

# Condition of Sale – Terms and Conditions for the Sale, Hire and Supply of Lifting Equipment and Ancillary Services Thereto Including Inspection and Maintenance

## 1. Interpretation

1.1 In these Conditions: 'Contract' means any contract for the hire or sale of Lifting Equipment and/or Lifting Services or any combination thereof incorporating these Terms and Conditions. 'Company' means MGF (Trench Construction Systems) Limited (company reg no. 1546198) and includes its servants, agents, successors and assigns and the Company shall be entitled to assign or subcontract all or any of its rights and obligations hereunder. 'Confidential Information' means any information (whether written, oral, in electronic form or in any other media) that is disclosed by or on behalf of a party to or otherwise accessed by the other party or its employees, agents or sub-contractors in connection with the Contract and/or the provision of the Lifting Services and that relates (in whole or in part) to the disclosing party or its business, including (without limitation) all tangible and intangible information designated as confidential by any party in writing and all other information which may, by its nature, be reasonably regarded as confidential including, but not limited to, know-how and trade secrets, procedures, network configuration and topology, drawings/diagrams, passwords and details of the parties methodologies. 'Customer' means the company, firm, person, corporation or public authority whose order for Lifting Services is accepted by the Company and includes their successors and/or personal representatives. If two or more persons constitute the Customer, eg a partnership their liability hereunder shall be joint and several and any notice, agreement or otherwise given to or by any one or more shall bind all of them. 'Group Company' shall include the Company, its subsidiaries or holding companies from time to time and any subsidiary of any holding Company from time to time and any reference herein to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006. For the purposes of this definition 'Group Company' shall also include any associated company of the Company which shall be under the significant control of the same person or group of persons as 'significant control' is defined in sections 1-6 of Schedule 1A of the Companies Act 2006 and shall include but shall not be limited to MGF Design Services Ltd (company reg no. 5359870). 'Input Information' shall be as defined in Condition 6.1 herein 'Intellectual Property' means all intellectual and industrial property rights of any kind whatsoever including but not so as to be limited to patents, supplementary protection certificates, registered trademarks, registered designs, models, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, rights in formulae, methods, plans, inventions, discoveries, improvements, processes, performance methodologies, techniques, specifications, technical information, tests, results, reports, component lists, manuals and instructions, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions. 'Lifting Equipment' means all classes of lifting appliances or equipment used for lifting or lowering loads including any attachment used for the purpose of anchoring, fixing or supporting such loads or equipment and any other ancillary items, accessories or equipment therefor. 'Lifting Services' means the inspection, testing, examination, maintenance, repair and other associated services supplied by the Company relative to Lifting Equipment and as more particularly specified in the Quotation. 'Quotation' means the Company's quotation, specification, scope of works or other such proposal for Lifting Equipment and/or Lifting Services to which these Terms and Conditions apply or are appended. 'Site' means the location at which the Lifting Services are to be provided as set out in the Quotation. 'Standard Charges' means the Company's standard charges for the Lifting Services (including but not so as to be limited to hourly rates (incorporating labour, administration, travel, waiting and call-out charges) for the provision of the Lifting Services) as listed in the Company's current price lists and/or annual approved account rates (as may be amended from time to time), or as set down in the Quotation.

1.2 Words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and neuter and vice versa.

1.3 Any reference in these terms and conditions to any statute or statutory provision shall be construed as a reference to that statute or statutory provision as amended, reenacted or extended at the relevant time and shall include any subordinate legislation made from time to time under that statutory provision.

1.4 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.

1.5 A reference to 'writing' or 'written' includes faxes and e-mails.

1.6 The headings in the Conditions set out below are for convenience only and shall not affect their interpretation.

## 2. Confirmation by the Customer

The Customer confirms that:

2.1 Any contract for the sale or hire of Lifting Equipment entered into by him has been made in the course of a business and the Lifting Equipment has been selected relying on his own skill and judgment.

2.2 Subject to any variation under Condition 14.5 the Contract will be governed by the Terms and Conditions set out below to the exclusion of all other terms and conditions (including any terms and conditions which the Customer purports to apply under any purchase order, confirmation of order or similar document).

2.3 Each order for the supply of Lifting Equipment and/or Lifting Services by the Customer shall be deemed to be an offer by the Customer to purchase or hire the Lifting Equipment and/or Lifting Services subject to these Terms and Conditions.

2.4 No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, specification or similar document will form part of the Contract simply as a result of a reference to such document being referred to in the Contract.

2.5 Any Quotation is given on the basis that no Contract will come into existence until either the Company despatches an acknowledgment of order to the Customer or the Company's employee(s)/personnel are despatched to Site. Any Quotation is valid only for a period of 30 days, provided that the Company has not previously withdrawn or amended it.

2.6 In instances where Lifting Services are supplied ancillary to the sale of Lifting Equipment by the Company the Customer accepts that the Company's Conditions of Sale either for Structural Support Solutions or Excavation Safety Solutions (as appropriate, and as can be accessed at [www.mgf.co.uk](http://www.mgf.co.uk)) shall also apply save that any reference to 'Buyer' within those Conditions of Sale shall be deemed a reference to the Customer herein and any reference to 'Goods' shall include Lifting Equipment. In the event of any discrepancy between the Company's Conditions of Sale and these Terms and Conditions then these Terms and Conditions shall prevail. Operating Instructions may also apply to any Lifting Equipment manufactured by the Company and supplied with the Lifting Services (in accordance with their terms).

2.7 In instances where Lifting Services are supplied ancillary to the hire of Lifting Equipment by the Company the Customer accepts that the Company's Conditions of Hire either for Structural Support Solutions or Excavation Safety Solutions (as appropriate, and as can be accessed at [www.mgf.co.uk](http://www.mgf.co.uk)) shall also apply save that any reference to 'the Lessor' within those Conditions of Hire shall be deemed a reference to the Company herein, any reference to 'the Hirer' shall be deemed a reference to the Customer herein and any reference to 'Equipment' shall include 'Lifting Equipment'. In the event of any discrepancy between the Company's Conditions of Hire and these Terms and Conditions then these Terms and Conditions shall prevail.

2.8 In instances where Lifting Services are supplied/provided in respect of Lifting Equipment not supplied by way of sale or hire from the Company, the Customer accepts that the Terms and Conditions set out herein and further below shall apply to the exclusion of all others.

## PROVISIONS APPLICABLE TO THE LIFTING SERVICES

### 3. Supply of the Lifting Services

3.1 The Lifting Services shall be provided to the Customer subject to these Terms and Conditions which shall apply to the Contract to the exclusion of any other terms or conditions that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any changes or additions to the Lifting Services must be expressly agreed in writing by the Company and the Customer.

3.2 Acceptance of the Lifting Services or allowing the Company's employee(s)/personnel access to Site shall be deemed to be conclusive evidence of the Customer's acceptance of these Terms and Conditions to the exclusion of all others.

3.3 The Lifting Services shall be provided in accordance with the Quotation and otherwise in accordance with the Company's current brochure, annual accounts rates, price lists or other published literature relating to the Lifting Services as may be amended from time to time, subject to these Terms and Conditions.

3.4 The Company may correct any typographical or other errors or omissions in any Quotation, brochure, accounts rates, promotional literature, or other document relating to the provision of the Lifting Services without any liability to the Customer provided that such correction is brought to the Customer's attention within a reasonable timeframe and prior to the supply of the Lifting Services. In the event of dispute, the Company reserves the right to refuse the Customer's order and refund any payment made for Lifting Equipment or Lifting Services yet to be supplied.

3.5 The Company may at any time without notifying the Customer make any changes to the Lifting Services which are necessary to comply with any safety or other statutory requirements, or which do not materially affect the nature or quality of the Lifting Services.

3.6 Where results, reports, presentations and test certificates are required they shall be produced by the Company and supplied or made available to the Customer as soon as reasonably practical though time shall not be of the essence for such supply. Access will be available for a time period of 12 months following the first production of the document.

3.7 The Company shall, where any of its employees are present on the Customer's premises or Site, use all reasonable endeavours to ensure that such employees comply with such reasonable Site rules and procedures as are notified to the Company from time to time.

3.8 The Company will use reasonable endeavours to ensure that, where applicable, the Lifting Services will be available during the normal business hours of 09:00-17:00 Monday to Friday, excluding United Kingdom statutory Bank Holidays, without interruptions.

### 4. Warranties, Liability and Indemnity

4.1 The Company warrants that the Lifting Services will be provided using reasonable care and skill in a professional manner and as far as reasonably possible, in accordance with the intervals and within the times referred to in the Quotation though time shall not be of the essence for their supply.

4.2 Subject as expressly provided in these Terms and Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. (The statutory rights of a person dealing as a consumer as defined by the Consumer Rights Act 2015 are not affected by these Terms and Conditions - it should be noted that the Customer is deemed to be acting in the course of a business unless expressly stated and agreed otherwise).

4.3 Any inspection, testing, examination, maintenance or repair services provided as part of the Lifting Services will be limited to the agreed scope of the inspection, testing, examination, maintenance or repair as set out in the Quotation and/or as may be recorded/referenced in any examination report. The Company shall have no responsibility to maintain, repair, examine, test or inspect any items which are outside the agreed scope.

4.4 Any inspection or examination services will not cover the examination or inspection of anything the Lifting Equipment is affixed to, unless otherwise stated in any Quotation.

4.5 The Customer is responsible for the care, control and custody of the Lifting Equipment at all times. For the avoidance of doubt at no time shall any Lifting Equipment supplied by way of hire from the Company become the property of the Customer.

4.6 The Company shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Input Information or instructions provided by the Customer in relation to the Lifting Equipment which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form howsoever arising, or resulting from their late arrival or non-arrival, or any other fault of the Customer.

4.7 Nothing in these terms shall be taken as excluding the Company's liability for death or personal injury arising as a result of its negligence. In no circumstances shall the Company be liable to the Customer or any third party by reason of any representation (unless fraudulent). Save as set out herein all warranties, conditions and other terms implied by statute are, to the fullest extent permitted by law, excluded from the Contract. The Company shall not in any circumstances be liable whether in tort (including without limitation for negligence or breach of statutory duty) howsoever arising, contract, misrepresentation (whether innocent or negligent) or otherwise for;

4.7.1 any increased costs or expenses;

4.7.2 any loss of profit (whether of the Customer or any other party);

4.7.3 any economic loss including loss of business, contracts, opportunity, reputation revenues or savings;

4.7.4 any anticipated economic loss including loss of business, contracts, opportunity, revenues, reputation or savings;

4.7.5 losses, claims, liabilities, expenses, costs or damages which were not reasonably foreseeable by the parties or either of them at the date of this Contract; or

4.7.6 any special, indirect or consequential damage of any nature whatsoever;

4.7.7 any liability of the Customer to any third parties (whether direct or indirect);

4.7.8 any loss or corruption of data or information.

4.8 Without prejudice to any provision set down in this condition 4 the Company's liability to the Customer with respect to any claims, losses or damages arising from or in connection with the Contract (whether in contract, tort, breach of statutory duty or otherwise) is limited to and shall not exceed 100% of the Contract price or weekly hire charge in the case of hired equipment.

4.9 Under no circumstances will the Company be liable for:

4.9.1 loss or damage sustained to Lifting Equipment or surrounding property, machinery or equipment as a result of any item of Lifting Equipment not being able to withstand a test applied as part of the Lifting Services;

4.9.2 failure with regard to any legal/regulatory obligation on the part of the Customer to have its property, machinery, or equipment (including Lifting Equipment) inspected and/or subjected to periodical examination. Should any inspection or examination performed as part of the Lifting Services reveal defects affecting the safety of any machinery or equipment (including Lifting Equipment) it will be the responsibility of the Customer to take appropriate action which may include removing the relevant item(s) from service and notifying its insurers.

4.9.3 any alleged failure concerning an inspection/examination of Lifting Equipment which is not deemed to comply with any legal or regulatory requirement unless the Quotation or examination report includes particular reference that the inspection will be conducted in accordance with such regulations.

4.9.4 any failure on the part of the Customer to follow the Company's instructions (whether oral or written) in relation to any Lifting Equipment, including but not so as to be limited to operating instructions;

4.9.5 any verification/confirmation of the fitness for purpose of any design features of the Lifting Equipment unless otherwise expressly agreed in writing between the parties;

4.9.6 any failure on the part of the Customer in the assembly, reassembly, repair, inspection, maintenance, storage or servicing of any equipment including Lifting Equipment either between prescribed inspection/examination intervals or otherwise;

4.9.7 abnormal use of the Lifting Equipment, including in unusual or dangerous conditions or otherwise in a manner for which the Lifting Equipment is not adapted, designed or intended;

4.9.8 fair wear and tear of the Lifting Equipment;

4.9.9 any failure to the Lifting Equipment caused by it being out of use for long periods of time; or due to a change in use;

4.9.10 any failure to the Lifting Equipment caused by changes made to it by the Customer affecting its integrity;

4.9.11 any failure on the part of the Customer to carry out appropriate risk assessments;

4.9.12 any failure to the Lifting Equipment caused by it being installed in a new location or reconfigured;

4.9.13 any damage or deterioration howsoever arising to the Lifting Equipment unless caused by the negligence or wilful act of the Company, its employee(s)/personnel;

4.10 The Company will make good at its discretion (by reimbursement of the Contract charges or by re-performance of the Lifting Services) if the Lifting Services are performed defectively provided the Customer notifies any such alleged failure to the Company in writing providing full details of the nature of the alleged failure as soon as reasonably possible and in any event within one business day of discovery of any alleged failure which was not apparent on reasonable inspection. Such making good also being subject to the proviso that any alleged failure must in any event be notified within 3 months after the date on which the Lifting Services were performed and also that until such time as the Company has carried out its own inspection so as to determine whether any failure has in fact occurred no one interferes with or moves / removes anything which might be relevant to an assessment of what has occurred and any alleged defect in the services. For the avoidance of doubt any failure on the Customer's part to comply with the provisos set down herein and as in condition 4.9 above (including 4.9.1-4.9.13) shall render this warranty null and void.

4.11 Any Lifting Equipment manufactured by the Company will be guaranteed by a 6 month warranty in accordance with any supplied warranty terms including but not so as to be limited to the notification provisions of any warranty.

4.12 The Customer shall indemnify and shall keep the Company fully and effectively indemnified from and against:

4.12.1 any proceeding, action or claim of any nature whatsoever made or brought against the Company and all loss, penalties, damages, costs and expenses suffered or incurred by the Company as a result of any third party claim including but not limited to, a claim by the Company's employee(s)/personnel or the Customer's employee(s)/personnel arising out of the Customer's negligence or that of its employees, agents or sub-contractors; the Customer's failure to comply with its obligations under the Contract including these Terms and Conditions and/or its failure to ensure that its Lifting Equipment is examined within any prescribed inspection interval; and

4.12.2 any proceeding, action or claim of any nature whatsoever made or brought against the Company and all loss, penalties, damages, costs and expenses arising from or connected with the Company's work on the Site, in preparing the Site or performing the Contract, including claims of nuisance and claims of trespass to persons, property, land or air space.

## **5. Delay/Force Majeure**

5.1 The Company shall not be liable to the Customer or be deemed to be in breach of Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Lifting Services and/or Lifting Equipment, if the delay or failure was due to any cause beyond the Company's reasonable control and such failure or delay shall entitle either party to terminate the Contract if it persists for more than three months but the Customer shall remain liable to pay for any Lifting Equipment supplied by way of hire or sale and/or any provision of the Lifting Services prior to the date of such cancellation. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

5.1.1 Act of God, explosion, flood, tempest, fire or accident;

5.1.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition;

5.1.3 treaties, directives, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority or other body or competent authority;

5.1.4 import or export regulations or embargoes;

5.1.5 strikes, lock-outs, or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

5.1.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

5.1.7 power failure or breakdown in machinery;

5.1.8 a lack of availability of the backbone internet infrastructure in the United Kingdom or elsewhere and the Company's need to perform maintenance of its hardware and/or software, which may interrupt the provision of the Lifting Services.

## **6. Obligations of the Customer**

6.1 The Customer shall at its own expense supply the Company with all necessary documents and/or other materials and all necessary data or other information that may be specified or required by the Company ("Input Information") relating to the Lifting Services and/or Lifting Equipment, within sufficient time to enable the Company to provide the Lifting Services in accordance with the Quotation. The Customer shall ensure the accuracy of all such Input Information. Without prejudice to the generality of the foregoing such Input Information shall include:

6.1.1 details/documentation/reports/certificates concerning all previous inspections/examinations pertaining to the Lifting Equipment;

6.1.2 details/documentation/reports/maintenance logs pertaining to the ongoing maintenance or servicing of the Lifting Equipment since the date of any previous inspection/examination; MGF-CR-F001-r3-07/21-JW 15

6.1.3 details concerning any modification/repair to the Lifting Equipment; any misuse or incident involving or affecting the Lifting Equipment and/or any change in location of the Lifting Equipment since the date of any previous inspection/examination;

6.1.4 any manufacturer's information, operating instructions or recommendations;

6.1.5 where appropriate all necessary statutory or regulatory licences, permits and/or consents;

6.1.6 details concerning how and where the Lifting Equipment is intended to be used including, but not so as to be limited to proposed changes in its environment;

6.1.7 appropriate Customer contact details for the provision of any documents under condition 8;

6.1.8 where appropriate relevant contact details for any third party owner of the Lifting Equipment.

6.2 The Customer shall comply in all respects with all applicable laws and regulations (whether of the United Kingdom or elsewhere) at the Site. Without prejudice to the generality of the foregoing, the Customer shall provide a safe environment in which the Company's employee(s)/personnel may provide the Lifting Services and shall establish procedures under and comply with all requirements from time to time in force under the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1992, the Workplaces (Health, Safety and Welfare) Regulations 1992, the Management of Health and Safety Regulations 1999 and the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 and all such similar statutory provisions. The Company must be notified immediately if the Company's employee(s)/personnel are involved in any accident resulting in injury to any person or damage to property while engaged on Site.

6.3 In connection with 6.1 and 6.2 above and in the event the Company determines there are unacceptable risks to the health and safety of its personnel on Site or requested Input Information is not supplied within sufficient time the Company may refuse to carry out the Lifting Services. The Company's personnel must be notified of any Site-specific hazards together with any measures the Customer proposes to control the risks posed by those hazards prior to any performance of the Lifting Services. If as a result of a Site-specific hazard or a failure to supply requested Input Information the Company refuses to carry out Lifting Services, the Contract charges as set out on the Quotation will still be payable.

6.4 The Customer shall cool, clean, dismantle, open out or otherwise prepare all Lifting Equipment to the condition agreed with the Company before the Lifting Services are due.

6.5 The Customer shall provide safe access to the Lifting Equipment (including the provision of work platforms, scaffolds, ladders, lighting, gas free certificates, preventative barriers, test weights etc.); provide any Customer support staff needed to perform/assist with the Lifting Services and/or provide any help, information or documentation requested by the Company's personnel while performing the Lifting Services.

6.6 The Customer shall be responsible for the reassembly of the Lifting Equipment following completion of the Lifting Services unless otherwise agreed in the Quotation.

6.7 The Customer shall afford the Company's employee(s)/personnel such access to the Site as may be required to provide the Lifting Services and shall advise the Company and its personnel of any rules and regulations which are then in force at the Site (including without limitation, any Site operating code or policies from time to time in force) and shall secure and otherwise keep safe all and any property of the Company or its personnel.

6.8 The Customer shall before any testing, inspection or examination of the Lifting Equipment inform the Company's employee(s)/personnel of any matter, including any misuse or incident involving or affecting the Lifting Equipment.

6.9 The Customer shall provide the Customer's equipment free of charge at such times and locations as may reasonably be required by the Company or its personnel and will also be responsible (at no cost to the Company) for the provision of any non-standard personal protective equipment that it may require the Company's personnel to wear.

6.10 The Customer shall pay the Contract charges by the due date for payment. Failure to do so shall entitle the Company to suspend or terminate the supply of the Lifting Services without further notice and without liability of any kind howsoever arising.

6.11 The Customer shall not, without the prior written consent of the Company, at anytime from the date of the Contract to the expiry of 6 months after the completion of the Contract, solicit or entice away from the Company or employ or attempt to employ any person who is, or has been, engaged as an employee of the Company.

6.12 The Customer shall maintain adequate insurance with reputable insurers for all of the Customer's responsibilities, obligations and potential liability as set down in these Terms and Conditions. The Company shall be entitled to request production of the Customer's insurance policies together with the latest premium receipts and in default of the same being produced shall be entitled to cancel the Contract or suspend the provision of the services to be performed thereunder without liability.

## **7. Intellectual Property Rights and Confidential Information**

7.1 For the avoidance of doubt all Intellectual Property rights in documents and materials owned and used by the Company to carry out the Lifting Services and/or in any registered or unregistered trademark, service mark, logo, design, database content or format, copyrighted material, software or data owned by the Company or any relevant third party owners shall remain vested in the Company or the relevant third party and cannot be used except with prior permission. Copyright in any results reports, portals, presentations and test certificates shall also remain with the Company, but (subject to the Customer making payment in full) the Customer is hereby granted a nonexclusive, non-transferable licence to copy and use the results for its own internal purposes only.

7.2 Any Intellectual Property rights which come into existence as a result of the performance by the Company of the Lifting Services will be the property of the Company and the Company may use data gathered in connection with the Lifting Services for statistical use.

7.3 Each party will be entitled to disclose Confidential Information to its employees, agents, sub-contractors and personnel strictly for the purpose of carrying out any obligation contained in the Contract provided that the same are under a duty of confidentiality no less onerous than as set out in these Terms and Conditions. Save as provided in the preceding sentence, neither party will use, disclose or permit its employees, agents and sub-contractors to use or disclose any Confidential Information entrusted to it by the other party provided always that this restriction shall not apply to information already in the receiving party's possession, or which comes into the public domain other than by breach of this obligation by the receiving party or its employees, agents and sub-contractors, or which is disclosed to the receiving party by a third party lawfully entitled to disclose the same or which is required to be disclosed pursuant to any law or regulation or by a court of competent jurisdiction.

## **8. Reports**

8.1 In the event reports or certificates are requested as part of any Lifting Services and where required by law the Company will forward a copy of any examination/inspection report or certificate to the relevant enforcing authority. The Company will supply or make available to the Customer any reports applicable to the Lifting Services provided. It is the Customer's responsibility to retain copies of such reports. If the Customer does not retain copies of such reports, the Company may charge an administration fee for providing copy reports to the Customer. Copy reports may not be available if requests are made more than 12 months after the lifting Services are provided.

8.2 Any reports will provide the results of the inspection/examination based upon the Input Information provided by the Customer to the Company prior to the performance of the examination/inspection. The reports will reflect the Company's findings effective only at the date of the examination/inspection. The Company will not update the reports after issue.

8.3 Any inspection/examination and subsequent report will be carried out and produced to the extent practicable given the extent to which the Customer has prepared the Lifting Equipment for inspection and provided safe access to it.

8.4 In the event that the Customer is granted access to an online portal, he shall be solely responsible for all activities which occur under its passwords or account and shall maintain the secrecy of those passwords. The Customer may at any time change its passwords by logging in to the relevant portal or contacting the Company. The Customer shall not disclose to any third party its user names and passwords so that they are able to log into the portal. This is entirely at the Customer's risk and the Company has no liability for any use or misuse of any information to which third parties may gain access or for any activities they may carry out.

## **9. Price/Cancellation of Services**

9.1 Unless otherwise agreed between the parties in writing the Customer shall pay the aggregate of:

9.1.1 where Lifting Services are being provided under the Contract the Company's Standard Charges and any additional sums which are agreed between the Company and the Customer for the provision of the Lifting Services (in accordance with condition 9.5 below) or which in the Company's sole discretion are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Input Information or any other cause attributable to the Customer; and

9.1.2 if Lifting Equipment is being sold under the Contract the price of the Lifting Equipment which shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in the Company's current price list at the date of acceptance of the Order; and

9.1.3 if Lifting Equipment is being supplied by way of hire under the Contract a minimum hire period of two working weeks will be applied, and thereafter charges shall be on either a working weekly or daily basis (using five (5) days to the week) unless otherwise agreed in writing. The full contracted hire rate will be charged for the full hire period irrespective of the actual time during which the hired equipment was in operation.

9.2 Any Quotation is valid for a period of 30 days only from the date it is first provided to the Customer, providing the Company has not advised otherwise in writing.

9.3 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of any Lifting Equipment or Lifting Services supplied under the Contract to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of provision/manufacture), any change in delivery dates, quantities or specifications for the Lifting Equipment or requests for additional Lifting Services, which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to supply adequate information or instructions.

9.4 Except as otherwise stated under the terms of any Quotation or in any price list/accounts rates of the Company, and unless otherwise agreed in writing between the Customer and the Company, all prices for Lifting Equipment are given by the Company on an ex works basis. Where the Company agrees to deliver the Lifting Equipment, the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.

9.5 Unless expressly stated otherwise, Standard Charges will not include the following, which will be charged as an additional cost to the Customer:

9.5.1 carrying out the Lifting Services on days that are not working days, or outside the normal business hours of 09:00 – 17:00;

9.5.2 additional Site visits as may be considered necessary as a result of the Customer failing to make any equipment (including Lifting Equipment) available or ready for inspection / examination at the times/dates previously agreed; or non-availability of a Site contact at the scheduled time;

9.5.3 maintenance, investigation or repair of the Lifting Equipment or return visits following the inspection/examination of Lifting Equipment found to be defective during the course of an inspection or in need of further investigation;

9.5.4 Site surveys to establish any equipment (including Lifting Equipment) owned by the Customer which may require testing, examination or inspection;

9.5.5 any requests for a technical specialist to attend a Site;

9.5.6 any type of specialist or non-routine testing service not expressly stated. MGF-CR-F001-r3-07/21-JW 16

9.6 All charges quoted to the Customer for the provision of the Lifting Services, the price of the Lifting Equipment or the supply of Lifting Equipment by way of hire are exclusive of any applicable value added tax for which the Customer shall be additionally liable to pay the Company at the applicable rate from time to time.

9.7 Please note that the Company reserves the right to charge one hundred per cent (100%) of the Contract price in the event that the Customer communicates its cancellation of the Lifting Services forty-eight (48) hours or less prior to the agreed time for performance of the Lifting Services.

## **10. Time for Payment**

10.1 The Company shall be entitled to invoice the Customer on or at any time after completion of the Lifting Services, or part thereof. The Company's Standard Charges and any additional charges claimed in accordance with the provisions of Condition 9 above shall be paid by the Customer (together with any applicable value added tax) and without any set-off, counterclaim or other deduction within 30 days of the date of the Company's invoice.

10.2 Time for payment shall be of the essence of the Contract.

10.3 No payment shall be deemed to have been received until the Company has received cleared funds.

10.4 Without prejudice to any other rights of the Company the Customer shall pay interest at 2 per cent per month (both before and after judgement) on all overdue amounts down to actual payment.

## **11. Early Termination/Insolvency of Customer**

11.1 This Condition applies if:

11.1.1 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt (or being a company) becomes subject to an administration order or goes into liquidation (voluntary or compulsory and otherwise than for the purpose of amalgamation or reconstruction); or

11.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

11.1.3 in the case of a partnership, if the partnership be dissolved; or

11.1.4 the Customer ceases, or threatens to cease, to carry on business; or

11.1.5 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly

11.2 If this Condition 11 applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract forthwith or suspend any further delivery or performance under the Contract without any liability to the Customer, and if the Lifting Equipment has been delivered or the Lifting Services provided (either in whole or in part) but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

## **12. Communication**

12.1 All communications between the parties regarding this Contract relating to claims, formal notices and disputes (excluding demands for payment) must be in writing and delivered by hand or sent by pre-paid first class post or by facsimile transmission. (Any such communication sent by email must be confirmed by post or fax.):

12.1.1 (In case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company;

12.1.2 (In the case of communications to the Customer) to the registered office of the Customer (if it is a Company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.

12.2 Communications shall be deemed to have been received:

12.2.1 if sent by pre-paid first class post 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

12.2.2 if delivered by hand, on the day of delivery;

12.2.3 if sent by facsimile transmission on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.

12.3 Communications addressed to the Company shall be marked for the attention of the Company Secretary.

### **13. Exclusion of Third Party Rights**

13.1 A person who is not a party to this Contract shall not have any rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of the Contract save for (in the case of the Company) any Group Company.

### **14. General**

14.1 The Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other Group Company, provided that any act or omission of any such Group Company shall be deemed to be the act or omission of the Company.

14.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

14.3 If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected.

14.4 Upon termination of the Contract, the following provisions will remain in full force and effect – (4.1-4.9.13 inclusive), (4.12), (6.11), (6.12), (7.1-7.3 inclusive), (8.1-8.4 inclusive) (4.12 – 4.12.2 inclusive).

14.5 No variation to these Terms and Conditions shall be binding unless agreed in writing between the authorised representatives of the Company and the Customer.

14.6 The Customer may not assign, transfer or charge its rights and responsibilities under this Contract without the Company's written consent.

14.7 The Contract represents the entire agreement between the parties and supersedes all prior agreements and representations made by either party, whether oral or written.

14.8 The Contract shall be governed by and construed in accordance with the laws of England and the Customer agrees to submit to the exclusive jurisdiction of the English courts.