LIFTING GEAR UK GROUP TRADING TERMS & CONDITIONS

These Terms set out the basis on which the Company enters into a Contract with the Customer. Part 1 of these Terms applies to all Contracts entered into and **THE CUSTOMER'S SPECIAL ATTENTION IS DRAWN TO CLAUSES 3, 6 AND 7 OF THESE TERMS.** Where the Customer is contracting with the Company for:

(a) the sale and purchase of Equipment, **Part 2 of these Terms shall also apply** to those elements of the Contract and in which case **THE CUSTOMER'S SPECIAL ATTENTION IS DRAWN TO CLAUSES 11 - 13 OF THESE TERMS; and/or**

(b) the hire of Equipment, **Part 3 of these Terms shall also apply** to those elements of the Contract and in which case **THE CUSTOMER'S SPECIAL ATTENTION IS DRAWN TO CLAUSES 14, 16, 19 AND 21 OF THESE TERMS**; and/or

(c) the provision of Works, **Part 4 of these Terms shall also apply** to those elements of the Contract and in which case **THE CUSTOMER'S SPECIAL ATTENTION IS DRAWN TO CLAUSES 27, 28, 30 AND 31 OF THESE TERMS**.

Defined words and phrases referred to above shall have the meanings given to them in clause 1.

PART 1 - MISCELLANEOUS

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** In these Terms, the following definitions apply:

Additional Hire Period: has the meaning given in clause 14.7.

Applicable Laws: all applicable laws, statutes, regulations and codes from time to time in force as the case may be including but not limited to the Lifting Operations and Lifting Equipment Regulations 1998, the Provision and Use of Work Equipment Regulations 1998, the British Standard Codes of Practice for the Safe Use of Cranes (BS 7121).

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: means:

(a) the charges for the sale and purchase of the Equipment; and/or

(b) the total of the charges comprising the Hire Rate and the Idle Time Rate; and/or

(c) the charges for the provision of the Works and any associated Goods; and

(d) any delivery charges,

as set out in the Quotation (or otherwise varied in accordance with these Terms) and any other charges to be paid by the Customer to the Company in accordance with these Terms.

Company: means:

(a) Lifting Gear UK Group Limited, a company registered and incorporated in England and Wales with company number 10046388 and whose registered office is at Unit 1d Maple Court, White Moss Business Park, Skelmersdale, Lancashire, WN8 9TW;

(b) such other legal entity as is specified in the Quotation,

in each case as specified in the Quotation.

Confirmation: the written acceptance of the Order issued by the Company.

Contract: the contract between the Company and the Customer for the:

(a) sale and purchase of the Equipment; and/or

(b) hire of Equipment;

(c) provision of Works,

(as the case may be) incorporating the Quotation and these Terms.

Customer: the business to which the Company wishes to provide the Equipment and/or the Works and which wishes to enter into a Contract with the Company.

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Customer Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Works.

Customer Specification: any specification for the Equipment and/or the Works (as the case may be), including any related data, designs, drawings, images, information, materials, plans or other documentation, that is provided by the Customer to the Company in conjunction with the product code relating to the Equipment in question and/or the Works and in whatever form or media they may be.

Deliverables: means any and all data, designs, drawings, images, information, materials, plans, specifications or other documentation produced by or on behalf of the Company in the course of carrying out the Works and in whatever form or media they may be.

Despatch: means the Equipment leaving the Company's premises.

Despatch Date: means the date on which the parties have agreed that Despatch shall take place.

Disposal: means the Goods leaving the Company's premises. **Dispose** and **Disposes** shall be construed accordingly.

Engineering Works: means the fabrication and/or engineering works to be carried out in relation to the Goods (if any) and including any Deliverables.

Equipment: the goods (or any part of them) set out in the Order, having been referred to initially within the Quotation.

Equipment Warranty Period: has the meaning given in clause 12.3.

Force Majeure Event: means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters, extreme or adverse weather conditions, or default of suppliers or subcontractors.

Free Issue Materials: any materials, items, tools, fixtures and fittings (including the Goods in their state prior to commencement of the Engineering Works) made available to the Company by the Customer (or a third party acting on its instructions) on a 'free issue basis' and including any items provided on loan to the Company.

Goods: the goods or any part of them (if any), which are the subject of the Engineering Works and which have been provided to the Company by the Customer on a free issue basis or which are otherwise supplied by the Company.

Goods Warranty Period: has the meaning given in clause 30.3.

Group: means the Company, the Company's holding company or subsidiary companies, and the subsidiary companies of the Company's holding company.

Hire Period: means the period of hire which shall commence from the Despatch Date and continue until the Equipment is received back at the Company's named depot (or other agreed location as specified in the Quotation) as may be varied or extended in accordance with these Terms.

Hire Rate: means the rate of hire as set out in the Quotation.

Idle Time Rate: means 30% of the Hire Rate.

Inspection & Testing: means the inspection and/or testing services as and to the extent specified in the Quotation.

Installation: means the installation of the Equipment or the Goods (as the case may be) at the Site by the Supplied Personnel.

Intellectual Property Rights: means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress,

goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

IPRs Claim: has the meaning given in clause 5.5(a).

Lifted Goods: the goods which are to be lifted by the Company in performance of the Project Lifting Services.

Literature: the Company's catalogues, brochures, websites or such other applicable sales or promotional literature, materials or publications.

Loss: actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, liabilities, losses, penalties, proceedings and settlements and **Losses** shall be construed accordingly.

Lifting Equipment: means any of the Company's equipment to be used for lifting or lowering loads or otherwise in connection with the performance of the Project Lifting Services including any applicable attachments and accessories.

Order: the Customer's purchase order (in whatever written or unwritten form this may be and which shall for the avoidance of doubt include email) for the:

(a) sale and purchase of the Equipment; and/or

(b) hire of Equipment; and/or

(c) provision of Works,

(as the case may be), raised in response to the Quotation and in accordance with clause 2 below.

Order Period: has the meaning given in clause 2.2.

Premises: means the location at which the Equipment is situation and from which it shall be transported to the Site.

Project Lifting Services: means the lifting services including any associated removal, transportation, storage and installation of goods including Lifted Goods, as more particularly specified in the Quotation.

Quotation: the Company's written quotation or proposal to provide the Equipment and/or the Works to the Customer incorporating these Terms and which includes the Special Conditions (if any).

Recommendations: has the meaning given in clause 16.2.

Site: means any location(s), owned, occupied or accessed by the Customer and which the Company needs to access for the purposes of performing any of its obligations in accordance with this Contract, including in the case of the Equipment the location at which the Customer elects for the Equipment to be delivered, as set out in the Quotation or otherwise agreed between the parties.

Special Conditions: the special, project-specific conditions referred to in the Quotation.

Supplied Personnel: means the personnel supplied by the Company to the Customer for the purposes connected with this Contract as set out in the Quotation or otherwise envisaged by these Terms.

Support: has the meaning given in clause 17.2.

Terms: the terms and conditions set out in this document as amended from time to time in accordance with clause 9.9.

VAT: has the meaning given in clause 4.5.

Works: means the:

(a) Project Lifting Services; and/or

(b) Inspection & Testing; and/or

(c) design services; and/or

(d) Engineering Works,

as more particularly described in the Quotation.

1.2 **Construction.** In these Terms, the following rules apply:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors or permitted assigns.

(c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to **writing** or **written** includes emails.

1.3 **Conflict.** In the event of any conflict between the provisions of the Quotation and these Terms, the provisions of the Quotation shall, save to the extent of any manifest or obvious error, take precedence to the extent of any conflict.

2. FORMATION AND BASIS OF THE CONTRACT

2.1 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Quotation shall remain valid for a period of thirty (30) days from the date specified on it (**Order Period**) and if the Customer accepts the position set out in the Quotation then it shall be required to raise an Order within the Order Period.

2.3 The Order constitutes an offer by the Customer to enter into a Contract in accordance with these Terms and shall not incorporate any other terms and conditions beyond those set out in the Contract. The Customer is responsible for ensuring that the terms of the Quotation and the Order and any applicable Customer Specification are complete and accurate and by raising an Order warrants that this is the case.

2.4 The Company may reject the Order at its absolute discretion and for any reason whatsoever and the Order shall only be deemed to be accepted at the earlier of when the Company:

(a) in the case of a Contract for the sale and purchase of the Equipment or the hire of the Equipment, Despatches the Equipment; or

(b) in the case of a Contract for the provision of Works, commences with the performance of the Works; or

(c) in either case, issues a Confirmation,

at which point the Contract shall come into existence.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions, colours or illustrations contained in the Literature are produced for the sole purpose of giving an approximate idea of the Equipment and/or the Works (as the case may be). They shall not form part of the Contract or have any contractual force.

3. GENERAL OBLIGATIONS OF THE CUSTOMER – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

3.1 The Customer shall:

(a) co-operate fully with the Company in connection with any and all reasonable requests connected with this Contract;

(b) provide the Company in a timely manner with any Customer Specifications reasonable required by the Company from time to time in connection with the performance of its obligations;

(c) obtain and maintain all necessary licenses and consents as required to enable the Company to perform its obligations, in all cases prior to their commencement; and

(d) comply with all Applicable Laws:

(i) to enable the Company to perform its obligations; and

(ii) in connection with health and safety matters relating to the Goods, including regulations under the Environmental Acts, Factories Acts, Health and Safety at Work Act and observance of the Road Traffic Acts (where and to the extent applicable).

3.2 If the Customer is not fully familiar with the Equipment and/or the Goods, the Company advises that the Customer contact the Company for the appropriate operating instructions. It is the Customer's responsibility to ensure that the persons using the Equipment and/or the Goods have received the appropriate instructions, information and training on any Applicable Laws.

3.3 The Customer agrees and acknowledges that time for performance of any of its obligations shall be of the essence and that the Company shall:

(a) be afforded a reasonable extension of time to any projected timescales or delivery dates (taking into account, amongst other things, the Company's then current workload; and

(b) not be liable for any Losses suffered or incurred by it or any third party (including any liquidated damages or otherwise),

as a result of any failure or delay by it or any third party acting for it or on its behalf to comply with any of its obligations under this Contract.

4. CHARGES AND PAYMENT

4.1 The Charges payable under this Contract are as set out in the Quotation, or, if not quoted, that set out in the Literature or the Company's published price list in force as at the date of formation of the Contract.

4.2 The Company may, by giving notice to the Customer at any time up to five (5) Business Days before Despatch (in the case of the Equipment) or commencement of the Works (in that case), increase the Charges to reflect any increase that is due to:

(a) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the Customer to change the delivery date(s), quantities or types of Equipment ordered, or the Specification; or

(c) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions,

provided that upon receipt of such notice the Customer shall be afforded with the opportunity to reject the change and cancel the Contract without liability to the Company provided that it notifies the Company in advance of the applicable period referred to above in this clause.

4.3 Unless otherwise agreed between the parties, the price of the Equipment and/or the Works (as the case may be) is exclusive of the costs and charges of packaging, insurance and transport, which shall be invoiced to the Customer.

4.4 Where performance of the Works has commenced, the Customer agrees that the Company may increase the Charges in line with its standard scale of charges where:

(a) additional services beyond the Works are required to be carried out by the Customer; or

(b) any of the factors set out in clause 4.2 occur.

4.5 The Charges are exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply

4.6 Unless otherwise specified in the Quotation, the Customer shall pay any and all invoices raised by the Company from time to time in full and in cleared funds within thirty (30) days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Company. Time for payment in accordance with this clause is of the essence.

4.7 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time and such other sums as may be due under the Late Payment of Commercial Debts Regulations 2013. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

4.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 In relation to the Deliverables (where applicable):

(a) the Company and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Specification;

(b) the Company grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this Contract to copy the Deliverables (excluding the Customer Materials) strictly for the purpose of receiving the Works and using the Goods in its business; and

(c) the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 5.1(b) to third parties.

5.2 the Company shall have no liability whatsoever to the Customer for any Loss arising out of or otherwise suffered by the Customer or any third party through their use of any Deliverables for purposes other than those provided for under this Contract or otherwise in conjunction with any third party.

5.3 In relation to the Customer Specification, the Customer:

(a) and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Specification; and

(b) grants the Company and its Group a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Specification for the term of this agreement for the purpose of providing the Works to the Customer,

provided and to the extent that the Customer Specification is generic and contains no substantive, protectable or legitimate Intellectual Property Rights nothing in these Terms shall prevent or restrict the Company from producing similar Goods or carrying out similar Works for any other third party.

5.4 The Customer:

(a) warrants that the receipt and use of the Customer Specification in the performance of its obligations under this Contract by the Supplier, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

(b) shall indemnify, keep indemnified and hold harmless the Company and its Group in full from and against any and all Losses suffered or incurred by the Company or any respective member of its Group arising out of or in connection with any claim brought against the Company, a member of its Group, its agents, subcontractors or consultants for actual or alleged infringement of a third party's rights, including any Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Specification.

5.5 If the Customer is required to indemnify under this clause 5, the Company (which reference for the purposes of this clause 5.5 shall include any member of its Group) shall:

(a) notify the Customer in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 5.4(b) (**IPRs Claim**);

(b) allow the Customer, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Customer shall obtain the Company's prior approval of any settlement terms, such approval not to be unreasonably withheld;

(c) provide the Customer with such reasonable assistance regarding the IPRs Claim as is required by the Customer, subject to reimbursement by the Customer of the Company's costs so incurred; and

(d) not, without prior consultation with the Customer, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Customer considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Company into disrepute.

6. LIMITATION OF LIABILITY – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

6.1 Nothing in these Terms shall limit or exclude the Company's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

(d) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

6.2 Subject to clause 6.1:

(a) the Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, for any:

(i) loss of profit;

(ii) loss of goodwill;

(iii) loss of business;

(iv) loss of business opportunity;

(v) loss of anticipated saving;

(vi) loss or corruption of data or information; or

(vii) any indirect, special or consequential Loss,

that arises under, in connection with or otherwise arising out of the Contract; and

(b) the Company's total liability to the Customer in respect of all other Losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, shall in no circumstances exceed, where:

(i) the Customer is purchasing the Equipment, the total Charges paid by the Customer to the Company under the Contract; or

(ii) the Customer is hiring the Equipment, the lesser of (i) the total Charges payable by the Customer to the Company under the Contract in respect of the day on which the event giving rise to the Losses took place, or (ii) £10,000; or

(c) the Contract is for Works, the lesser of (i) the Charges paid or payable by the Customer to the Company under the Contract in respect of the day on which the event giving rise to the Losses took place, or (ii) £10,000.

6.3 The Customer shall indemnify, keep indemnified and hold harmless the Company and any member of its Group in full from and against any and all Losses suffered or incurred by the Company or any respective member of its Group arising out of or in connection with the acts or omissions (including any breach of or delay in complying with the obligations imposed by this Contract) by the Customer and any third party acting for it or on its behalf, whether in contract, tort (including negligence), breach of statutory duty or otherwise and whether the same are of a direct, indirect, consequential or special nature and including any loss of profit, loss of goodwill or reputation, loss of business, loss of business opportunity, loss of anticipated saving and loss or corruption of data or information.

7. TERMINATION – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

7.1 The Company may terminate the Contract forthwith by written notice and without liability to the Customer if one or more of the following events occur:

(a) the Customer defaults in punctual payment of any Charges due to the Company;

(a) the Customer fails to observe and perform any provision of the Contract;

(b) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

(c) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(d) the Customer takes any step or action in connection with the Customer being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(e) the Customer suspends, threatens to suspends, ceases or threatens to cease to carry on all or a substantial part of its business;

(f) the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract or the Company's rights in the Goods may be prejudiced or placed in jeopardy; and

(g) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

7.2 The rights to terminate under this Contract:

(a) may be exercised notwithstanding that the Company may have waived some previous default or matter of the same or a like nature;

(b) shall if exercised:

(i) have the effect of bringing any and all licences granted by the Company to the Customer (including those to make use of the Deliverables) to an end; and

(ii) shall not affect the Company's right to claim damages for breach of Contract or recover any sums due under the Contract as a debt.

7.3 If the Customer does not make payment of a sum by date on which payment of that sum is due to be made, the Company has the right to suspend performance of its obligations under the Contract. The right to suspend may not be exercised without first giving to the Customer at least two (2) days' notice in writing of the Company's intention to suspend performance, stating the ground or grounds on which the Company intends to suspend performance. The right to suspend performance will cease when the Customer makes payment in full of the amount due.

7.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

8. NOTICES

8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or email.

8.2 A notice or other communication shall be deemed to have been received:

(a) if delivered personally, when left at the address referred to in clause 8.1;

(b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second (2nd) Business Day after posting; or

(c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one (1) Business Day after transmission.

8.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

9. GENERAL

9.1 **Force Majeure.** Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event or the acts or omissions of the other party.

9.2 **Entire Agreement.** The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company including, for the avoidance of doubt, the information included in the Literature which is not set out in the Contract.

9.3 **Assignment and other dealings.**

(a) the Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

9.4 **Severance.**

(a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

9.5 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

9.6 **Rights and Remedies.** No right or remedy conferred upon or reserved to the Company by these Terms is exclusive of any other right or remedy in these Terms provided or permitted by law, and each shall be cumulative of every other right or remedy now or in the future existing and may be enforced by the Company concurrently or from time to time.

9.7 **Third party rights.** Save to the extent provided for in these Terms, any person who is not a party to the Contract shall not have any rights to enforce its terms.

9.8 **Further Assurance.** The Customer shall, whenever requested by the Company, execute such documents and do such acts and things as the Company may require to give full effect to the Contract.

9.9 **Variation.** Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Company.

9.10 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

9.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

PART 2 – SALE AND PURCHASE OF EQUIPMENT

10. EQUIPMENT

10.1 The Equipment is as described in the Literature as modified or supplemented by any applicable Customer Specification.

10.2 The Company reserves the right to amend the specification of the Equipment and, where applicable, the Customer Specification if required by any Applicable Laws from time to time in force or to improve the Equipment where to do so would not have a materially adverse effect on the Customer.

11. DELIVERY – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

11.1 The Company shall ensure that:

(a) each delivery of the Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Customer and the Company reference numbers, the type and quantity of the Equipment (including the code number of the Equipment, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Equipment remaining to be delivered; and

(b) if the Company requires the Customer to return any packaging materials to the Company, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Company shall reasonably request. Returns of packaging materials shall be at the Company's expense.

11.2 Without prejudice to clause 11.3, the Company (or, where appropriate, the instructed carrier) shall physically deliver the Equipment to the location set out in the Quotation or such other location as the parties may agree.

11.3 Unless otherwise agreed, delivery of the Equipment shall be on the basis of:

(a) EXW (at the Company's address as detailed in the Quotation or otherwise notified to the Customer in advance) (Ex Works - Incoterms 2010) where the final destination for the Equipment is on mainland United Kingdom; or

(b) FCA (at the Company's address as detailed in the Quotation or otherwise notified to the Customer in advance) (Free Carrier - Incoterms 2010) where the final destination for the Equipment is not on mainland United Kingdom.

11.4 Any dates quoted for delivery are approximate only and the Company is under no obligation to provide an estimated delivery time. If a quoted date for delivery is not provided, delivery will be made within a reasonable time. The time of delivery in accordance with any timescales is not of the essence.

11.5 The Company shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event suffered by it or an instructed carrier (save where it is reasonably practicable to instruct another carrier) or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

11.6 If the Customer fails to take delivery of the Equipment within five (5) Business Days of the Company notifying the Customer that the Equipment is ready, then, except where such failure or delay is caused by a Force Majeure Event:

(a) delivery of the Equipment shall be deemed to have been completed at 9.00 am on the fourth (4^{th}) Business Day after the day on which the Company notified the Customer that the Equipment were ready; and

(b) the Company shall store the Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

11.7 If ten (10) Business Days after the day on which the Company notified the Customer that the Equipment were ready for delivery the Customer has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the Equipment.

11.8 The Company may deliver the Equipment by instalments, which may be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

12. QUALITY, INSPECTION AND ACCEPTANCE – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

12.1 The Customer shall be required to inspect the Equipment immediately upon receipt. In the event that:

(a) there are any damages or defects in the Equipment; or

(b) an incorrect quantity of the Equipment has been received; or

(c) anything other than the Equipment are received,

the Customer shall be required to notify the Company within one (1) Business Day of receipt. Where no such notification is made by the Customer to the Company in accordance with this clause, the Equipment shall be deemed to have been accepted in all respects by the Customer.

12.2 For the purposes of clause 12.1, receipt shall mean:

(a) (where no Installation is required):

(i) Despatch, where the Customer collects the Equipment from the Company's premises; or

(ii) the arrival of the Equipment at the Site, where the Customer does not collect the Equipment from the Company's premises; or

(b) (where Installation of the Equipment is required) the date of Installation.

12.3 Without prejudice to clause 12.1, the Company warrants that on delivery, and (where applicable) for such additional period of time as may be specified in the Literature or the Quotation (**Equipment Warranty Period**), the Equipment shall:

(a) conform in all material respects with their description and any applicable Customer Specification;

(b) be free from material defects in design, material and workmanship;

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

(d) be fit for any purpose held out by the Company.

12.4 Subject to clause 12.5, if:

(a) the Customer gives notice in writing to the Company during the Equipment Warranty Period within a reasonable time of discovery that some or all of the Equipment do not comply with the warranty set out in clause 12.3;

(b) the Company is given a reasonable opportunity of examining such Equipment; and

(c) the Customer (if asked to do so by the Company and where reasonably practicable) returns such Equipment to the Company's place of business at the Customer's cost (such reasonable return costs to be refunded to the Customer if the Equipment are found to not comply with the warranty set out in clause 12.2),

the Company shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full in addition to any reasonable return costs in accordance with clause 12.4(c).

12.5 The Company shall not be liable for the Equipment's failure to comply with the warranty set out in clause 12.3 in any of the following events:

(a) the Customer makes any further use of such Equipment after giving notice in accordance with clause 12.4;

(b) the defect arises because the Customer failed to follow the Company's (or the manufacturer's) oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of the Company following any Customer Specification;

(d) the Customer (or a third party acting on its behalf or under its instruction) alters or repairs such Equipment without the written consent of the Company;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(f) the Equipment differ from their description and any Customer Specification provided as a result of changes made to ensure they comply with Applicable Laws.

12.6 Except as provided in this clause 12, the Company shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in clause 12.3 save that where the parties have agreed otherwise in writing, the Company may carry out repair work to such Equipment falling under clause 12.5 at an additional charge.

12.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

12.8 These Terms shall not apply to any repaired or replacement Equipment supplied by the Company.

13. TITLE AND RISK – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

13.1 Title to the Equipment shall not pass to the Customer until the earlier of:

(a) the Company receiving payment in full (in cash or cleared funds) for the Equipment; or

(b) the Customer reselling the Equipment, in which case title to the Equipment shall pass to the Customer at the time specified in clause 10.4 and the proceeds of sale shall be immediately accounted to the Company and otherwise held in a fiduciary capacity on trust for the Company to the extent of any liability for unpaid sums.

13.2 Until title to the Equipment has passed to the Customer, the Customer shall:

(a) store the Equipment separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;

(c) maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Company immediately if it becomes subject to any of the events listed in clause 7.1(c)-(h); and

(e) give the Company such information relating to the Equipment as the Company may require from time to time.

13.3 Subject to clause 13.4, the Customer may resell or use the Equipment in the ordinary course of its business (but not otherwise) before the Company receives payment for the Equipment. However, if the Customer resells the Equipment before that time:

(a) it does so as principal and not as the Company’s agent; and

(b) title to the Equipment shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.

13.4 If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause 7.1(c)-(h), or the Customer fails to fulfil its payment obligations in respect of the Equipment then, without limiting any other right or remedy the Company may have:

(a) the Customer's right to resell the Equipment or use them in the ordinary course of its business ceases immediately; and

(b) the Company may at any time:

(i) require the Customer to deliver up all Equipment in its possession which have not been resold, or irrevocably incorporated into another product; and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment are stored in order to recover them.

PART 3 – HIRE OF EQUIPMENT

14. DELIVERY, ACCEPTANCE AND HIRE PERIOD – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

14.1 The Company shall use reasonable endeavours to Despatch the Equipment on the projected Despatch Date but for the avoidance of doubt time for Despatch is not of the essence and the Company shall not be liable to the Customer in the event of any delay including those caused by a Force Majeure Event. In the event that the Company becomes aware of any likely delay it shall notify the Customer.

14.2 If the Customer has opted to collect the Equipment itself, it shall return the Equipment to the Company's premises at the end of the Hire Period.

14.3 If the Company has agreed to deliver or collect any Equipment from the Customer, the Company shall charge its standard delivery cost from time to time, applicable as at and confirmed in advance of Despatch.

14.4 The Hire Rate shall be paid for the Hire Period save that where more than one (1) day is properly and unavoidably occupied in transporting the Equipment causing the Hire Period to be extended, a charge at the Idle Time Rate shall be payable for such extra time.

14.5 During the Hire Period the Customer must not relocate the Equipment from the Site except with the prior written consent of the Company.

14.6 Should the Customer require the Equipment beyond the Hire Period, the Customer must apply to the Company for such an extension. If the extension is accepted by the Company, the Customer must signify its agreement to a new Quotation which shall form a new Contract stating the extension terms. Where possible the Company shall offer the Equipment at the same Charges as offered prior to the extension but the Company cannot make any guarantee that this will be the case.

14.7 If the Equipment is not made available by the Customer for collection by the Company or returned by the Customer to the location agreed between the parties, such Equipment shall be deemed with immediate effect to be placed back on hire (**Additional Hire Period**) and the Hire Rate shall apply until such time as the Company can collect the Equipment at its convenience or it is agreed that the Customer can return the Equipment. The Customer shall remain responsible for the safekeeping of the Equipment for the Additional Hire Period in accordance with these Terms, and for all the reasonable costs and expenses incurred by the Company in seeking to collect such Equipment.

14.8 We do not accept fixed periods of hire and in order to bring the Hire Period to an end in a manner other than as set out elsewhere in these Terms, the Customer must issue the Company with a formal request via email or telephone (followed up by email or otherwise in writing) detailing the proposed off-hire and which request may be accepted or rejected at the absolute discretion of the Company. If the Company accepts the request it will issue the off-hire reference number and specify the basis on which the Equipment shall be returned to or collected by it on the requested date, which shall be the date on which the Hire Period is deemed to end. Such specification by the Company is without prejudice to clause 14.7 above.

15. UNLOADING AND LOADING

15.1 The Customer shall be responsible for the Company's unobstructed access to, movement around and egress from the Site and, unless otherwise agreed in writing, for the unloading and loading of the Equipment at the Site.

15.2 Any Supplied Personnel provided by the Company for such unloading and/or loading shall be deemed to be under the direction and control of the Customer. Such Supplied Personnel shall, for all purposes in connection with their employment in the unloading and/or loading of the Equipment, be regarded as the servants or agents of the Customer (but without prejudice to any of the provisions of clause 21) who shall be solely responsible for all claims arising in connection with unloading and/or loading of the Equipment by, or with the assistance of, such Supplied Personnel.

16. INSPECTION AND MAINTENANCE – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

16.1 In the case of Equipment supplied, unless notification in writing to the contrary is received by the Company from the Customer within one (1) Business Day of:

(a) (where no Installation is required):

(i) Despatch, where the Customer collects the Equipment from the Premises; or

(ii) the arrival of the Equipment at the Site, where the Customer does not collect the Equipment from the Premises; or

(b) (where Installation of the Equipment is required) the date of Installation,

the Equipment shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with these Terms and to the Customer's satisfaction.

16.2 Risk in the Equipment shall transfer to the Customer upon Despatch and the Customer shall be responsible for its safe keeping and good working order, its use:

(a) in accordance with any Applicable Laws including any Institution of Electrical Engineers;

(b) in a workmanlike manner within the manufacturer's rated capacity; and

(c) in accordance with the manufacturer's and/or the Company's recommendations as to its storage, commissioning, installation, use and maintenance,

(**Recommendations**), and its return on the completion of the Hire Period in equal good order (fair wear and tear excepted). The Customer must ensure that everyone who uses the Equipment has been properly instructed in its safe and proper operation and has read the Recommendations.

16.3 The Customer must without exception:

(a) not re-hire, sub-let or lend the Equipment to any third party without the Company's prior written consent;

(b) take reasonable care of the Equipment and not use the Equipment following any breakdown or damage;

(c) transport and return any Equipment provided by the Company in a flight case in that flight case and return all cables, rigging hardware and chain hoists and any other equipment in the exact conditions as supplied with the respective Equipment and in the event of breach of this clause the Company may, at its absolute discretion, apply reasonable handling charges;

(d) not remove or deface any labels from the Equipment;

(e) ensure that all channel marking tape be removed from control desks immediately after use and that no food or drink comes on, over, above or in close proximity to control desks or any other electronic equipment;

(f) not use control desks or any other electronic equipment outdoors without adequate protection from the elements (approved by the Company), including humidity or condensation when Equipment is to be left outdoors overnight;

(g) ensure that electronic equipment is left powered up and adequately supervised;

(h) keep all Equipment in a clean, dry, dust free environment for the Hire Period;

(i) take adequate measures to safeguard the Equipment against theft, damage or other reasonable risks;

(j) not interfere with the Equipment, its working mechanisms or any part of them; and

(k) upon the completion of the Hire Period, return the Equipment:

(i) cleaned and where necessary, decontaminated;

(ii) in good working condition (fair wear and tear excepted); and

(iii) together with all licences, registration and other documentation relating to the Equipment.

16.4 The Customer shall be liable on demand for any costs, liabilities and expenses incurred by the Company should the Customer fail to comply with clause 16.3.

16.5 The Customer warrants that it will not employ or otherwise use the Equipment in connection with any illegal or unlicensed purposes. Should the Company in its reasonable opinion suspect that the Customer is in breach of this clause it reserves the right to inform the police and any other relevant statutory or regulatory authorities and present details of the Customer to them.

16.6 The Customer shall at all times take all reasonable steps to keep itself acquainted with the state and condition of the Equipment. If such Equipment is continued at work or in use in an unsafe and unsatisfactory state or environment, the Customer shall be solely responsible for any Losses whether directly or indirectly arising therefrom.

16.7 Save where it is agreed between the parties that the foregoing shall be carried out by the Company, the Customer shall be responsible for the conduct and cost of any testing, inspections, examinations and/or other checks to be carried out in respect of the Equipment as required by legislation, best practice and/or operating instructions.

16.8 Any inspection report required under relevant legislation, or a copy thereof, shall be supplied by the Company, if requested by the Customer, and returned on completion of the Hire Period.

16.9 The Customer shall at all reasonable times allow the Company, its agents and insurers to have access to the Equipment to inspect, test, adjust, repair or replace the same.

16.10 Where the Equipment requires fuel, oil, grease and or electricity, the Customer shall ensure that the proper type and/or voltage is used at all times and that, where appropriate, the Equipment is properly installed by a qualified and competent person. It is the Customer's responsibility to check the calibration of the Equipment on each occasion before use. Final determination of the suitability of the Equipment for the Customer's specific use is the Customer's responsibility and the Customer therefore assumed all risk and liability in this regard.

16.11 The cost of re-sharpening or replacing drill bits, blades or other consumables or ancillary items utilised in connection with the Equipment in the course of its hire shall be borne by the Customer.

17. GROUND AND SITE CONDITIONS

17.1 The Customer is deemed to have knowledge of the Site and the Customer warrants that the condition of the Site is suitable for the use of such Equipment.

17.2 If, in the opinion of the Customer, the ground of the Site (including any private access road or track) is soft or otherwise unsuitable for the Equipment to work on, travel over, be transported over, be erected or dismantled on without timbers or equivalent support, the Customer shall supply and lay suitable timbers or equivalent support (**Support**) in a suitable position for the Equipment to travel over, work on, be transported over, be erected or dismantled on, including for the purpose of delivery and collection.

17.3 Any Support supplied by the Company is provided solely to assist the Customer under their duties within this clause 17 and expressly not to relieve it of its legal, regulatory or contractual obligations to ensure adequate stability of the Equipment.

17.4 The Customer is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the Site and the Customer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

18. SUPPLIED PERSONNEL

18.1 When the Equipment is accompanied by Supplied Personnel, the Company shall ensure that such Supplied Personnel are competent in operating the Equipment or for such purpose for which they are supplied and such Supplied Personnel shall be under the direction and control of the Customer. Such Supplied Personnel shall for all purposes in connection with their employment in the working of the Equipment be regarded as the servants or agents of the Customer (but without prejudice to any of the provisions of clause 21) and the Customer shall be solely responsible for all claims arising in connection with the operation of the Equipment by the Supplied Personnel.

18.2 Supplied Personnel shall not be required to operate anything other than the Equipment for which they are supplied as set out in the Quotation unless previously agreed in Writing between the Company and the Customer.

18.3 When the Company supplies Supplied Personnel, the Customer shall not allow any other person to operate such Equipment without the Company's prior written consent.

19. BREAKDOWN, REPAIRS AND ADJUSTMENT – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

19.1 Any breakdown or the unsatisfactory working of or damage to any part of the Equipment must be notified by the Customer immediately to the Company, and confirmed in writing in any event within twenty-four (24) hours. Any claim for breakdown time will only be considered from the time and date at which written notification is received and acknowledged by the Company or (if earlier) the date on which the Company inspects the Equipment.

19.2 Charges will not be charged to the Customer for any stoppage due to breakdown of the Equipment 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 the event that the Equipment becomes temporarily unusable or unavailable in accordance with this clause, the Company shall use reasonable endeavours to make available replacement Equipment (not necessarily of the same type and age) for collection by the Customer within twenty-four (24) hours (or as soon after that as is practicable) after the receipt of notification from the Customer requesting replacement Equipment. If the Customer requires such replacement Equipment to be delivered to it by the Company, the Company may raise a charge.

19.3 The Customer shall not repair, modify, interfere with or alter the Equipment without the prior written permission of the Company. In particular, cables must not be cut, plugs and sockets must not be rewired and identification marks, labels or plates affixed to the Equipment must not be interfered with or otherwise covered up by the Customer. Any Equipment

found to have been repaired, modified, interfered with or altered in breach of this clause will be charged at replacement cost to the Customer.

19.4 The Customer shall be responsible for all expense involved arising from any breakdown, unsatisfactory working of or damage to any part of the Equipment where:

(a) the Customer makes any further use of such Equipment after giving notice in accordance with clause 19.1;

(b) the defect arises because the Customer failed to follow the Recommendation or (if there are none) good trade practice regarding the same;

(c) the Customer (or a third party acting on its behalf or under its instruction) alters or repairs such Equipment without the written consent of the Company;

(d) the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions, or

otherwise due to the Customer's negligence, misdirection or misuse of the Equipment and whether by the Customer or its agents or servants, and for the payment of the proportion of the Charges in respect of that part of the Equipment at the Idle Time Rate during the period that that part of the Equipment is necessarily idle due to such breakdown, unsatisfactory working or damage. For the avoidance of doubt the parts of the Equipment which are not broken shall remain to be charged for at the Hire Rate. The Customer is responsible for the cost of spares and/or repairs due to theft, loss or vandalism of the Equipment.

19.5 No claims will be admitted (other than those allowed for under this clause 19), for stoppages through causes outside the Company's control, including but not limited to bad weather and/or ground conditions nor shall the Company be responsible for the cost or expense of recovering any Equipment from soft or unsuitable ground, or a hazardous environment or caused by a Force Majeure Event. For the avoidance of doubt, the Customer shall be responsible for the cost and expense of recovering any Equipment from soft or unsuitable ground or a hazardous environment.

19.6 Each item of Equipment is hired as a separate unit and the breakdown or stoppage of one or more units (whether the property of the Company or otherwise) through any cause whatsoever, shall not entitle the Customer to compensation or allowance for the loss of working time by any other unit or units of Equipment working in conjunction therewith, provided that where two or more items of Equipment are expressly hired together as a unit, such items shall be deemed to be one unit for the purpose of breakdown.

19.7 If during the Hire Period the Company decides that urgent repairs to the Equipment are necessary, then it may arrange for such repairs to be carried out on Site or at any location of its nomination.

20. NOTICE OF ACCIDENTS

If the Equipment is involved in any accident resulting in injury to persons or damage to property, immediate notification must be given by the Customer to the Company by telephone and confirmed in writing to the Company no later than twenty-four (24) hours after such telephone notification. In relation to any claim no admission of liability, offer, promise of payment or indemnity shall be made by the Customer without the Company's prior written permission.

21. CUSTOMER'S RESPONSIBILITY FOR LOSS AND DAMAGE – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

21.1 For the avoidance of doubt it is hereby declared and agreed that nothing in this clause affects the operation of clauses 15, 16, 18 and 19 of these Terms.

21.2 For the duration of the Hire Period and where the Equipment is otherwise returned in breach of these Terms

21.3 The Customer shall indemnify, keep indemnified and hold harmless the Company and where applicable any member of its Group and any Supplied Personnel in full from and against any and all Losses suffered or incurred by the Company, any respective member of its Group and any Supplied Personnel:

(a) arising out of or in connection with the acts or omissions (including any breach of or delay in complying with the obligations imposed by this Contract) by the Customer and any third party acting for it or on its behalf, whether during the Hire Period or where the Equipment is otherwise returned in breach of these Terms;

(b) in respect of 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 Equipment during the continuance of the Hire Period, and in connection therewith,

whether in contract, tort (including negligence), breach of statutory duty or otherwise and whether the same are of a direct, indirect, consequential or special nature and including any loss of profit, loss of goodwill or reputation, loss of business, loss of business opportunity, loss of anticipated saving and loss or corruption of data or information.

21.4 For the avoidance of doubt, Losses under clause 21.3 above shall include but not be limited to:

(a) the cost of any repair, cleaning and/or decontamination required to return the Equipment to a condition fit for re-hire;

(b) the full replacement cost of any Equipment (on a new for old basis) which is lost, stolen and/or damaged beyond economic repair during the Hire Period;

(c) the Company's costs which may be incurred in tracking or recovering any lost or stolen Equipment; and

(d) payment of the Hire Rate up to and including the date it notifies the Company that the Equipment has been lost, stolen and/or damaged beyond economic repair and from that date until the Company has replaced such Equipment (or retrieved any lost or stolen Equipment), the Customer shall pay, as a genuine pre-estimate of lost profit, a sum as liquidated damages being equal the Hire Rate that would have applied for such Equipment for that period. The Company endeavours to purchase replacements for such Equipment as quickly as possible using the monies paid by the Customer.

22. INSURANCE

22.1 The Customer shall throughout the Hire Period (without prejudice to any liability of the Customer to the Company) take responsibility for insuring the Equipment (including any replacement Equipment provided under these Terms) at its own expense. The Customer shall insure against all Loss from all risks in an amount equal to the full new replacement value of the Equipment and continuance of Charges in the event Equipment is returned damaged, and is unable to be hired out.

22.2 If the Customer takes out a policy of insurance in respect of the Equipment to cover the Hire Period it shall notify its insurers that the Equipment is on hire from the Company and request the insurers to endorse a note of the Company's interest on the policy of insurance naming the Company as loss payee. The Customer shall do nothing which shall or may invalidate the policy of insurance required to be held under this clause.

22.3 Where any event or accident occurs which is a risk covered by the Customer's insurance, the Customer shall:

(a) immediately notify the Company in accordance with clause 20;

(b) not take any action or make any omission which may compromise any claim without the consent of the Company;

(c) indemnify the Company against all Loss to the Equipment not recoverable by the Company under the applicable policy of insurance;

(d) allow the Company to take over the conduct of negotiations (except in relation to claims of the Customer for personal injuries, or Loss to the property of the Customer); and

(e) at the expense of the Customer, take such proceedings (in the sole name of the Customer or jointly with the Company) as the Company shall direct, holding all sums recovered, together with any monies received by the Customer under its policy of insurance, on trust for the Company and paying or applying the same as the Company directs and as provided in these Terms.

22.4 If the Equipment is declared a total loss the Hire Period will extend and only terminate once the Company has received full replacement Equipment or has been indemnified by the Customer for all costs incurred due to the Equipment being unable to be hired out by the Company. The Company will offset any proceeds received from the sale or scraping of the Equipment after the cost of disposal or sale has been deducted from any proceeds received. The balance of any monies received from this process will be offset against the continuation of the Charges on behalf of the Customer:

(a) Equipment substitutions may be considered by the Company as replacement for discontinued products always at the Company's sole discretion, which replacement shall be deemed to be included in these conditions for all purposes, and the Customer shall continue to be liable to pay Charges as if such loss had not taken place; or

(b) in or towards payment to the Company of the sum necessary to compensate the Company for the loss or profit suffered as a result of the loss of the Equipment.

22.5 the Company has the right to repair or have repaired the Equipment which suffers damage (and not a total loss), but if the Company does not choose to do so, the Customer is liable at its own expense (but subject to any insurance proceeds) to reinstate or repair it and shall continue to pay Charges in respect of the Equipment during such reinstatement or repair.

22.6 The Customer is liable to pay to the Company any amount deducted by the insurers by way of excess or in respect of damage caused to the Equipment prior to the date of total loss and shall indemnify the Company accordingly.

23. COMPLIANCE AND HEALTH AND SAFETY

23.1 The Customer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities including regulations under the Environmental Acts, Factories Acts, Health and Safety at Work Act and observance of the Road Traffic Acts (where and to the extent applicable) and shall fully indemnify and hold harmless the Company against any charges or fines that the Company may become liable for as a result of the operation of the Equipment during the Hire Period.

23.2 If the Customer is not fully familiar with the Equipment, the Company advises that the Customer to contact the Company for the appropriate operating instructions. It is the Customer's responsibility to ensure that the persons using the Equipment have received the appropriate instructions, information and training any Applicable Laws.

24. OWNERSHIP RIGHTS

24.1 The Equipment shall at all times remain the property of the Company and the Customer shall have no rights to the Equipment other than as hirer and the Customer shall not do nor permit or cause to be done any matter or thing consistent with the Company's ownership or as a result of which the Company in respect of the Equipment are or may be prejudicially affected.

24.2 The Customer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Equipment or any part thereof except with the prior written consent of the Company and shall protect the same against distress, execution or seizure.

24.3 The Customer shall take all necessary steps (at its own expense) to retain and recover possession and control of the Equipment if the Customer loses possession or control and shall indemnify the Company against all Losses arising as a direct result of any failure to observe and perform this clause 24.

25. TERMINATION

25.1 The Customer may terminate the Contract forthwith by giving notice to the Company in writing at any time. Should the Customer terminate the Contract for the Hire of the Equipment in accordance with this clause 25.1:

(c) not less than twenty one (21) days prior to Despatch then it shall be liable to pay 25% of the Charges to the Company;

(d) not less than seven (7) days but less than twenty one (21) days prior to Despatch then it shall be liable to pay 50% of the Charges to the Company;

(e) less than seven (7) days prior to Despatch then it shall be liable to pay the Charges in full.

25.2 In the event of termination under clauses 7.1 or 25.1 above:

(f) the Customer must give the Company or its agents, immediate unobstructed access to recover the Equipment whosesoever this may be located; and

(g) the Company shall be entitled to claim the Charges outstanding as at the date of termination of the hire under this clause and return transport charges.

25.3 The Company reserves the right to suspend performance immediately and regain possession of the Equipment in the event that in its reasonable opinion it considers that the Equipment is at risk of damage or otherwise has the right to terminate this Contract.

PART 4 - WORKS

26. PERFORMANCE OF THE WORKS

26.1 The provision of the Works:

(a) shall be performed by the Company in accordance with these Terms in all material respects using reasonable care and skill and in accordance with good industry practice; and

(b) may be carried out in any number of stages.

26.2 The Company shall use reasonable endeavours to meet any projected dates, timescales and deadlines for completion of the Works and subsequent delivery of the Goods (if any) but for the avoidance of doubt time for completion of the Works (or any particular part of them including any Deliverables) and subsequent delivery of the Goods shall not be of the essence

26.3 The Customer shall supply any requisite Customer Equipment and ensure that all such Customer Equipment is in good working order and suitable for the purposes for which it is used in relation to the Works and conforms to all relevant United Kingdom standards or requirements.

PROJECT LIFTING SERVICES

26.4 The Company shall plan, supervise and carry out the Project Lifting Services and unless otherwise agreed between the parties, the Project Lifting Services will be carried out in daylight during normal working hours.

26.5 The Customer agrees that the Company:

(a) controls the Project Lifting Services and that where the Company deems appropriate in connection with their performance, to control and instruct any of the Customer's personnel involved in or otherwise connected with the Project Lifting Services, the Site or the Lifted Goods; and

(b) is not a common carrier.

26.6 The Customer warrants that it is the owner or authorised agent of the Lifted Goods.

26.7 In the event that the Lifted Goods or any part of them, require transportation by air, sea, road, rail or otherwise the Company may undertake such transportation itself or otherwise arrange for the same to be carried out by a third party in which case that third party shall be responsible for the inherent risk in such transportation.

INSPECTION & TESTING

26.8 The Company shall carry out the Inspection & Testing in relation to the Customer Equipment specified in the Quotation and such other Customer Equipment as may be agreed between the parties from time to time.

26.9 The Customer agrees and acknowledges that notwithstanding that the Company may have 'passed' Customer Equipment in the course of providing the Inspection & Testing, the Company shall not be liable for any defects in the Customer Equipment which were not reasonably apparent to the Company at the point of performing the Inspection & Testing or which were otherwise concealed from the Company.

FABRICATION AND/OR ENGINEERING SERVICES

26.10 The Company reserves the right to amend the specification of the Goods and, where applicable, the Customer Specification if required by any Applicable Laws from time to time in force or to improve the Goods where to do so would not have a materially adverse effect on the Customer.

26.11 Upon completion of the Engineering Works, the Company shall carry out factory testing and inspection of the Goods against the Customer Specification and the obligations imposed upon it by this Contract. Where:

(a) there are any defects with the Goods established by the Company in performing such testing and inspection it shall remedy the same in advance of delivery; or

(b) the Goods are found to meet the applicable requirements, it shall proceed with delivery in accordance with clause 28.

27. FREE ISSUE MATERIALS – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

27.1 The Customer warrants and undertakes that:

(a) any Free Issue Materials shall be delivered at the Customer's cost and risk to the Company's address as detailed in the Quotation or otherwise notified to the Customer in advance of delivery; and

(b) as at the date of delivery of any Free Issue Materials have been assessed for suitability by the Customer and shall be of the best quality, new, manufactured, engineered, supplied and tested in accordance with best industry practice, damage and defect free and remain so for such period of time as the same are required to be used by the Company and subsequently by the Customer following supply,

and that in the event that the Company is unable to perform or delayed in the performance of its obligations under this Contract as a result of a breach of warranty above, it shall not be liable to the Customer or any third party for any Losses suffered in any way as a result and the remedy of any such breach shall be at the Customer's cost.

27.2 The Free Issue Materials shall be held at the custody of the Company at the risk of the Customer and the Customer shall insure the Free Issue Materials at its own expense against any and all Loss from all risks in an amount equal to their full new replacement value whilst held in the custody of the Company.

27.3 Subject to clause 27.2, in the event of any damage to or destruction of the Free Issue Materials caused by the Company's negligence in performing the Engineering Works or wilful default, the Customer shall, at the Company's absolute discretion be required to replace them and supply replacement Free Issue Materials to the Company either:

(a) free of charge and in which case and for the avoidance of doubt, the Company shall not be liable to the Customer whatsoever; or

(b) for a sum equivalent to the replacement cost price of the Free Issue Materials and in which case and for the avoidance of doubt, the Company shall not be liable to the Customer for a sum exceeding that amount.

28. DELIVERY – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

28.1 The Company shall ensure that:

(a) each delivery of the Goods following the completion of the Engineering Works (or a part thereof) is accompanied by a delivery note which shows the date of the Order, all relevant Customer and the Company reference numbers, the Goods being delivered, special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(b) if the Company requires the Customer to return any packaging materials to the Company, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Company shall reasonably request. Returns of packaging materials shall be at the Company's expense.

28.2 the Company (or, where appropriate, the instructed carrier) shall deliver the Goods to the location set out in the Quotation or such other location as the parties may agree.

28.3 Unless otherwise agreed, delivery of the Goods shall be on the basis of:

(a) EXW (at the Company's address as detailed in the Quotation or otherwise notified to the Customer in advance) (Ex Works - Incoterms 2010) where the final destination for the Goods is on mainland United Kingdom; or

(b) FCA (at the Company's address as detailed in the Quotation or otherwise notified to the Customer in advance) (Free Carrier - Incoterms 2010) where the final destination for the Goods is not on mainland United Kingdom.

28.4 Any dates quoted for delivery are approximate only and the Company is under no obligation to provide an estimated delivery time. If a quoted date for delivery is not provided, delivery will be made within a reasonable time. The time of delivery in accordance with any timescales is not of the essence.

28.5 The Company shall not be liable for Losses arising out of any delay in delivery of the Goods that is caused by a Force Majeure Event suffered by it or an instructed carrier (save where it is reasonably practicable to instruct another carrier) or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

28.6 If the Customer fails to take delivery of the Goods within five (5) Business Days of the Company notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourth (4th) Business Day after the day on which the Company notified the Customer that the Goods were ready; and

(b) the Company shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

28.7 If ten (10) Business Days after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods.

28.8 the Company may deliver the Goods by instalments, which may be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

28.9 If the cost of delivery is not specified in the Quotation, the Company shall charge its standard delivery cost from time to time, applicable as at and confirmed in advance of their Disposal.

29. THE SITE

29.1 The Customer shall be responsible:

(a) for clearing the Site, public highways and access roads, including of any and all vehicles, plant, machinery, goods or other materials or waste not required in connection with the Contract and for setting up any and all required barricades, cones or tapes in advance of the performance of the Works or otherwise by the Company from time to time;

(b) for any road or other closures connected with a public authority or third party and any associated costs or Losses, notwithstanding that the Company may have arranged these as agent for the Customer;

(c) for the Company's unobstructed access to, movement around and egress from the Site for any reason reasonably required by the Company in connection with the performance of its obligations under this Contract; and

(d) unless otherwise agreed in writing, for the unloading and loading of the Goods at the Site.

29.2 Any Supplied Personnel provided by the Company for such unloading and/or loading shall be deemed to be under the direction and control of the Customer. Such Supplied Personnel shall, for all purposes in connection with their employment in the unloading and/or loading of the Goods, be regarded as the servants or agents of the Customer who shall be solely responsible for all claims arising in connection with unloading and/or loading of the Goods by, or with the assistance of, such Supplied Personnel.

29.3 The Customer is deemed to have knowledge of the Site and the Customer warrants that the condition of the Site is suitable for the performance of the Project Lifting Services and/or use of such Goods, as the case may be.

29.4 If, in the opinion of the Customer, the ground of the Site (including any private access road or track) is soft or otherwise unsuitable for:

(a) the performance of the Project Lifting Services and Lifting Equipment; and/or

(b) the Goods,

to work on, travel over, be transported over, be erected or dismantled on without Support, the Customer shall supply and lay suitable Support in a suitable position for the Lifting Equipment and/or Goods to travel over, work on, be transported over, be erected or dismantled on, including for the purpose of delivery and collection.

29.5 Any Support supplied by the Company is provided solely to assist the Customer under their duties within this clause 29 and expressly not to relieve it of its legal, regulatory or contractual obligations to ensure adequate stability of the Goods.

29.6 The Customer is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the Site and the Customer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

30. QUALITY, INSPECTION AND ACCEPTANCE – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

30.1 The Customer shall be required to inspect the Goods and inherent Engineering Works immediately upon receipt. In the event that:

(a) there are any damages or defects in the Goods; or

(b) an incorrect quantity of the Goods has been received; or

(c) anything other than the Goods are received,

the Customer shall be required to notify the Company within one (1) Business Day of receipt. Where no such notification is made by the Customer to the Company in accordance with this clause, the Goods and therefore the Engineering Works shall be deemed to have been accepted in all respects by the Customer.

30.2 For the purposes of clause 30.1, receipt shall mean:

(a) (where no Installation is required):

(i) Disposal, where the Customer collects the Goods from the Company's premises; or

(ii) the arrival of the Goods at the Site, where the Customer does not collect the Goods from the Company's premises; or

(b) (where Installation of the Goods is required) the date of Installation.

30.3 Without prejudice to clause 30.1, the Company warrants that on delivery, and (where applicable) for such additional period of time as may be specified in the Quotation (**Goods Warranty Period**), the Goods (and the inherent Engineering Works) shall:

(a) conform in all material respects with their description and any applicable Customer Specification;

(b) be free from material defects in design, material and workmanship;

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

(d) be fit for any purpose held out by the Company.

30.4 Subject to clause 30.5, if:

(a) the Customer gives notice in writing to the Company during the Goods Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 30.3;

(b) the Company is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by the Company and where reasonably practicable) returns such Goods to the Company's place of business at the Customer's cost (such reasonable return costs to be refunded to the Customer if the Goods are found to not comply with the warranty set out in clause 30.3),

the Company shall, at its option, repair or replace the defective Goods (including by performing any defective element of the Engineering Works), or refund the price of the defective Goods in full in addition to any reasonable return costs in accordance with clause 30.4(c).

30.5 the Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 30.3 in any of the following events:

(a) the Customer has failed to pay any sums due to the Company under or in accordance with these Terms or any other contract between the Customer and the Company (or any member of its Group);

(b) the Customer makes any further use of such Goods after giving notice in accordance with clause 30.3;

(c) the defect arises because the Customer failed to follow the Company's (or the manufacturer's) oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

(d) the defect arises as a result of the Company following any Customer Specification;

(e) the Customer (or a third party acting on its behalf or under its instruction) alters or repairs such Goods without the written consent of the Company;

(f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(g) the Goods differ from their description and any Customer Specification provided as a result of changes made to ensure they comply with Applicable Laws.

30.6 Except as provided in this clause 30, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 30.3 save that where the parties have agreed otherwise in writing, the Company may carry out repair work to such Goods falling under clause 30.5 at an additional charge.

30.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

30.8 These Terms shall not apply to any repaired or replacement Goods (and where applicable the inherent re-performed Engineering Works) supplied by the Company.

31. TITLE AND RISK – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

31.1 Title to any Free Issue Materials shall pass to the Company upon receipt in its custody.

31.2 Title to the Goods shall not pass to the Customer until the earlier of:

(a) the Company receiving payment in full (in cash or cleared funds) for the Engineering Works; or

(b) the Customer reselling the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 31.4 and the proceeds of sale shall be immediately accounted to the Company and otherwise held in a fiduciary capacity on trust for the Company to the extent of any liability for unpaid sums.

31.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Company immediately if it becomes subject to any of the events listed in clause 7.1(c)-(h); and

(e) give the Company such information relating to the Goods as the Company may require from time to time.

31.4 Subject to clause 31.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time:

(a) it does so as principal and not as the Company's agent; and

(b) title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.

31.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 7.1(c)-(h), or the Customer fails to fulfil its payment obligations in respect of the Works then, without limiting any other right or remedy the Company may have:

(a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

(b) the Company may at any time:

(i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.