Avon Material Supplies Limited

Terms and Conditions for Plant and Vehicle Hire

1. Definitions

1.1 "Company" means Avon Material Supplies Limited (company no. 02808339) with its registered office at Unit 26-28 Thorne Way, Woolsbridge Industrial Estate, Three Legged Cross, Wimborne, Dorset, BH21 6FB and includes the Group Companies;

1.2 "Contract" means the contract entered into between the Company and the Customer based on these conditions;

1.3 "Customer" means the company or person that has requested the hire of Plant from the Company;

1.4 "Environmental Laws" means all directives, statutes, ordinances, byelaws, regulations and codes of practice for the protection of the environment or the regulation or control of environmental hazards or pollution having the force of law in England and Wales;

1.5 "Group Companies" means Avon Material Supplies Limited (company no. 02808339), Avon Material Supplies (Holdings) Limited (company no. 08179185), Avon Material Supplies (Transport) Limited (company no. 07659774), and Avon Material Supplies (Plant Hire) Limited (company no. 03830153);

1.6 "Hazardous Waste" means any waste materials with one or more hazardous properties that are hazardous to health or the environment as defined under Environmental Laws or as determined by governmental authority in England and Wales from time to time;

1.7 "Plant" means the vehicle, plant, Plant, tools or goods that has been hired from the Company by or for the Customer;

1.8 "Restricted Material" means any waste materials shown or described in the notice given or made available to the Customer at the commencement of the Contract (including notices displayed at the Company's offices or shown on its website) and which includes without limitation fridges and freezers, tyres, paint cans both full and empty, televisions and monitors, asbestos and asbestos-containing materials, clinical/medical waste, fluorescent tubes, solvents, liquids of any description, oil whether loose or in containers, batteries, plasterboard, hazardous or toxic material, gas cylinders;

1.9 "Site" means the site or location to where the Plant is to be delivered at the request of the Customer.

2. Basis of the Contract

2.1 The Contract between the Company and the Customer shall come into effect only upon the Company having accepted in writing an order from the Customer or an acknowledgement by the Customer of the Company's quotation or estimate provided that in the absence of such written acceptance the Contract based solely upon these conditions and excluding any alternative, amended or different terms and conditions presented by the Customer shall come into effect upon delivery of the Plant to or collection of the Plant by the Customer.

2.2 Any quotation or estimate given by the Company is an indication given in good faith and shall not become binding unless confirmed by the Company in writing.

2.3 All prices quoted are based on information available at the date of quotation, and the Company reserves the right to vary prices at any time without notice prior to accepting an order from the Customer.

2.4 The Contract made between the Company and the Customer shall incorporate and be subject to these conditions. No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the Company and the Customer prior to the date of the Contract.

2.5 The Company reserves the right to make any changes in the specification of the Plant which are required to conform with any applicable safety or other statutory requirements.

2.6 The term of hire for any Plant is strictly that set out in the Company's quotation or confirmation of order. Hire in excess thereof is only acceptable with the Company's written permission and will incur additional hire charges.

2.7 Where the hire of Plant is to a Customer who is an individual and the hire would otherwise be covered by any legislation protecting the rights of consumers, the duration of the hire shall not exceed three months, and the hire of Plant will not therefore be covered by such legislation.

2.8 Nothing in the Contract shall exclude or limit any statutory rights of the Customer which may not be excluded or limited due to the Customer acting as a consumer. Any provision which would be void under any consumer protection or other legislation shall, to that extent only, be deemed excluded from the Contract and shall have no force or effect.

3. Plant use while on hire where not located on private property

3.1 The Customer undertakes with respect to all Plant delivered by the Company to be placed and operated other than on private property that:

3.1.1 the permission of the Highways Authority (or other authority from whom permission for locating the Plant must be sought) has been duly obtained and a relevant permit or licence issued;

3.1.2 the said permission shall be kept in force by the extension or renewal of the permit or licence as necessary until either the Plant is removed or until the expiry of three working days after notice is received by the Company to remove the Plant;

3.1.3 the Customer shall ensure the observation and performance at all times of all of the conditions subject to which the aforesaid permission or licence is granted and in particular shall ensure that, where it is located on a public highway, the Plant is properly lit throughout the hours of darkness;

3.1.4 the Customer shall not remove the Plant from the place where it is deposited without first obtaining both the written permission of the Company and the written permission or licence of the relevant authority;

3.1.5 the Customer shall ensure that, at the time of collection by or on behalf of the Company, there is sufficient space around the Plant to give the collecting vehicle sufficient access for uplift and removal. In the event that it proves impracticable to deposit Plant to the site at which it is to be delivered or to collect Plant because of inadequate access to it, the Customer shall be liable to pay the Company the abortive delivery or collection costs incurred.

4. Warranties and undertakings given by Customer

4.1 The Customer warrants that:

4.1.1 it shall take reasonable care of the Plant and only use it for its proper purpose in a safe and correct manner and shall notify the Company immediately after any loss and/or damage to the Plant;

4.1.2 it shall ensure that any person directed or permitted to use the Plant is proficient to do so and, where the Plant is of a type for which formal qualification for the operator is required (including for the avoidance of doubt driver licensing requirements for vehicles hired by the Customer), shall ensure that such qualification is valid and up-to-date. The Customer shall provide the Company with copies of operator qualifications and certification upon request;

4.1.3 it shall take adequate and proper measures to protect the Plant from theft, damage and/or other risks;

4.1.4 where the Plant is to be used at one location only, it shall notify the Company

of any change of the location of the Plant;

4.1.5 it shall ensure that the location specified by the Customer for delivery of the Plant is capable of being accessed by a heavy goods vehicle without undue difficulty and without causing damage to the vehicle, to the Plant, to the Customer's own property or to the property owned or in the possession of any third party (including without limitation damage to kerbs, grass verges, pavements and roadways, and drainage apparatus);

4.1.6 it shall permit the Company at all reasonable times to inspect the Plant including procuring access to any property where the Plant is situated;

4.1.7 it shall keep the Plant at all times in its possession and control and shall not remove the Plant from the United Kingdom without the prior written consent of the Company;

4.1.8 it shall not continue to use the Plant where it has been damaged and shall notify the Company immediately if the Plant is involved in an accident resulting in damage to the Plant, other property and/or injury to any person;

4.1.9 the Plant shall be returned by the Customer in good working order and condition (fair wear and tear only excepted);

4.1.10 no fire or other burning of the contents of the Plant shall occur;

4.1.11 corrosive or noxious substances, acids, liquid cement or concrete shall not be deposited in the Plant;

4.1.12 any waste material to be removed or disposed of in the Plant does not come within the definition of or is mixed in with Hazardous Waste unless otherwise agreed by the Company in writing, and where the Company has given such agreement, the Customer shall ensure that the Hazardous Waste is deposited and secured in the Plant in strict accordance with the Company's instructions;

4.1.13 all activities undertaken by it which may be subject to regulation by virtue the Environmental Laws are fully compliant with the legislation and do not detrimentally affect the compliance of the Company with the said legislation or in any way render the Company liable under the Environmental Laws as may be in force at any time during the period of the hire of the Plant;

4.1.14 if the Plant is returned in a damaged, unclean and/or defective state (fair wear and tear only excepted), the Customer shall be liable to pay the Company for the cost of any repair and/or cleaning required to return the Plant to a condition fit for re-hire, and the Customer will continue to pay the hire charges until such repairs and/or cleaning have been completed;

4.1.15 it shall pay to the Company the replacement cost on a new for old basis of Plant which is lost, stolen and/or damaged beyond economic repair while on hire less the amount paid to the Company under any policy of insurance taken out in accordance with these conditions. The Customer shall further pay to the Company the hire charges for the Plant until the Company has been paid the amount representing the replacement cost of the Plant.

4.2 Notwithstanding any other provision in the Contract, the Customer undertakes to comply strictly with all notices published by the Company from time to time (including notices displayed at the Company's offices or shown on its website) regarding the use of the Plant by the Customer including without limitation the type and nature of the waste that can be deposited in the Plant.

4.3 The Customer undertakes that it shall comply at all times with all Environmental Laws that apply to the use of the Plant including without limitation the depositing and disposal of waste material in the Plant.

5. Indemnities given by Customer

The Customer shall indemnify the Company in respect of all losses suffered by the Company as a consequence of:

5.1 it requiring the Company or its subcontractors to use their vehicles to deliver or collect the Plant to an off-road location and damage is caused to the vehicle, to the Plant, to the property of any third party or to any of its own property, including damage to road margins and pavements unless the damage is caused by the negligence of the driver of such vehicle;

5.2 damage to or loss of the Plant while on hire to the Customer which shall include damage howsoever caused but excepting only fair wear and tear;

5.3 all claims for injuries to persons or damage to property arising out of use of the Plant while on hire, save only in the case of death or injury to any person caused through the negligence of the Company;

5.4 any breach of the Contract (including without limitation and breach of these conditions, the undertakings in Clause 3 or the warranties in clause 4) by the Customer.

6. Limitation of liability of the Company

6.1 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.

6.2 If the Company is found to be liable in respect of any loss or damage to the

Customer's property, the extent of its liability will be limited to the reasonable cost of repairs or, at the option of the Company, the cost of replacing the property so damaged.

6.3 The Company shall have no liability to the Customer if any monies due in respect of the hire of Plant have not been paid in full by the due date for payment.

6.4 The Customer shall give the Company a reasonable opportunity to remedy any matter for which the Company is liable before the Customer incurs any costs and/or expenses in remedying in the matter itself. If the Customer fails or omits to do this, the Company shall have no liability to the Customer.

6.5 The Company shall have no liability to the Customer to the extent that the Customer is covered by any policy of insurance, and the Customer shall ensure that its insurers waive any and all rights of subrogation they may have against the Company.

6.6 The Company shall have no liability to the Customer for any consequential losses (including loss of profits and /or damage to goodwill), economic and /or other similar losses, special damages and indirect losses or for business interruption, loss of business or loss of opportunity.

6.7 The Company will use its reasonable endeavours to ensure the Plant arrives when the Customer requires delivery. Any times given by the Company are approximate only, and the Company shall not be liable for any delay in delivery of the Plant howsoever caused. Time for delivery of the Plant shall not be of the essence unless previously agreed in writing by the Company.

6.8 The Company shall not in any event be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of its obligations in relation to the Contract if the delay or failure is due to any cause beyond the Company's reasonable control.

6.9 Nothing in the Contract shall exclude or limit the liability of the Company for death or personal injury due to its negligence or any other liability which it is not permitted to exclude or limit as a matter of law.

6.10 Where the hire of the Plant is deemed to be a consumer transaction (as defined by the Consumer Transactions Restrictions on Statements Order 1976), the statutory rights of the Customer are not affected by these Conditions.

7. Price and payment

7.1 The price quoted by the Company is exclusive of VAT and any other taxes and the cost of delivery and any other matters all of which may be charged in addition. In

the event of any variation to the order placed by the Customer, the Company shall be entitled to adjust the price to reflect the costs involved and to adjust delivery dates as appropriate.

7.2 Payment for the hire of the Plant and all applicable delivery charges shall be in advance save only where the Company has agreed with the Customer in writing that payment shall be on credit terms. Unless such terms, agreed as aforesaid, state differently, payment shall be made within 30 days of the date of the Company's invoice.

7.3 Any payment made by the Customer in respect of the hire of Plant shall be deemed conclusive proof of the Company's entitlement to payment in full for the relevant invoice, and this shall be treated by the Customer as an admission accordingly.

7.4 Time for payment by the Customer shall be of the essence of the Contract.

7.5 The Company shall be entitled to charge the Customer interest on all amounts that remain unpaid beyond the due date at the rate (and including costs) prescribed by the Late Payment of Commercials Debts (Interest) Act 1998.

7.6 If there is any evidence that the Customer is insolvent, then without prejudice to any other rights or remedies of the Company, the Company shall be entitled to:

7.6.1 terminate the Contract and/or suspend any further deliveries to the Customer;

7.6.2 charge the Customer interest (both before and after judgment) on the amount unpaid at the rate (and including costs) prescribed by the Late Payment of Commercials Debts (Interest) Act 1998.

7.7 In the event that the Company issues legal proceedings for the recovery of any monies due to it, the Customer hereby agrees to indemnify the Company in respect of all legal costs incurred by the Company including costs incurred with its solicitors on a solicitor and own client basis.

8. Termination by notice

8.1 If the period of hire of the Plant is of a fixed duration, the Customer shall not be entitled to terminate the Contract before the expiry of that period unless agreed to by the Company in writing.

8.2 If the period of hire of the Plant is not of a fixed duration, the Customer may terminate the Contract upon giving the Company any agreed period of notice.

8.3 If no period of notice has been agreed or specified, the Customer shall be entitled to terminate the hire of the Plant by giving not less than 3 days' notice in writing to the Company.

8.4 The Company may terminate the Contract at any time by giving written notice of termination to the Customer.

9. Default

9.1 If the Customer:

9.1.1 fails to make any payment to the Company when due;

9.1.2 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;

9.1.3 persistently breaches the terms of the Contract;

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

9.1.5 pledges, charges or creates any form of security over any Plant on hire;

9.1.6 ceases or threatens to cease to carry on business or proposes to compound with its creditors, applies for an interim moratorium in respect of claims and/or proceedings or, being an individual, has a bankruptcy petition presented against him, or, being a company, has a winding up order made against it, has a receiver, administrator or administrative receiver appointed over all or any of its assets, has an attachment order made against it, or any distress, execution or other legal process is levied on any of its property;

9.1.7 appears reasonably to the Company to be about to suffer any of the above events,

then the Company shall have the right without prejudice to any other remedies to exercise any or all of the rights set out in Clause 9.2 below.

9.2 If any of the events set out in Clauses 9.1 occur in relation to the Customer then:

9.2.1 the Company may enter without prior notice any premises of the Customer (or premises of third parties with their consent) where Plant on hire is located and repossess the Plant;

9.2.2 the Company may withhold further performance of the Contract;

9.2.3 the Company may suspend the Contract without liability to the Customer, provided that the Company at its absolute discretion may lift such suspension whereupon the Contract will continue in accordance with its terms but subject to such modifications thereto as the Company may reasonably require in order to prevent any further cause for suspension or termination of the Contract;

9.2.4 the Company may cancel and/or terminate the Contract and/or any other

contract with the Customer without liability to the Customer;

9.2.5 all monies owed by the Customer to the Company shall immediately become due and payable.

9.3 Any repossession of Plant on hire shall not affect the Company's right to recover from the Customer any monies due under the Contract and/or any damages in respect of any prior breach.

9.4 Upon termination of the Contract, the Customer shall immediately return Plant to the Company or make the Plant available for collection by the Company and shall pay all arrears for hire charges and any other sums payable under the Contract.

10. Risk and title to Plant

10.1 Risk in the Plant will pass immediately to the Customer when the Plant leaves the physical possession or control of the Company or its agent.

10.2 Risk in the Plant hired will not pass back to the Company from the Customer until the Plant is back in the physical possession of the Company or its agent. This shall apply even if the Company has agreed to cease charging for the hire of the Plant.

10.3 Title in the Plant hired remains at all times with the Owner. The Customer has no right, title or interest in the Plant except that it is hired to the Customer in accordance with the Contract.

10.4 The Customer must not deal with the title or any interest in the Plant hired, including without limitation the sale, assignment, mortgaging, pledging, charging, securing, hiring, exercising a lien over and/or lending of the Plant.

10.5 The Company may provide insurance in respect of the Plant hired at additional cost to the Customer. Alternatively, the Company may require the Customer to insure the Plant on such reasonable terms and for such responsible risk as the Company may specify. In the event that the Customer for any reason makes a claim on such insurance in respect of the Plant, the proceeds of the claim shall be held by the Customer in trust for the Company and be paid to the Company on demand. The Customer must not compromise any claim in respect of the Plant and/or any associated insurance without the written consent of the Company.

11. General

11.1 If any term or provision in these conditions shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of these conditions, but the validity and enforceability of the remainder of these conditions shall not be affected.

11.2 The waiver by or failure of the Company to perform or require the performance of any of these conditions shall not be construed as a waiver of the Company's rights to future performance of such conditions, and the Customer's obligations in respect of future performance shall continue in full force and effect.

11.3 The Contract shall be governed by the laws of England and Wales, and the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

11.4 In any legal proceedings between the Company and the Customer, the certificate of a duly authorised representative of the Company as to date of delivery of the Plant and the date of its collection shall be conclusive evidence of the facts stated therein.