

1. Interpretation

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

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.

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 Hirer for the hire of the Equipment in accordance with the Contract Details and these terms and conditions.

Daily Rate means the daily rate set out in the Contract Details.

Delivery means the completion of delivery of the Equipment to the Hirer at the Site.

End Date means the date and time that the Hirer is due to return the Equipment to the Company as detailed in the Contract Details or any other date and time agreed in writing pursuant to clause 4.3.

Equipment means the crane type detailed in the Contract Details or similar.

Hirer means the person who hires the Equipment from the Company as detailed in the Contract Details.

Hire Payment means the total payment due to the Company for the hire of the Equipment during the Hire Period as detailed in the Contract Details and as may amended pursuant to clause 4.2, 4.3 or 6.3.

Hire Period means the period of hire described in clause 4.1.

Operator means a competent and appropriately trained employee or agent of the Company who will Deliver the Equipment to the Hirer and operate the Equipment at the Site during the Hire Period in accordance with the Hirer's reasonable instructions.

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

Start Date means the date and time that the Hirer is due to take Delivery of the Equipment as detailed in the Contract Details.

Site means the site where the Equipment shall be used by the Hirer as detailed in the Contract Details.

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

Working Day means 8am to 4.30pm, Monday to Sunday unless otherwise agreed in writing or detailed in the Contract Details.

Working Hours means 8 or 10 hours (as detailed in the Contract Details) of each Working Day during the Hire Period.

VAT means value added tax chargeable under the Value Added Tax Act 1994.

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

2.2 The Contract shall come into effect on the date that it is signed by the Hirer.

3. Equipment hire

The Company shall hire the Equipment (with the Operator) to the Hirer for use at the Site subject to these terms and conditions.

4. Hire Period

4.1 Subject to clause 4.3, the Hire Period shall start on the Start Date and shall continue until the End Date. The Hire Period includes the Working Hours only.

4.2 If during a Working Day the Operator and the Equipment is required on Site for a period exceeding the Working Hours, the Company will use reasonable efforts to ensure that the Operator is available during such excess Working Hours and the Overtime Rate shall be payable by the Hirer for each additional hour (or part thereof) that the Operator is on Site. The Operator will keep time sheets which the Hirer shall sign on request.

4.3 The Hire Period may be extended by one or more Working Days by written agreement between the parties. The Daily Rate shall be payable for each Working Day that the Hire Period is extended pursuant to this clause 4.3 and the Hire Payment shall be adjusted accordingly.

5. Operation of the Equipment

5.1 The Operator shall be:

5.1.1 the only person permitted to operate the Equipment during the Hire Period; and

5.1.2 under the direction and control of the Hirer at all times whilst at the Site.

5.2 The Hirer shall be fully responsible for and shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company arising out of or in connection with the operation of the Equipment at the Site.

5.3 The Hirer shall ensure that the Operator takes a half hour break after a maximum of 4 hours work each Working Day during the Hire Period.

6. Breakdown of the Equipment

6.1 Subject to clause 6.5, the Hirer shall:

6.1.1 notify the Company immediately if the Equipment breaks down during the Hire Period;

6.1.2 not repair, modify or alter the Equipment without the prior written consent of the Company; and

6.1.3 on request allow the Company access to the Site at reasonable times during the Working Day to inspect the Equipment and undertake any necessary repairs or replacements.

6.2 The Hirer shall be fully responsible for and shall indemnify the Company for all costs and expenses incurred in repairing or replacing the Equipment to the extent that the need for any such repair or replacement is caused by the Hirer's negligence, breach of Contract or misuse of the Equipment or any acts or omissions of any third party present at the Site.

6.3 To the extent that any breakdown of the Equipment is not due to the Hirer's negligence, breach of Contract or misuse of the Equipment or the acts or omissions of any third party present at the Site then, subject to clause 15, the Company shall make a pro rata adjustment to the Hire Payment due to it to reflect any period of time during the Hire Period in which the Equipment was not available for use due to a breakdown. This shall be the Hirer's exclusive remedy in these circumstances and the Company shall have no other liability to the Hirer for any breakdown of the Equipment in these circumstances.

6.4 In the event that the Company is unable to repair the Equipment following a breakdown during the Hire Period, the Company may at its option:

6.4.1 substitute the Equipment with similar equipment; or

6.4.2 terminate the Contract with immediate effect on written notice.

6.5 During the Hire Period the Hirer shall be fully responsible at its own cost for the repair or replacement (as appropriate) of the Equipment's tyres as a result of punctures. The Hire Payment shall not be adjusted to reflect any period of time during the Hire Period in which the Equipment cannot be used due to a tyre puncture.

7. Hire Payment

7.1 The Company may invoice the Hirer for the Hire Payment on or at any time after Delivery.

7.2 The Hire Payment will not be adjusted to reflect any period during the Hire Period during which the Equipment is not in use due to circumstances beyond the Company's control (including for any period during the Hire Period which the Hirer decides not to put the Equipment to use).

7.3 The Hirer shall pay the Hire Payment to the Company in full and cleared funds by the end of the month following the month the invoice is dated. The Hire Payment shall be paid in Pounds Sterling and shall be made to the bank account nominated in writing by the Company. Time for payment shall be of the essence.

7.4 The Hire Payment is exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the manner from time to time prescribed by law.

7.5 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).

7.6 If the Hirer 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 13, the Hirer 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 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%.

8. Delivery

8.1 Delivery of the Equipment shall be made by the Company to the Site each Working Day during the Hire Period.

8.2 The Company shall use all reasonable endeavours to effect Delivery on the dates and at the times agreed between the parties but time for delivery shall not be of the essence.

8.3 The Hirer shall procure that a duly authorised representative of the Hirer shall be present at each Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Hirer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by the Company, the Hirer's duly authorised representative shall sign a receipt confirming such acceptance.

8.4 To facilitate Delivery the Hirer shall provide all requisite access to the Site and ensure that the Site is in a suitable working condition.

9. Title, risk and insurance

- 9.1 The Equipment shall at all times remain the property of the Company, and the Hirer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to these terms and conditions).
- 9.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on Delivery. The Equipment shall remain at the sole risk of the Hirer whilst it is at the Site during the Hire Period and any further term during which the Equipment is in the possession, custody or control of the Hirer (**Risk Period**) until such time as the Equipment is delivered to the Company. During the Hire Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain the following insurances:
 - 9.2.1 insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing;
 - 9.2.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Company may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
 - 9.2.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Company may from time to time consider reasonably necessary and advise to the Hirer.
- 9.3 All insurance policies shall upon the Company's request name the Company as a loss payee in relation to any claim relating to the Equipment. The Hirer shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 9.4 The Hirer shall give immediate written notice to the Company in the event of any loss, accident or damage to the Equipment occurring during the Risk Period.
- 9.5 If the Hirer fails to effect or maintain any of the insurances required under the Contract, the Company shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Hirer.
- 9.6 The Hirer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Company and proof of premium payment to the Company to confirm the insurance arrangements.

10. Hirer's responsibilities

- 10.1 The Hirer warrants that:
 - 10.1.1 it has planned the lifting for which the Equipment is required in accordance with all Applicable Laws; and
 - 10.1.2 there is a method statement for the Site.
- 10.2 The Hirer shall during the Hire Period:
 - 10.2.1 ensure that the Equipment is kept in a suitable environment, and is only operated by the Operator;

- 10.2.2 ensure that the Site is clear and has adequate approaches suitable for the necessary movement of the Equipment;
- 10.2.3 ensure that the Equipment can travel from the public highway across to the Site safely;
- 10.2.4 supervise the operation of the Equipment by the Operator using reasonable care and skill and in accordance with Applicable Laws and shall ensure that any person who supervises the Operator will be competent and appropriately trained. If at any time the Company considers, acting reasonably, that any person supervising the Operator is not competent or appropriately trained, the Company may suspend the performance of its obligations under the Contract until such time as it is satisfied that the person supervising the Operator is or is replaced by another supervisory person who is competent and appropriately trained;
- 10.2.5 not refuel the Equipment unless otherwise agreed with the Company and specified in the Contract Details. Where it has been agreed that the Hirer will refuel the Equipment, the Hirer must fuel at its own cost and expense using fuel of the type and quality specified by the Company in writing;
- 10.2.6 take such steps (including compliance with all safety and usage instructions provided by the Company) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being used;
- 10.2.7 make no alteration to the Equipment;
- 10.2.8 keep the Company fully informed of all material matters relating to the Equipment;
- 10.2.9 keep the Equipment at all times at the Site and not move or attempt to move any part of the Equipment to any other location without the Company's prior written consent;
- 10.2.10 permit the Company or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
- 10.2.11 not, without the prior written consent of the Company, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 10.2.12 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Company in the Equipment;
- 10.2.13 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Hirer shall notify the Company and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Company on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 10.2.14 not use the Equipment for any unlawful purpose;
- 10.2.15 ensure that at all times the Equipment remains identifiable as being the Company's property;
- 10.2.16 permit the Operator to deliver up the Equipment to the Company at the end of each Working Day during the Hire

Period and at the end of the Hire Period or on earlier termination of the Contract;

10.2.17 not do or permit to be done anything which could invalidate the insurances referred to in clause 9;

10.2.18 be responsible for checking the wind speed to ensure that it is safe to operate the Equipment. In the event that it is not safe and the Hirer wishes to terminate the Contract, the terms of clause 13 shall apply; and

10.2.19 be responsible for all recovery costs and any damage to the Equipment arising from circumstances where the Equipment gets stuck.

10.3 The Hirer acknowledges that the Company shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Hirer or its officers, employees, agents, servants and contractors, and the Hirer undertakes to indemnify the Company on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Hirer to comply with these terms and conditions;

11. Warranties

11.1 The Company warrants that:

11.1.1 the Equipment shall substantially conform to its specification (as made available by the Company), be of satisfactory quality and fit for any purpose held out by the Company in writing; and

11.1.2 the Operator has been appropriately trained to operate the Equipment.

11.2 The Hirer warrants that:

11.2.1 the condition of the Site is suitable for use of the Equipment; and

11.2.2 the ground at the Site is firm, level, in good condition and will adequately support the Equipment and the loads that it will carry.

12. Liability

12.1 Without prejudice to clause 12.2, the Company's maximum aggregate liability for breach of the Contract (including any liability for the acts or omissions of the Operator or the Company's employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the Hire Payment received by it.

12.2 Nothing in these terms and conditions shall exclude or in any way limit:

12.2.1 either party's liability for death or personal injury caused by its own negligence;

12.2.2 either party's liability for fraud or fraudulent misrepresentation; or

12.2.3 any other liability which cannot be excluded by law.

12.3 These terms and conditions set forth the full extent of the Company's obligations and liabilities in respect of the Equipment and its hiring to the Hirer. In particular, there are

no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Company except as specifically stated in these terms and conditions. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.

12.4 Without prejudice to clause 12.2, the Company shall in no circumstances be liable under the Contract for any loss of profit, loss of revenue, loss of business or indirect consequential loss or damage, even if such loss was foreseeable.

13. Termination

13.1 Subject to clause 13.2 and 13.3, the Hirer may terminate the Contract at any time prior to the Start Date.

13.2 If the Hirer terminates the Contract on or at any time after 12pm on the day immediately prior to the Start Date the Hirer shall pay the Company 100% of the Hire Payment, unless otherwise agreed in writing by the Company.

13.3 If the Hirer terminates the Contract at any time before 12pm on the day immediately prior to the Start Date the Hirer shall pay the Company 50% of the Hire Payment, unless otherwise agreed in writing by the Company.

13.4 Without affecting any other right or remedy available to it, the Company may terminate the Contract with immediate effect by giving notice to the Hirer if:

13.4.1 the Hirer 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;

13.4.2 the Hirer commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within 7 days after being notified to do so;

13.4.3 the Hirer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

13.4.4 the Hirer 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;

13.4.5 the Hirer suspends or ceases, or threatens to suspend or cease, payment of its debts or is unable to pay its debts as they fall due;

13.4.6 the Hirer's financial position deteriorates to such an extent that in the Company's opinion the Hirer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;

13.4.7 the Hirer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.5 If a Total Loss occurs in relation to the 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.

14. Consequences of termination

- 14.1 Upon termination of the Contract, however caused:
 - 14.1.1 the Company's consent to the Hirer's possession of the Equipment shall terminate and the Company may, by its authorised representatives, without notice and, where termination is under clause 13.4, at the Hirer's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; and
 - 14.1.2 without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to the Company on demand:
 - 14.1.3 all Hire Payment and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 7.6; and
 - 14.1.4 any costs and expenses incurred by the Company in recovering the Equipment and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, and legal costs).
- 14.2 Subject to clause 13.3, upon termination of the Contract pursuant to clause 13 or any other repudiation of the Contract by the Hirer which is accepted by the Company, without prejudice to any other rights or remedies of the Company, the Hirer shall pay to the Company on demand a sum equal to the whole of the Hire Payment that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the end of the Hire Period, less the amount of the Hire Payment that has been paid up to the date of such demand.
- 14.3 The sum payable pursuant to clause 14.2 shall be agreed compensation for the Company's loss.
- 14.4 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15. 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 Hirer.

16. Assignment and other dealings

The Contract is personal to the parties and neither party shall 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.

17. Entire agreement

- 17.1 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.
- 17.2 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 these terms and conditions.
- 17.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms and conditions.
- 17.4 Nothing in this clause shall limit or exclude any liability for fraud.

18. Variation

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

19. No partnership or agency

- 19.1 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.
- 19.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

20. Third party rights

- 20.1 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.

21. Notices

- 21.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - 21.1.1 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
 - 21.1.2 sent by fax or email to its main fax number or email address.
- 21.2 Any notice shall be deemed to have been received:
 - 21.2.1 if delivered by hand, on signature of a delivery receipt;
 - 21.2.2 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; and
 - 21.2.3 if sent by fax or email, at 9.00 am on the next Business Day after transmission.

21.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22. 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.

23. 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.

24. Severance

If any provision or part-provision of these terms and conditions 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 these terms and conditions.

25. 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.

26. 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 the Contract or its subject matter or formation (including non-contractual disputes or claims).