

# SPOA Terms and Conditions

## Managing the Risk

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17<sup>th</sup> January 2023

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# What is a contract?

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- offer
- acceptance
- when did the contract conclude?
- is a purchase order an offer?
- is a quotation an offer?
- is a delivery note an acceptance?

# What are the terms of the contract?

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- per the purchase order?
- per the quotation?
- per the delivery note?
- rarely per the invoice!

# Insurance

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- standard terms clarify risk
- insure your risk
- check that the customer insures their risk
- read the small print on your policy
- Avoid the “double whammy”
  - no claim under insurance
  - No claim against hirer

# Mistakes with standard terms

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- unconditionally accepting a phone order
- conflict between purchase order and quotation standard terms
- the “battle of the forms”
- standard terms only referred to in an invoice
- the customer never actually seeing the standard terms
- procedures with regular customers.

# Best practice with standard terms

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- use the SPOA ones!
- sign up regular customers annually
- win the battle of the forms
- accept phone orders subject to standard conditions; and then
- email (then also post out) the conditions that night
- ensure the standard terms are incorporated
- no such thing as automatic incorporation

# Key clauses

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- Clause 3 Period of Hire
- Clause 13 Payment of Hire Charges
- Period of Hire is about risk. Off Hire is only about Hire Charges- but don't unnecessarily delay uplift of the Plant
- Clause 10- supply of operator. The contractor controls the site but the operator should still be competent. If there is an incident collect statements quickly

# Frequently Asked Questions (1)

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- Q: Our customer has called to tell us that a breaker on hire to them with a mini digger has been stolen from the site. Who is liable for the loss and should the replacement be invoiced new for old or at market value?
- A: Risk is with the customer during the Period of Hire. The claim for loss will be dealt with as part of the insurance claim. Insurers rarely over-compensate.
- Q: We operate across Scotland and into England, can SPOA terms be used across the UK?
- A: Yes. Scots law applies but the dispute could be heard in the English Courts.
- Q: A machine we have on hire to a customer has broken down on site, the customer wants to off hire it immediately or if they give us the time to fix it on site they want us to pay their downtime whilst we repair our machine, where do we stand?
- A: The Owner can repair or supply substitute Plant, failing which the contract is at an end. The customer is not entitled to compensation.

## Frequently Asked Questions (2)

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- Q: We've hired out one of our 13t excavators on a self drive basis and it has been returned to the yard filled with red diesel, can I charge the customer for the draining and disposal of the red diesel and refilling the tank with white diesel?
- A: Difficult under the 2007 Conditions but under the proposed 2023 Conditions- yes
- Q: We hire small tools to domestic customers from time to time, do the SPOA terms cover us hiring to the public?
- A: Use of the SPOA Consumer Terms and Conditions is recommended
- Q: Our customer cancelled an operated hire with us the evening before the hire was due to commence at 7:30am, where do we stand with charging for the cancellation?
- A: If a contract is breached, the customer could be liable to the Owner for “loss” - subject to the duty for that loss to be mitigated.