

**TERMS & CONDITIONS FOR PROJECTS**

**THE CUSTOMER'S SPECIAL ATTENTION IS DRAWN TO CLAUSES 4 – 6, 8, 10 AND 12 – 13 OF THESE TERMS.**

**1. DEFINITIONS AND INTERPRETATION**

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

**Applicable Laws:** all applicable laws, statutes, regulations and codes from time to time in force 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 the charges for the provision of the Works and any associated Goods and 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.

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

**Company:** means:

- (a) Lifting Projects UK Limited, a company registered and incorporated in England and Wales with company number 09158962 and whose registered office is at Unit 1d Maple Court, White Moss Business Park, Skelmersdale, Lancashire, WN8 9TW;
- (b) Lifting Gear UK Limited, a company registered and incorporated in England and Wales with company number 09245302 and whose registered office is at Unit 1d Maple Court, White Moss Business Park, Skelmersdale, Lancashire, WN8 9TW; or
- (c) such other legal entity as is specified in the Quotation,

in each case as specified in the Quotation.

**Contract:** the contract between the Company and the Customer for the provision of Works incorporating the Quotation and these Terms.

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

**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 Works, 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 Goods leaving the Company's premises.

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

**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.

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

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

**Installation:** means the installation of the Goods 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 11.5.

**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 written purchase order (in whatever form this may be and which shall for the avoidance of doubt include email) for the Works, raised in response to the Quotation and in accordance with clause 2 below.

**Order Period:** has the meaning given in clause 2.2.

**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 Works to the Customer incorporating these Terms and which includes the Special Conditions (if any).

**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, 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 7.4.

**Terms:** the terms and conditions set out in this document as amended from time to time in accordance with clause 7.9.

**VAT:** has the meaning given in clause 9.4.

**Warranty Period:** has the meaning given in clause 8.3.

**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) commences with the performance of the Works; or
- (b) 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 Works. They shall not form part of the Contract or have any contractual force.

## 3. PERFORMANCE OF THE WORKS

3.1 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.

3.2 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.

## PROJECT LIFTING SERVICES

3.3 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.

3.4 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.

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

3.6 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**

3.7 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.

3.8 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**

3.9 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.

3.10 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 6.

#### **4. FREE ISSUE MATERIALS – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**

4.1 The Customer warrants and undertakes that:

(a) any Free Issue Materials shall be delivered at the Customer's cost and risk to LGUK'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.

4.2 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.

4.3 Subject to clause 4.2, 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.

#### **5. GENERAL OBLIGATIONS OF THE CUSTOMER – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**

- 5.1 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 the Works;
  - (c) 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;
  - (d) obtain and maintain all necessary licenses and consents as required to enable the Company to perform the Works, in all cases prior to the commencement of the Works; and
  - (e) comply with all Applicable Laws:
    - (i) to enable the Company to perform the Works; 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).
- 5.2 If the Customer is not fully familiar with the Goods, 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 Goods have received the appropriate instructions, information and training on any Applicable Laws.
- 5.3 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.
- 6. DELIVERY – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**
- 6.1 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.
- 6.2 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.
- 6.3 Unless otherwise agreed, delivery of the Goods shall be on the basis of:
- (a) EXW (at LGUK'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 LGUK'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.
- 6.4 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.
- 6.5 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.

- 6.6 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 (4<sup>th</sup>) 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).
- 6.7 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.
- 6.8 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.
- 6.9 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 Despatch.

## **7. THE SITE**

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 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 timbers or equivalent support, the Customer shall supply and lay suitable timbers or equivalent support (**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.
- 7.5 Any Support supplied by the Company is provided solely to assist the Customer under their duties within this clause 7 and expressly not to relieve it of its legal, regulatory or contractual obligations to ensure adequate stability of the Goods.
- 7.6 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.

## **8. QUALITY, INSPECTION AND ACCEPTANCE – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**

- 8.1 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.

8.2 For the purposes of clause 8.1, receipt shall mean:

- (a) (where no Installation is required):
  - (i) Despatch, 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.

8.3 Without prejudice to clause 8.1, the Company warrants that on delivery, and (where applicable) for such additional period of time as may be specified in the Quotation (**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.

8.4 Subject to clause 8.5, if:

- (a) the Customer gives notice in writing to the Company during the 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 8.3;
- (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 8.3),

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 8.4(c).

8.5 The Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 8.3 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 8.3;
- (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.

8.6 Except as provided in this clause 8, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 8.3 save that where the parties have agreed otherwise in writing, the Company may carry out repair work to such Goods falling under clause 8.5 at an additional charge.

8.7 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.

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

## **9. CHARGES AND PAYMENT**

9.1 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.

9.2 The Company may, by giving notice to the Customer at any time up to five (5) Business Days before commencement of the Works, 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) for the Goods, completion date for the Works or the Customer 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.

9.3 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 9.2 occur.

9.4 Unless otherwise agreed between the parties, the price of the Works is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

9.5 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 provision of the Works.

9.6 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.

9.7 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.

9.8 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.

## **10. TITLE AND RISK – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**

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

10.2 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 10.5 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.

- 10.3 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 13.1(c)-(h); and
  - (e) give the Company such information relating to the Goods as the Company may require from time to time.
- 10.4 Subject to clause 10.5, 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.
- 10.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(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.
- 11. INTELLECTUAL PROPERTY RIGHTS**
- 11.1 In relation to the Deliverables:
- (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 11.1(b) to third parties.
- 11.2 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.
- 11.3 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.
- 11.4 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.

11.5 If the Customer is required to indemnify under this clause 11, the Company (which reference for the purposes of this clause 11.5 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 11.4(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.

## **12. LIMITATION OF LIABILITY AND INDEMNITY – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**

12.1 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.

12.2 Subject to clause 12.1:

- (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 or reputation;
  - (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 the lesser of:
  - (i) the total 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.

12.3 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.

## **2. TERMINATION – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE**

2.1 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;
- (b) the Customer fails to observe and perform any provision of the Contract;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (g) 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
- (h) (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.

2.2 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.

2.3 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.

2.4 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.

## **3. NOTICES**

3.1 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.

- 3.2 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 14.1;
  - (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second (2<sup>nd</sup>) 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.
- 3.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### **4. GENERAL**

- 4.1 **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.
- 4.2 **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.
- 4.3 **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.
- 4.4 **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.
- 4.5 **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.
- 4.6 **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.
- 4.7 **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.
- 4.8 **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.
- 4.9 **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.
- 4.10 **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.

4.11 **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).