

Barhale Construction Services Limited (hereinafter "The Supplier") will provide Hired Goods and / or Services to the Customer on the terms and conditions set out below.

1. DEFINITIONS

- 1.1 In these conditions the following words have the following meanings:
"Contract" means a contract which incorporates these conditions and made between the Customer and the Supplier for Services and the hire of Hire Goods;
- 1.2 "Customer" means the firm, company, sole trader, individual or other organisation hiring Hire Goods and/or Services;
- 1.3 "Deposit" means any advance payment required by the Supplier in relation to the Hire Goods and/or Services which is to be held as security by the Supplier;
- 1.4 "Hire Goods" means any machine, article, tool, and/or device together with any accessories specified in a Contract which are hired to the Customer;
- 1.5 "Hire Period" means the period commencing when the Customer holds 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 the Customer into the Supplier's possession; or (ii) the physical repossession or collection of Hire Goods by the Supplier;
- 1.6 "Liability" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;
- 1.7 "Rental" means the Supplier's charging rate for the hire of the Hire Goods which is current from time to time during the Hire Period
- 1.8 "Supplier" means Barhale Construction Services Limited trading as BCS Group and will include its employees, servants, agents and/or duly authorised representatives;
- 1.9 "Services" means the services and/or work (if any) to be performed by the Supplier for the Customer in conjunction with the hire of Hire Goods including any delivery and/or collection service for the Hire Goods.

2. ORDERING SERVICES

- 2.1 Hire Goods are hired subject to them being available for hire to the Customer at the time required by the Customer. The Supplier will not be liable for any loss suffered by the Customer as a result of the Hire Goods being unavailable for hire where the Hire Goods are unavailable due to circumstances beyond the Supplier's control.
- 2.2 The hire of Tunnelling Equipment is subject to a standard minimum hire period of four weeks.

3. BASIS OF HIRE

- 3.1 The provisions of this Hire Agreement are upon the basis of the Hirer working a 5-day week of 50 hours. Any extension to the days per week or hours of usage expressed in the Hire Agreement must be approved in writing by the Supplier prior to the alteration of working hours by the Customer, and shall be chargeable as extra time to the Hire Period.
- 3.2 Notwithstanding clauses 1.5 and 3.1, the hire of the Tunnel Boring Machine and associated tunneling equipment is based upon a maximum hire period as agreed between the Supplier and the Customer, any continued usage of the Tunnel Boring Machine after the agreed period will be subject to additional Hire charges.
- 3.3 Hire and preparation charges shall be paid based upon the schedule of rates detailed in the Supplier's official quotation. Refurbishment and hire Payment identified in the schedule is due in the following installments
 - 25% (Twenty Five percent) upon placement of order,
 - 25% (Twenty Five percent) 4 weeks before on site delivery date,
 - 25% (Twenty Five percent) upon successful Tunnel Boring Machine testing,
 - 25% (Twenty Five percent) prior to commencement of deliveries to site.
- 3.4 Any additional hire charges will be issued to the Customer once the Tunnel Boring Machine has been received at the Supplier's premises at the end of the Hire Period.
- 3.5 Where notification of delay or cancellation is received, none of the charges paid will be refundable.

4. PAYMENT

- 4.1 The Customer shall pay the monies for any Products, Services, additional costs or charges payable under the contract to the Supplier 30 days from the date of invoice and in the manner agreed. The Supplier's prices are, unless otherwise stated, exclusive of any applicable VAT for which the Customer shall additionally be liable.
- 4.2 Payment by the Customer on time under the Contract is an essential condition of the Contract. Payment shall not be deemed to be made until the Supplier has received either cash or cleared funds in respect of the full amount outstanding.

- 4.3 If the Customer fails to make any payment in full on the due date the Supplier may charge the Customer interest (both before and after judgment/decreed) 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 the Supplier's bank whichever is higher.
- 4.4 Any monies received by the Supplier from the Customer may be applied by the Supplier at its option against any additional administrative costs and interest charged prior to application against any principal sums due from the Customer against which it may be applied in any order.
- 4.5 The Customer shall pay all sums due to the Supplier under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 4.6 The Supplier may set a reasonable credit limit for the Customer. The Supplier reserves the right to terminate or suspend the Contract for hire of the Hire Goods and/or the provision of Services if allowing it to continue would result in the Customer exceeding its credit limit or the credit limit is already exceeded.
- 4.7 Invoice queries must be made within 7 days of receipt of the invoice, failing which the invoice is payable in full.
- 4.8 Any Deposit paid to the Supplier by the Customer should be assumed as non-refundable. The Supplier reserves the right to refund any sum, in which case shall be calculated upon the costs incurred by the Supplier to the point where the Customer requested the refund.

5. VAT

- 5.1 All sums payable under this agreement unless otherwise stated are exclusive of VAT and other duties or taxes.
- 5.2 Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums.

6. RISK OWNERSHIP AND INSURANCE

- 6.1 Risk of the Hire Goods and any Products will pass immediately to the Customer when they leave the physical possession or control of the Supplier from its premises.
- 6.2 Risk in the Hire Goods will not pass back to the Supplier from the Customer until the Hire Goods are back in the physical possession of the Supplier at its premises. This shall apply even if the Supplier has agreed to cease charging the Rental.
- 6.3 Ownership of the Hire Goods remains at all times with the Supplier. The Customer has no right, title or interest in the Hire Goods except that they are hired to the Customer. Ownership of any Products remains with the Supplier until all monies payable to the Supplier by the Customer for the Products have been paid in full.
- 6.4 The Customer 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 to a third party, withholding, exerting any right to withhold, disposing of and/or lending.
- 6.5 The Customer shall provide the Supplier with evidence of a Hired in Plant Insurance policy and a Public Liability Insurance Policy. The Insurance should not exclude the recovery of tunneling equipment. The Customer warrants it will maintain payments of the insurance throughout the Hire Period and beyond.
- 6.6 The Supplier may enter without prior notice any premises or construction site of the Customer's where the Hire Goods that are owned by the Supplier may be stored or used and repossess the Hire Goods. Repossession of the Hire Goods shall not affect the Supplier's right to recover from the Customer any monies due under the Contract and/or any damages in respect of any breach which occurred prior to repossession of the Hire Goods.

7. DELIVERY, COLLECTION AND SERVICES

- 7.1 It is the responsibility of the Customer to collect the Hire Goods from the Supplier and return them to the Supplier at the end of the Hire Period. If the Supplier agrees to deliver or collect the Hire Goods to and/or from the Customer it will do so at its standard delivery cost and such delivery and/or collection will form part of the Services.
- 7.2 Where the Supplier provides Services the persons performing the Services are servants of the Customer and once the Customer instructs such person they are under the direction and control of the Customer. The Customer shall be solely responsible for any instruction, guidance and/or advice given by the Customer to any such person and for any damage which occurs as a result of such persons following the Customer's instructions, guidance and/or advice except to the extent that the persons performing the Services are negligent.
- 7.3 The Customer will allow and/or procure sufficient access to and from the relevant site and procure sufficient unloading space, facilities, equipment and access to utilities for the Supplier's employees, subcontractors and/or agents to allow them to carry out the Services. The Customer 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.
- 7.4 If any Services are delayed, postponed and/or are cancelled due to the Customer failing to comply with its obligations the Customer will be liable to pay the Supplier's additional standard charges from time to time for such delay, postponement and/or cancellation.

8. CARE OF HIRE GOODS

- 8.1 The Customer shall:-
- 8.1.1 not remove any labels or name plates from and/or interfere with the Hire Goods, their working mechanisms or any other parts of them and shall 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 the Customer;
- 8.1.2 notify the Supplier immediately after any breakdown, loss and/or damage to the Hire Goods;
- 8.1.3 take adequate and proper measures to protect the Hire Goods from theft, damage and/or other risks;
- 8.1.4 notify the Supplier of any change of its address and upon the Supplier's request provide details of the location of the Hire Goods;
- 8.1.5 permit the Supplier at all reasonable times to inspect the Hire Goods including procuring access to any property where the Hire Goods are situated;
- 8.1.6 keep the Hire Goods at all times in its possession and control and not to remove the Hire Goods from the country where the Customer is located and/or the country where the Supplier is located without the prior written consent of the Supplier;
- 8.1.7 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 the Supplier has agreed to provide them as part of any services;
- 8.1.8 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 the Customer;
- 8.1.9 not continue to use Hire Goods where they have been damaged and will notify the Supplier 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;
- 8.1.10 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.
- 8.1.11 the Customer will inform the Supplier of any servicing or repairs to the hire equipment they wish to carry out themselves prior to undertaking it, and will only be permitted in writing from the Supplier.
- 8.2 The Hire Goods must be returned by the Customer in good working order and condition (fair wear and tear excepted) and in a clean condition together with all insurance policies, licenses, registration and other documents relating to the Hire Goods.

9. BREAKDOWN

- 9.1 The Customer shall be responsible for all expenses, loss (including loss of Rental) and/or damage suffered by the Supplier arising from any breakdown of the Hire Goods due to the Customer's negligence, misdirection and/or misuse of the Hire Goods.
- 9.2 The Supplier may carry out routine maintenance checks during the Hire Period, all repairs which are required due to fair wear and tear and/or an inherent fault in the Hire Goods are the responsibility of the Supplier. The Customer 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, or an inherent fault.

- 9.3 The Customer must not repair or attempt to repair the Hire Goods unless authorised to do so in writing by the Supplier.

10. LOSS OR DAMAGE TO THE HIRE GOODS

- 10.1 If the Hire Goods are returned to the Supplier's premises in a damaged, unclean and/or defective state except where due to fair wear and tear and/or an inherent fault in the Hire Goods, the Customer shall be liable to pay the Supplier 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 the provisions of clause 10.3, until such repairs and/or cleaning have been completed.
- 10.2 The Customer will pay to the Supplier the replacement cost on a new for old basis of any Hire Goods which are lost, stolen and/or damaged beyond economic repair during the Hire Period less the amount paid to the Supplier under any policy of insurance taken out in accordance with these conditions.
- 10.3 The Customer shall pay the Rental for the Hire Goods up to and including the date it notifies the Supplier that the Hire Goods have been lost, stolen and/or damaged beyond economic repair. From that date until the Supplier has replaced such Hire Goods the Customer shall pay, as a genuine pre-estimate of lost rental profit, a sum as damages that would have applied for such Hire Goods for that period. The Supplier shall use its reasonable commercial endeavors to purchase replacements for such Hire Goods as quickly as possible using the monies paid under clause 9.2 above.

11. DEFAULT

- 11.1 If the Customer:-
- 11.1.1 fails to make any payment to the Supplier when due without just cause;
- 11.1.2 breaches the terms of the Contract and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
- 11.1.3 persistently breaches the terms of the Contract;
- 11.1.4 provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;
- 11.1.5 pledges, charges or creates any form of security over any Hire Goods, ceases or threatens to cease to carry on business, or proposes to compound with its creditors, creates a trust deed for its creditors, applies for an interim moratorium in respect of claims and/or proceedings, any distress/diligence, execution or other legal process is levied on any property of the Customer, has a Bankruptcy Petition/Petition for Sequestration presented against it or the Customer takes or suffers any similar action in any jurisdiction;
- 11.1.6 being a company, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver or in the Republic of Ireland an examiner appointed over all or any of its assets, any attachment order/arrestment is made against the Customer, any distress/diligence, execution or other legal process is levied on any property of the Customer or the Customer takes or suffers any similar action in any jurisdiction;
- 11.1.7 appears reasonably to the Supplier due to the Customer's credit rating to be financially inadequate to meet its obligations under the Contract; and/or
- 11.1.8 appears reasonably to the Supplier to be about to suffer any of the above events; then the Supplier shall have the right, without prejudice to any other remedies.
- 11.2 Any repossession of the Hire Goods and/or Products shall not affect the Supplier's right to recover from the Customer any monies due under the Contract and/or any damages in respect of any breach which occurred prior to repossession of the Hire Goods and/or Products.
- 11.3 Upon termination of the Contract the Customer shall immediately:
- 11.3.1 return the Hire Goods to the Supplier or make the Hire Goods available for collection by the Supplier as requested by the Supplier; and
- 11.3.2 pay to the Supplier all arrears for Rentals, Charges for any Services, monies for any Products and/or any other sums payable under the Contract.

12. LIMITATIONS OF LIABILITY

- 12.1 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.
- 12.2 Any defective Hire Goods must be returned to the Supplier for inspection if requested by the Supplier before the Supplier will have any Liability for defective Hire Goods.
- 12.3 The Supplier shall have no Liability to the Customer if, without just cause, any monies due in respect of the Hire Goods and/or the Services have not been paid in full by the due date for payment.
- 12.4 The Supplier shall have no Liability for additional damage, loss, liability claims, costs or expenses caused or contributed to by the Customer's continued use of defective Hire Goods and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.
- 12.5 The Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Supplier shall have no Liability to the Customer.
- 12.6 The Supplier shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Contract and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Supplier.
- 12.7 The Supplier shall have no Liability to the Customer for any:-
 - 12.7.1 consequential losses direct or indirect (including loss of profits and/or damage to goodwill);
 - 12.7.2 economic and/or other similar losses;
 - 12.7.3 special damages and indirect losses; and/or
 - 12.7.4 business interruption, loss of business, contracts and/or opportunity.
- 12.8 The Supplier's total Liability to the Customer under and/or arising in relation to 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/e1250 whichever is the higher. To the extent that any Liability of the Supplier to the Customer would be met by any insurance of the Supplier then the Liability of the Supplier shall be extended to the extent that such Liability is met by such insurance.
- 12.9 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:
 - 12.9.1 Liability for breach of contract;
 - 12.9.2 Liability in tort/delict (including negligence); and
- 12.10 Nothing in this Contract shall exclude or limit the Liability of the Supplier for death or personal injury due to the Supplier's negligence nor exclude or limit any other type of Liability which it is not permitted to exclude or limit as a matter of law.

13. GENERAL

- 13.1 Upon termination of the Contract the provisions of clauses 4.1, 4.2, 4.3, 10.1, 10.2, 10.3 and Section 8 shall continue in full force and effect.
- 13.2 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.
- 13.3 The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors as though they were its own acts and/or omissions under this Contract.
- 13.4 The Customer agrees to indemnify and keep indemnified the Supplier 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 the Supplier and arising from or due to any breach of contract, any tortious/delictual act and/or omission and/or any breach of statutory duty by the Customer.
- 13.5 No waiver by the Supplier of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision 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 of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
- 13.6 The Supplier shall have no Liability to the Customer for any delay and/or non-performance of a Contract to the extent that such delay is due to any Force Majeure events. If the Supplier is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.

- 13.7 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 the Supplier has an outstanding finance agreement relating to the Hire Goods. Such finance company shall, subject to the Supplier's consent, have the right to enforce this Contract as if they were the Supplier. This Contract is governed by and interpreted in accordance with the law of the country where the Supplier is located and that country will have exclusive jurisdiction in relation to this Contract.
- 13.8 If one or more of these terms and conditions or any part thereof is determined to be invalid, illegal or unenforceable in any respect the validity, legality or enforceability of the remaining terms and conditions shall not be affected or impaired by such determination.
- 13.9 These terms and conditions, the Hire Agreement and the order confirmation constitutes entire agreement between the parties and supersedes all previous agreements with respect thereto.
- 13.10 No variation of these terms and conditions will be effective unless agreed in writing by a Director of Barhale Construction Services Limited trading as BCS Group (the Supplier). All terms other than those expressly set out in this agreement are hereby excluded.
- 13.11 These terms and conditions shall be governed in all respects by the law of England and English Courts shall have non-exclusive jurisdiction.