

LIFTING GEAR UK GROUP TRADING TERMS & CONDITIONS

These Terms set out the basis on which the Company enters into a Contract with the Supplier. Part 1 of these Terms applies to all Contracts entered into and **THE SUPPLIER'S SPECIAL ATTENTION IS DRAWN TO CLAUSES 3, 7, 8 and 9 OF THESE TERMS**. Where the Supplier is contracting with the Company for:

- (a) the purchase of Equipment, **Part 2 of these Terms shall also apply** to those elements of the Contract and in which case **THE SUPPLIER'S SPECIAL ATTENTION IS DRAWN TO CLAUSES 13 - 15 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 SUPPLIER'S SPECIAL ATTENTION IS DRAWN TO CLAUSES 16, 18 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 SUPPLIER'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:

ADR Notice: has the meaning given in clause 11.10.

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 purchase of the Equipment; and/or
- (b) the total of the charges comprising the Hire 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 Order (or otherwise varied in accordance with these Terms) and any other charges to be paid by the Supplier to the Company to the Supplier in accordance with these Terms.

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 Order,

in each case as specified in the Order.

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

Compliance Legislation: the Bribery Act 2010, the Criminal Finances Act 2017, the Modern Slavery Act 2015, the Money Laundering Regulations 2017 and such other pieces of Applicable Law relating to corporate criminal offences.

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

- (a) purchase of the Equipment; and/or
- (b) hire of Equipment;
- (c) provision of Works,

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

Delivery Date: means the date on which the equipment and/or Works are to be delivered to the Company, as specified in the Order.

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

Dispute: has the meaning given in clause 11.10.

Dispute Notice: has the meaning given in clause 11.10.

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 12.1(c).

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, pandemics or similar events, natural disasters, extreme or adverse weather conditions.

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 Supplier by the Company (or a third party acting on its instructions) on a 'free issue basis' and including any items provided on loan to the Supplier.

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 Supplier by the Company on a free issue basis or which are otherwise supplied by the Supplier.

Goods Warranty Period: has the meaning given in clause 30.5.

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 Delivery Date and continue until the Equipment is made available by the Supplier for collection by the Company as may be varied or extended in accordance with these Terms.

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

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

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 6.5(a).

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

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

- (a) 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.

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 Order.

Quotation: the Supplier's written quotation or proposal to provide the Equipment and/or the Works to the Company incorporating these Terms.

Site: means any location(s), owned, occupied or accessed by the Company 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 Company elects for the Equipment to be delivered, as set out in the Order or otherwise agreed between the parties.

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 and in whatever form or media they may be.

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

Supplier: the business from which the Company wishes to purchase the Equipment and/or the Works and which wishes to enter into a Contract with the Company in accordance with these Terms.

Support: has the meaning given in clause 19.2.

Terms: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.9.

VAT: has the meaning given in clause 5.3.

Works: means the:

- (a) Project Lifting Services; and/or
- (d) Inspection & Testing; and/or
- (e) design services; and/or
- (f) Engineering Works,

as more particularly described in the Order.

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 Order and these Terms and the Quotation, the provisions of the document first appearing in this clause 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 Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Quotation constitutes an offer capable of acceptance by the Company and the Order constitutes the Company's acceptance of the Quotation, at which point the Contract shall be deemed to have been formed.

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

- 3.1 The Supplier agrees and acknowledges that the Company relies on the skill and judgement of the Supplier in the supply of the Equipment and/or Works and the execution of the Order.
- 3.2 The Supplier shall:
 - (a) ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract;
 - (b) comply with all Applicable Laws;
 - (c) comply with health and safety matters including regulations under the Environmental Acts, Factories Act, Health and Safety at Work Act and observance of the Road Traffic Acts (where and to the extent applicable); and
 - (d) provide the Company with all operating instructions and training necessary to enable the Company to make use of the Equipment and/or the Works.

4. COMPLIANCE OBLIGATIONS OF THE SUPPLIER

- 4.1 The Supplier represents, warrants and undertakes to the Company that:
 - (a) in relation to these Terms and the Contract and/or its subject matter, neither the Supplier nor any of its employees, sub-contractors or agents or others performing services on behalf of the Supplier has, as far as it is aware, done (or agreed to do) or will do (or agree to do) anything which constitutes a breach by the Supplier or the Company of the Compliance Legislation;

- (b) the Supplier has in place, and will at all times during the term of the Contract continue to have in place, adequate procedures designed to prevent any person associated with the Supplier from committing an offence under any Compliance Legislation and as a minimum such procedures comply, and will at all times during the term of the Agreement comply, with the most recent guidance issued from time to time by the Secretary of State pursuant to the applicable Compliance Legislation;
- (c) the Supplier shall comply with all Compliance Legislation in connection with the Contract and the Company's business and shall immediately notify the Company if it discovers or suspects that any of its officers, directors, employees or representatives are acting or have acted in a way which violates such legislation;
- (d) the Supplier will promptly co-operate (and will procure that each of its employees, agents, sub-contractors and any others performing services on its behalf in relation to the Agreement and/or its subject matter will co-operate) with the Company and/or any regulator and/or prosecutor in any investigation relating to any breach, or alleged breach, of any Compliance Legislation by the Supplier or any of its employees, agents, sub-contractors or others performing services on its behalf; and
- (e) neither the Supplier nor any of its shareholders, subsidiaries or affiliates nor any of its or their directors, officers, agents or employees has been subject to any investigation by any government agency with regard to any breach of the Compliance Legislation.

4.2 The Supplier will throughout the term of the Contract comply with, monitor, and enforce the obligations referred to in clause 4.1 above.

4.3 If the Supplier fails to comply with this clause 4, the Company shall be entitled, in its sole discretion, to terminate the Contract and any other contracts between the Supplier and the Company without penalty to the Company but with obligations for the Supplier to remedy any damages suffered by the Company as a result of such termination or breach of Contract.

4.4 Where for the purposes of this clause:

- (a) Counterfeit: means Fraudulent Goods and/or Deliverables that have been confirmed as:
 - (i) being a copy, imitation or substitute that has been represented, identified or marked as genuine;
 - (ii) being altered by a source without a legal right with the intention to mislead, deceive or defraud; and/or
 - (iii) infringing the Intellectual Property Rights of a third party;
- (b) Fraudulent: means Goods and/or Deliverables which have been misrepresented as meeting the Company's requirements, including but not limited to those represented as being new; and
- (c) Suspect: means there being any evidence or a reasonable suspicion that Goods and/or Deliverables may be Counterfeit or Fraudulent,

the Company reserves the right to quarantine any Goods and/or Deliverables which are Suspect, Counterfeit or Fraudulent and have the same tested by a third party, the costs of which are to be met by the Supplier in the event that a positive determination is made. Notwithstanding that an invoice may have been validly raised in accordance with the Contract, payment of the Charges in this case will be held by the Company until conclusive results are obtained which confirm that the Goods and/or Deliverables in question are not Suspect, Counterfeit or Fraudulent and in cases where payment has already been made the Supplier shall issue a refund to the Company on demand. Furthermore, Goods and/or Deliverables which are Suspect may be subject to disposition and details reported to the appropriate authorities. The disclosure of the source and location of supply is to be provided where requested.

5. CHARGES AND PAYMENT

5.1 The Charges payable by the Company to the Supplier shall be those specified in the Order.

5.2 The Supplier may not increase the Charges unless it is validly accepted by the Company and agreed in writing.

- 5.3 Unless expressly agreed otherwise between the parties in writing, the Charges shall be inclusive of all delivery and insurance costs, value added tax (**VAT**) and any other applicable sales taxes, duties or levies.
- 5.4 Unless expressly agreed in writing by the Company, the Supplier shall render a separate invoice in respect of each consignment of the Equipment and/or Works delivered under the Contract. The Company undertakes to pay correctly submitted invoices within 30 days of the end of the month of physical or electronic arrival at the nominated address of the Company of the invoice. Invoices shall not be rendered by the Supplier until completion of delivery of all the Equipment and/or Works which are the subject of the Contract.
- 5.5 A valid invoice is one that:
- (a) is delivered in time in accordance with the Contract;
 - (b) is for the correct sum;
 - (c) is in respect of the Equipment and/or Works supplied or delivered to the required quality;
 - (d) quotes the relevant Order number; and
 - (e) has been delivered to the nominated address.
- 5.6 The Company specifically reserves the right to withhold or deduct by way of set-off or otherwise from any monies due or to become due to the Supplier any monies due to the Company from the Supplier.
- 5.7 The Company shall not be liable for any orders or amendments to Contracts other than those issued or confirmed on the Company's official purchase order documentation and shall not be responsible for the payment of the Charges for Equipment and/or Works supplied in excess of those required by the Order.
- 5.8 No payment of or on account of the Charges shall constitute any acceptance or admission by the Company as to the proper performance by the Supplier of its obligations under the Contract.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 The Supplier authorises the Company to apply to the Equipment and/or Works the Supplier's Intellectual Property Rights including but not limited to its registered trade marks for the purposes of making use of the Equipment and/or Works for internal purposes or otherwise selling them to its customers.
- 6.2 Except to the extent that the Equipment and/or Works are supplied in accordance with designs provided by the Company, it shall be a condition of the Order that none of the Equipment and/or Works will infringe any Intellectual Property Rights of any third party and the Supplier shall indemnify and keep indemnified the Company against all Losses which the Company may suffer or incur as a result of or in connection with any breach of this clause.
- 6.3 All materials, equipment, software, inventions, specifications, instructions, plans or any form of Intellectual Property Rights in any of the foregoing:
- (a) furnished to or made available to the Supplier by the Company pursuant to the Contract are hereby assigned to and shall remain vested solely in the Company; and
 - (b) the Supplier shall not (except to the extent necessary for the implementation of the Contract) without prior written consent of the Company, use or disclose any such Intellectual Property or any information (whether or not relevant to the Contract) which the Supplier may obtain pursuant to the Contract and in particular (but without prejudice to the generality of the foregoing), the Supplier shall not refer to the Company or the Contract in any advertisement without the Company's prior written agreement.
- 6.4 The Supplier:
- (a) warrants that use of the 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 Contract of the Specification.

6.5 If the Supplier is required to indemnify under this clause 6, the Company (which reference for the purposes of this clause 6.5 shall include any member of its Group) shall:

- (a) notify the Supplier in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 6.4(b) (**IPRs Claim**);
- (b) allow the Supplier, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, provided always that the Supplier shall obtain the Company's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Supplier with such reasonable assistance regarding the IPRs Claim as is required by the Supplier, subject to reimbursement by the Supplier of the Company's costs so incurred; and
- (d) not, without prior consultation with the Supplier, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Supplier 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.

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

7.1 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.

7.2 Subject to clause 7.1:

- (a) the Company shall under no circumstances whatever be liable to the Supplier, 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 Supplier 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 value of the Contract; or
- (ii) £10,000.

7.3 The Supplier 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 Supplier 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.

7.4 If the Supplier defaults or delays in performance of any of its obligations under this Contract, the Company may, at its option, claim or deduct liquidated damages from the Supplier at the rate of 10% of the value of the Contract for the first day's default or delay in performance of the applicable obligation and 2.5% of the value of the Contract for each day's default or delay in performance of the applicable obligation thereafter. The liquidated damages payable under this clause shall accrue from the first day on which the Supplier has delayed or defaulted in the performance of its obligations and shall continue until the earlier of:

- (a) the Supplier fulfilling the delayed or defaulted obligation in question; or
- (b) termination of this Contract by the Company,

and are without prejudice to the Company's right to claim Losses in accordance with clause 7.3. The parties confirm that these liquidated damages are reasonable and proportionate to protect the Company's legitimate interest in performance and represent a genuine pre-estimate of Losses during the period of such delay or default.

8. TERMINATION – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

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

- (a) the Supplier fails to observe and perform any provision of the Contract;
- (b) the Supplier 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 Supplier 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 Supplier takes any step or action in connection with the Supplier 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 Supplier suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (f) the Supplier's financial position deteriorates to such an extent that in the Company's opinion the Supplier'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; or

(g) (being an individual) the Supplier 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.

8.2 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; and

(b) if exercised, 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.

8.3 The Company may terminate the Contract forthwith by giving notice to the Supplier in writing at any time on no less than two weeks' notice.

8.4 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.

9. CANCELLATION - SEPCIAL ATTENTION IS BROUGHT TO THIS CLAUSE

9.1 The Company may cancel the Contract at any time on immediate notice for any part of the Deliverables, or any part of the Deliverables which have not yet supplied, by giving notice to the Supplier.

9.2 Where the Company cancels the Contract in accordance with clause 9.1, upon receipt of a validly issued and properly documented evidence, the Company shall pay for that part of the price of the Contract which, at the time of cancellation and as the case may be, had been delivered to the Company and which cannot be used for other orders or be returned to the Supplier's supplier of those goods for a refund.

9.3 To the maximum extent possible, the Supplier shall mitigate all costs relating to the Contract immediately upon receipt of cancellation.

10. NOTICES

10.1 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.

10.2 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 10.1;

(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.

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

11. GENERAL

11.1 **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.

11.2 **Entire Agreement.** The Contract constitutes the entire agreement between the parties. The Supplier 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 any literature which is not set out in the Contract.

11.3 **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.
- (d) The Supplier 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.

11.4 **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.

11.5 **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.

11.6 **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.

11.7 **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.

11.8 **Further assurance.** The Supplier 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.

11.9 **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.

11.10 **Multi-tiered dispute resolution.** If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**), then, except as expressly provided in these Terms, the parties shall follow the procedure set out in this clause 11.10:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the management of both parties shall attempt in good faith to resolve the Dispute;
- (b) if the management of the parties are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to the directors of the parties, who shall attempt in good faith to resolve it; and
- (c) if the directors of the parties are for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR Notice**) to the other party, referring the Dispute to mediation. Unless otherwise agreed between the parties, the mediation will start not later than 14 days after the date of the ADR Notice; and

- (d) If the Dispute is not resolved within 28 days after service of the ADR Notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 28 day period, or the mediation terminates before the expiry of that 28 day period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 11.12.
- 11.11 **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.
- 11.12 **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 – PURCHASE OF EQUIPMENT**12. EQUIPMENT**

12.1 The Supplier warrants and represents to the Company that the Equipment shall in every respect:

- (a) conform with any particulars or Company Specification specified in the Order including any variations;
- (b) conform with the requirements of any statutes, orders, regulations or bye-laws from time to time in force; and
- (c) be of the best quality, made of the highest quality materials, fit and sufficient for any purpose for which they are supplied, free from defects in materials and workmanship in each case from the Delivery Date and for a period of 24 months from the date on which they are put into use by the later of the Company or its customer (**Equipment Warranty Period**) and subject to any applicable installation and usage guidelines supplied.

12.2 The Supplier shall guarantee the Equipment for the Equipment Warranty Period (subject to any alternative guarantee arrangements agreed in writing between the Company and the Supplier). If the Company shall, within such Equipment Warranty Period or within 30 days thereafter, give notice in writing to the Supplier of any defect in any of the Equipment that has arisen under proper and normal use, the Supplier shall (without prejudice to any of the Company's other rights and remedies) as quickly as possible remedy such defects (as the Company shall elect in its sole discretion) without cost to the Company.

13. DELIVERY – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

13.1 The Supplier shall ensure that:

- (a) each delivery of the Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Supplier 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 Supplier requires the Company to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Supplier 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 Supplier's expense.

13.2 Without prejudice to clause 13.3, the Supplier (or, where appropriate, the instructed carrier) shall physically deliver the Equipment to the location set out in the Order or such other location as the parties may agree.

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

- (a) DAP (at the Company's address as detailed in the Order or otherwise notified to the Supplier in advance) (Delivered at Point - Incoterms 2010) where the origin of the Equipment is any location from which no import duties or customs tax are payable; or
- (b) DDP (at the Company's address as detailed in the Order or otherwise notified to the Supplier in advance) (Delivered Duty Paid - Incoterms 2010) where the origin of the Equipment is any location from which import duties or customs tax is payable in the course of delivery.

13.4 The time of delivery shall be of the essence for the purposes of the Contract and failure to deliver by the Delivery Date shall enable the Company (at its option) to release itself from any obligation to accept and pay for the Equipment and/or to cancel all or part of the Equipment under the Order, in either case without prejudice to its other rights and remedies.

13.5 The Supplier's failure to effect delivery on the Delivery Date specified shall entitle the Company to purchase substitute Equipment and to hold the Supplier accountable for any and all Loss incurred as a result of such failure.

13.6 If Equipment is delivered before the Delivery Date, the Company shall be entitled at its sole discretion to refuse to take delivery or to charge for insurance and storage of the Equipment until the Delivery Date.

13.7 Unless otherwise stated in the Order, the Supplier is responsible for obtaining and the cost of all the export and import licences for the Equipment, and in the case of Equipment supplied from outside the UK, the Supplier shall ensure that accurate information is provided to the Company as to the country of origin and the Supplier shall be liable for additional duties or taxes should the country of origin prove to be different to the one stated.

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

14.1 Nothing contained in these Terms shall in any way detract from the Supplier's obligations under common law or statute or any express warranty or condition contained in the Order.

14.2 The Supplier shall permit the Company or its authorised representatives to make any inspections or tests it may reasonably require in relation to the Equipment and the Supplier shall afford all reasonable facilities and assistance free of charge at the Company's premises. The Supplier shall make good any defects or deficiencies in the event of any failure (in the sole opinion of the Company) to comply with the terms of the Order or the Contract. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Company of any rights or remedies in respect of the Equipment.

14.3 The Company may by written notice to the Supplier reject any of the Equipment which fails to meet the requirements in the Contract. Such notice shall be given within a reasonable time after delivery to the Company of the relevant Equipment. If the Company rejects any of Equipment pursuant to this clause 14.3, the Supplier shall at the Company's sole option (without prejudice to its other rights and remedies) either:

(a) repair, replace or re-perform the defective Equipment in accordance with any timescale specified by the Company, such that the repaired, replacement or re-performed Equipment comply in all respects with the requirements under the Contract; or

(b) refund to the Company any Charges in respect of the defective Equipment.

14.4 Any Equipment rejected or returned by the Company pursuant to this clause 14 shall be returned to the Supplier at the Supplier's risk and expense.

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

15.1 Title to the Equipment shall pass to the Company on delivery in accordance with clause 13.3. The Company shall be entitled to resell or use the Goods in the ordinary course of its business.

15.2 Risk in the Equipment shall pass to the Company on payment of all Charges by the Company.

PART 3 – HIRE OF EQUIPMENT

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

- 16.1 The Supplier shall deliver the Equipment on the agreed Delivery Date and time for delivery is of the essence. In the event that the Supplier becomes aware of any likely delay, it shall immediately notify the Company.
- 16.2 If the Company has agreed to collect or return any Equipment from the Supplier, the Supplier shall issue the Company with a credit equivalent to its standard delivery cost from time to time, applicable as at and confirmed in advance of delivery.
- 16.3 The Hire Rate shall be paid for the Hire Period and will include, at no additional cost, any and all time which is properly and unavoidably occupied in transporting the Equipment causing the Hire Period to be extended.
- 16.4 Should the Company require the Equipment beyond the Hire Period, the Company shall notify the Supplier in writing and the Supplier shall offer the Equipment at the same Charges as offered prior to the extension.

17. UNLOADING AND LOADING

The Supplier shall be responsible for the unloading and loading of the Equipment at the Site and shall remain responsible for the actions and omissions of any Supplied Personnel provided by the Supplier, notwithstanding that they may be acting under the direction of the Company.

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

- 18.1 Nothing contained in these Terms shall in any way detract from the Supplier's obligations under common law or statute or any express warranty or condition contained in the Order.
- 18.2 The Supplier shall permit the Company or its authorised representatives to make any inspections or tests as it may reasonably require in relation to the Equipment and shall afford all reasonable facilities and assistance free of charge at such suitable location. The Supplier shall make good any defects or deficiencies in the event of any failure (in the sole opinion of the Company) to comply with the terms of the Order or the Contract. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Company of any rights or remedies in respect of the Equipment.
- 18.3 Risk in the Equipment shall transfer to the Company upon completion of any inspections or the commencement of its use within the Hire Period.
- 18.4 Save where it is agreed between the parties that the foregoing shall be carried out by the Company, the Supplier 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. Any inspection report

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

19. GROUND AND SITE CONDITIONS

- 19.1 The Supplier is deemed to have knowledge of the Site and the Supplier warrants that the condition of the Site is suitable for the use of such Equipment.
- 19.2 If, in the opinion of the Supplier, 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 Supplier shall, at no additional charge 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.
- 19.3 Any Support supplied by the Company is provided solely to assist the Supplier under their duties within this clause and expressly not to relieve it of its legal, regulatory or contractual obligations to ensure adequate stability of the Equipment.
- 19.4 The Supplier 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 in the course of the delivery and collection of the Equipment and the Supplier shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

20. SUPPLIED PERSONNEL

- 20.1 When the Equipment is accompanied by Supplied Personnel, the Supplier warrants 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 Company.
- 20.2 Supplied Personnel shall not be required to operate anything other than the Equipment for which they are supplied as set out in the Order unless previously agreed in Writing between the Company and the Supplier.

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

- 21.1 Charges will not be charged to the Company 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 Supplier shall make available replacement Equipment (not necessarily of the same type and age) for collection by the Company within twenty-four (24) hours (or as soon after that as is practicable) after the receipt of notification from the Company requesting replacement Equipment.
- 21.2 The Supplier shall be responsible for all Loss involved arising from any breakdown, unsatisfactory working of or damage to any part of the Equipment save to the extent that such issue is proven to be wholly attributable to the acts or omissions of the Company.
- 21.3 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.

22. INSURANCE

- 22.1 The Supplier shall take out and maintain with a reputable insurance company a policy or policies of insurance that are normal for contracts of this nature and covering all of its obligations under these Terms.
- 22.2 The Supplier shall at the request of the Company produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium.
- 22.3 The Supplier shall be liable under the provisions of the Contract whether or not it complies with the insurance provisions in this clause.

The Lifting Gear UK Group of Companies

5

PART 4 - WORKS

23. PERFORMANCE OF THE WORKS

- 23.1 The provision of the Works shall be performed by the Supplier in accordance with these Terms, any Specification, using all care and skill and in accordance with best industry practice in every respect.
- 23.2 The Supplier shall use its' best 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 be of the essence.
- 23.3 The Supplier shall supply any requisite Supplier Equipment and ensure that all such Supplier 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.

24. PROJECT LIFTING SERVICES

- 24.1 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.
- 24.2 The Supplier agrees that the Company controls the Project Lifting Services and that where the Company deems appropriate in connection with their performance, to control and instruct any of the Supplier's personnel involved in or otherwise connected with the Project Lifting Services, the Site or the Lifted Goods.

25. INSPECTION & TESTING

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

26. FABRICATION AND/OR ENGINEERING SERVICES

Upon completion of the Engineering Works, the Supplier shall carry out factory testing and inspection of the Goods against the Specification and the obligations imposed upon the Supplier by this Contract. The Supplier shall invite the Company to attend any such inspection and testing and where:

- (a) there are any defects with the Goods established 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 Supplier warrants and undertakes that:

- (a) any Free Issue Materials shall be delivered at the Supplier's cost and risk to the Supplier's address as detailed in the Order or otherwise notified to the Company in advance of delivery; and
- (b) unless it notifies the Company to the contrary within 1 Business Day of the date of delivery of any Free Issue Materials, it shall be deemed to have assessed the same for suitability and that they shall be deemed to be of the best quality, new, manufactured, engineered, supplied and tested in accordance with best industry practice, damage and defect free.

27.2 The Free Issue Materials shall be held at the custody and risk of the Supplier and the Supplier 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.

27.3 In the event of any damage to or destruction of the Free Issue Materials caused by the Supplier's negligence in performing the Engineering Works or wilful default, the Supplier shall, at the Company's absolute discretion, be required to repair or replace them at no charge to the Company or issue the Company with a credit to the value of the replacement of the Free Issue Materials.

28. DELIVERY – SPECIAL ATTENTION IS DRAWN TO THIS CLAUSE

28.1 The Supplier shall ensure that:

- (a) each delivery of the Works 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 Supplier 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;
- (b) if the Supplier requires the Company to return any packaging materials to the Company, that fact is clearly stated on the delivery note. The Company 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 Supplier's expense; and
- (c) the Supplier (or, where appropriate, the instructed carrier) shall deliver the Goods to the location set out in the Order or such other location as the parties may agree.

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

- (a) DAP (at the Company's address as detailed in the Order or otherwise notified to the Supplier in advance) (Delivered at Point - Incoterms 2010) where the origin of the Equipment is any location from which no import duties or customs tax are payable; or
- (b) DDP (at the Company's address as detailed in the Order or otherwise notified to the Supplier in advance) (Delivered Duty Paid - Incoterms 2010) where the origin of the Equipment is any location from which import duties or customs tax is payable in the course of delivery.

28.3 The time of delivery shall be of the essence for the purposes of the Contract and failure to deliver by the Delivery Date shall enable the Company (at its option) to release itself from any obligation to accept and pay for the Works and/or to cancel all or part of the works under the Order, in either case without prejudice to its other rights and remedies.

28.4 The Supplier's failure to effect delivery on the Delivery Date specified shall entitle the Company to purchase substitute Works and to hold the Supplier accountable for any and all Loss incurred as a result of such failure.

28.5 If the Goods are delivered before the Delivery Date, the Company shall be entitled at its sole discretion to refuse to take delivery or to charge for insurance and storage of the Goods until the Delivery Date.

29. THE SITE

29.1 The Supplier 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;
- (b) for any road or other closures connected with a public authority or third party and any associated costs or Losses, notwithstanding that the Supplier may have arranged these as agent for the Company;
- (c) for the Supplier's unobstructed access to, movement around and egress from the Site for any reason reasonably required 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 and shall remain responsible for the actions and omissions of any Supplied Personnel provided by the Supplier, notwithstanding that they may be acting under the direction of the Company.

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

29.3 If, in the opinion of the Supplier, 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 Supplier 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.

29.4 The Supplier 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 Supplier 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 Nothing contained in these Terms shall in any way detract from the Supplier's obligations under common law or statute or any express warranty or condition contained in the Order.

30.2 The Supplier shall permit the Company or its authorised representatives to make any inspections or tests it may reasonably require in relation to the Works and the Supplier shall afford all reasonable facilities and assistance free of charge at the Company's premises. The Supplier shall make good any defects or deficiencies in the event of any failure (in the sole opinion of the Company) to comply with the terms of the Order or the Contract. No failure to make a complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Company of any rights or remedies in respect of the Works.

30.3 The Company may by written notice to the Supplier reject any of the Works which fail to meet the requirements in the Contract. Such notice shall be given within a reasonable time after discovery by the Company of the relevant defect in the Works. If the Company rejects any of Works pursuant to this clause 30.3, the Supplier shall at the Company's sole option (without prejudice to its other rights and remedies) either:

- (a) repair, replace or re-perform the defective Works in accordance with any timescale specified by the Company, such that the repaired, replacement or re-performed Works comply in all respects with the requirements under the Contract; or
- (b) refund to the Company any Charges in respect of the defective Works.

30.4 Any Goods rejected or returned by the Company pursuant to this clause 30.3 shall be returned to the Supplier at the Supplier's risk and expense.

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

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from defects in design, material and workmanship;
- (c) be of the best quality; and
- (d) be fit for any purpose held out by the Supplier or required by the Company.

30.6 Subject to clause 30.5, if the Company gives notice in writing to the Supplier during the Goods Warranty Period that some or all of the Goods do not comply with the warranty set out in clause 30.5 the Supplier shall, at the sole discretion of the Company, 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.

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

31.1 Title to any Free Issue Materials shall remain with the Company throughout the term of the Contract and the Supplier shall:

- (a) not remove, deface or obscure any identifying mark or packaging on or relating to the Free Issue Materials;
- (b) maintain the Free Issue Materials in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (c) notify the Company immediately if it becomes subject to any of the events listed in clause 8.1(a)-(g); and
- (d) give the Company such information relating to the Free Issue Materials as the Company may require from time to time.

31.2 Title to the Goods shall pass to the Company on delivery. The Company may resell or use the Goods in the ordinary course of its business.

31.3 Risk in the Goods shall pass to the Company on payment of all Charges by the Company.