standard"</b>	has the meaning given in condition 6.5.
<b>"Site"</b>	the Site or Sites at which the Plant is required as set out in the Purchase Order.
<b>"Site Hours"</b>	means normal operational hours at the Site.
<b>"Specification"</b>	means the required performance of each Item as set out in the Purchase Order.
<b>"Statutory Deduction"</b>	means the deduction in force at the time of payment under section 61 of the Finance Act 2004, or any re-enactment or update thereof.
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

1.2 In the Contract, unless the context otherwise requires, a reference to a statute or statutory provision includes:

- (a) any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it; and
- (b) any repealed statute or statutory provision which it re-enacts (with or without modification).

## **2. Supply of Plant**

- 2.1 The Employer appoints the Contractor as its contractor to provide the Plant on the terms of, and to the standards required in, the Contract and the Specification and the Contractor agrees to provide the Plant. The appointment of the Contractor is not exclusive and nothing in the Contract shall be deemed to give the Contractor exclusive rights to supply plant to the Employer.
- 2.2 These Conditions shall prevail over any terms in any Purchase Order, any acknowledgement from the Contractor of such Purchase Order, or (subject to condition 14.2) in other correspondence between the parties relating to the subject matter of the Contract (including but not limited to any quote provided by the Contractor).
- 2.3 The Contract shall commence on the Commencement Date and shall (unless terminated at an earlier date pursuant to conditions 9.10(b), 11.3 or 12) terminate automatically once the Hire Period has expired and the Contract Price has been paid.

## **3. Delivery of Plant to and collection from the Site**

- 3.1 The Contractor shall at its own expense deliver the Plant to the Site on the Commencement Date and collect the Plant from the Site within 5 Business Days of notification by the Employer that the Plant is available for collection.
- 3.2 The Contractor shall be responsible for delivery of the Plant to the Site, offloading, and loading onto transportation at the end of the Hire Period. Any personnel supplied by the Employer to assist with unloading and loading shall be deemed to be under the Contractor's control and must comply with the reasonable directions of the Contractor.
- 3.3 The Contractor shall ensure that throughout the Hire Period a manual of instructions for operation is provided for each Item delivered to the Site.
- 3.4 Where the Contractor supplies an Operator with the Plant, the Contractor shall ensure that the Operator complies with the instructions given by the Employer in operating the Plant. However, the detailed activities required to operate the Plant, especially with regards to health and safety, shall remain the responsibility of the Contractor except when the Employer is operating the Plant.
- 3.5 The Contractor shall be responsible for checking the ground conditions on which Plant is to be placed and for providing and laying any necessary supporting materials, for example spreader mats or trackway, to ensure stability of the Plant whilst in use.
- 3.6 The Contractor is deemed to have understood the nature and extent of the proposed use of the Plant at the Site and shall make no claim founded on his failure to do so. The Employer shall, on request of the Contractor, grant such access as may be reasonable for this purpose during Site Hours. The Contractor shall check the Site for access restrictions in relation to the Plant and other equipment being provided. At least 2 Business Days prior to the Commencement Date, the Employer shall advise the Contractor of any hazards of which the Employer is aware which are particular to the Site.

#### **4. Operation of the Plant**

- 4.1 The Employer shall use the Plant in a proper and workmanlike manner throughout the Hire Period and within the Manufacturers' Recommendations (as notified by the Contractor to the Employer).
- 4.2 The Contractor shall take all steps as may be reasonably recommended by the Manufacturer or the Employer or may otherwise be necessary to ensure that the Plant complies with the Requirements and is safe when properly used by the Operator or the Employer.
- 4.3 The Operator shall take reasonable steps to monitor the state and condition of the Plant each Business Day.
- 4.4 The Employer shall keep the Plant suitably stored at the Site.
- 4.5 The Plant shall not be moved from the Site to any other Site operated by the Employer without the written agreement of the Contractor, such agreement not to be unreasonably withheld or delayed.
- 4.6 The Employer shall not remove, deface or cover up the Contractor's name plate or sign on any Item of Plant indicating that it is its property.
- 4.7 The Employer agrees and acknowledges that it has no right or interest in any Plant.
- 4.8 The Employer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Plant and must protect the Plant against distress, execution or seizure and shall indemnify the Contractor against all losses, damage, costs, charges and expenses arising as a direct result of any failure to observe and perform this condition 4.8.
- 4.9 The Employer shall not make or allow any alteration to the Plant without the prior written consent of the Contractor. To the extent that any additions to the Plant can be removed from them at the end of the Hire Period without causing any damage, the additions or alterations shall remain the property of the Employer.
- 4.10 The Employer shall make the Plant available for collection by the Contractor on the expiry of the Hire Period in Good and Serviceable Condition.
- 4.11 All Operators shall remain the responsibility of the Contractor, whether they are employees, agents or sub-contractors to the Contractor. The Contractor warrants that each Operator is fully trained and has the skills and expertise to safely operate the Plant in accordance with the Requirements. The Contractor shall promptly on request provide to the Employer satisfactory evidence that the Operators have successfully completed such training.
- 4.12 The Contractor shall at all times be responsible for making appropriate PAYE deductions for tax and national insurance contributions from the remuneration which it pays to its personnel (including but not limited to each Operator) and the Contractor agrees to indemnify the Employer in respect of any claims or demands which may be made by the relevant authorities against the Employer in respect of income tax relating to the operation of the Plant.
- 4.13 If the Contractor does not already have in place an occupational pension scheme that allows all eligible employees and earnings at or above the National Insurance lower earnings level to join within 12 months of starting work for it, or if the Contractor is not an exempt employer under the provisions of the Welfare Reform and Pensions Act 1999 (the "**Act**"), the Contractor shall provide to the

Employer such evidence as the Employer may reasonably require that the Contractor has arranged for its relevant employees as defined in the Act to have access to a stakeholder pension scheme in accordance with the Act and the Stakeholder Pension Scheme Regulations 2000.

- 4.14 There will be no contract between the Employer and any of the Contractor's third party workers, and the Contractor will be responsible, at its cost, for all vetting and auditing of its third party workers (including but not limited to checking identities, c.v's, references, qualifications, DBS records, ISA checks, FSA compliance, rights to work in UK, driving licenses, etc). The Contractor will indemnify the Employer and the RWE Group against any loss, liability, damage, expense, claim, fine, demand, proceeding, charge, expense, claim, fine, demand, proceeding, charge, expense or cost suffered or incurred by it (and/or the RWE Group) as a result of any breach by the Contractor of its obligations under this condition.

## **5. Servicing and Maintenance**

- 5.1 In the event that the Employer is operating the Plant, the Employer shall procure that at the start of each Business Day, grease and oil levels for each Item at the Site are checked against and comply with the Manufacturers' Recommendations (as notified by the Contractor to the Employer) and that oils, grease and lubricants are added as necessary, otherwise this shall be the responsibility of the Operator. Appropriate oils, grease and lubricants shall be provided by the Contractor and are deemed to be included in the Contract Price but the Employer shall account for the use of all supplied materials in the format to be agreed.
- 5.2 The Contractor shall ensure that each Item is inspected and serviced in a proper and workmanlike manner in accordance with sound engineering practice and with the Manufacturer's Recommendations. The Contractor shall ensure that any spares or replacement parts used are in accordance with sound engineering practice and the Manufacturer's Recommendations. The Contractor and the Employer shall act in good faith to agree mutually acceptable arrangements for servicing of Plant. The Contractor acknowledges that the Employer may, at its sole discretion (acting reasonably), decide that Site operational requirements require that servicing of Plant does not take place during normal Site Hours.
- 5.3 The Employer shall not (except for the changing of any tyre or repair of punctures), repair any Item or repair, modify or alter the Plant without the prior written authority of the Contractor. The changing of any tyre and repair of punctures are however the responsibility of the Employer who should arrange for them to be changed / repaired. The Employer is responsible for all costs incurred in the changing or replacement of any tyre (which must be of an equivalent specification) as approved by the Contractor and for the repair of any puncture.
- 5.4 The Employer shall permit the Contractor to access the Site during Site Hours in order to inspect, test, adjust, repair or replace the Plant, provided that the Contractor uses its reasonable endeavours to minimise disruption to the Employer's operations in so doing.

## **6. Breakdowns and non-availability of Plant**

- 6.1 Any breakdown or the unsatisfactory working of any Item shall be notified in writing using the form of notification which may be agreed between the parties from time to time immediately to the Contractor who shall use its best endeavours to procure that breakdown repairs are completed within 2 Business



Days of any fault being reported. Any claim for breakdown time will only be considered from the time and date at which written notification is received and acknowledged by the Contractor.

- 6.2 Full allowance for the Contract Price will be made to the Employer for any stoppage due to breakdown of the Plant caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs in accordance with the terms of the Contract.
- 6.3 If any Item is not available for use because of theft, damage or other reason not attributable to the negligence or improper use of that Item by the Employer, the Item shall be replaced by the Contractor within 2 Business Days of notification with an Item of equal capability. The Contract Price shall be reduced on a pro-rata basis to take account of any period of unavailability of the Plant.
- 6.4 If an Item cannot be repaired by the Contractor within 2 Business Days of notification by the Employer, the Contractor shall substitute that Item with an Item of equal capability within 2 Business Days of notification.
- 6.5 The Employer shall measure Serviceability on a weekly basis for each Item. If Serviceability of an Item falls below 97% (the "**Serviceability Standard**") on more than 2 occasions in any 12 week period, that Item shall be deemed to have failed its Serviceability Standard and must be replaced by the Contractor within 5 Business Days of notification to the Contractor of the second failure.
- 6.6 The Employer shall be responsible for all expense involved arising from any breakdown, unsatisfactory working of or damage to any part of the Plant due to the Employer's negligence, misdirection or misuse of the Plant, whether by the Employer or his servants, and for the payment of hire at the Idle Time Rate, during the period the Plant is necessarily idle due to such breakdown, unsatisfactory working or damage. The Employer is responsible for the cost of spares and / or repairs due to theft, loss or vandalism of the Plant. The Contractor will be responsible for the cost of repairs, inclusive of the cost of spares, to the Plant involved in breakdown from all other causes.

## **7. Health and Safety**

- 7.1 The Contractor shall procure that at all times when they are present at the Site, its employees and agents (including but not limited to the Operators) shall comply with the safety policy of the Employer (including the RWE Group Policy Documents) and the Requirements.
- 7.2 The Contractor shall notify the Employer of any Safety Incidents involving the Plant.
- 7.3 The Contractor shall notify the Employer immediately following receipt of any prosecution, improvement notice, written warning or other correspondence received from the Health & Safety Executive, the Environment Agency, any local authority or the police which relates to any Safety Incidents involving Plant owned or operated by the Contractor.
- 7.4 In addition to complying with RIDDOR the Contractor shall immediately notify the Employer in writing of any Safety Incident relating to the Contract so the Employer can make full and accurate notifications as required by law. The Contractor shall make notifications of any Serious Incident immediately by telephone, and in the case of any other Safety Incident without delay and in any

event by no later than 10am on the Business Day immediately following the Safety Incident taking place.

- 7.5 The Contractor have in place an accident investigation procedure to deal with all Serious Incidents. Copies of all Serious Incident investigation reports shall be supplied by the Contractor to the Employer promptly following the conclusion of the investigation.

## **8. Insurance**

- 8.1 The Employer shall procure that the RWE Group takes out and maintains at its cost a property all-risks and liability insurance policy for the Site at which the Plant is to be used. Deductibles applying under the insurance arranged by the RWE Group shall be for the Contractor's account where such deductibles relate to loss or damage for which the Contractor is responsible under the Contract.
- 8.2 The Contractor undertakes and agrees to take out and maintain insurance cover in full force and effect at its own cost with an insurance office of repute to cover its liabilities under the Contract to the extent as would reasonably be expected, including (but not limited to) the insurance cover set out in conditions 8.3, 8.4 and 8.5.
- 8.3 The Contractor shall take out and maintain at its cost a third party legal liability insurance policy to cover loss, damage, injury or death to any third party, persons or property arising in connection with the Plant. Such insurance shall have a limit of liability of a minimum of £5,000,000 each and every occurrence.
- 8.4 The Contractor shall take out and maintain at its cost employer's liability insurance in respect of its employees as required by the Requirements. Such insurance shall have a limit of liability of a minimum of £5,000,000 each and every claim and the level of such insurance shall be adjusted in line with the statutory minimum requirements prevailing from time to time.
- 8.5 The Contractor shall take out and maintain motor insurance in respect of vehicles used by it in the delivery, collection, loading or unloading of the Plant and such other insurances as are required to be taken out and maintained by the Contractor under the Requirements.
- 8.6 The Employer shall provide to the Contractor, and the Contractor shall provide to the Employer (and procure that its sub-contractors provide), all such reasonable assistance and necessary information and documentation for the purpose of making or processing claims under the insurances.
- 8.7 The Contractor shall provide evidence to the Employer whenever reasonably requested of the placing of the insurance policies detailed above.

## **9. Contract Price and Payment Terms**

- 9.1 The Employer shall pay the Contractor the Contract Price for the hire of each Item and amounts set out in the Purchase Order (which include payment for supply and operation of the Plant, transport of the Plant to and from the Site, servicing, lubricants, fuel, Operators, insurance, travel, accommodation and all other costs relating to the Plant). The Contract Price includes the provision of timber mats and any other equipment necessary as a result of any Site conditions and/or any hazards or risks identified at the Site. The Employer shall not be liable for any other costs, expenses, charges or payments of any kind incurred by the Contractor in the provision of the Plant.

- 9.2 The Employer shall send the Contractor each calendar month a statement of the Serviceability of each Item in the preceding month. If requested by the Contractor the Employer shall supply the Plant Report Sheets for the relevant period.
- 9.3 The Employer shall pay the Contractor the Contract Price, adjusted to take account of any additions or deductions that are due in accordance with the Contract. The Contractor shall submit an invoice to the Employer in accordance with the provisions of the Purchase Order, showing any sums which the Contractor considers are due under the Contract.
- 9.4 The due date for payment of sums properly due shall be the date on which the Employer receives the Contractor's invoice.
- 9.5 The Employer shall within 5 calendar days of the due date for payment issue a notice in writing to the Contractor specifying the amount of the payment it proposes to make in relation to the Contractor's invoice and the basis on which that amount is calculated. Subject to any Pay Less Notice, the Employer shall pay the Contractor the amount so notified on or before the final date for payment described in condition 9.6.
- 9.6 The final date for payment shall be the number of calendar days as expressed in the Purchase Order after receipt by the Employer of a valid VAT invoice for the amount notified under condition 9.5.
- 9.7 If the Employer fails to give a payment notice in accordance with condition 9.5, the amount to be paid by the Employer in respect of Contractor's invoice shall, subject to any Pay Less Notice served in accordance with condition 9.8, be the amount specified in the relevant invoice submitted by the Contractor in accordance with condition 9.3.
- 9.8 Where the Employer intends to pay less than the sum stated in the Employer's payment notice (or the sum stated in the Contractor's invoice where condition 9.7 applies), the Employer shall notify the Contractor in writing not less than 1 calendar day before the final date for payment specifying both the amounts it considers due to the Contractor on the date such notice is given and the basis on which that amount has been calculated ("**Pay Less Notice**"). Where a Pay Less Notice is given the payment to be made on or before the relevant final date for payment shall be not less than the amount stated as due in the Pay Less Notice.
- 9.9 If payment of any sum properly due is delayed after the final date for payment and where no effective Pay Less Notice has been served by the Employer under condition 9.8, the Contractor shall be entitled to receive interest on that sum in accordance with condition 9.12.
- 9.10 If the Employer fails to make any payment as provided in this condition 9, subject to any deduction that the Employer is entitled to make under the Contract, the Contractor shall be entitled:
- (a) to stop work until the failure is remedied, by giving 14 calendar days written notice to the Employer, in which event any additional expense and cost incurred (including overheads and financing charges allocated to them but excluding any allowance for profit) by the Contractor as a result of the stoppage and the subsequent resumption of work shall be added to the aggregate of the Contract Price otherwise due; and/or

- (b) to terminate the Contract by giving 30 calendar days' written notice to the Employer, whether or not the Contractor has previously stopped work under this condition 9.10.
- 9.11 All invoices to be rendered by the Contractor pursuant to condition 9.3 must contain the information and be sent to the address specified in the Purchase Order.
- 9.12 If either party fails to pay any sum payable under the Contract when due (whether payable by agreement or by an order of the court or otherwise) the liability of that party shall be increased to include interest on that sum from the date when such payment was due until the date of the actual payment at a rate of 4% over the base rate from time to time of the Bank of England. Such interest shall accrue from day to day and shall be compounded annually.
- 9.13 Where under the Contract either party agrees to pay to the other party any sum or to furnish to the other party consideration which (in either case) is consideration for a taxable supply, that sum or consideration shall be exclusive of Value Added Tax payable on it and the recipient of the supply shall pay an amount equal to such Value Added Tax in addition to any sum or consideration on receipt of a valid Value Added Tax invoice from the relevant party.

## **10. Liability**

- 10.1 Each party shall inform the other of any default or breach under the Contract and afford the other a reasonable opportunity to correct such default or breach.
- 10.2 Each party accepts unlimited liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) any other liability which cannot by law be excluded or limited.
- 10.3 Except for liability on the part of the Contractor which is expressly provided for in the Contract (including these conditions):
- (a) the Contractor shall have no liability or responsibility for any loss, or damage of whatever nature due to or arising through any cause beyond his reasonable control;
  - (b) the Contractor shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of the Contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the hire, for any of the Employer's loss of profit, loss of use of the Plant or any other asset or facility, loss of production or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party, and / or any other financial or economic loss or indirect or consequential loss or damage of whatever nature; and
  - (c) whenever the Contract (including these conditions) provides that any allowance is to be made against hire charges, such allowance shall be the Employer's sole and exclusive remedy in respect of the circumstances giving rise to the allowance, and such remedy shall be limited to the amount of hire charges which would otherwise be or become due if the allowance in question had not been made.

- 10.4 For the duration of the Hire Period (which includes the time Plant is left on Site during a Holiday Period) the Employer shall, subject to the provisions referred to in conditions 4, 5, 8 and 9 of the CPA Model Conditions for the Hiring of Plant 2011, make good to the Contractor all loss of or damage to the Plant from whatever cause the same may arise, fair wear and tear excepted, and except as provided in condition 6 herein, and shall also fully and completely indemnify the Contractor and any personnel supplied by the Contractor in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the Plant during the continuance of the Hire Period, and in connection therewith, whether arising under statute or common law. In the event of loss of or damage to the Plant, hire charges shall be continued at the Idle Time Rates until the settlement has been agreed. Payment of the settlement must be made within 21 calendar days of the date of the agreement or idle time charges can be reinstated from the date of that agreement. Should idle time charges be re-instated, the agreed settlement figure remains payable in full.
- 10.5 The Employer shall not be liable for the following loss or damage however caused and even if foreseeable.
- (a) economic loss including loss of profits, business, contracts, revenues, goodwill, production and anticipated savings of every description;
  - (b) loss arising from any claim made by any third party;
  - (c) loss or damage arising from the other party's failure to fulfil its responsibilities or any matter under the Contractor's control;
  - (d) prior to delivery of any Plant to the Site (or, where the Site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving such highway) where the Plant is in transit by transport of the Contractor or as otherwise arranged by the Contractor;
  - (e) during the erection and / or dismantling of any Plant where such Plant;
  - (f) requires to be completely erected / dismantled on Site, provided always that such erection / dismantling is under the exclusive control of the Contractor or his agent;
  - (g) after the Plant has been removed from the Site and is in transit on a highway maintainable at the public expense (or where the Site is not immediately adjacent to a highway maintainable at the public expense after it has joined such highway) to the Contractor by transport of the Contractor or as otherwise arranged by the Contractor; and
  - (h) where the Plant is travelling to or from a Site on a highway maintainable at the public expense (or, where the Site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving or after its joining such highway) under its own power with a driver supplied by the Contractor.
- 10.6 Save for liability arising under condition 10.2, neither party shall be liable for indirect or consequential loss.
- 10.7 The Contractor shall be liable for any damage caused through not acquainting itself fully of the Site conditions as stated in condition 3.5.

10.8 Except as provided in condition 10.2, the Contractor's liability under the Contract shall not exceed £2,000,000 in aggregate.

## **11. Force Majeure**

11.1 Subject to condition 11.2, neither party shall be deemed to be in breach of the Contract, or otherwise be liable to the other, by reason of any delay in performance or non-performance of any of its obligations under the Contract to the extent that such delay or non-performance is due to any Act of God, explosion, lightning, tempest, flood, fire, terrorism, war, hostilities, act of public enemy, invasion, revolution or riot or is due to any cause beyond its reasonable control (an "**Event of Force Majeure**") provided that the following shall not be treated as Events of Force Majeure (i) a strike by or lockout or other industrial dispute or trade dispute involving any Operator, any other employees of the Contractor or any suppliers, agents or sub-contractors; or (ii) non-supply of machinery by any supplier to the Contractor; or (iii) the Contractor's failure to hire suitably qualified personnel or labour; or (iv) mechanical or electrical breakdown or failure of equipment, machinery or plant owned by or provided to the Contractor.

11.2 The party affected by the Event of Force Majeure shall immediately give the other party written notification of the nature and extent of the Event of Force Majeure and shall make all reasonable efforts to prevent and reduce to a minimum the effect of any Event of Force Majeure. The parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.

11.3 If the Contractor is affected by the Event of Force Majeure and the written notice in relation to the Event of Force Majeure has not been withdrawn within 1 month, the Employer may terminate the Contract with immediate effect by serving a written notice on the Contractor. The service of such notice shall be without prejudice to any rights or obligations which have accrued prior to termination.

11.4 When the effects of the Event of Force Majeure cease both parties shall take all reasonable steps to ensure resumption of normal performance of their obligations under the Contract.

## **12. Termination**

12.1 Without prejudice to any right or remedy either party may have against the other for breach or non-performance of the Contract, either party may, with immediate effect by notice in writing to the other, terminate the Contract on or at any time after the happening of any of the following events:

- (a) the other party commits a material breach of the Contract provided that where such breach is capable of remedy the party in breach has been advised in writing of the breach and has not rectified it within 30 days of receipt. For the purposes of this condition 12.1 a breach shall be considered capable of remedy if time is not of the essence in performance of the obligation and if that party can comply with the obligation within the 30 day period;
- (b) the passing of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up or the dissolution of the other party;

- (c) the making of an administration order or the appointment of an administrator under the out of court procedure under the Enterprise Act 2002 or the appointment of a receiver or an administrative receiver over, or the taking possession or sale by an encumbrancer of, any of the other party's assets;
- (d) the other party makes an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;
- (e) the other party ceases to do business at any time for 30 consecutive days; or
- (f) the other party for any reason whatsoever being substantially prevented from performing or becoming unable to perform its obligations.

### **13. Consequences of Termination**

- 13.1 All rights and obligations of the parties shall cease to have effect immediately upon termination of the Contract except that termination shall not affect:
- (a) the accrued rights and obligations of the parties at the date of termination; and
  - (b) conditions 4.12, 8, 10, 13, 14, 15, 18, 19 and 20, which shall remain in force.
- 13.2 Where the Contract terminates under conditions 9.10, 11.3 or 12 the Contractor shall as soon as reasonably practicable, and in any event not more than 5 Business Days after receipt of written notice of termination of the Contract, remove the Plant from the Site during Site Hours. If the Plant is not removed from the Site within this time period, the Employer shall have the right to arrange for the Plant to be removed from the Site and the Contractor shall reimburse the Employer all reasonable costs and expenses incurred by the Employer in effecting such removal.
- 13.3 On expiry or termination of the Contract for any reason whatsoever the Employer shall be under no obligation to offer employment to any employee, Operator, agent, sub-contractor or member of the Contractor's team who has been operating any Plant on any Site in accordance with the Contract.
- 13.4 On termination of the Contract for any reason whatsoever, the Contractor shall (subject to condition 14.5) be entitled to be paid the value of the Contract Price properly due under the Contract for hire of Plant up to the date of termination (to the extent not already paid to the Contractor in accordance with the terms of the Contract). The Employer shall have no liability to the Contractor for any loss of profit, loss of contracts, loss of revenue or any indirect or consequential losses arising out of or in connection with such termination.
- 13.5 It is acknowledged and agreed between the parties that TUPE does not apply to the transfer of the plant hire services under the Contract.
- 13.6 Notwithstanding condition 13.5, the Contractor undertakes to hold harmless and fully indemnify and keep the Employer indemnified against any and all losses which the Employer and any relevant sub-contractor may incur arising out of or in connection with:

- (a) any claim or allegation relation to the employment and/or dismissal of any person whose employment transfers or is alleged to transfer to the Employer and or a relevant sub-contractor by virtue of TUPE; and
- (b) any failure on the part of the Contractor to comply with Regulation 11 and/or 13 of TUPE.

13.7 The Contractor warrants that there is no organised grouping of employees whose principal purpose is carrying on the activities of plant hire services on behalf of the Contractor.

## **14. General**

### **14.1 Assignment and subcontracting**

- (a) the Contract shall be binding on and enure for the benefit of the successors in title of the parties but, except as set out in condition 14.1(b), shall not be assigned or sub-contracted by any party without the prior written consent of the other; in addition, a party to the Contract may not hold the benefit of the Contract or any rights under it on trust for any third party or parties.
- (b) the Employer may assign the benefit of the Contract to any other member of the RWE Group.

### **14.2 Variation**

No purported variation of the Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties.

### **14.3 Releases and Waivers**

- (a) Any party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it in the Contract by any other party or parties without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.
- (b) No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under the Contract or otherwise.
- (c) The rights, powers and remedies conferred on any party by the Contract and the remedies available to any party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise.

### **14.4 Costs and Expenses**

Each party shall bear its own costs and expenses incurred in the preparation, execution and implementation of the Contract.

### **14.5 Set off**

The Employer may at any time set off any liability of the Contractor to the Employer against any liability of the Employer to the Buyer howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination. Any exercise by the Employer of



its rights under this condition shall be without prejudice to any other rights or remedies available to the Employer under the Contract or otherwise.

#### 14.6 **Confidentiality**

- (a) Except as referred to in condition 14.6(b) below, each party shall treat as strictly confidential and shall not disclose to any third party any information received or obtained as a result of entering into or performing the Contract which relates to the provisions or subject matter of the Contract, or the negotiations relating to the Contract.
- (b) Any party may disclose information which would otherwise be confidential if and to the extent that:
  - (i) it is required to do so by law or any securities exchange or regulatory or governmental body to which it is subject wherever situated;
  - (ii) it considers it necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on a confidential basis;
  - (iii) (the information has come into the public domain through no fault of that party;
  - (iv) the information was previously disclosed to it without any obligation of confidence; or
  - (v) each party to whom it relates has given its consent in writing.

#### 14.7 **No partnership**

Nothing in the Contract shall create, or be deemed to create, a partnership between the parties.

#### 14.8 **Entire agreement**

The Contract sets out the entire agreement and understanding between the parties in respect of the subject matter of the Contract.

#### 14.9 **Acknowledgement**

The Contractor acknowledges that it has entered into the Contract in reliance only upon the representations, warranties and promises specifically contained or incorporated in the Contract and, save as expressly set out in the Contract, the Employer shall have no liability in respect of any other representation, warranty or promise made prior to the date of the Contract unless it was made fraudulently.

#### 14.10 **Invalidity**

To the extent that any provision of the Contract is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of the Contract and it shall not affect the enforceability of the remainder of the Contract nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

#### 14.11 **Exclusion of third party rights**

No express term of the Contract or any term implied under it is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

## **15. Notices**

- 15.1 Any notice to be given to a party under the Contract shall be in writing (which excludes email) signed by or on behalf of the party giving it, and shall be delivered personally, or sent by recorded delivery, to the address of the party set out in the Purchase Order. Either party may, by a notice given in accordance with this condition 15, change its address for the purposes of this condition.
- 15.2 A notice shall be deemed to have been served:
- (a) at the time of delivery if delivered personally; or
  - (b) 2 Business Days after posting in the case of an address in the United Kingdom and 5 Business Days after posting for any other address.

## **16. Data Protection**

- 16.1 The Contractor warrants that it shall comply with its obligations under the Data Protection Act 1998.
- 16.2 The Contractor shall procure permission from all employees, Operators, agents and sub-contractors involved in discharging obligations under the Contract permitting the Employer to create and maintain records and details of:
- (a) each individual's name and National Insurance number; and
  - (b) details of relevant training each individual has had (including but not limited to that training provided by or on behalf of the Employer).
- 16.3 The Employer warrants that it shall comply with the relevant provisions of the Data Protection Act 1998 in respect of the records referred to in condition 16.2.

## **17. System Access**

- 17.1 During and in the course of furnishing the Services, the Contractor shall: (i) not access, and shall not permit anyone to access, the Employer's computing systems without the Employer's express written authorisation; (ii) employ anti-virus procedures when appropriate; (iii) comply with the Employer's information security policies and procedures; (iv) ensure that it has in place a plan approved by the Employer in relation to ensuring business continuity both in relation to general day-to-day service disruptions and disaster recovery affecting either the Contractor's, the Employer's or the RWE Group's business.
- 17.2 Where authorised by the Employer in advance, the Employer may provide the Contractor with remote access to its computing systems. Where the Employer provides such access the Contractor will comply with the Employer's IT policies and procedures, including those relating to access to its systems (which will be provided on request).
- 17.3 The Contractor shall use any remote access only to provide Services. The Employer may terminate the Contractor's access to the Employer's systems at any time without notice to the Contractor. The Contractor shall immediately notify the Employer of any actual or threatened security breach in or unauthorised access to the Employer's systems.

## **18. Alternative Dispute Resolution**

- 18.1 Subject to condition 18.5 and without prejudice to either party's rights under condition 18.3, if a dispute arises out of or in connection with the Contract, the parties shall:

- (a) within 21 days of written notice of the dispute being received by the receiving party in good faith seek to resolve the dispute through negotiations between the parties' senior representatives who have the authority to settle it;
  - (b) not pursue any other remedies available to them until at least two months after the first written notification of the dispute.
- 18.2 The appointed representatives shall use all reasonable endeavours to resolve the dispute.
- 18.3 Either party may at any time refer any dispute or difference arising between the parties under the Contract to adjudication. The Technology and Construction Solicitors Association Adjudication Rules 2010, Version 3.1, as such rules may be amended or updated from time to time (the "**TeCSA Adjudication Rules**") shall apply to any adjudication and are hereby incorporated into the Contract.
- 18.4 The adjudicator shall be nominated under the provisions of the TeCSA Adjudication Rules. If he is unwilling or unable to act or fails to give his decision in accordance with the TeCSA Adjudication Rules a replacement adjudicator shall be nominated under the provisions of the TeCSA Adjudication Rules.
- 18.5 Nothing in this condition shall prevent either party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

## **19. CIS Scheme**

- 19.1 The Employer is a "Contractor" for the purposes of the CIS Regulations. To the extent that the CIS Regulations apply to any payment under the Contract, the Contractor shall supply the Employer with details which allow the Employer to verify with Her Majesty's Revenue & Customs the Contractor's identity and whether payments made under the Contract should be made gross or net of the Statutory Deduction.

## **20. Governing Law**

- 20.1 The Contract shall be governed by and construed in accordance with English law.
- 20.2 Subject to condition 18, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with the Contract.