

1. Interpretation

1.1 The following definitions and rules of interpretation apply in these Conditions.

Appointed Person means the person appointed by the Company to: assess, plan and organise the Services; to select suitable plant and equipment in connection with the Services; to ensure all statutory documentation required in connection with the Services is complete and in order; to provide appropriate instruction and supervision to relevant personnel at the Site to enable the Services to be safely performed; and to have overall responsibility for the performance of the Services on behalf of the Company.

Applicable Laws means all applicable laws, rules regulations, codes of practice or other requirements of regulatory authorities, as amended from time to time including British Standard 7121 - Code of Practice for the Safe Use of Cranes, the Lifting Operations and Lifting Equipment Regulations 1998 and the Provision and Use of Work Equipment Regulations 1998.

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

Client means the person who purchases Services from the Company.

Client Default has the meaning set out in clause 5.4.

Company means Thanet Crane Hire Ltd, a company incorporated in England and Wales with company number 06680391 whose registered office address is 3 Enterprise House, 8 Essex Road, Dartford, Kent, DA1 2AU.

Contract means the contract between the Company and the Client for the supply of Services in accordance with the Contract Details and these terms and conditions.

Contract Equipment means the plant and equipment used by the Company for the performance of the Services.

Contract Goods means the goods which are to be lifted by the Company as part of the Services in accordance with these terms and conditions.

Contract Price means the price payable by the Client to the Company for the Services as detailed in the Contract Details and as may be varied pursuant to clause 3.5.

Lifting Commencement Date means the date that lifting is due to commence as set out in the Specification or otherwise agreed in writing.

Overtime Rate means the overtime rate detailed in the Contract Details.

Services means the supply by the Company of supervised lifting services and planning services in accordance with the Specification.

Site means the site where the Services shall be performed, as detailed in the Contract Details.

Specification means the description or specification of the Services as detailed in the Contract Details or any other specification for the services provided in writing by the Company to the Client.

Total Loss means the Contract Equipment is, in the Company's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of the Contract.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.7 A reference to writing or written includes fax and e-mail.

1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.9 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Basis of contract

2.1 The Contract shall come into effect on the date that it is signed by the Client.

2.2 These terms and conditions and the Contract Details apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Supply of Services

3.1 The Company shall supply the Services to the Client in accordance with the Specification.

3.2 The Company will provide the Client with any available information relevant to the qualifications and competence of the Appointed Person on request.

3.3 The Company shall use all reasonable endeavours to meet any performance dates and times specified by the Client but any such dates and times shall be estimates only and time shall not be of the essence for performance of the Services.

3.4 The Company reserves the right to amend the Specification if necessary to comply with any Applicable Law, or if the amendment will not materially affect the nature or quality of the Services, and the Company shall notify the Client in any such event.

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- 3.5 The Client may request changes to the Specification at any time. Any changes to the Specification must be agreed by the Company in writing and will be subject to payment of an additional fee (which shall be notified to the Client by the Company in writing) and the Company shall adjust the Contract Price accordingly.
- 3.6 The Company warrants to the Client that the Services will be provided using reasonable care and skill and in accordance with Applicable Laws.
- 4. Carriage of Contract Goods**
- 4.1 The Company is not a common carrier and unless otherwise agreed in writing the Company shall not be responsible for transporting the Contract Goods from the Site following the completion of the Services.
- 4.2 If the Company arranges for the Contract Goods to be transported from the Site on the Client's behalf, the Company's total liability for any loss incurred as a result of any such transportation shall be limited to the amount that the Company is able to recover from the person or organisation that transports the Contract Goods on the Client's behalf.
- 5. Client's warranties and obligations**
- 5.1 The Client warrants that it is:
- 5.1.1 the owner of the Contract Goods; or
- 5.1.2 that it is authorised to accept these terms and conditions on the owner's behalf.
- 5.2 The Client shall:
- 5.2.1 ensure that any information it provides in connection with the Specification is complete and accurate;
- 5.2.2 co-operate with the Company in all matters relating to the Services;
- 5.2.3 ensure that its employees, agents and representatives and any other persons present at the Site comply with any instructions given by the Company in connection with the performance of the Services;
- 5.2.4 ensure that the Site is clear and has adequate approaches suitable for the necessary movement of the Contract Equipment;
- 5.2.5 ensure that the Contract Equipment can travel from the public highway across to the Site safely;
- 5.2.6 erect barricades, tapes and/or cones at the Site at the Company's request;
- 5.2.7 notify the Company of any matters relevant to the performance of the Services including the location of anything on or near the Site, above or below ground, which is likely to be damaged by, or cause damage to, the Contract Equipment or which is likely to affect the health and safety of any person present at the Site;
- 5.2.8 provide the Company, its employees, agents, consultants and subcontractors, with access to and use of the Site for the purpose of performing the Services;
- 5.2.9 ensure that the ground or other surface at the Site will be firm, level and in good condition and will provide proper support for the weight of the Contract Equipment (as advised by the Company) either whilst travelling to the Site or whilst on outriggers plus the weight of the Contract Goods. The Company shall supply the outrigger loadings prior to arriving at the Site;
- 5.2.10 provide the Company with such information as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 5.2.11 be responsible for all recovery costs and any damage to the Contract Equipment arising from circumstances where the Contract Equipment gets stuck;
- 5.2.12 be responsible for checking the wind speed to ensure that it is safe to operate the Contract Equipment. In the event that it is not safe and the Client wishes to terminate the Contract, the terms of clause 10 shall apply.
- 5.2.13 unless it is otherwise agreed in writing that the Company will do so, obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- 5.2.14 ensure that the Site and the Client's employees, representatives, agents and subcontractors present at the Site comply with the Applicable Laws.
- 5.3 Should the Client fail to comply with any of its obligations under clause 5.2 above, the Company may revise the Contract Price to reflect any increase in its costs of providing the Services. If the revised Contract Price is not acceptable to the Client, the Company may terminate the Contract with immediate effect by written notice and in the event of such termination the provisions of clause 11 shall apply.
- 5.4 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
- 5.4.1 without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Company's performance of any of its obligations;
- 5.4.2 the Company shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 5;

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5.4.3 the Client shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Client Default; and

5.4.4 the Company shall pay the Overtime Rate to the Company for each day (or part thereof) by which the performance of the Services by the Company is delayed.

6. Charges and payment

6.1 The Client shall pay to the Company the Contract Price.

6.2 In addition to the Contract Price, the Company may charge the Client for the cost of any services provided by third parties and required by the Company for the performance of the Services including any costs payable in connection with road closures and/or bus lane closures.

6.3 The Company may invoice the Client at or at any time after commencement of the Services.

6.4 The Client shall pay each invoice submitted by the Company:

6.4.1 by the end of the month following the month the invoice is dated; and

6.4.2 in Pounds Sterling, in full and in cleared funds to a bank account nominated in writing by the Company.

6.5 The Contract Price is exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Client at the rate and in the manner from time to time prescribed by law.

6.6 If the Client fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 10, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

6.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. Limitation of liability

7.1 Nothing in the Contract shall limit or exclude the Company's liability for:

7.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

7.1.2 fraud or fraudulent misrepresentation; or

7.1.3 any other liability which cannot be limited or excluded by applicable law.

7.2 Subject to clause 7.1, the Company shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for loss of profits, loss of sales or business, loss of production or activity, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill or any indirect or consequential loss.

7.3 The Company shall not be liable for any loss, damage, injury or death caused by:

7.3.1 any defect in the Contract Goods including any design defect and any defect relating to the lifting points on the Contract Goods;

7.3.2 the Client providing inaccurate or incomplete information to the Company;

7.3.3 any instructions given by the Client to the Company in connection with the performance of the Services;

7.3.4 any defect in any equipment provided by the Client to the Company in connection with the Company's performance of the Services; or

7.3.5 the acts and omissions of any person at the Site other than the Company's employees, representatives and agents except to the extent that such person has followed the Company's instructions.

7.4 Subject to clause 7.1, the Company's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to:

7.4.1 for loss or destruction of or damage to the Contract Goods, **£25,000** in aggregate;

7.4.2 for any other loss, damage or injury, **£5,000,000** in aggregate.

7.5 These terms and conditions set forth the full extent of the Company's obligations and liabilities in respect of the performance of the Services. In particular, there are no conditions, warranties or other terms, express or implied, that are binding on the Company except as specifically stated in these terms and conditions. Any condition, warranty or other term concerning the Services which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.

7.6 This clause 7 shall survive termination of the Contract.

8. Insurance

8.1 Unless otherwise agreed in writing, the Company shall maintain sufficient insurance to cover its potential liability under the Contract pursuant to clause 7.

9. Indemnity

9.1 The Client shall indemnify the Company in full against:

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- 9.1.1 any claims against the Company for nuisance or trespass arising under or in connection with the performance of the Services by the Company at the Site;
- 9.1.2 any claims arising from any of the circumstances described under clause 7.3; and
- 9.1.3 without prejudice to clause 7.1, any claims made against the Company by any third party in connection with the performance of the Services at the Site to the extent that the amount of such claim exceeds the limitation on the Company's liability pursuant to clause 7.4.
- 10. Termination**
- 10.1 If the Client terminates the Contract on or at any time after 12pm on the day immediately prior to the Lifting Commencement Date the Client shall pay the Company 100% of the Contract Price, unless otherwise agreed in writing by the Company.
- 10.2 If the Client terminates the Contract at any time before 12pm on the day immediately prior to the Lifting Commencement Date the Hirer shall pay the Company 50% of the Contract Price, unless otherwise agreed in writing by the Company.
- 10.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 10.3.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- 10.3.2 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 3 days after being notified to make such payment;
- 10.3.3 the other party 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;
- 10.3.4 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.3.5 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.4 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services under the Contract or any other contract between the Client and the Company if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 10.3.3 to clause 10.3.5, or the Company reasonably believes that the Client is about to become subject to any of them.
- 10.5 If a Total Loss occurs in relation to any of the Contract Equipment the Company shall use reasonable endeavours to provide replacement equipment or if no such replacement is readily available to the Company, the Company may terminate the Contract without liability.
- 11. Consequences of termination**
- 11.1 On termination of the Contract for any reason the Company shall cease performance of the Service and remove the Contract Equipment from the Site and the Client shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest accrued pursuant to clause 6.8 and, in respect of Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Client immediately on receipt.
- 11.2 Upon termination of the Contract by the Company pursuant to clause 10.3.1 or 10.3.2 or any other repudiation, cancellation or termination of the Contract by the Client which is accepted by the Company, without prejudice to any other rights or remedies of the Company, the Client shall pay to the Company on demand a sum equal to the whole of the Contract Price that would (but for the termination) have been payable if the Service had been completed, less the amount of the Contract Price that has been paid up to the date of such demand.
- 11.3 The sum payable pursuant to clause 11.2 shall be agreed compensation for the Company's loss.
- 11.4 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 11.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 12. Force Majeure**
- The Company shall not be in breach of the Contract nor liable for any financial loss or delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control including road traffic, bad weather and unsuitable ground conditions at or inability to access and move throughout the Site. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 2 weeks, the Company may terminate the Contract by giving written notice to the Client.

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13. Assignment and other dealings

- 13.1 The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 13.2 The Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

14. Entire agreement

- 14.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- 14.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 14.4 Nothing in this clause shall limit or exclude any liability for fraud.

15. Variation.

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16. No partnership or agency

- 16.1 Nothing in these terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 16.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

17. Third party rights

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

18. Notices

- 18.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- 18.2 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 18.3 sent by fax or email to its main fax number or email address.
- 18.4 Any notice shall be deemed to have been received:
- 18.5 if delivered by hand, on signature of a delivery receipt;
- 18.6 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 18.7 if sent by fax or email, at 9.00 am on the next Business Day after transmission.

19. Waiver

No failure or delay by a party to exercise any right or remedy provided under these terms and conditions 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.

20. Rights and remedies

Except as expressly provided in these terms and conditions, the rights and remedies provided pursuant to these terms and conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

21. Severance

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.

22. Governing law

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

23. Jurisdiction.

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