



# Trading Account Application Form

- ▶ Excavation Solutions
- ▶ Lifting & Safety
- ▶ Structural Support

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## 1. Trading Account Application Form

Originator of application for MGF: \_\_\_\_\_

Name/Trading Name of applicant: \_\_\_\_\_

Company registration no: \_\_\_\_\_

Limited / LLP / PLC / Individual / Other: \_\_\_\_\_

Date established: \_\_\_\_\_

Address of registered office: \_\_\_\_\_

Invoicing address if different to above: \_\_\_\_\_

Bankers name: \_\_\_\_\_

Address where account held: \_\_\_\_\_

Directors: \_\_\_\_\_

Website address: \_\_\_\_\_

Email address (accounts payable): \_\_\_\_\_

Telephone number (accounts payable): \_\_\_\_\_

Email address (electronic invoicing): \_\_\_\_\_

Maximum credit limit required: £ \_\_\_\_\_

ALL HIRES & SALES ARE SUBJECT TO OUR GENERAL TERMS & CONDITIONS, BUT STRUCTURAL SUPPORT SOLUTIONS PRODUCTS ARE SUBJECT TO THEIR OWN TERMS & CONDITIONS, AS ARE LIFTING EQUIPMENT AND ANCILLARY SERVICES THERETO INCLUDING INSPECTION AND MAINTENANCE. ALL THESE TERMS & CONDITIONS HAVE BEEN SENT WITH AND FORM PART OF THIS APPLICATION. PLEASE NOTE THAT OUR TERMS OF PAYMENT ARE 30 DAYS FROM DATE OF INVOICE.

INLINE WITH DATA PROTECTION LEGISLATION WE REQUEST THE AUTHORITY TO APPLY FOR PERSONAL INFORMATION ON SOLE TRADERS & PARTNERSHIPS AND SHARE THIS WITH 3RD PARTIES, INCLUDING CREDIT CIRCLES AND REFERENCE AGENCIES.

WHERE YOU PAY BY CREDIT CARD, YOU AUTHORISE US TO DEBIT THAT CARD WITH ANY SUMS DUE TO US FROM TIME TO TIME.

PLEASE SIGN BELOW TO ACKNOWLEDGE YOUR RECEIPT & AGREEMENT TO THE ABOVE.

Signed: \_\_\_\_\_ Position: \_\_\_\_\_ Date: \_\_\_\_\_

## 2. Trade References Offered

A minimum of two trade references are required.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

If you require any help completing the two forms, please contact Credit Control on 01942 402 700. Once completed, please return to:

**E-mail:** [credit.control@mgf.ltd.uk](mailto:credit.control@mgf.ltd.uk)

**Post:** Credit Control, MGF, Grant House, Lockett Road, Ashton in Makerfield, Wigan WN4 8DE

### 3. Bank Details

**Name:** National Westminster Bank PLC Branch

**Address:** Manchester City Centre Branch,  
19 Market St  
Manchester  
M1 1WR

**Account Number:** 01903209

**Sort Code:** 01-10-01

**Account Name:** MGF Trench Construction Systems Ltd

PLEASE FORWARD ALL REMITTANCES TO:

**Address:** Credit Control  
MGF  
Grant House  
Lockett Road  
Ashton in Makerfield  
Wigan  
WN4 8DE

**Email:** [credit.control@mgf.co.uk](mailto:credit.control@mgf.co.uk)

## 4. Conditions of Hire – Excavation Safety Solutions

### 1. DEFINITIONS

The following expressions shall (unless the context demands otherwise) have the following respective meanings: -

- a) "the Lessor" means MGF (Trench Construction Systems) Limited and includes its servants, agents, successors and assigns and the Lessor shall be entitled to assign or subcontract all or any of its rights and/or obligations hereunder.
  - b) "the Hirer" means the company, firm, person, corporation or public authority taking the Equipment on hire and includes their successors and/or personal representatives. If two or more persons constitute the Hirer, e.g. 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.
  - c) "Equipment" means all plant, machinery and equipment, which the Lessor agrees to hire to the Hirer, including all extras, components and replacements.
  - d) "A working week" means five days from Monday to Friday inclusive (including public holidays) in each week.
  - e) "Period of Hire" means the period commencing at commencement of business on the day when the Equipment leaves the Lessor's depot where last in use for delivery to the Hirer and terminating at the close of business on the day when all the Equipment is delivered to the Lessor's named depot, or otherwise as directed by the Lessor.
- 2. CONFIRMATION BY THE HIRER**
- The Hirer confirms that: -
- a) the particulars overleaf are correct and acknowledges that the Lessor specifically relies thereon in entering into this Agreement;
  - b) he makes the Agreement in the course of a business and has selected the Equipment relying solely on his own skill and judgement;
  - c) at no time shall the Equipment become the property of the Hirer who shall not re-hire or subcontract the Equipment or any part thereof or part with possession or control thereof.
  - d) having regard to the nature of the Equipment and of the respective businesses of the Hirer and the Lessor and to the Hirer's specialist knowledge, the exclusions in Condition 3 are fair and reasonable.
- pursuant to Section 6(8) of the Health and Safety at Work Act 1974, he will inspect the Equipment immediately on its delivery to him and thereafter at such intervals as may be required to ensure, so far as is reasonably practical that the Equipment will be safe and without risk to health when properly used and he will immediately repair or cause to be repaired any defects in the Equipment which such examination may reveal.
- f) he will take delivery of the Equipment at the location specified by the Lessor and acceptance by the Hirer of the Equipment shall be conclusive that he has examined it and found it in good order and condition.
- g) he accepts that the conditions of Hire as set out in the Construction Plant-hire Association (CPA) Model Conditions, including supplementary conditions for Shoring and Piling Technology and Design and/or Installation Conditions for Shoring and Piling Technology Operations form part of this agreement. These conditions are available for inspection at the Lessor's depot.

### 3. REPRESENTATIONS AND LIABILITY OF THE LESSOR

The Lessor: -

- a) does not exclude or restrict its liability for death or personal injury resulting from negligence of the Lessor, its servants or agents in the course of their employment by the Lessor.
- b) does not make any representation or undertaking, express or implied, in respect of the Equipment, its description, condition, quality, attributes or fitness for any particular purpose.
- c) shall not, save as provided in Condition 3 a) hereof, be liable for any death, injury, loss or damage (including consequential loss or damage) by reason of any defect in the Equipment howsoever arising;
- d) shall not be liable for any loss or damage arising as a result of any delay or non-delivery of the Equipment however caused and reasonable delay in delivery shall not entitle the Hirer to avoid or rescind this Agreement;
- e) may, so far as may be legally permissible, at any time substitute for the Equipment other Equipment fulfilling a similar function;
- f) shall not be prejudiced by any time or other indulgence granted to the Hirer.

### 4. BASIS OF CHARGING AND PAYMENT

- a) The minimum period of hire is two working weeks and thereafter charges shall be on either a working weekly or a daily basis unless specifically agreed otherwise in writing. The Hirer shall pay rentals for each day (including the day of delivery and of redelivery to the Lessor) until all the Equipment has been redelivered to the Lessor (where hire is on a working weekly basis the daily rate shall be at one fifth of the weekly rate with no charge being made for Saturday and Sundays).
- b) All payments by the Hirer shall be made within 30 days of invoice date and without any deduction, counterclaim or set-off, to the Lessor at the address shown overleaf (or otherwise as notified by the Lessor) and all payments by post shall be at the Hirer's risk. In payment time shall be of the essence and without prejudice to any other rights of the Lessor the Hirer shall pay interest at 2 per cent per month on all overdue amounts down to actual payment. The Hirer is not under any circumstances entitled to any rebate or cesser of rental whether as a result of the Equipment becoming unserviceable or otherwise.

### 5. THE HIRER'S OBLIGATIONS

The Hirer shall: -

- a) not take or permit the Equipment to be taken out of the United Kingdom and the Isle of Man without the prior written consent of the Lessor;
- b) if at the date hereof any charge or interest exists on the Hirer's assets or if at any time hereafter the Hirer wishes to create any such charge or interest which may in any way affect the Equipment he shall immediately notify the Lessor and obtain a waiver from the holder of such interests of any claim which he might otherwise have had on or in respect of the Equipment and the Hirer shall produce evidence to the Lessor of having done so and an acknowledgement from every such holder that the Equipment will not be subject to the interest concerned;
- c) punctually pay all rent, rates, outgoings and taxes payable on the premises where the Equipment may be at any time (including mortgage payments) and shall produce evidence of payment to the Lessor on request, and shall keep the Equipment free from any distress, execution, diligence or other legal process;
- d) be solely responsible for and indemnify the Lessor in respect of all loss of or damage to the Equipment however caused (excepting fair wear and tear) and use the Equipment properly and carefully and at all times keep it in good repair and condition and immediately deliver it to the Lessor in good order and repair at the end of the hiring;
- e) obtain and keep valid all permissions and licenses that may from time to time be required in connection with the use of the Equipment and take all such other steps as are necessary to ensure that the Equipment will in use be safe and without risk to health and safety;
- f) ensure that the Equipment is only operated by properly qualified persons and immediately notify the Lessor of all loss, damage and/or destruction of the Equipment;
- g) immediately insure and keep the Equipment insured (with prompt payment of all premiums) in at least its full replacement value at any time. Any monies received by the Lessor may be applied by him towards the repair and/or replacement of the Equipment and/or towards payment of the rentals hereunder (without in any way releasing the Hirer from his obligations under this Agreement);
- h) be responsible for the safe unloading, loading and protection of the Equipment on site;
- i) if the Equipment is involved in any accident resulting in injury to persons or damage to property, immediately notify the Lessor by telephone and confirm the same in writing and insofar as any claim may be made by any person or body suffering injury or damage, the Hirer shall not unless that claim lies within the terms of any indemnity given to the Lessor hereunder, make any admission, offer, promise or settlement without the prior consent of the Lessor in writing;
- j) not move the Equipment from the site to which it was delivered or consigned without the prior authority of the Lessor, such authority to be confirmed in writing;
- k) give the Lessor, its agents and those authorised by its access to every premises and site where the Equipment may be at all reasonable times to inspect same and if necessary remove it on the termination of or otherwise deal with it in accordance with this Agreement;
- l) subject to Condition 3 a), indemnify the Lessor against all claims by any third party in respect of any death, injury, loss or damage to persons or property (whether or not caused or contributed to by the negligence of the Lessor) arising out of or in connection with as a result of the use or possession of the Equipment or the condition thereof;
- m) reimburse to the Lessor all expenses incurred by the Lessor in repossessing and/or repairing the Equipment, obtaining payment, and/or otherwise caused by any breach by the Hirer of his obligations under this Agreement.

### 6. EARLY TERMINATION

- a) if the Hirer shall default in the payment of any sums payable hereunder (whether or not the same shall have been demanded) or in the performance or observance of any stipulation herein or on his part to be performed or observed or commit any breach of any such stipulation or if he shall die or, in the case of a company, it shall be wound up compulsorily or voluntarily (otherwise than in connection with a scheme of reconstruction or amalgamation with a declaration that the Hirer is solvent) or a receiver be appointed if any of its assets or if any execution, distress or diligence or if any other legal process shall be threatened, commenced or levied against it or its goods or in the case of an individual he shall commit any act of bankruptcy or shall become not our bankrupt or shall have a receiving order made against him or shall be sequestered or, in the case of a partner, if the partnership shall be dissolved or if the Hirer abandons the Equipment or signs a trust deed on behalf of or calls any meeting of or enters into any arrangement or composition with his or its creditors or does anything to prejudice the rights of the Lessor hereunder to the Equipment, then the Lessor forthwith without notice or demand become entitled to immediate possession of the Equipment and
  - i) the Lessor may forthwith and without notice repossess the Equipment and thereupon this Agreement and the hiring shall terminate; or
  - ii) the Lessor may by written notice sent by post or left at the Hirer's address terminate this Agreement and thereupon the Hirer shall no longer be in possession of the Equipment with the Lessor's consent and such deterioration shall be without prejudice to any pre-existing liability of the Hirer to the Lessor or the Hirer's liabilities under Condition 7 hereof.
- b) If at any time during this Agreement there shall be any other Hire Agreement or other Agreements in existence between the Lessor and the Hirer, whether in similar terms to this Agreement or otherwise, which are not regulated agreements (as defined in the Consumer Credit Act 1974) then provided always that the provisions of legislation from time to time in force do not apply thereto and invalidate this Condition 6 b) all such Agreements shall be construed as forming one transaction so that:-
  - i) any money paid to the Lessor under this Agreement or any such Agreements may be appropriated by the Lessor in full or part satisfaction of any sums due to the Lessor by the Hirer under any such other Agreements or under this Agreement, and notwithstanding that the Hirer may have purported to appropriate such money in some other way;
  - ii) any breach of any such Agreement may be treated by the Lessor as a breach of all such agreements then existing between the Lessor and the Hirer; and/or
  - iii) termination of any such Agreement may be treated by the Lessor as termination of all such Agreements.

### 7. TERMINATION

If the hiring and this Agreement shall be terminated under any of the provisions of Condition 6 hereof the Hirer shall forthwith at his own expense deliver up the Equipment to the Lessor and shall immediately pay to the Lessor.

- a) all arrears of rentals due at the date of such termination, interest thereon in accordance with Condition 4 b), the cost of repairs required to be done to the Equipment to put the same in good condition, and all legal and other costs and expenses incurred by the Lessor in connection with the repossession of the Equipment;
- b) the balance of all rentals applicable to the remainder of the Period of Hire less such rebate as the Lessor in its absolute discretion may allow in consideration of accelerated payment.

### 8. VARIATION OF AGREEMENT

This agreement constitutes the sole agreement between the parties relating to the hire of the Equipment and no variation shall be made to it unless in writing signed by the Lessor's duly authorised representative.

### 9. NOTICES

All notices, demands and communications given by the Lessor hereunder shall be validly given when served personally on the Hirer or sent by post to or left at the address of the Hirer stated overleaf or at the Hirer's present or last known business or private address or registered office and, if sent by first class post shall be deemed to have been received by the Hirer 48 hours after posting.

### 10. LAW

The Agreement shall be read and construed in accordance with English Law.

## 5. Conditions of Sale – Excavation Safety Solutions

### 1. DEFINITION

1.1 In these terms and conditions the following words have the following meanings: - Word Meaning

"Buyer" the person(s) or company whose order for the Goods is accepted by the Company including their successors and/or personal representatives;

"Company" MGF (Trench Construction Systems) Limited and includes its successors and assigns, and the Company shall be entitled to sub-contract all or any of its rights and/or obligations hereunder.

"Consequential Loss" pure economic loss, loss of use, loss of profit, loss of production, loss of contract, any financial or economic loss, loss of business, depletion of goodwill and like loss; "Contract" any contract between the Company and the Buyer for the sale and purchase of the Goods;

"Delivery Point" the place where delivery of the Goods is to take place under condition 4;

"Goods" any goods which the Company is to supply to the Buyer (including any of them or any part of them).

1.2 The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

### 2. FORMATION AND INCORPORATION

2.1 The Buyer makes the Contract in the course of a business and has selected the Goods relying solely on his own skill and judgment.

2.2 Subject to any variation under condition 2.5, the Contract will be on these terms and conditions set out below to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document).

2.3 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these terms and conditions.

2.4 No terms or conditions endorsed upon, delivered with or contained in the Buyer'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 variation to these terms and conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an officer of the Company.

2.6 Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these terms and conditions.

2.7 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.8 Any quotation is given on the basis that no Contract will come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date provided the Company has not previously withdrawn it.

2.9 Subject to condition 4.9 no order which the Company has accepted may be cancelled by the Buyer except with the written agreement of the Company and on terms that the Buyer shall indemnify the Company in full against all losses (including loss of profit), costs, damages, charges and expenses suffered or incurred by the Company as a result of such cancellation.

### 3. DESCRIPTION, DESIGNS AND ADVICE

3.1 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract.

3.2 The Company may make any changes to the specification, design, materials or finishes of the Goods which are required to conform with any applicable safety or other statutory requirements.

3.3 No variation in the specification or design of any Goods which, in the Company's reasonable opinion, does not adversely affect the suitability of the Goods for the particular purpose for which they are supplied by the Company will constitute a breach of contract or impose any liability upon the Company. In the event that the Company undertakes any design work in connection with any Goods supplied by the Company or in the event that the Company provides any designs, drawings, specifications, guidance or other information in connection with any such Goods, or any advice as to the use of any such Goods, (and whether such designs, drawings, specifications, guidance, information or advice are provided in the form of computer software or by the way of a manual or otherwise in writing or orally), then the Buyer acknowledges that such designs, drawings, specifications, information and/or advice are provided by the Company for guidance only and without any responsibility being accepted for the accuracy or correctness of the same, and it is for the Buyer to check and verify the accuracy and correctness of the same and to determine whether or not to rely upon the same. Any such designs, drawings, specifications, information and/or advice are provided by the Company strictly on the understanding that, subject to condition 11.3, no liability shall attach to the Company in respect thereof, and the Buyer shall fully and completely indemnify the Company against all claims by any person whatsoever for injury to person, loss or damage to property, howsoever caused, arising from the provision of such designs, drawings, specifications, information and/or advice by the Company and whether such claims arise under common law or statute or in negligence or breach of duty or other wrongful act of omission.

### 4. DELIVERY

4.1 Delivery of the Goods shall be made ex-works (Incoterms 2000).

4.2 The Buyer will take delivery of the Goods within 5 working days of the Company giving it notice that the Goods are ready for delivery and during the normal business hours of the Company.

4.3 If carriage is required in accordance with condition 4, the Goods shall be delivered by such means as the Company thinks fit unless the Buyer has specified in its order the details of the contract with a carrier which it reasonably requires having regard to the nature of the Goods and the other circumstances of the case.

4.4 The carrier shall be deemed to be the Buyer's agent except for the purposes of sections 44, 45 and 46 of the Sale of Goods Act 1979.

4.5 Any dates specified by the Company for delivery of the Goods are approximate only and may not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

4.6 Subject to the other provisions of these terms and conditions the Company will not be liable for any loss (including without limitation Consequential Loss), costs, damages, charges or expenses caused directly or indirectly by any non-delivery or delay in the delivery of the Goods (even if caused by the Company's negligence) nor unless such delay exceeds 180 days will any delay entitle the Buyer to terminate or rescind the Contract.

4.7 The Buyer must accept delivery of the Goods and pay for them in full unless the delay in delivery exceeds 180 days. In such a case, if delay is caused by the Company's negligence, or fault and is not covered by condition 6 the Buyer may cancel this Contract to the extent it relates to the Goods which were the subject of such delivery, without further liability for such Goods.

4.8 If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except because of the Company's fault) risk in the Goods will pass to the Buyer (including, without limitation, for loss or damage caused by the Company's negligence); the Goods will be deemed (on written notice given by the Company) to have been delivered and the Buyer shall be bound to pay for the Goods accordingly. Without prejudice to its other rights, the Company may (but shall not be obliged to):

4.8.1 store or arrange for the storage of the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or

4.8.2 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract.

4.9 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading or off-loading the Goods (as appropriate).

4.10 The Buyer will indemnify the Company against any liability and expense (whether arising under statute or common law) caused by the Buyer's failure to provide appropriate equipment and manual labour for off-loading (whether or not the off-loading is supervised by or on behalf of the Buyer) for:

4.10.1 any personal injury to or death of any of the Company's employees, agents or sub-contractors or any third party; and

4.10.2 any damage to or loss of any property of the Company, its employees, agents or sub-contractors or any third party.

### 5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 5 working days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

5.4 A signature of qualified acceptance on a carrier's delivery note shall not be written notice to the Company for the purpose of these terms and conditions.

### 6. FORCE MAJEURE

6.1 The Company shall not be liable to the Buyer in any manner or be deemed to be in breach of the Contract (subject to condition 11) because of any delay in performing or any failure to perform any of the Company's obligations under this Contract if the delay or failure due to any cause beyond the Company's reasonable control.

6.2 Without prejudice to the generality of condition 6, the following shall be included as causes beyond the Company's reasonable control:

6.2.1 governmental actions, war or threat of war, national emergency, riot, civil disturbance, sabotage or requisition;

6.2.2 Act of God, fire, explosion, flood, epidemic or accident;

6.2.3 import or export regulations or embargoes;

6.2.4 labour disputes whether or not including disputes involving the Company's work-force; or

6.2.5 inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour.

### 7. RISK/OWNERSHIP

7.1 Subject to condition 4.8, risk of damage to or loss of Goods shall pass to the Buyer upon delivery or the circumstances referred to in condition 4.8, or deemed delivery.

7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

7.2.1 the Goods; and

7.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

7.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

7.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

7.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property and easily accessible and returnable to the Company;

7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

7.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company and naming the Company as loss payee. On request the Buyer shall produce the policy of insurance to the Company;

7.3.5 hold the proceeds of the insurance referred to in condition 7.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

7.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

7.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall account to the Company accordingly; and

7.4.2 any such sale shall be a sale of the Company's property on the Company's behalf and the Buyer shall deal as agent when making such a sale.

7.5 Where the Company is unable to determine whether any goods are the Goods, the Company shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

7.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

7.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them and that all such premises are in a safe and accessible condition to enable the Company to do this.

7.8 The Buyer shall be liable for any costs, damages or expenses which either of the Buyer, the Company or any third party shall suffer by reason of the Company exercising any of its rights under clause 7.7.



## **8. PRICE**

8.1 The price for the Goods shall be as detailed in the Company's current price list (at the date of acknowledgement of order by the Company) subject to any discounts agreed by the Company and subject to condition 2.8.

8.2 The price for the Goods is exclusive of any value added tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods.

8.3 The price for the Goods is given on an ex-works basis and where the Delivery Point is other than at the Company's premises the Buyer shall pay the Company's charges for transport.

## **9. PAYMENT**

9.1 The Company may invoice the Buyer for the Goods at any time after delivery.

9.2 Time for payment shall be of the essence.

9.3 Payment of the price for the Goods is due 30 days after the date of the invoice.

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

9.5 All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract despite any other provision.

9.6 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

9.7 The Company may appropriate any payment made by the Buyer to the Company to such of the Goods as the Company thinks fit despite any purported appropriation by the Buyer.

9.8 If the Buyer fails to make any payment under the Contract on the due date then (without prejudice to its other rights and remedies) the Company may charge the Buyer interest (both before and after judgement) on the amount unpaid at 2% per month on all overdue amounts down to actual payment (a part of a month being treated as a full month for the purpose of calculating interest).

## **10. QUALITY**

10.1 Where the Company is not the manufacturer of the Goods the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

10.2 Pursuant to Section 6(8) of the Health and Safety at Work Act 1974, the Buyer will inspect the Goods immediately on its delivery to him to ensure, so far as is reasonably practical, that the Goods will be safe and without risk to health when properly used.

10.3 The Company warrants that (subject to the other provisions of these terms and conditions) upon delivery the Goods will, and for a period of 6 months from the date of delivery, be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

10.4 The Company shall not be liable for a breach of the warranty in condition 10.3 unless:

10.4.1 the Buyer gives written notice of the defect to the Company and, if the defect is as a result of damage in transit, also to the carrier within 5 working days of:

10.4.1.1 the date of delivery (where the defect would be apparent to the Buyer upon a reasonable inspection); or

10.4.1.2 the date when the Buyer knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Buyer upon a reasonable inspection); and

10.4.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.

10.5 The Company shall not be liable for a breach of the warranty in condition 10.3 if:

10.5.1 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

10.5.2 the Buyer alters or repairs such Goods without the written consent of the Company; or

10.5.3 the defect in such Goods arises from any design defect in any drawing, design or specification supplied or approved by the Buyer.

10.6 If the Buyer makes a valid claim against the Company based on a defect in the quality of the Goods, the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro-rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Company.

10.7 If the Company complies with condition 10.6 it shall have no further liability for a breach of the warranty in condition 10.3 in respect of the quality such Goods.

10.8 Any Goods repaired or replaced by the Company pursuant to this condition 10 will be supplied pursuant to these terms and conditions.

## **11. LIMITATION OF LIABILITY**

11.1 The following provisions of this condition 11 and the provisions of condition 10 set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of:

11.1.1 any breach of these terms and conditions; and

11.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from the Contract.

11.3 Nothing in these terms and conditions excludes or limits the liability of the Company for fraudulent misrepresentation or death or personal injury caused by the Company's negligence. THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 11.4 AND 11.5

11.4 Subject to conditions 11.2 and 11.3:

11.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price of the Goods; and

11.4.2 the Company shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term or any duty at law or under the express terms of the Contract for any indirect or Consequential Loss, costs, expenses or other claims for consequential compensation whatsoever (whether caused by the negligence of the Company, its employees, agents or subcontractors) which arise out of or in connection with the Contract.

11.5 The Buyer shall indemnify the Company and keep it indemnified in full against all liability, loss, damages, costs and expenses (including legal expenses on an indemnity basis) which the Company may suffer or incur as a result of or arising out of or in connection with:-

11.5.1 any negligence by the Buyer in connection with the Contract or breach of the Contract by the Buyer;

11.5.2 the storage, use or sale of the Goods by the Buyer or other act, omission or negligence of the Buyer in connection with the Goods (except where the Company is liable to the Buyer in accordance with these terms and conditions);

11.5.3 any claims brought or threatened against the Company by any third party in connection the Goods (except where the Company is liable in respect thereof in accordance with these terms and conditions).

## **12. TERMINATION**

12.1 The Contract will terminate immediately upon the happening of any one or more of the following events; the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, or in the case of a partner, if the partnership shall be dissolved.

12.2 The Contract will terminate immediately upon service of written notice of termination by the Company on the Buyer on the happening of any one or more of the following; the Buyer suffers or allows any execution whether legal or equitable, or any distress or diligence to be levied on his/its property or obtained against him/it or his/its goods, or if any other legal process shall be threatened or commenced against him/it or his/its goods, or fails to observe or perform any of his/its obligations or duties under the Contract or any other contract between the Company and the Buyer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade.

12.3 The Company's rights contained in condition 7 (but not the Buyer's rights) shall continue beyond the discharge of the Buyer's and the Company's primary obligations under the Contract consequent upon its termination.

12.4 The termination of the Contract howsoever arising shall be without prejudice to the rights and duties of either the Buyer or the Company accrued prior to termination.

## **13. GENERAL**

13.1 Time for performance of all obligations of the Buyer is of the essence.

13.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

13.3 Any provision of the Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected.

13.4 Failure by the Company to enforce or partially enforce any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

13.5 Company may assign, license or sub-contract all or any part of its rights or obligations under the Contract without the Buyer's consent.

13.6 The Contract is personal to the Buyer who may not assign, license or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.

13.7 The formation, construction, performance, validity and all aspects of the Contract are governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

## **14. COMMUNICATION**

14.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:-

14.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

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

14.2 Communications shall be deemed to have been received:-

14.2.1 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);

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

14.2.3 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.

14.3 Communications addressed to the Company shall be marked for the attention of the Sales Director.



## 6. Conditions of Hire – Structural Support Solutions

### 1. DEFINITIONS

The following expressions shall (unless the context demands otherwise) have the following respective meanings:-

- a) "the Lessor" means MGF (Trench Construction Systems) Limited and includes its servants, agents, successors and assigns and the Lessor shall be entitled to assign or subcontract all or any of its rights and/or obligations hereunder.
- b) "the Hirer" means the company, firm, person, corporation or public authority taking the Equipment on hire and includes their successors and/or personal representatives. If two or more persons constitute the Hirer, e.g. 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.
- c) "Equipment" means all plant, machinery and equipment, which the Lessor agrees to hire to the Hirer, including all extras, components and replacements.
- d) "A working week" means five days from Monday to Friday inclusive (including public holidays) in each week.
- e) "Period of Hire" means the period commencing at commencement of business on the day when the Equipment leaves the Lessor's depot where last in use for delivery to the Hirer and terminating at the close of business on the day when all the Equipment is delivered to the Lessor's named depot, or otherwise as directed by the Lessor.
- f) "Specifications" refers to:
  - a) "Advice" which may include, but is not limited to, suggestions, configurations, sequences, timescales, quality of Plant installation and removal methodologies, Plant requirements.
  - b) "Design" or "Designs" which may include, but is not limited to, drawings, illustrations, design calculations (including those provided in association with the hire) and safe systems of work.

### 2. CONFIRMATION BY THE HIRER

The Hirer confirms that:-

- a) the particulars overleaf are correct and acknowledges that the Lessor specifically relies thereon in entering into this Agreement;
- b) he makes the Agreement in the course of a business and has selected the Equipment relying solely on his own skill and judgement;
- c) at no time shall the Equipment become the property of the Hirer who shall not re-hire or subcontract the Equipment or any part thereof or part with possession or control thereof.
- d) having regard to the nature of the Equipment and of the respective businesses of the Hirer and the Lessor and to the Hirer's specialist knowledge, the exclusions in Condition 3 are fair and reasonable.
- e) pursuant to Section 6(8) of the Health and Safety at Work Act 1974, he will inspect the Equipment immediately on its delivery to him and thereafter at such intervals as may be required to ensure, so far as is reasonably practical that the Equipment will be safe and without risk to health when properly used and he will immediately repair or cause to be repaired any defects in the Equipment which such examination may reveal.
- f) he will take delivery of the Equipment at the location specified by the Lessor and acceptance by the Hirer of the Equipment shall be conclusive that he has examined it and found it in good order and condition.
- g) he accepts that the conditions of Hire as set out in the Construction Plant-hire Association (CPA) Model Conditions, including supplementary conditions for Shoring and Piling Technology and Design and/or Installation Conditions for Shoring and Piling Technology Operations form part of this agreement. These conditions are available for inspection at the Lessor's depot.

### 3. REPRESENTATIONS AND LIABILITY OF THE LESSOR

The Lessor:-

- a) does not exclude or restrict its liability for death or personal injury resulting from negligence of the Lessor, its servants or agents in the course of their employment by the Lessor.
- b) does not make any representation or undertaking, express or implied, in respect of the Equipment, its description, condition, quality, attributes or fitness for any particular purpose.
- c) shall not, save as provided in Condition 3 a) hereof, be liable for any death, injury, loss or damage (including consequential loss or damage) by reason of any defect in the Equipment howsoever arising;
- d) shall not be liable for any loss or damage arising as a result of any delay or non-delivery of the Equipment however caused and reasonable delay in delivery shall not entitle the Hirer to avoid or rescind this Agreement;
- e) may, so far as may be legally permissible, at any time substitute for the Equipment other Equipment fulfilling a similar function;
- f) shall not be prejudiced by any time or other indulgence granted to the Hirer.

### 4. BASIS OF CHARGING AND PAYMENT

- a) The minimum period of hire is two working weeks and thereafter charges shall be on either a working weekly or a daily basis unless specifically agreed otherwise in writing. The Hirer shall pay rentals for each day (including the day of delivery and of redelivery to the Lessor) until all the Equipment has been redelivered to the Lessor (where hire is on a working weekly basis the daily rate shall be at one fifth of the weekly rate with no charge being made for Saturday and Sundays).
- b) All payments by the Hirer shall be made within 30 days of invoice date and without any deduction, counterclaim or set-off, to the Lessor at the address shown overleaf (or otherwise as notified by the Lessor) and all payments by post shall be at the Hirer's risk. In payment time shall be of the essence and without prejudice to any other rights of the Lessor the Hirer shall pay interest at 2 per cent per month on all overdue amounts down to actual payment. The Hirer is not under any circumstances entitled to any rebate or cesser of rental whether as a result of the Equipment becoming unserviceable or otherwise.

### 5 THE HIRER'S OBLIGATIONS

The hirer shall:-

- a) not take or permit the Equipment to be taken out of the United Kingdom and the Isle of Man without the prior written consent of the Lessor;
- b) if at the date hereof any charge or interest exists on the Hirer's assets or if at any time hereafter the Hirer wishes to create any such charge or interest which may in any way affect the Equipment he shall immediately notify the Lessor and obtain a waiver from the holder of such interests of any claim which he might otherwise have had on or in respect of the Equipment and the Hirer shall produce evidence to the Lessor of having done so and an acknowledgement from every such holder that the Equipment will not be subject to the interest concerned;
- c) punctually pay all rent, rates, outgoings and taxes payable on the premises where the Equipment may be at any time (including mortgage payments) and shall produce evidence of payment to the Lessor on request, and shall keep the Equipment free from any distress, execution, diligence or other legal process;
- d) be solely responsible for and indemnify the Lessor in respect of all loss of or damage to the Equipment however caused (excepting fair wear and tear) and use the Equipment properly and carefully and at all times keep it in good repair and condition and immediately deliver it to the Lessor in good order and repair at the end of the hiring;
- e) obtain and keep valid all permissions and licenses that may from time to time be required in connection with the use of the Equipment and take all such other steps as are necessary to ensure that the Equipment will in use be safe and without risk to health and safety;
- f) ensure that the Equipment is only operated by properly qualified persons and immediately notify the Lessor of all loss, damage and/or destruction of the Equipment;
- g) immediately insure and keep the Equipment insured (with prompt payment of all premiums) in at least its full replacement value at any time. Any monies received by the Lessor may be applied by him towards the repair and/or replacement of the Equipment and/or towards payment of the rentals hereunder (without in any way releasing the Hirer from his obligations under this Agreement);
- h) be responsible for the safe unloading, loading and protection of the Equipment on site;
- i) if the Equipment is involved in any accident resulting in injury to persons or damage to property, immediately notify the Lessor by telephone and confirm the same in writing and insofar as any claim may be made by any person or body suffering injury or damage, the Hirer shall not unless that claim lies within the terms of any indemnity given to the Lessor hereunder, make any admission, offer, promise or settlement without the prior consent of the Lessor in writing;
- j) not move the Equipment from the site to which it was delivered or consigned without the prior authority of the Lessor, such authority to be confirmed in writing;
- k) give the Lessor, its agents and those authorised by its access to every premises and site where the Equipment may be at all reasonable times to inspect same and if necessary remove it on the termination of or otherwise deal with it in accordance with this Agreement;
- l) subject to Condition 3 a), indemnify the Lessor against all claims by any third party in respect of any death, injury, loss or damage to persons or property (whether or not caused or contributed to by the negligence of the Lessor) arising out of or in connection with as a result of the use or possession of the Equipment or the condition thereof;
- m) reimburse to the Lessor all expenses incurred by the Lessor in repossessing and/or repairing the Equipment, obtaining payment, and/or otherwise caused by any breach by the Hirer of his obligations under this Agreement.

### 6. THE HIRERS OBLIGATIONS – SPECIFICATION, ADVICE AND DESIGN

The Hirer shall:-

- a) accept that any Specifications given either in support of the plant being used by the Hirer, or when separately requested by the Hirer are based solely on the written information provided by the Hirer. All Specifications provided by the Lessor shall be based on the written information provided by the Hirer.
- b) accept that the suitability of the suggested Specifications is solely dependant on the accuracy of the written information provided by the Hirer. No attempt is or can be made by the Lessor to check the validity of any written information provided by the Hirer or ascertain what further information should be taken into account that may affect the outcome and accordingly any Specifications are suggestions only. The Hirer must verify and be satisfied with the completeness of the written information provided by the Lessor: also to ascertain the accuracy and validity of the interpretation of the Specifications presented by the Lessor to the Hirer and whether the suggested Specifications can be used on the relevant project safely or at all.
- c) accept that notwithstanding any information supplied, the overall responsibility for the suitability and workability of the suggested Specifications remains with the Hirer. Accordingly, no liability shall be attached to the Lessor in respect of any loss, injury or damage of any kind whatsoever should the suggested Specifications be proven unsuitable or unworkable, except for death or personal injury resulting from the Lessors negligence.
- d) notify the Lessor immediately of any changes to the site conditions or other information provided which may affect the outcome. The Lessor reserves the right to nullify or withdraw the Specifications without notice for any changes to information either notified or otherwise. If the Hirer fails to notify the Lessor of such changes that he knew or ought reasonably to have known about then the Lessor takes no further responsibility whatsoever for the continued use of the plant.
- e) accept that the Lessor shall exercise reasonable skill and care only in providing the Specifications. The Lessor makes no representation whatsoever that the Specifications are fit for purpose.
- f) accept that the Lessor shall use reasonable endeavours to perform the Specifications to the agreed programme, subject to the Hirer providing all written information in a timely manner.
- g) not charge the Lessor for any information provided by the Hirer.
- h) accept that the copyright in all the Specifications shall remain vested in the Lessor. Subject to all sums due and payable to the Lessor under the contract having been paid, the Lessor grants the Hirer a full, royalty free, irrevocable, nonexclusive licence to use and reproduce the Specifications for any purpose in connection with the contract or the project. The Lessor shall not be liable for the use of the Specifications for any purpose other than the purposes for which they were provided.
- i) not agree, without the written consent of the Lessor, to divulge any details of the Specifications to any third party, other than as may be necessary in connection with the hiring of the plant and/or the carrying out of the project.
- j) accept that with respect to any structure being supported he has absolute responsibility to:
  - i) check that the structure to be supported is sufficiently robust and in suitable condition for the proposed method of support / restraint.
  - ii) check the local and global stability of the structure to be supported whilst in a temporary construction with reference to and consideration of the whole of the works
  - iii) check that the structure to be supported is capable of safely supporting any loads imposed by the proposed method of support.
- iv) design and supply any temporary foundations, timber packing, decking or other items not specified in a quotation from the Lessor or in an official order from the Hirer that is accepted by the Lessor.
- v) produce a suitably detailed Risk Assessment and Method Statement (RAMS) document prior to starting the works. Product information is available from the Lessor's web site or depot network.
- k) accept that the Lessor is not responsible where the proposed advice or design is not suitable due to any of the considerations in 6.j above and that unless specifically agreed otherwise in writing the Lessor does not accept the role of Principal Designer as defined by the Construction Design and Management Regulations 2015.

### 7. EARLY TERMINATION

- a) if the Hirer shall default in the payment of any sums payable hereunder (whether or not the same shall have been demanded) or in the performance or observance of any stipulation herein or on his part to be performed or observed or commit any breach of any such stipulation or if he shall die or, in the case of a company, it shall be wound up compulsorily or voluntarily (otherwise than in connection with a scheme of reconstruction or amalgamation with a declaration that the Hirer is solvent) or a receiver be appointed if any of its assets or if any execution, distress or diligence or if any other legal process shall be threatened, commenced or levied against it or its goods or in the case of an individual he shall commit any act of bankruptcy or shall become not our bankrupt or shall have a receiving order made against him or shall be sequestrated or, in the case of a partner, if the partnership shall be dissolved or if the Hirer abandons the Equipment or signs a trust deed on behalf of or calls any meeting of or enters into any arrangement or composition with his or its creditors or does anything to prejudice the rights of the Lessor hereunder to the Equipment, then the Lessor forthwith without notice or demand become entitled to immediate possession of the Equipment and
- i) the Lessor may forthwith and without notice repossess the Equipment and thereupon this Agreement and the hiring shall terminate; or
- ii) the Lessor may by written notice sent by post or left at the Hirer's address terminate this Agreement and thereupon the Hirer shall no longer be in possession of the Equipment with the Lessor's consent and such deterioration shall be without prejudice to any pre-existing liability of the Hirer to the Lessor or the Hirer's liabilities under Condition 7 hereof.

b) If at any time during this Agreement there shall be any other Hire Agreement or other Agreements in existence between the Lessor and the Hirer, whether in similar terms to this Agreement or otherwise, which are not regulated agreements (as defined in the Consumer Credit Act 1974) then provided always that the provisions of legislation from time to time in force do not apply thereto and invalidate this Condition 6 b) all such Agreements shall be construed as forming one transaction so that:-

- i) any money paid to the Lessor under this Agreement or any such Agreements may be appropriated by the Lessor in full or part satisfaction of any sums due to the Lessor by the Hirer under any such other Agreements or under this Agreement, and notwithstanding that the Hirer may have purported to appropriate such money in some other way;
- ii) any breach of any such Agreement may be treated by the Lessor as a breach of all such agreements then existing between the Lessor and the Hirer; and/or
- iii) termination of any such Agreement may be treated by the Lessor as termination of all such Agreements.

#### **8. TERMINATION**

If the hiring and this Agreement shall be terminated under any of the provisions of Condition 7 hereof the Hirer shall forthwith at his own expense deliver up the Equipment to the Lessor and shall immediately pay to the Lessor.

- a) all arrears of rentals due at the date of such termination, interest thereon in accordance with Condition 4 b), the cost of repairs required to be done to the Equipment to put the same in good condition, and all legal and other costs and expenses incurred by the Lessor in connection with the repossession of the Equipment;
- b) the balance of all rentals applicable to the remainder of the Period of Hire less such rebate as the Lessor in its absolute discretion may allow in consideration of accelerated payment.

#### **9. VARIATION OF AGREEMENT**

This agreement constitutes the sole agreement between the parties relating to the hire of the Equipment and no variation shall be made to it unless in writing signed by the Lessor's duly authorised representative.

#### **10. NOTICES**

All notices, demands and communications given by the Lessor hereunder shall be validly given when served personally on the Hirer or sent by post to or left at the address of the Hirer stated overleaf or at the Hirer's present or last known business or private address or registered office and, if sent by first class post shall be deemed to have been received by the Hirer 48 hours after posting.

#### **11. LAW**

The Agreement shall be read and construed in accordance with English Law.

## 7. Conditions of Sale – Structural Support Solutions

### 1. DEFINITIONS

1.1 In these terms and conditions the following words have the following meanings: -

"Buyer" the person(s) or company whose order for the Goods is accepted by the Company including their successors and/or personal representatives;

"Company" MGF (Trench Construction Systems) Limited and includes its successors and assigns, and the Company shall be entitled to sub-contract all or any of its rights and/or obligations hereunder.

"Consequential Loss" pure economic loss, loss of use, loss of profit, loss of production, loss of contract, any financial or economic loss, loss of business, depletion of goodwill and like loss;

"Contract" any contract between the Company and the Buyer for the sale and purchase of the Goods;

"Delivery Point" the place where delivery of the Goods is to take place under condition 4;

"Goods" any goods which the Company is to supply to the Buyer (including any of them or any part of them).

"Specifications" refers to either "Advice" or "Designs" or a combination thereof, as set out below.

"Advice" which may include, but is not limited to, suggestions, configurations, sequences, timescales, quality of Plant installation and removal methodologies, Plant requirements.

"Design" or "Designs" which may include, but is not limited to, drawings, illustrations, design calculations (including those provided in association with the hire) and safe systems of work.

1.2 The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

### 2. FORMATION AND INCORPORATION

2.1 The Buyer makes the Contract in the course of a business and has selected the Goods relying solely on his own skill and judgment.

2.2 Subject to any variation under condition 2.5, the Contract will be on these terms and conditions set out below to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document).

2.3 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these terms and conditions.

2.4 No terms or conditions endorsed upon, delivered with or contained in the Buyer'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 variation to these terms and conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an officer of the Company.

2.6 Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these terms and conditions.

2.7 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.8 Any quotation is given on the basis that no Contract will come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date provided the Company has not previously withdrawn it.

2.9 Subject to condition 4.9 no order which the Company has accepted may be cancelled by the Buyer except with the written agreement of the Company and on terms that the Buyer shall indemnify the Company in full against all losses (including loss of profit), costs, damages, charges and expenses suffered or incurred by the Company as a result of such cancellation.

### 3. DESCRIPTION, DESIGNS AND ADVICE

3.1 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract.

3.2 Any advice, drawing or design that the Company may provide is based solely on written information provided by the Buyer. The suitability of the suggestions is solely dependant on the accuracy of the written information provided by the Buyer. No attempt is or can be made by the company to ascertain what further information should be taken into account that may affect the outcome accordingly the Specifications are suggestions only. The Buyer must verify and be satisfied with the completeness of the written information provided to the Company; also to ascertain the accuracy and validity of the interpretation of the Specifications presented by the Company to the Buyer and whether the suggested Specifications can be used on the relevant project either safely or at all. It remains the Buyer's responsibility to check that the structure to be supported is sufficiently robust and in suitable condition for the proposed method of support and is able to safely support any loads imposed upon it by the suggested Specification without adversely affecting the local or global stability of the structure.

3.3 Notwithstanding any information supplied, the overall responsibility for the suitability and workability of any suggested Specifications remains with the Buyer. Accordingly, no liability shall be attached to the company in respect to any loss, injury or damage of any kind whatsoever should the suggested Specifications be proven unsuitable or unworkable, except for death and personal injury resulting from the company's negligence.

3.4 The Company shall exercise reasonable skill and care only in providing the Specifications. The Company makes no representations whatsoever that the Specifications are fit for purpose.

3.5 The Company shall use reasonable endeavours to perform the Specifications to the agreed programme, subject to the Buyer providing all written information in a timely manner.

3.6 The Company may make any changes to the specification, design, materials or finishes of the Goods which are required to conform with any applicable safety or other statutory requirements.

3.7 No variation in the specification or design of any Goods which, in the Company's reasonable opinion, does not adversely affect the suitability of the Goods for the particular purpose for which they are supplied by the Company will constitute a breach of contract or impose any liability upon the Company. In the event that the Company undertakes any design work in connection with any Goods supplied by the Company or in the event that the Company provides any designs, drawings, specifications, guidance or other information in connection with any such Goods, or any advice as to the use of any such Goods, (and whether such designs, drawings, specifications, guidance, information or advice are provided in the form of computer software or by the way of a manual or otherwise in writing or orally), then the Buyer acknowledges that such designs, drawings, specifications, information and/or advice are provided by the Company for guidance only and without any responsibility being accepted for the accuracy or correctness of the same, and it is for the Buyer to check and verify the accuracy and correctness of the same and to determine whether or not to rely upon the same. Any such designs, drawings, specifications, information and/or advice are provided by the Company strictly on the understanding that, subject to condition 11.3, no liability shall attach to the Company in respect thereof, and the Buyer shall fully and completely indemnify the Company against all claims by any person whatsoever for injury to person, loss or damage to property, howsoever caused, arising from the provision of such designs, drawings, specifications, information and/or advice by the Company and whether such claims arise under common law or statute or in negligence or breach of duty or other wrongful act of omission.

### 4. DELIVERY

4.1 Delivery of the Goods shall be made ex-works (Incoterms 2000).

4.2 The Buyer will take delivery of the Goods within 5 working days of the Company giving it notice that the Goods are ready for delivery and during the normal business hours of the Company.

4.3 If carriage is required in accordance with condition 4.1 the Goods shall be delivered by such means as the Company thinks fit unless the Buyer has specified in its order the details of the contract with a carrier which it reasonably requires having regard to the nature of the Goods and the other circumstances of the case.

4.4 The carrier shall be deemed to be the Buyer's agent except for the purposes of sections 44, 45 and 46 of the Sale of Goods Act 1979.

4.5 Any dates specified by the Company for delivery of the Goods are approximate only and may not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

4.6 Subject to the other provisions of these terms and conditions the Company will not be liable for any loss (including without limitation Consequential Loss), costs, damages, charges or expenses caused directly or indirectly by any non-delivery or delay in the delivery of the Goods (even if caused by the Company's negligence) nor unless such delay exceeds 180 days will any delay entitle the Buyer to terminate or rescind the Contract.

4.7 The Buyer must accept delivery of the Goods and pay for them in full unless the delay in delivery exceeds 180 days. In such a case, if delay is caused by the Company's negligence, or fault and is not covered by condition 6 the Buyer may cancel this Contract to the extent it relates to the Goods which were the subject of such delivery, without further liability for such Goods.

4.8 If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except because of the Company's fault) risk in the Goods will pass to the Buyer (including, without limitation, for loss or damage caused by the Company's negligence); the Goods will be deemed (on written notice given by the Company) to have been delivered and the Buyer shall be bound to pay for the Goods accordingly. Without prejudice to its other rights, the Company may (but shall not be obliged to):

4.8.1 store or arrange for the storage of the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or

4.8.2 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract.

4.9 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading or off-loading the Goods (as appropriate).

4.10 The Buyer will indemnify the Company against any liability and expense (whether arising under statute or common law) caused by the Buyer's failure to provide appropriate equipment and manual labour for off-loading (whether or not the off-loading is supervised by or on behalf of the Buyer) for:

4.10.1 any personal injury to or death of any of the Company's employees, agents or sub-contractors or any third party; and

4.10.2 any damage to or loss of any property of the Company, its employees, agents or sub-contractors or any third party.

### 5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 5 working days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

5.4 A signature of qualified acceptance on a carrier's delivery note shall not be written notice to the Company for the purpose of these terms and conditions.

### 6. FORCE MAJEURE

6.1 The Company shall not be liable to the Buyer in any manner or be deemed to be in breach of the Contract (subject to condition 11) because of any delay in performing or any failure to perform any of the Company's obligations under this Contract if the delay or failure due to any cause beyond the Company's reasonable control.

6.2 Without prejudice to the generality of condition 6, 1 the following shall be included as causes beyond the Company's reasonable control:

6.2.1 governmental actions, war or threat of war, national emergency, riot, civil disturbance, sabotage or requisition;

6.2.2 Act of God, fire, explosion, flood, epidemic or accident;

6.2.3 import or export regulations or embargoes;

6.2.4 labour disputes whether or not including disputes involving the Company's work-force; or

6.2.5 inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour.

### 7. RISK/OWNERSHIP

7.1 Subject to condition 4.8, risk of damage to or loss of Goods shall pass to the Buyer upon delivery or the circumstances referred to in condition 4.8, or deemed delivery.

7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

7.2.1 the Goods; and

7.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

7.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

7.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

7.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property and easily accessible and returnable to the Company;

7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

7.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company and naming the Company as loss payee. On request the Buyer shall produce the policy of insurance to the Company;

7.3.5 hold the proceeds of the insurance referred to in condition 7.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

7.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

7.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall account to the Company accordingly; and

7.4.2 any such sale shall be a sale of the Company's property on the Company's behalf and the Buyer shall deal as agent when making such a sale.

7.5 Where the Company is unable to determine whether any goods are the Goods, the Company shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

7.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

7.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them and that all such premises are in a safe and accessible condition to enable the Company to do this.

7.8 The Buyer shall be liable for any costs, damages or expenses which either of the Buyer, the Company or any third party shall suffer by reason of the Company exercising any of its rights under clause 7.7.

## **8. PRICE**

8.1 The price for the Goods shall be as detailed in the Company's current price list (at the date of acknowledgement of order by the Company) subject to any discounts agreed by the Company and subject to condition 2.8.

8.2 The price for the Goods is exclusive of any value added tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods.

8.3 The price for the Goods is given on an ex-works basis and where the Delivery Point is other than at the Company's premises the Buyer shall pay the Company's charges for transport, packaging, loading, unloading and insurance in addition when the Buyer is due to pay for the Goods.

## **9. PAYMENT**

9.1 The Company may invoice the Buyer for the Goods at any time after delivery.

9.2 Time for payment shall be of the essence.

9.3 Payment of the price for the Goods is due 30 days after the date of the invoice.

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

9.5 All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract despite any other provision.

9.6 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

9.7 The Company may appropriate any payment made by the Buyer to the Company to such of the Goods as the Company thinks fit despite any purported appropriation by the Buyer.

9.8 If the Buyer fails to make any payment under the Contract on the due date then (without prejudice to its other rights and remedies) the Company may charge the Buyer interest (both before and after judgement) on the amount unpaid at 2% per month on all overdue amounts down to actual payment (a part of a month being treated as a full month for the purpose of calculating interest).

## **10. QUALITY**

10.1 Where the Company is not the manufacturer of the Goods the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

10.2 Pursuant to Section 6(8) of the Health and Safety at Work Act 1974, the Buyer will inspect the Goods immediately on its delivery to him to ensure, so far as is reasonably practical, that the Goods will be safe and without risk to health when properly used.

10.3 The Company warrants that (subject to the other provisions of these terms and conditions) upon delivery the Goods will, and for a period of 6 months from the date of delivery, be of satisfactory quality within the meaning of the Sale of Goods Act 1979.

10.4 The Company shall not be liable for a breach of the warranty in condition 10.3 unless:

10.4.1 the Buyer gives written notice of the defect to the Company and, if the defect is as a result of damage in transit, also to the carrier within 5 working days of:

10.4.1.1 the date of delivery (where the defect would be apparent to the Buyer upon a reasonable inspection); or

10.4.1.2 the date when the Buyer knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Buyer upon a reasonable inspection); and

10.4.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.

10.5 The Company shall not be liable for a breach of the warranty in condition 10.3 if:

10.5.1 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

10.5.2 the Buyer alters or repairs such Goods without the written consent of the Company; or

10.5.3 the defect in such Goods arises from any design defect in any drawing, design or specification supplied or approved by the Buyer.

10.6 If the Buyer makes a valid claim against the Company based on a defect in the quality of the Goods, the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro-rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Company.

10.7 If the Company complies with condition 10.6 it shall have no further liability for a breach of the warranty in condition 10.3 in respect of the quality such Goods.

10.8 Any Goods repaired or replaced by the Company pursuant to this condition 10 will be supplied pursuant to these terms and conditions.

## **11. LIMITATION OF LIABILITY**

11.1 The following provisions of this condition 11 and the provisions of condition 10 set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of:

11.1.1 any breach of these terms and conditions; and

11.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from the Contract.

11.3 Nothing in these terms and conditions excludes or limits the liability of the Company for fraudulent misrepresentation or death or personal injury caused by the Company's negligence.

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 11.4 AND 11.5

11.4 Subject to conditions 11.2 and 11.3:

11.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price of the Goods; and

11.4.2 the Company shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term or any duty at law or under the express terms of the Contract for any indirect or Consequential Loss, costs, expenses or other claims for consequential compensation whatsoever (whether caused by the negligence of the Company, its employees, agents or sub-contractors) which arise out of or in connection with the Contract.

11.5 The Buyer shall indemnify the Company and keep it indemnified in full against all liability, loss, damages, costs and expenses (including legal expenses on an indemnity basis) which the Company may suffer or incur as a result of or arising out of or in connection with:-

11.5.1 any negligence by the Buyer in connection with the Contract or breach of the Contract by the Buyer;

11.5.2 the storage, use or sale of the Goods by the Buyer or other act, omission or negligence of the Buyer in connection with the Goods (except where the Company is liable to the Buyer in accordance with these terms and conditions);

11.5.3 any claims brought or threatened against the Company by any third party in connection the Goods (except where the Company is liable in respect thereof in accordance with these terms and conditions).

## **12. TERMINATION**

12.1 The Contract will terminate immediately upon the happening of any one or more of the following events; the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory), except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, or in the case of a partner, if the partnership shall be dissolved.

12.2 The Contract will terminate immediately upon service of written notice of termination by the Company on the Buyer on the happening of any one or more of the following; the Buyer suffers or allows any execution whether legal or equitable, or any distress or diligence to be levied on his/its property or obtained against him/it or his/its goods, or if any other legal process shall be threatened or commenced against him/it or his/its goods, or fails to observe or perform any of his/its obligations or duties under the Contract or any other contract between the Company and the Buyer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade.

12.3 The Company's rights contained in condition 7 (but not the Buyer's rights) shall continue beyond the discharge of the Buyer's and the Company's primary obligations under the Contract consequent upon its termination.

12.4 The termination of the Contract howsoever arising shall be without prejudice to the rights and duties of either the Buyer or the Company accrued prior to termination.

## **13. GENERAL**

13.1 Time for performance of all obligations of the Buyer is of the essence.

13.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

13.3 Any provision of the Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected.

13.4 Failure by the Company to enforce or partially enforce any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

13.5 Company may assign, license or sub-contract all or any part of its rights or obligations under the Contract without the Buyer's consent.

13.6 The Contract is personal to the Buyer who may not assign, license or sub-contract all or any of its rights or obligations under the Contract without the Company's prior written consent.

13.7 The formation, construction, performance, validity and all aspects of the Contract are governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

## **14. COMMUNICATION**

14.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:-

14.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

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

14.2 Communications shall be deemed to have been received:-

14.2.1 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);

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

14.2.3 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.

14.3 Communications addressed to the Company shall be marked for the attention of the Sales Director.

## 8. Conditions 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, re-enacted 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;

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 non-exclusive, 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.

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.