

# FORSYTH



MOBILE CRANE HIRE



TRANSPORT SERVICES



TOWER CRANES



PROJECTS



Stirling, Scotland



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01324 822 141



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www.forsythofdenny.com

## TERMS & CONDITIONS FOR LORRY LOADER CRANES AND GENERAL HAULAGE SERVICES



## **CONDITIONS OF HIRE**

We generally operate to the ALLMI, CPA AND FTA model Conditions of Hire with the additional conditions set out in this letter. These Conditions expressly exclude Clause 13 (C) iii and iv of said CPA Conditions. See 'Exclusions To CPA Conditions' below for further definitions of these exclusions. A copy of both the ALLMI, CPA and FTA conditions are included below.

## **ORDERING**

All services (General Haulage or Lorry Loader Haulage) must be booked via the Central Hire Desk.

- TELEPHONE (24 HRS) : +44 1324 822141

## **CONTACTS**

- Hire Desk Manager - Joanne Walsh +44 7387 019684 [jo@forsythofdenny.com](mailto:jo@forsythofdenny.com)
- Transport Manager - Conor McManus +44 7824 392350 [conor@forsythofdenny.com](mailto:conor@forsythofdenny.com)
- General Manager - Mark Syme + 44 7918 555 333 [mark@forsythofdenny.com](mailto:mark@forsythofdenny.com)
- Cathal McNally - + 44 7918 556 826 [cathal@forsythofdenny.com](mailto:cathal@forsythofdenny.com)

## **HIRING & OFF-HIRING**

- It is not sufficient to inform a driver on site.
- Bookings are not accepted unless they are firm.
- We cannot guarantee provisional bookings.
- Vehicles originally booked for long term, repeat or consecutive day hire must be off-hired by noon the day previous if vehicle is not required on following day.
- Vehicles can only be off hired by phoning or e-mailing the Hire Desk.
- Most customers now operate a Purchase Order (PO) number system. PO's must be issued at the time of the booking.
- Please find a sample of our Lorry Loader Hire Jobsheet on the last page of this document which will be e-mailed to you prior to the date of the hire, listing all agreed Hourly rates etc.

## **Extension of Hire**

- The hire period is defined at order stage.
- The hire period can only be extended by agreement with the hire co-ordinator.
- In some cases, the hire period cannot be extended at short notice due to prior commitments i.e. crane booked for another client.

## Depot Information

### CENTRAL HEAD OFFICE



Forsyth of Denny Ltd

Easterton

Stirling Road

Stirlingshire FK6 6RF

T - 01324 822141

W – [www.forsythofdenny.co.uk](http://www.forsythofdenny.co.uk)



Irvine Depot



FORSYTH of DENNY LTD  
DUNLOP PLACE  
MEADOWHEAD IND EST  
IRVINE  
KA11 5BJ



## General Terms

To avoid needless delays at invoice stage, the following information **MUST** be given when **booking** the Service :

- Purchase Order number (PO)
- Name of person responsible for the order.
- Exact site details – location plus directions to site.
- Job Details including load / radii criteria (see below)
- Responsible person on site.
- Date, Time etc.
- Invoice Address.

**Job details should be presented at booking stage. For crane selection, the following data is needed:**

- Job type.
- Load.
- Radius – distance from centre of crane slew ring to centre of load.
- Height.
- Obstructions etc.

**We bear no responsibility for selections:**

- a) By client.
- b) Based upon inaccurate data.



## **CANCELLATIONS**

Cancellations only accepted by phoning or e-mailing the Hire Desk during normal office hours, and by phone after normal business hours. We bear no responsibility for Cancellations via e-mail after normal business hours.

### **Charges for cancellations as follows :**

- Up to 4.00p.m. on evening prior to job: No charge.
- After 4.00 p.m.: 50% of minimum hire.
- After 6.00 p.m.: 80% of minimum hire.
- After truck has left depot: Full minimum hire.

It is normal for truck drivers to travel to customer loading or unloading site on the previous day prior to scheduled / ordered day and take rostered break. In the event of cancellation after truck has left depot, full charges will apply

## **SCOPE OF SUPPLY**

**For non contract 'CPA' hire our scope of supply includes:**

- Certified Truck / Lorry Loader + Fuel
- Certified Driver.
- Certified Standard Tackle for Lorry Loader Cranes
- Standard Outrigger support mat / pads. (See outrigger load guide).

A copy of our Method Statement & Risk Assessment for Lorry Loader Mobilisation can be forwarded to you (for inclusion in your RA/MS package) on request.

## Lifting Gear

All Lorry Loader cranes come supplied with a selection of chains, shackles, and nylon web slings. Some jobs are specific and may require special tackle. If this is so, please inform us when the crane is being booked. We have an excellent selection of heavy wire ropes, spreader beams, heavy shackles, turnbuckles and snatch blocks available on request.

- Non-standard tackle supplied at a cost to be agreed.
- We accept no liability for delays due to tackle inadequacy. The only exception to this is where pre-booked tackle does not arrive.

## DAMAGE TO TACKLE

- Damaged tackle will be charged at full replacement cost.

## Type Of Supply – Contract Lift or CPA Hire – Definitions

Given the wide variety of contractual arrangements used in the construction industry, it is important to ensure that the planning, organization control and management of lifting operations is not compromised. In general, any organization requiring a load to be moved by crane, which does not have its own craneage, has two basic options: hiring a crane (**Hired Crane**) or employing a contractor to carry out the lifting operation (**Contract Lift**).

If an individual or organization does not have expertise in lifting operations (***i.e. have their own crane Appointed Person and Crane Supervisor and be competent in the planning and execution of lifting operations***) they should not engage in a CPA 'Hire' arrangement, but should opt for a contract lift.

Before entering into a contract, employing organizations should satisfy themselves that the contractor has the necessary competence to carry out the work.

***NOTE: Responsibilities for insurance in terms of the crane, personnel, the load and third parties may also need to be clarified. This can be checked in the Liability Cover section of these Terms and Conditions.***



**EMPLOYING ORGANISATION**

The organisation requiring the load to be moved.

**Hired Crane  
(Hired and Managed)**

**The employing organisation must:**

Carry out all work in accordance with BS7121-3:2017 +  
A1:2019 / I.S.360.20019

Supply the "appointed person".

Plan the lift and operate a safe system of work.

Ensure that the crane hired is of a suitable type and  
capacity.

Check the credentials of  
the crane hire company and certification supplied.

**The crane owner has a duty to:**

Provide a crane that is properly maintained tested and  
certificated

Provide a competent driver.

**Contract Lift  
(Fully Contracted)**

**The employing organisation should specify:**

That all work is to be undertaken in accordance  
with

BS7121-3:2017 + A1:2019 / I.S.360.2019

That the Contractor is to supply the "appointed  
person".

What information and /or services will be provided  
to the contractor by the employing organisation.

**The contractor is responsible for:**

Supplying the "appointed person",  
Planning the lift, and operation of a safe system of  
work.

Organisation and control of the lifting operation.

## **CONTRACT LIFTING OPERATION**

The employing organization may enter into a contract with a contractor who undertakes the work on their behalf

### **The parties to the contract should ensure that:**

- a) For lorry loader cranes, all work is carried out in accordance with the BS7121 Part 4 series;
- b) the contractor appoints a competent crane “Appointed Person” to the satisfaction of the employing organisation;
- c) all information or services provided by the employing organization to facilitate compliance with the BS7121 Part 4 series are notified to the contractor in writing.

The contractor should carry out lifting operations in accordance with the BS7121 Part 4 series. The contractor should be given full authority by the employing organization to work in accordance with the BS7121 Part 4 series including, where appropriate, authority to control and instruct the employing organization’s personnel.

**NOTE:** Although the BS7121 Part 4 series is intended to assist organizations to comply with their statutory and common law obligations, it does not relieve them from these obligations. Before entering into a contract, employing organizations should ensure that the contractor has the necessary competence to carry out the work in accordance with the BS7121 Part 4 series.

### **User’s duties under standard CPA Hired agreement:**

When a Lorry Loader Crane is hired out together with an operator to the user organization, the crane owner should provide a competent operator and a crane that is properly maintained, inspected and tested in accordance with BS7121 Part 4, and has a current report of thorough examination.

The user organization retains the responsibility for nominating a competent appointed person and for following the recommendations given in the BS7121 Part 4 series. Notwithstanding any advice the crane owner might have offered concerning the selection of a particular crane or any other relevant matter, for example clearances, ground conditions, the responsibility for ensuring that the crane is of a suitable type, size and capacity for the task being undertaken and for planning the operation remains with the user organization. Therefore, if an individual or organization does not have expertise in lifting operations, they should not hire cranes but should opt for a contract lift.

## **GROUND CONDITIONS**

- a) The hirer must provide ground conditions that are safe for crane during travel, rigging and operation. This also applies to trucks and ancillary vehicles.
- b) Ground must be capable of sustaining axle loads of up to 18 Tonne. (Depends on crane size)

### **Outrigger Load Guide**

Crane:	Max o/r loading	General Pad Size
Up to 16tm:	~ 12T	0.6m x 0.6m
Up to 24tm:	~ 16T	0.6m x 0.6m
Up to 32tm:	~22T	0.6m x 0.6m
Up to 42tm:	~26T	0.6m x 0.6m
Up to 60tm:	~30T	0.6m x 0.6m
Up to 74tm:	~40T	0.6m x 0.6m
Up to 80tm:	~48T	0.6m x 0.6m

#### **Notes :**

On CPA 'Hire' Projects – oversize outrigger mats can be supplied at additional cost

- c) All costs due to the recovery of vehicles on failed ground will be due to the hirer.
  - Recovery costs.
  - Stricken Truck hire cost + cost of additional trucks / craneage required for recovery.
  - Cost of damage to crane.
  - Reinstatement.
  - Injuries to staff and third parties.

**This applies to site roads, site access public roads etc.**

## **EXCLUSIONS TO CPA CONDITIONS**

Under CPA Conditions of Hire, Clause 13 (C) iii and iv outline the exceptions to the hirer being liable for the loss.

However – Clause 13 (C) iii and iv are **EXPRESSLY EXCLUDED** from these Forsyth of Denny Terms for such times when a truck must leave the main Public Highway (\*\*\*) and travel along single carriageway class routes to access the Hirers site. Hirers should be aware that they are responsible for the safe Access and Egress of all trucks along such routes from the Main Public Highway (\*\*\*) to the Hirers site entrance and in addition, must satisfy themselves that such roads are capable of withstanding axle loadings of up to 18t per axle.

**(\*\*\*) – Any roadway with dual carriageway or white line in centre.**

## **CONSEQUENTIAL LOSSES**

We do not accept any consequential losses due to breakdown, late arrival etc which are normally due to forces beyond our control.

**If the service is delivered we expect full payment.**

## **NORMAL CAUSES OF DELAYS**

- Tyre failure.
- Mechanical – electrical breakdown.
- Operator sudden illness.
- Accident en-route to site.
- Truck held over by previous client.
- Weather.
- Direction by statutory body.

**We will only negotiate on the charge where the delay mal-performance is due to our negligence.**

## **LIABILITY COVER**

- a) EL/PL cover is £10m
- b) We do not cover third party liability.

### **Risks Not Covered :**

- Ground failure.
  - Sabotage.
  - Third party negligence.
  - Failure of third party load or lifting device.
- c) All costs due to damage to plant or our personnel injuries whilst on hirers site shall be to the hirers account if the fault is shown not to be ours, or our agents or servants.

Note that under non-Contract Lift conditions the responsibilities in general rest with the hirer as the crane is under the hirers direct control.

- d) Hirers E/L policy to be extended to include our employees whilst on hirers site and under hirer's control.
- e) Under Hook Cover.

**Under hook cover is not included and is available at additional cost upon request.**

- 1) CPA Hire (non-Contract Lift)
  - not included
  - can be provided at extra cost upon provision of details of load.
- 2) CPA Contract Lift
  - included as part of rates up to a value of £17,000 per item being lifted.

Items with a higher value must be advised by e-mail in advance by the hirer.

Unless actual value is stated by e-mail in advance of lifting operations, we will assume that items being lifted do not exceed this value, and that adequate cover has been put in place by the hirer.

For items which have a value of more than £17,000 we can provide insurance cover at a rate of 0.4% + VAT of the value of the item. For Example - For an item valued at £100,000 insurance cover will be £400 + VAT which will be chargeable to the customers account.

#### **f) Driver Rigger Hire**

When a driver, operator or any person is supplied by FORSYTH of Denny (FOD), FOD Management shall supply a person competent in operating the plant identified to the Hirer on the date of the contract or for such purpose for which the person is supplied (including but not limited to Slinger / Signaller, Crane Supervisor etc, Crane Operator, Truck Driver) and such person shall be under the direction and control of the Hirer. Such drivers or operators or persons shall not operate any plant other than that identified by the Hirer to FOD Management prior to the date of the contract or for such purpose for which the person is supplied, unless FOD Management has given his/her prior written agreement. Such drivers or operators or persons shall for all purposes in connection with their employment in the working of any plant or for such purpose for which the person is supplied be regarded as the servants or agents of the Hirer ( but without prejudice to any of the provisions of Clause 13 of the CPA Conditions of Hire) who also shall be responsible for all claims arising in connection with the operation of any plant by or such work carried out by the said drivers / operators / persons.

Drivers/Riggers when supplied by FORSYTH of Denny to third parties, will be assumed to work under third party instruction and sign on to their site specific method statements and risk assessments. It is the hiring party's responsibility to satisfy themselves that the supplied labour is suitable for the task they are to be assigned and properly trained, complete with all relevant supporting certification. It is also assumed that the supplied labour will carry out said tasks as instructed by third party supervisor.

FORSYTH of Denny cannot be held liable for any loss or damage to third party property, consequential loss or claims arising as a result of delays due to damages caused by, or negligence of our employee.

#### **g) Site Security :**

The hirer is at all times responsible for site security. All costs due to malicious damage, theft etc shall be to the hirer's account.

#### **h) Punctures – Tyre Damage**

The cost of puncture repairs / tyre replacement due to cuts by debris (eg – protruding re-bar or rough stone) incurred on site shall be due to the hirer.



i) **Hired-In Plant Cover.**

All hirers must provide the following hired in plant cover as follows:

<b><u>Capacity</u></b>	<b><u>Value</u></b>
<b>16t/m</b>	<b>£130k</b>
<b>24 t/m</b>	<b>£150k</b>
<b>32 t/m</b>	<b>£170k</b>
<b>42 t/m</b>	<b>£180k</b>
<b>48 t/m</b>	<b>£190k</b>
<b>53 t/m</b>	<b>£220k</b>
<b>66 t/m</b>	<b>£250k</b>
<b>74 t/m</b>	<b>£270k</b>
<b>85 t/m</b>	<b>£300k</b>
<b>Artic Flat</b>	<b>£100k</b>

For Hirers without sufficient Hired in Plant Cover, cover can be provided by Forsyth of Denny and charged at 20% of the expected Hire cost.

Hiring parties must also be aware that should a truck or crane become damaged and/or rendered inoperable for a period of time due to damage caused while supplied to the hirer under standard 'Hire' terms, the cost for loss of earnings for this machine will be charged to the hirers account/insuring party.

## **CHARGE BASIS :**

- Hourly rate ex nearest depot.
- For short notice bookings charge will be ex available depot.
- Travel time is calculated each way.
- Minimum travel time is 1 hour each way.
- 

### **Minimum Hire :**

Small Lorry Loaders up to 42tm - 4hrs

Large Lorry Loaders up to 85tm - 8hrs

Tractor Units + Selection of Trailers - 8hrs

### **Overtime :**

- Overtime will be charged:
- Outwith 8am – to 4pm Weekdays
  - on Sundays.
  - on Saturdays.
  - on Public Holidays.

Operator expenses charged – where required. I.E. Short notice extension of hire requiring provision of accommodation for driver.

Ancillaries – spreaders, baskets, skips etc available at hire cost + delivery and collection.

## **TERMS OF PAYMENT**

### **a) Account**

Strictly **30 days** net monthly account.

Example work in January must be paid in full by end February.

**Interest will be charged on overdue accounts.**

### **b) New Customers**

c)

Credit card payment will be required by all new customers until we can establish a common trust. Jobs booked without official order numbers will require payment by credit card.

## **LARGER VEHICLE**

**We reserve the right to substitute the specified truck with an equal or larger truck. (At rate of chosen crane except where agreed in advance).**

# Sample Crane Hire Jobsheet

Job No:		Date:	
Received By:		Order No:	-
Customer Name:		Ordered By:	
Address:			
Postcode:			
Office Telephone No:		Email:	
Item of Plant ordered:	Click here to enter text.	Extra Items:	-
Contract Lift: <input type="checkbox"/>	Crane Hire: <input checked="" type="checkbox"/>	Slinger Signaller: <input type="checkbox"/>	Rigger: <input type="checkbox"/>
Other Items:	-		
Date Required: -	Duration of Hire:	Time Onsite:	
Job Detail:			
Collection at :			
Delivery to :			
Collection Site Contact Name and Number:			
Delivery Site Contact Name and Number :			
Max Load:	Radius :	Height of Lift:	
Site Visit Required: <input type="checkbox"/>	Travel Time: <input type="checkbox"/>	Hours Each Way:	
Special Instructions: -			
<b>Payment Arrangements</b>			
Account: <input type="checkbox"/>	Cheque: <input type="checkbox"/>	Credit Card: <input type="checkbox"/>	Cash: <input type="checkbox"/>
Price Quoted: -	Overtime: -	Sub: -	VAT:
Price for Extras: -	Delivery: -	Minimum Hire:	
Insurance Required: <input type="checkbox"/>	Insurance Details:		
Terms & Conditions Attached: <input type="checkbox"/>		Site Visit Template Attached: <input type="checkbox"/>	



## MODEL CONDITIONS FOR THE HIRING OF PLANT (With effect from July 2011)

These conditions are not to be used for consumer contracts.

A consumer contract is a contract entered into with a person acting in their own capacity and not for or on behalf of any business or trade entity.

### 1. DEFINITIONS

- (a) The "Contract" is the Contract between the Owner and the Hirer for the hire of Plant, which incorporates the Offer and is governed by these conditions.
- (b) The "Hire Period" shall commence from the time when the Plant leaves the Owner's depot or place where last employed and shall continue until the Plant is received back at the Owner's named depot or other agreed location. For the avoidance of doubt the Hire Period includes the time Plant is left on site during a Holiday Period.
- (c) The "Hirer" is the Company, firm, person, Corporation or public authority taking the Owner's Plant on hire and includes their successors or personal representatives.
- (d) "Holiday Period" covers any cessation of work over Easter, Christmas and the New Year, as well as any other Bank or Public holidays.
- (e) "Offer" is the Owner's offer to hire the Plant to the Hirer which will include details of the Plant to be hired, the Hire Period, relevant hire rates and charges and any supplementary conditions to be incorporated into the Contract.
- (f) The "Owner" is the Company, firm or person letting the Plant on hire and includes their successors, assignees or personal representatives.
- (g) "Plant" covers all classes of Plant, or replacement Plant, machinery, vehicles, equipment, accessories, and any ancillary items, vehicles or equipment therefor, which the Owner agrees to hire to the Hirer, or anything which is supplied by the Owner to effect the hire, and anything supplied by the Owner for the safe operation and routine inspection and maintenance of the Plant.
- (h) A "Working Day" shall be from 8.00 am to 4.30 pm, Monday to Thursday, and 8.00 am to 3.30 pm, on Friday allowing a half-hour lunch break each day, unless otherwise specified in the Contract.
- (i) A "Working Week" covers the period from 8.00 am on Monday to 3.30 pm on Friday, unless otherwise specified in the Contract.

### 2. EXTENT OF CONTRACT

No terms, conditions or warranties other than as specifically set forth in the Offer shall be deemed to be incorporated or to form part of the Contract or shall otherwise govern the relationship between the Owner and the Hirer in relation to the hire of any particular Plant pursuant to the Offer. This excludes all other terms or conditions which the Hirer may seek to apply under any order or acknowledgement or acceptance or similar document and supersedes all prior negotiations, representations or agreements, whether written or oral unless and to the extent that they are expressly accepted in writing and signed by the Owner. The Owner and the Hirer do not intend that any of the terms of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Contract, except that a person who is a successor to or an assignee of the rights of the Owner is deemed to become a party to the Contract after the date of succession or assignment (as the case may be).

### 3. ACCEPTANCE OF PLANT

Acceptance of the Plant on site implies acceptance of all terms and conditions herein unless otherwise previously agreed in writing.

### 4. UNLOADING AND LOADING

The Hirer shall be responsible for the unobstructed access and egress and, unless otherwise agreed in writing, for unloading and loading of the Plant at the site; and any personnel supplied by the Owner for such unloading and / or loading shall be deemed to be under the direction and control of the Hirer. Such personnel shall for all purposes in connection with their employment in the unloading and / or loading of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of clause 13) who shall be solely responsible for all claims arising in connection with unloading and / or loading of the Plant by, or with the assistance of, such personnel.

### 5. DELIVERY IN GOOD ORDER AND MAINTENANCE: INSPECTION REPORTS

- (a) Unless notification in writing to the contrary is received by the Owner from the Hirer in the case of Plant supplied with an operator within four working days, and in the case of Plant supplied without an operator within three working days, of the Plant being delivered to the site, the Plant shall be deemed to be in good order, save for either an inherent fault or a fault not ascertainable by reasonable examination, in accordance with terms of the Contract and to the Hirer's satisfaction, provided that where the Plant requires to be erected on site, the periods stated above shall be calculated from the date of completed erection of Plant. The Hirer shall be responsible for the safe keeping of the Plant, its use in a workmanlike manner within the manufacturer's rated capacity and in accordance with the manufacturer's and / or the Owner's recommendations, and its return on the completion of the Hire Period in equal good order (fair wear and tear excepted).
- (b) The Hirer shall at all times when hiring Plant without the Owner's operator or driver take all reasonable steps to keep himself acquainted with the state and condition of the Plant. If such Plant is continued at work or in use in an unsafe and unsatisfactory state or environment, the Hirer shall be solely responsible for any damage, loss, cost, expense or accidents whether directly or indirectly arising therefrom.

- (c) Any inspection report required under the relevant legislation, or a copy thereof, shall be supplied by the Owner, if requested by the Hirer, and returned on completion of the Hire Period.

### 6. SERVICING AND INSPECTION

The Hirer shall at all reasonable times allow the Owner, his agents or his insurers to have access to the Plant to inspect, test, adjust, repair or replace the same. So far as reasonably practicable the Hirer shall allow such access during the Working Day.

### 7. GROUND AND SITE CONDITIONS

- (a) The Hirer is deemed to have knowledge of the site or the property or land where the Plant is to be delivered and the Hirer warrants that the condition of the site or place of delivery of the Plant is suitable for the use of such Plant.
- (b) If, in the opinion of the Hirer, the ground (including any private access road or track) is soft or unsuitable for the Plant to work on, travel over, be transported over, be erected or dismantled on without timbers or equivalent support, the Hirer shall supply and lay suitable timbers or equivalent support in a suitable position for the Plant to travel over, work on, be transported over, be erected or dismantled on, including for the purpose of delivery and collection.
- (c) Any timber or other material supplied by the Owner is provided solely to assist the Hirer under their duties within clause 7(b) and expressly not to relieve him of his legal, regulatory or contractual obligations to ensure adequate stability of the Plant.
- (d) The Hirer is responsible for the protection of, and liable for any damage to, any underground, surface or above ground services and utilities including, but not limited to cables, ducts, water pipes and gas lines, and any pavements, bridges, tunnels and roadways on or adjacent to the site and the Hirer shall liaise as necessary and comply with all requirements of the relevant statutory authority or similar body.

### 8. HANDLING OF PLANT

- (a) When a driver or operator or any person is supplied by the Owner with the Plant, the Owner shall supply a person competent in operating the Plant or for such purpose for which the person is supplied and such person shall be under the direction and control of the Hirer. Such drivers or operators or persons shall for all purposes in connection with their employment in the working of the Plant be regarded as the servants or agents of the Hirer (but without prejudice to any of the provisions of clause 13) and the Hirer shall be solely responsible for all claims arising in connection with the operation of the Plant by the said drivers / operators / persons.
- (b) The Hirer shall not allow any other person to operate such Plant without the Owner's prior written consent.
- (c) Such drivers or operators or persons shall not operate any other plant or machinery or undertake work other than that for which they are supplied by the Owner unless previously agreed in writing between the Owner and the Hirer.

### 9. BREAKDOWN, REPAIRS AND ADJUSTMENT

- (a) Any breakdown or the unsatisfactory working of or damage to any part of the Plant must be notified immediately to the Owner, and confirmed in writing. Any claim for breakdown time will only be considered from the time and date at which written notification is received and acknowledged by the Owner.
- (b) Full allowance for the hire charges set out in the Offer will be made to the Hirer for any stoppage due to breakdown of the Plant caused by the development of either an inherent fault or a fault not ascertainable by reasonable examination or fair wear and tear and for all stoppages for normal running repairs in accordance with the terms of the Contract.
- (c) The Hirer shall not (except for the changing of any tyre and repair of punctures), repair, modify or alter the Plant without the prior written permission of the Owner. The changing of any tyre and repair of punctures are however the responsibility of the Hirer who should arrange for them to be changed / repaired. The Hirer is responsible for all costs incurred in the changing or replacement of any tyre (which must be of an equivalent specification) as approved by the Owner and for the repair of any puncture.
- (d) The Hirer shall be responsible for all expense involved arising from any breakdown, unsatisfactory working of or damage to any part of the Plant due to the Hirer's negligence, misdirection or misuse of the Plant, whether by the Hirer or his servants, and for the payment of hire at the idle time rate as defined in clause 25, during the period the Plant is necessarily idle due to such breakdown, unsatisfactory working or damage. The Hirer is responsible for the cost of spares and / or repairs due to theft, loss or vandalism of the Plant. The Owner will be responsible for the cost of repairs, inclusive of the cost of spares, to the Plant involved in breakdown from all other causes.

### 10. OTHER STOPPAGES

No claims will be admitted (other than those allowed for under "Breakdown" (clause 9) or for "Idle Time" (clause 25), as herein provided), for stoppages through causes outside the Owner's control, including but not limited to bad weather and / or ground conditions nor shall the Owner be responsible for the cost or expense of recovering any Plant from soft or unsuitable ground, or a hazardous environment. For the avoidance of doubt, the Hirer shall be responsible for the cost and expense of recovering any Plant from soft or unsuitable ground or a hazardous environment.

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#### 11. LOSS OF OTHER PLANT DUE TO BREAKDOWN

Each item of Plant specified in the Contract is hired as a separate unit and the breakdown or stoppage of one or more units or vehicles (whether the property of the Owner or otherwise) through any cause whatsoever, shall not entitle the Hirer to compensation or allowance for the loss of working time by any other unit or units of Plant working in conjunction therewith, provided that where two or more items of Plant are expressly hired together as a unit, such items shall be deemed to be one unit for the purpose of breakdown.

#### 12. LIMITATION OF LIABILITY

Except for liability on the part of the Owner which is expressly provided for in the Contract (including these clauses):

- (a) the Owner shall have no liability or responsibility for any loss, or damage of whatever nature due to or arising through any cause beyond his reasonable control;
- (b) the Owner shall have no liability or responsibility, whether by way of indemnity or by reason of any breach of the Contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the hire, for any of the Hirer's loss of profit, loss of use of the Plant or any other asset or facility, loss of production or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party, and / or any other financial or economic loss or indirect or consequential loss or damage of whatever nature; and
- (c) whenever the Contract (including these clauses) provides that any allowance is to be made against hire charges, such allowance shall be the Hirer's sole and exclusive remedy in respect of the circumstances giving rise to the allowance, and such remedy shall be limited to the amount of hire charges which would otherwise be or become due if the allowance in question had not been made.
- (d) For the avoidance of doubt, nothing in these conditions limits or seeks to exclude the Owner's liability for claims of death or personal injury caused by the Owner's negligence, fraud or for any other liability for which it is not permitted to seek to limit or exclude by operation of law.

#### 13. HIRER'S RESPONSIBILITY FOR LOSS AND DAMAGE

- (a) For the avoidance of doubt it is hereby declared and agreed that nothing in this clause affects the operation of clauses 4, 5, 8 and 9 of these conditions.
- (b) For the duration of the Hire Period (which for the avoidance of doubt includes the time Plant is left on site during a Holiday Period) the Hirer shall, subject to the provisions referred to in sub paragraph (a) make good to the Owner all loss of or damage to the Plant from whatever cause the same may arise, fair wear and tear excepted, and except as provided in clause 9 herein, and shall also fully and completely indemnify the Owner and any personnel supplied by the Owner in respect of all claims by any person whatsoever for injury to person or property caused by or in connection with or arising out of the storage, transit, transport, unloading, loading or use of the Plant during the continuance of the Hire Period, and in connection therewith, whether arising under statute or common law. In the event of loss of or damage to the Plant, hire charges shall be continued at idle time rates as defined in clause 25 until the settlement has been agreed. Payment of the settlement must be made within 21 calendar days of the date of the agreement or idle time charges can be reinstated from the date of that agreement. Should idle time charges be re-instated, the agreed settlement figure remains payable in full.
- (c) Notwithstanding the above the Hirer shall not be responsible for damage, loss or injury:
  - (i) prior to delivery of any Plant to the site (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving such highway) where the Plant is in transit by transport of the Owner or as otherwise arranged by the Owner;
  - (ii) during the erection and / or dismantling of any Plant where such Plant requires to be completely erected / dismantled on site, provided always that such erection / dismantling is under the exclusive control of the Owner or his agent;
  - (iii) after the Plant has been removed from the site and is in transit on a highway maintainable at the public expense (or where the site is not immediately adjacent to a highway maintainable at the public expense after it has joined such highway) to the Owner by transport of the Owner or as otherwise arranged by the Owner;
  - (iv) where the Plant is travelling to or from a site on a highway maintainable at the public expense (or, where the site is not immediately adjacent to a highway maintainable at the public expense, prior to its leaving or after its joining such highway) under its own power with a driver supplied by the Owner.

#### 14. NOTICE OF ACCIDENTS

If the Plant is involved in any accident resulting in injury to persons or damage to property, immediate notification must be given by the Hirer to the Owner by telephone and confirmed in writing to the Owner no later than 24 hours after such telephone notification. In relation to any claim in respect of which the Hirer is not bound to fully indemnify the Owner, no admission of liability, offer, promise of payment or indemnity shall be made by the Hirer without the Owner's prior written permission.

#### 15. RE-HIRING ETC.

Neither the Plant nor any part thereof shall be re-hired, sub-let, or lent to any third party without the prior written permission of the Owner.

#### 16. CHANGE OF SITE

The Plant shall not be moved from the site to which it was delivered or consigned without the prior written permission of the Owner.

#### 17. RETURN OF PLANT FOR REPAIRS

If during the Hire Period the Owner decides that urgent repairs to the Plant are necessary then he may arrange for such repairs to be carried out on site or at any location of his nomination. In the event that urgent repairs to the Plant are necessary the Owner shall be obliged to replace the Plant with similar Plant if available, the

Owner (but without prejudice to any of the provisions of clauses 9 and / or 13) paying all transport charges involved. In the event of the Owner being unable to replace the Plant he shall be entitled to terminate the Contract forthwith (but without prejudice to any of the provisions of clauses 9 and / or 13) by giving written notice to the Hirer. If such termination occurs:

- (a) within three months from the commencement of the Hire Period, the Owner (but without prejudice to any of the provisions of clauses 9 and / or 13) shall pay all transport charges involved, or,
- (b) more than three months from the commencement of the Hire Period, the Owner (but without prejudice to any of the provisions of clauses 9 and / or 13) shall be liable only for the cost of reloading and return transport.

#### 18. BASIS OF CHARGING

- (a) The Hirer shall render to the Owner for each Working Week an accurate statement of the number of hours the Plant has worked each day. When any personnel, operator or driver is supplied by the Owner, the Hirer shall sign their time record sheets. The signature of the Hirer's representative shall bind the Hirer to accept the hours shown on the time records sheets.
- (b) Full allowance will be made for breakdown periods resulting from mechanical or electrical faults or absence of driver or operator supplied by the Owner except where breakdown is due to acts or omissions of third parties and / or the Hirer's misuse, misdirection or negligence, subject however to the provisions of clause 8 of these conditions.
- (c) Breakdown time in respect of such periods shall be allowed for not more than the Working Day less the actual hours worked.
- (d) Plant shall be hired out either:
  - (i) for a stated minimum number of hours per Working Day or per Working Week or,
  - (ii) without any qualification as to minimum hours. Odd days at the beginning and at the end of the Hire Period shall be charged pro rata.
- (e) Stoppages due to changing of tyres and repairs to punctures will be chargeable as working time up to a maximum of 2 hours for any one stoppage and any excess will be charged for at the appropriate idle time rates.
- (f) In the case of Plant which is required to be dismantled for the purpose of transportation, if the Owner agrees to a modification of the hire charge for the period required for assembling on site and dismantling upon completion of the Hire Period, such modification of the hire charge and the Hire Period for which it shall apply shall be stated in the Offer / Contract.

#### 19. PLANT HIRED ON A DAILY BASIS WITHOUT QUALIFICATION AS TO HOURS

The full daily rate will be charged on a daily basis irrespective of the hours worked except in the case of breakdown for which the Owner is responsible, when the actual hours worked will be charged pro rata of the average Working Day. No hire charge shall be made for Saturday and / or Sunday unless the Plant is actually worked.

#### 20. PLANT HIRED BY THE WEEK OR MONTH WITHOUT QUALIFICATION AS TO HOURS

The weekly or monthly rate shall be charged irrespective of the number of hours worked, except in the case of breakdown for which the Owner is responsible when an allowance pro rata of the agreed weekly rate or pro rata of the agreed monthly rate will be made for each full Working Day broken down calculated to the nearest half Working Day.

#### 21. PLANT HIRED BY THE WEEK OR THE HOUR FOR A MINIMUM OF 39 HOURS PER WEEK

The full hire for the minimum period in the Contract will be charged and an additional pro rata charge will be made for hours worked in excess of such minimum period. Allowance will be made for breakdowns up to 8 hours except on Fridays when the allowance will be up to 7 hours providing always that where the actual hours worked are in excess of the minimum period less breakdown time, the actual hours worked shall be chargeable. Idle time for this purpose shall be treated as actual working time. The minimum Working Week of 39 hours shall be reduced by 8 hours Monday to Thursday and 7 hours Friday for each Holiday Period occurring in such Working Week, provided that the Plant is not in use during such Holiday Period.

#### 22. "ALL-IN" RATES

Where "All-In" rates are charged by agreement the minimum period shall be as defined in the Contract and in accordance with the hire rates and terms contained therein, subject to the provisions of clause 26.

#### 23. COMMENCEMENT AND TERMINATION OF CONTRACT (TRANSPORT OF PLANT)

- (a) The Hire Period shall commence from the time when the Plant leaves the Owner's depot or place where last employed and shall continue until the Plant is received back at the Owner's named depot or other agreed location but an allowance shall be made of not more than one day's hire charge each way for travelling time. If the Plant is used on the day of travelling, full hire rates shall be paid for the period of use on that day. If more than one day is properly and unavoidably occupied in transporting the Plant, a hire charge at idle time rates shall be payable for such extra time, provided that where Plant is hired for a total period of less than one Working Week, the full hire rate shall be paid from the date of despatch to the date of return to the Owner's named depot or other agreed location.
- (b) If the Plant is not made available for collection as agreed between the parties, such Plant shall be deemed with immediate effect to be placed back on hire. The Hirer shall be responsible for the safekeeping of the Plant in accordance with clause 13, and for all the reasonable costs and expenses incurred by the Owner in seeking to collect such Plant.
- (c) Upon the completion of the Hire Period, the Hirer shall clean and where necessary, decontaminate the Plant. All fuel and contaminants will be removed from bunds, storage tanks and bowlers. The Hirer shall be liable for any costs, liabilities and expenses incurred by the Owner should the Hirer fail to comply with this clause.

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#### 24. HIRER'S LIABILITY DURING THE NOTICE OF TERMINATION OF CONTRACT

- a) Where the Hire Period is indeterminate or having been defined becomes indeterminate the Contract shall be terminable by seven days notice in writing given by either party to the other except in cases where the Plant has been lost or damaged. Notwithstanding that the Owner may have agreed to accept less than 7 days notice of termination, the Hirer's obligations under clause 13 shall continue until the Plant is returned to the Owner in accordance with clause 31 or until the Owner has collected the Plant within the 7 days following the acceptance of short notice. Oral notice given by the Hirer to the Owner's driver or operator shall not be deemed to constitute compliance with the provisions of this clause.
- b) Without prejudice to clause 24(a), should the Hirer fail to make the Plant available for collection by the Owner before the end of the 7 day notice, the Hirer's obligations under clause 13 shall continue for a further 3 days or until such time as the Plant is made available for collection and the Owner has collected the Plant. For the avoidance of doubt, where the Hirer gives a notice pursuant to clause 24(a) but subsequently and with the consent of the Owner, withdraws such notice, the obligations of clause 13 shall continue to apply and the requirements of clause 24 will apply to any later termination of the Contract.
- c) If the Hirer terminates the Contract before the Hire Period commences, then the Hirer is liable for all reasonable costs and charges incurred by the Owner or to which the Owner is committed at the time of termination.

#### 25. IDLE TIME

When the Plant is prevented from working for a complete Working Week, the hire charges shall be two thirds of the hire rate or such other idle time rate as is agreed in writing by the Owner for the period during which the Plant is not in use. If the Plant works for any time during the Working Day then the whole of that Working Day shall be charged as working time. In any case no period less than one Working Day shall be reckoned as idle time save for as provided for in clause 18(e). Where an "All-In" rate is charged, idle time is calculated on the machine element only. Full rate will be charged for the operator.

#### 26. WAGES AND OTHER CHARGEABLE ITEMS RELATING TO DRIVERS AND OPERATORS OF PLANT

All chargeable items shall be paid by the Hirer at the rates set out in the Contract save that any subsequent increases before and / or during the Hire Period arising from awards under any wage agreements and / or from increases in the Owner's statutory contribution shall be charged as additions at cost by the Owner and shall be admitted and paid by the Hirer.

#### 27. TRAVELLING TIME AND FARES

Travelling time, fares and similar expenses for drivers, operators and any person supplied by the Owner, incurred at the beginning and end of the Hire Period and where appropriate return fare of the driver, operator and any person supplied by the Owner to his home will be chargeable at cost. No charge shall be made by the Owner for any such expenses incurred by other employees of the Owner for the purpose of servicing, repair or maintenance of Plant, unless necessitated by the Hirer's negligence, misdirection or misuse of the Plant.

#### 28. FUEL, OIL AND GREASE

Fuel, oil and grease shall, when supplied by the Owner, be charged at net cost or an agreed estimate of net cost, and when supplied by the Hirer, shall be of a grade or type specified by the Owner. The Hirer shall be solely responsible for all damages, losses, costs and expenses incurred by the Owner if the Hirer uses the wrong fuel, oil or grease.

#### 29. SHARPENING OF DRILLS/STEELS ETC.

The cost of re-sharpening or replacement of drill bits, blades and other ancillary items shall be borne by the Hirer.

#### 30. OWNER'S NAME PLATES

The Hirer shall not remove, deface or cover up the Owner's name plate or mark on the Plant indicating that it is his property, without the prior written permission of the Owner.

#### 31. TRANSPORT

The Hirer shall pay the cost of and if required by the Owner, arrange transport of, the Plant from the Owner's depot or other agreed location to the site and return to the Owner's named depot or other agreed location on completion of the Hire Period.

#### 32. GOVERNMENT REGULATIONS

- a) The Hirer will be responsible for compliance with relevant regulations issued by the Government or Local Authorities, including regulations under the Environmental Acts, Factories Acts, Health and Safety at Work, etc. Act and observance of the Road Traffic Acts should they apply, including the cost of road fund licences and any insurances made necessary thereby, save that if and during such time as the Plant is travelling, whether for full or part journey from Owner to site and site to Owner under its own power with a driver supplied by the Owner, the Owner and not the Hirer shall be responsible as aforesaid.
- b) The Hirer shall indemnify the Owner against any charges or fines that the Owner may become liable for as a result of the operation of the Plant during the Hire Period.

#### 33. PROTECTION OF OWNER'S RIGHTS

- a) The Hirer shall not re-hire, sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Plant except as provided under clause 15 and shall protect the same against distress, execution or seizure and shall indemnify the

Owner against all losses, damage, costs, charges and expenses arising as a direct result of any failure to observe and perform this condition except in the event of Government requisition.

- b) The Owner may terminate the Contract forthwith by written notice to the Hirer if one or more of the following events occur:

- (i) The Hirer defaults in punctual payment of any sum due to the Owner for hire of Plant or other charges payable pursuant to these conditions;
- (ii) The Hirer fails to observe and perform the terms and conditions of the Contract;
- (iii) The Hirer suffers, or the Owner reasonably believes that the Hirer shall suffer, any distress or execution to be levied against him;
- (iv) The Hirer makes or proposes to make any arrangement with his creditors or becomes insolvent within the meaning of Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof for the time being in force; or
- (v) The Hirer does or causes to be done or permit or suffer any act or thing whereby the Owner's rights in the Plant may be prejudiced or put into jeopardy.

- c) In the event of termination under sub-paragraph (b) above:

- (i) The Hirer must give the Owner or his agents, immediate unobstructed access to recover the Plant.
- (ii) The Owner shall be entitled to claim the hire charges outstanding as at the date of termination of the hire under this clause and return transport charges under clause 31.

- d) The rights under sub-paragraph (b) and (c) above:

- (i) May be exercised notwithstanding that the Owner may have waived some previous default or matter of the same or a like nature.
  - (ii) Shall not affect the Owner's right to claim damages for breach of Contract or recover any sums due under the Contract as a debt.
- e) If the Hirer does not make payment of a sum by the final date on which payment is due to be made, the Owner has the right to suspend performance of its obligations under the Contract. The right to suspend may not be exercised without first giving to the Hirer at least 7 days notice in writing of the Owner's intention to suspend performance, stating the ground or grounds on which the Owner intends to suspend performance. The right to suspend performance will cease when the Hirer makes payment in full of the amount due.

#### 34. CHANGES IN NORMAL WORKING WEEK

The foregoing provisions have been framed upon the basis of the Hirer working a 5-day week of 39 hours; it is hereby agreed that in the event of:

- (a) there being any agreed change in the normal weekly hours in the industry in which the Hirer is engaged or,
- (b) the Contract being made with reference to a 5 day week of other than 39 hours. Clauses 1(h) and (i), 18(c) and (d), 20 and (in regard to breakdown allowance and reduction for statutory holidays) 21 shall be deemed to be modified conformably and in the event of an alteration in the normal weekly working hours in the said industry the "Hire Rates and Terms" of Plant hired for a minimum weekly or daily period shall be varied pro rata.

#### 35. DISPUTE RESOLUTION

- a) If the site is situated within the United Kingdom, then the court whose jurisdiction covers the site will have exclusive jurisdiction and interpretation of the law for this Contract. If the original site is not situated within the United Kingdom, then the relevant jurisdiction and interpretation of the law of the Contract will be governed by the country where the Owner's head office is located.
- b) Both parties to the Contract have a right to refer any difference or dispute arising under or in connection with the Contract to adjudication and the procedure set out in Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (or any amendment or re-enactment thereof for the time being in force) will apply. The person (if any) specified in the Contract to act as adjudicator may be named in the Offer. The specified nominating body to select adjudicators shall be the Construction Plant-hire Association acting by its President or Chief Executive for the time being.
- c) The Owner and the Hirer shall comply forthwith with any decision of the adjudicator; and shall submit to summary judgment and enforcement (and / or, under Scots law, shall consent to a motion for summary decree and submit to enforcement) in respect of all such decisions; in each case, without any defence, set-off, counterclaim, abatement or deduction. Where, under Scots law, the Owner, the Hirer, or the adjudicator, wishes to register a decision of the adjudicator for execution in the Books of Council and Session, any other party shall, on being requested to do so, forthwith consent to such registration by subscribing the decision before a witness.

#### 36. LATE PAYMENTS

The Owner reserves the right to charge the Hirer for the late payment of any outstanding invoices under the Late Payment of Commercial Debts (Interest) Act 1998, or any subsequent legislation.

#### 37. SEVERABILITY

If any of these clauses are held to be unlawful, void or unenforceable, then that clause will be deemed severable and will not affect the validity and enforceability of the remaining clauses, to the extent permitted by law.





## ALLMI - Industry Standard Terms & Conditions for a Lifting Operation using a Lorry Loader.

These terms have been prepared by the Association of Lorry Loader Manufacturers & Importers (ALLMI). ALLMI is the only trade association dedicated exclusively to the promotion of best practice within the UK lorry loader industry. Any company offering goods or services under these terms must be a member of ALLMI, which should be verified by visiting [www.allmi.com](http://www.allmi.com). Members of ALLMI are required to comply with The Lifting Operation and Lifting Equipment Regulations 1998 ("LOLER") and the Approved Code of Practice BS7121 Safe Use of Cranes Part 4:2010 Lorry Loaders.

### 1. Introduction & Definitions

- 1.1 These terms apply to the contract for the supply of goods or services by the Company to the Client and each future request for the supply of such goods or services received by the Company from the Client from time to time. The communication of a request by the Client to the Company for the supply of such goods or services shall amount to the Client's acceptance of these terms. These terms shall take precedence over any terms and conditions of the Client, whether attached to, enclosed with or referred to in any purchase order of the Client or elsewhere. They may not be varied except by written agreement between the Company and the Client.
- 1.2 In these terms, unless the context requires otherwise, the following terms and expressions shall have the following meanings:
  - 1.2.1 "*The Appointed Person*" is a person employed by the Contractor who in accordance with Regulation 8 of LOLER is deemed sufficiently competent to be ultimately responsible for the planning and safe execution of the Lifting Operation.
  - 1.2.2 "*The Client*" is the person or organisation requiring the Lifting Operation to be carried out.
  - 1.2.3 "*The Company*" is the person or organisation providing goods or services to the Client either as a Contractor or Equipment Provider.
  - 1.2.4 A "*Contract Lift*" is where the Client chooses to contract out the responsibility for the Lifting Operation as a whole to the Company, which assumes the role of Contractor.
  - 1.2.5 "*The Contractor*" is the person or organisation who is legally responsible for the safe planning and execution of the Lifting Operation.
  - 1.2.6 "*The Equipment Provider*" is the person or organisation responsible for providing the lorry loader, together with a trained operator.
  - 1.2.7 A "*Hired & Managed Lift*" is where the Client assumes the role of Contractor and the Company is the Equipment Provider.
  - 1.2.8 "*The Lifting Operation*" means an operation concerned with the lifting or lowering of a load.
- 1.3 Any ALLMI Member being asked to provide services under these terms must firstly establish whether the type of lift being requested is a Hired & Managed Lift or a Contract Lift.
- 1.4 Under either type of lifting contract, the Company and the Client is each responsible for ensuring it has insurances appropriate to the activities it is undertaking.



- 1.5 The Company may cross-hire or sub-contract any or all of its obligations arising under these terms, provided it does so only to a fellow ALLMI Member and provided it gives the Client written notice of such cross-hire or sub-contract.
2. **Lifting Operations under a Contract Lift (the default position)**
  - 2.1 Unless there is a written agreement between the Client and the Company stating the Lifting Operation is being carried out on a Hired & Managed Lift basis, then the Lifting Operation becomes, by default, a Contract Lift.
  - 2.2 **Rights and Responsibilities of the Client**
    - 2.2.1 Unless expressly stated to the contrary, all site visits will be chargeable at a rate deemed appropriate by the Company and will not be conducted unless and until the Client has approved such cost prior to the visit taking place.
    - 2.2.2 Unless stated to the contrary, the Client will be responsible for providing any information requested by the Contractor, confirming this in writing if requested. Such information requested may include (non-exhaustively):
      - 2.2.2.1 information on ground conditions and bearing capacities;
      - 2.2.2.2 overhead obstructions;
      - 2.2.2.3 the load(s) to be lifted;
      - 2.2.2.4 access and egress to the site;
      - 2.2.2.5 welfare facilities; and
      - 2.2.2.6 induction processes and site rules.
    - 2.2.3 Should the Client refuse a site visit following the provision of inadequate or unsubstantiated information then the Client will be charged the whole job price, or a pro-rata element of the job price, as a consequence of the job being aborted or delayed.
  - 2.3 **Rights and Responsibilities of the Company (as Contractor and Equipment Provider)**
    - 2.3.1 Under a Contract Lift, the Company is responsible for all aspects of the safe planning and execution of the Lifting Operation with the exception of determining the load bearing capacity of the ground. *This information must be provided by the Client, who shall be entirely responsible for any liabilities arising.*
    - 2.3.2 The Company shall make appropriate enquiries as to the nature of the Lifting Operation required, in order to determine whether or not a site visit will be necessary.
    - 2.3.3 In the event of a site visit being deemed necessary, the Appointed Person will be responsible for overseeing the task and for collating all information subsequently obtained for the purposes of preparing a safe system of work or Lifting Plan.
    - 2.3.4 In the event of any information provided by the Client under condition 2.2.2 proving to be inadequate or unsubstantiated, the Company reserves the right to carry out a site visit which will be charged to the Client at the applicable rate.
    - 2.3.5 The Company reserves the right and holds absolute authority at all times in determining whether or not the Lifting Operation is safe to proceed. In the event of a lift being stopped, postponed or aborted due to inclement weather, high winds, site conditions or other factors beyond the control of the Company, the Company reserves the right to charge a fee proportional to the costs incurred when measured against the job as a whole.



- 2.3.6 Should the Lifting Operation be delayed or aborted due to issues with the condition or accessibility of the land caused by acts or omissions of the Client, the Company reserves the right to charge the whole job price or a fee proportional to the costs incurred when measured against the job as a whole.
- 2.3.7 The Company shall not be liable for any losses or damage including consequential damage caused as a consequence of negligence or incorrect or inadequate information being provided by the Client. The Company reserves the right to pursue a claim against the Client for losses it may suffer or incur in such circumstances.
3. **Lifting Operations under a Hired & Managed Lift (the contracted out position)**
- 3.1 **Rights and Responsibilities of the Client (as Contractor)**
- 3.1.1 The Client will be responsible for providing the Appointed Person, carrying out all risk assessments and/or method statements, assessing ground conditions, preparing the safe system of work (also known as The Lifting Plan) and for ensuring the Company's employees have been briefed on the method of the Lifting Operation and (where necessary) have signed onto the Lifting Plan to make a declaration to that effect.
- 3.1.2 The Client will be responsible for ensuring the Lifting Operation is conducted in accordance with the appropriate legislation and standards.
- 3.1.3 The Client will be responsible for advising the Company immediately verbally and on the same day in writing in the event of an incident directly or indirectly involving equipment supplied under these terms if it has occurred within the scope of the Lifting Plan. The Company accepts no liability howsoever arising and whether owed to the Client or to any third party if notified after the date of the incident.
- 3.2 **Rights and Responsibilities of the Company (as Equipment Provider only)**
- 3.2.1 The Company will be responsible for providing a lorry loader which:
- 3.2.1.1 has been maintained in accordance with manufacturer's instructions;
- 3.2.1.2 carries an appropriate and current Report of Thorough Examination which meets with the requirements of LOLER; and
- 3.2.1.3 carries a current Report of Thorough Examination and Test in accordance with the requirements of BS7121 Part 2.
- 3.2.2 Unless agreed to the contrary, the Company will be responsible for providing lifting accessories which carry an appropriate and current Report of Thorough Examination which meet with the requirements of LOLER.
- 3.2.3 The Company will be responsible for ensuring all personnel supplied by them are:
- 3.2.3.1 suitably trained;
- 3.2.3.2 suitable for the task; and
- 3.2.3.3 deemed competent.
- 3.2.4 Under a Hired & Managed Lift, the Company *will not* compromise its contractual status by providing information or contributing to the planning of the Lifting Operation other than:
- 3.2.4.1 to provide information concerning the lifting duties and rated capacities of the lorry loader being supplied;





- 3.2.4.2 to provide information on the maximum forces being placed through the lorry loader stabilizers; and
- 3.2.4.3 to provide information on the type and configurations of lifting accessories available.
- 3.2.5 The Company will be responsible for providing information on the size of stabilizer support pads/mats available. In the event of pads/mats being required beyond the scope of those carried with the vehicle, this will be subject to further discussion, agreement and pricing prior to acceptance of any job.
- 3.2.6 In all cases of Hired & Managed lifts it is the responsibility of the Appointed Person to ensure the lift is properly planned etc. in accordance with Regulation 8(1) of LOLER.

#### 4. Breakdowns, Stoppages and Losses

- 4.1 The Company is responsible for ensuring all equipment supplied by them, irrespective of the type of Lifting Operation being carried out, is adequately maintained in accordance with the requirements and definitions contained within LOLER and that where applicable, it has been Thoroughly Examined in accordance with the requirements of LOLER and BS7121 Part 2.
- 4.2 In the event of a breakdown or unscheduled stoppage caused by the failure of the equipment supplied by the Company, the Company's liability shall be limited to it arranging repairs or a replacement at the earliest possible opportunity in order to complete the work.
- 4.3 Should the Client require more explicit guarantees of performance in this regard, it must be stipulated by them prior to or at the enquiry stage to permit pricing and contingency planning to be arranged in order to accommodate their requirements.
- 4.4 Provided that the Company has complied with clause 4.1, its liability shall be limited as stated in clause 4. 2 and, for the avoidance of doubt, the Company shall not be liable (whether to the Client or otherwise) for any claims for any consequential losses or liabilities held by other parties shall not be accepted.

#### 5. Payment

- 5.1 Unless otherwise agreed in writing, the Client shall pay the Company's invoices in full (without deduction, set-off or counterclaim) within 30 days from the date of the invoice.
- 5.2 All invoices unpaid after the stated and mutually agreed terms will incur a legally enforceable contractual interest rate of 8%, per month, above the Bank of England base rate.
- 5.3 Where the Lifting Operations are carried out under a Hired & Managed Lift:
  - 5.3.1 in the event that the Client's requirements exceed the standard sizes/specifications carried by the vehicle on which the loader crane is mounted, the Company and the Client will agree additional rates as required;
  - 5.3.2 in the event of additional specialised equipment being required e.g. lifting accessories, skates and so on, the Company and the Client will agree additional rates as required.

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# Model Conditions for the Carriage of Goods by Road in the United Kingdom

2018

The Conditions set down the basis on which the Carrier will carry Goods for the Customer (definitions of Conditions, Carrier, Goods and Customer are given in Condition 1). The Carrier is not and does not contract as a common carrier. The Conditions may not be altered or varied in any way except by express agreement in writing signed by a director or proprietor of the Carrier. The Conditions cannot and do not override any statutory provisions imposed by law or the application of any applicable international conventions.

It is expressly stated to be the Customer's responsibility to read and understand these Conditions which will form the basis of the Contract under which any claims or disputes are settled. Customers are recommended to take professional advice and must arrange adequate insurance to provide full cover when the Consignment is in transit.

A set of explanatory notes is available from the Freight Transport Association.

Name of Carrier	
Address	

## 1 Definitions

In these Conditions:

- 1.1 **ADR notice** means a notice in writing in relation to the referral of a dispute to mediation.
- 1.2 **Alternative Dispute Resolution** means any procedure agreed by the parties for the resolution of disputes other than those involving formal arbitration or litigation.
- 1.3 **Approved Carriage List** means the list of approved carriage items prepared pursuant to the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 and as updated from time to time.
- 1.4 **Carrier** means the person (corporate or otherwise) who contracts with the Customer to carry the Goods.
- 1.5 **CEDR** means the Centre for Effective Dispute Resolution.
- 1.6 **Conditions** means these Terms and Conditions.
- 1.7 **Contract** means the agreement between the Customer and the Carrier for the carrying out of the transport service in relation to the Goods including all documents expressly incorporated therein.
- 1.8 **Consignee** means the person (corporate or otherwise and who may or may not be the Customer) to whom the Carrier contracts to deliver the Consignment.
- 1.9 **Consignment** means the consignment of the Goods at any one time from one Consignor in a single load from one address in the United Kingdom to one Consignee at any one other address in the United Kingdom.
- 1.10 **Consignor** means the person (corporate or otherwise who may or may not be the Customer) who supplies the Consignment to the Carrier for carriage.
- 1.11 **Customer** means the person (corporate or otherwise) who contracts with the Carrier for the carriage of goods.
- 1.12 **Dangerous Goods** means Goods of any nature including those listed in the Approved Carriage List which represent a hazard, or include radioactive material and explosives of any nature.
- 1.13 **Delay** means failure by the Carrier to deliver the Goods within the agreed time limit, or if there is no agreed time limit, within the period of 60 days from the date upon which the Carrier takes possession of the Goods.
- 1.14 **Exempt Products** means bullion, precious metals, precious stones, money (whether in note or coin form),

securities, stamps, legal or business documents, living creatures or anything of a similar nature.

- 1.15 Goods** means the goods whether single or multiple units or in bulk which are transported in the Consignment.
- 1.16 Loss** means the actual loss of the Goods or failure by the Carrier to deliver the Goods within 30 days of the agreed time limit for delivery or, if there is no agreed time limit, within 60 days from the date on which the Carrier took over the Goods.
- 1.17 Owner's Risk** means that the Goods are held upon terms that the Carrier shall not be liable for any loss of whatsoever nature and howsoever caused including negligence in relation to the Goods or as a consequence of the Goods being in the Carrier's possession.
- 1.18** The expressions Carrier, Consignee, Consignor and Customer shall include those parties' principals, agents and servants.

## **2 Principal parties and sub-contractors**

- 2.1** The Customer contracts as the legal owner of the Goods or as the authorised agent of such legal owner in which case the Customer warrants that he has the authority to accept these Conditions on behalf of the legal owner.
- 2.2** Unless written instructions to the contrary are received from the Customer, the Carrier may sub-contract part or the whole of the Consignment.
- 2.3** Where carriage of any Consignment or part of a Consignment is sub-contracted to a sea, air or rail carrier then the liability of the Carrier and of any sub-contractor shall be limited and/or excluded in accordance with the conditions of carriage of that sub-contractor or as provided for by statute or international convention.
- 2.4** Notwithstanding the provisions of the Condition 2.2, the Carrier may not sub-contract the carriage of Dangerous Goods without the prior written consent of the Customer.
- 2.5** Where part or the whole of the carriage has been sub-contracted as provided for in Condition 2.2 above, such sub-contractors shall have the benefit of these Conditions and shall be under no greater liability to the Customer than, the Carrier would be under the Contract and the Customer agrees with the Carrier that no claim shall be made against a sub-contractor in addition to or in excess of the limitations and/or exclusions of liability as set out in these Conditions.

## **3 Loading and unloading**

- 3.1** The Carrier shall not be required to provide additional services other than the service for the carriage of the Consignment from the designated place of collection to the designated place of delivery unless any such service has been requested by the Customer and agreed by the Carrier in writing, prior to collection or delivery being made.
- 3.2** The Customer shall be responsible for all aspects of loading and unloading the Consignment onto and off of the vehicle, including providing and safely operating any equipment that may be required for loading and unloading the Consignment. If the Carrier's personnel assist in any part of loading or unloading then, while they provide such assistance, the Carrier's personnel shall

be deemed to be under the Customer's instruction and control and the Customer accepts full liability for the acts of such personnel during that period except for any acts of gross negligence.

- 3.3** The Carrier shall not be liable for any loss or damage caused as a result of:
- a** its use of defective equipment supplied by the Consignee or Consignor;
  - b** the Carrier acting upon the instructions or directions of the Customer, the Consignor or the Consignee, or their servants or agents, with respect to the loading and/or unloading of the Consignment; or
  - c** negligent acts committed by the Consignor or Consignee or their servants or agents in assisting with loading and/or unloading; and
  - d** the Customer shall indemnify the Carrier against any claim made against the Carrier in respect of such loss or damage including claims in respect of death or personal injury.
- 3.4** The Carrier will endeavour to make the Consignment reasonably accessible on the vehicle at the place designated for delivery.
- 3.5** The Customer shall make available to the Carrier upon request details of any risk assessments which may have been carried out at the collection and/or delivery addresses. The responsibility for carrying out such risk assessments shall be that of the Customer and not of the Carrier.

## **4 Dangerous Goods**

- 4.1** The Contract for the carriage of Dangerous Goods shall be voidable by the Carrier and the Carrier shall have no liability unless, prior to loading, the Carrier receives precise and correct identification of the substances in writing and has agreed to accept the same for carriage. Instructions in writing must be provided by the Customer in the form prescribed by the appropriate statutory authority giving details of each and every substance the Carrier is requested to carry. Written information must be provided in respect of Goods classified as Dangerous Goods and where an instruction in writing is not required by statute. An instruction in writing or other written notification provided by the Customer must accompany each and every Consignment.
- 4.2** The Customer shall be responsible for ensuring that such substances are properly and safely packaged and labelled with the identities of the substances and all other relevant information as specified by any statutory requirements for the time being in force.
- 4.3** The Customer shall be responsible for and indemnify the Carrier against any loss or damage and claims made upon the Carrier in respect of any injury to persons or damage to property arising from the non-compliance by the Customer or the Consignor with any of the provisions of these Conditions in as far as they relate to the carriage of Dangerous Goods, unless the Customer proves that the loss, damage or injury was due to the negligence of the Carrier.



## 5 Consignment notes/receipts

- 5.1 The Carrier shall, if requested, sign a document acknowledging receipt for the carriage of the quantity and description of the Consignment loaded on to the Carrier's vehicle, to the extent this can be determined, by visual inspection. Such receipt shall not be evidence as to accuracy of the condition, weight, quantity nor nature of the Goods said to comprise the Consignment at the time the receipt document is signed by the Carrier and/or his agents and/or his servants. The burden of proof in the event of dispute is with of the Customer.
- 5.2 The Carrier shall use its best endeavours to obtain a signed receipt of delivery of the Consignment from the Consignee unless otherwise agreed with the Customer. Such receipts will be returned to the Customer as proof of delivery, unless otherwise agreed in writing by the Customer and/or his agent and/or his servants.

## 6 Carrier's responsibility

- 6.1 Goods are accepted by the Carrier for carriage at the Owner's Risk where the Carrier is able to show that the Customer has explicitly agreed to the carriage of the Goods at the Owner's Risk (or in accordance with Condition 8.2b). In that event, the Carrier shall not be liable for loss damage or delay to the Goods no matter howsoever or by whomsoever caused and the Customer agrees to indemnify the Carrier against any claims made by any third party (including in relation to the carriage, retention or storage) in respect of the Goods carried.
- 6.2 Subject to the provisions of Condition 6.1 above the Carrier's responsibility for the Consignment shall commence when the Carrier, its agents or sub-contractors takes physical control of the Consignment at the point of collection or by receiving the same at the Carrier's premises.
- 6.3 Subject to Condition 6.4 the Carrier's responsibility and liability for the Consignment shall end when the Carrier, its agents or sub-contractors relinquish physical control of the Consignment at the proper place of delivery or the Consignment is presented at the proper place of delivery within normal business hours allowing sufficient time for unloading.
- 6.4 If it has been agreed that the Consignee will collect the Goods from the Carrier's premises or if the Carrier is prevented from making delivery at the Consignee's address as a consequence of the absence of a safe and/or adequate access or unloading facility, then the Carrier's responsibility for the Goods shall end at the expiration of 24 hours after notice (by letter, telephone, fax or email or other agreed method of communication) has been given to the Consignee and/or the Consignor.
- 6.5 At any time during the term of the Contract the Customer may request or the Contractor may recommend variations to the service and/or variations to any other matters covered by the Contract. The Carrier shall investigate the likely impact of any such requested or recommended variations upon the service, the charge for the service and other aspects of the Contract and shall report promptly to the Customer. Neither party shall be obliged to agree to any requested or recommended variation but neither party shall withhold or delay its agreement unreasonably. Until such time as any variation to the Contract has been mutually agreed in writing, the parties shall continue

to perform their respective obligations without taking account of the requested or recommended variation.

## 7 Carrier's charges

- 7.1 The Carrier's charges shall be payable by the Customer provided always that, when the Goods are consigned carriage forward, the Consignee shall have primary responsibility for the payment of the carriage charges but the Customer shall pay such charges in the event of default by the Consignee and the Carrier shall not be required to take any steps to obtain payment from the Consignee other than a written request for payment.
- 7.2 Notwithstanding any claim which the Customer may have against the Carrier, the Carrier's charges for carriage and any other services incidental to the carriage chargeable under the Contract shall be payable by the Customer within the timeframe communicated by the Carrier prior to the Contract being entered into, and in the event that no timeframe is communicated, then the charges shall be payable within 30 days of the date of the invoice unless otherwise agreed in writing. Should the charges not be paid within such a period, then the Carrier shall be entitled to interest at the rate of 8 per cent above the base rate of the Bank of England prevailing at the date of invoice, calculated on a daily basis from the date when the sum became due to the date of actual payment, whether before or after any judgment.
- 7.3 Without limiting the generality of Condition 7.2, the Carrier's charges shall be payable when due without reduction or deferment on account of any claim, counterclaim or set-off.

## 8 Disposal of the Goods by the Carrier

- 8.1 In the event that the Carrier is unable for any reason beyond its reasonable control to deliver the Consignment in accordance with the Contract, the Carrier shall seek further instructions from the Customer. The Carrier's reasonable additional charges for retaining the Goods pending the arrival of such further instructions and for carrying out those instructions shall be payable by the Customer.
- 8.2 Subject to the provisions contained in Condition 8.2a to c below, where the Carrier is unable to obtain further instructions from the Customer in accordance with Condition 8.1, the Carrier may sell the Goods provided that such sale is permitted by law. Payment or tender of the net proceeds to the Customer after deductions of all costs of and charges for carriage, other services incidental to the carriage chargeable under the Contract, storage and disposal and expenses in relation to the Goods shall (without prejudice to any claim or right which the Customer may have against the Carrier otherwise arising under the Conditions) discharge the Carrier from all liability in respect of such Goods, their carriage and storage.
- a The Goods may not be sold unless the Carrier shall have made reasonable efforts (having regard, if appropriate, to the perishable nature of the Consignment) to notify the Customer of the Carrier's intention to sell the Goods. The Goods may then be sold unless, within reasonable time (such time to be specified in the notice) the Customer shall have

arranged to collect the Goods or given instructions for their disposal and have paid, without prejudice, all outstanding charges as referred to in this Condition including any warehousing charges which may have been incurred during the time that the Goods have been retained.

- b Pending the expiry of such periods of notice referred to in Condition 8.2a and of disposal of the Goods under these provisions the Carrier shall at the expense of the Customer have authority to arrange proper storage of the Consignment. During such period of storage, the Goods will be held at the Owner's Risk and the Carrier shall not be liable for loss or damage of the Goods howsoever caused.
- c In the event of a sale of the Goods under this Condition 8 the Carrier shall do what is reasonable to obtain the market value of the Consignment (subject to any unavoidable deterioration thereof). If the Goods have no market value, then the Carrier may dispose of them subject to compliance with all legal requirements in force in respect of such Goods.

**8.3** Subject to the provision of Condition 8.1 above, and in circumstances in which the Carrier is unable to obtain further written instructions, the Carrier may, in respect of Dangerous Goods only, at his sole discretion dispose of the Dangerous Goods or return them to the Customer. Where such action is taken by the Carrier, it shall comply with all prevailing legal requirements that may be in force in respect of the Dangerous Goods. Any such action taken by the Carrier under this Condition shall be at the sole risk and expense of the Customer.

## **9 Liability for loss, damage or delay**

**9.1** Subject to these Conditions, the Carrier shall be liable for:

- a any loss of or damage to the Goods in a Consignment occurring whilst the Carrier has responsibility for the Consignment in accordance with Condition 6 above;
- b any delay in the carriage of any Goods in a Consignment arising from the negligence of the Carrier.

**9.2** The Carrier's liability is restricted to the financial limits imposed under Condition 10 of these Conditions unless otherwise agreed in writing between the contracting parties prior to the transit commencing.

**9.3** The Carrier shall not be liable for whatsoever reason for loss of or damage to, mis-delivery or loss arising from any delay in respect of Exempt Products, unless:

- a the Carrier has agreed in writing to carry such Goods at the specific request of the Customer prior to commencement of the transit;
- b the Customer has agreed to reimburse the Carrier with all additional costs necessarily incurred as a direct result of the Carrier agreeing to carry such Goods;
- c the loss or damage or delay has been proved to have been caused by the negligence of the Carrier and/or his agents and/or his servants.

**9.4** The Carrier shall be relieved of all liability if such loss, damage or delay arises from the effect of:

- a an act of God;

- b any consequence of war, act of foreign power, terrorism, requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- c seizure or forfeiture under legal process;
- d an error, act, omission, mis-statement or misrepresentation by the Customer or other owner of the Goods or by servants or agents of either of them;
- e an inherent liability due to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the Goods;
- f any special handling requirements in respect of the Goods which have not been notified to the Carrier;
- g insufficient or improper packaging, unless the Carrier has contracted to provide this service;
- h insufficient or improper labelling or addressing, unless the Carrier has contracted to provide this service;
- i riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour from whatever cause;
- j the acts of the Customer, Consignee or Consignor as set out in Condition 3.3;
- k a delay in providing to the Carrier safe and adequate access and/or delivering instructions in accordance with Condition 6.4;
- l fraud on the part of the Customer, Consignor, Consignee or owner or of their servants or agents in respect of all or any part of the Consignment.

**9.5** For the avoidance of doubt and without affecting the generality of Condition 9.1, the Carrier shall not be liable for any loss or damage to the Goods where the Carrier's responsibility for the Consignment has ended in accordance with Conditions 6.3 and 6.4.

## **10 Limitation of liability of Carrier**

**10.1** Unless otherwise agreed in writing between the Customer and the Carrier prior to the commencement of carriage, the liability of the Carrier in respect of loss of or damage to Goods whilst they are the responsibility of the Carrier in accordance with Conditions 6 and 9 hereof shall be limited as follows:

- a where the whole or part of a Consignment is lost or damaged, to a maximum rate of £1,300 per tonne inclusive of all/any duties and/or taxes on the gross weight of the Consignment or that proportion by weight of lost or damaged property as stated on the Consignment note referred to in Condition 5, or otherwise ascertained, or £500 for the total Consignment whichever is greater but not exceeding the actual value of the Consignment or part of the Consignment;
- b for the purpose of this Condition the value referred to is the valuation of the Goods at the time they are accepted for carriage including all duties and taxes. Provided that no claim shall be accepted by the Carrier pending its receipt from the Customer of proof of the value of the Consignment or any part thereof.

**10.2** The Carrier's liability for any delay or consequential loss shall not exceed the amount of the claimant's bona fide



loss or the amount of the carriage charges whichever shall be the lower unless agreement has been made previously in writing between the Carrier and the Customer for a specific level of liability for such delay or consequential loss.

## **11 Customer's indemnity to the Carrier**

The Customer shall indemnify the Carrier against:

- 11.1** Losses suffered by the Carrier arising from any act, omission, misdirection, mis-statement or negligence by the Customer, Consignor or Consignee, its servants or agents.
- 11.2** Claims of any nature for loss or damage resulting from the carriage of Dangerous Goods where the Customer's obligations in Condition 4 above have not been met.
- 11.3** Claims and demands of any nature in respect of loss of or damage to the Goods made by any third party additional to or in excess of the limits of liability of the Carrier set out in Condition 10 above.
- 11.4** Any claims made or penalties imposed by the Commissioners of Customs and Excise in respect of dutiable goods.
- 11.5** Claims and demands made by a third party attributable to lack of authority on the part of the Customer to enter into the Contract upon these Conditions.

## **12 Notification of claims**

**12.1** The Carrier shall not be liable for:

- a** loss or damage of the whole of the Consignment unless a claim specifying the general nature thereof is submitted by the Customer to the Carrier in writing within 14 days from the Carrier's responsibility for the Consignment having commenced in accordance with Condition 6.2 above and unless a detailed claim giving weight and value and date of collection are submitted by the Customer to the Carrier in writing within 14 days from the Carrier's responsibility for the Consignment having ended or been deemed to have ended;
- b** loss or damage of any part of a Consignment unless a claim specifying the general nature thereof is submitted by the Customer to the Carrier in writing within 7 days from the Carrier's responsibility for the Consignment having ended in accordance with Condition 6.3 above and a detailed claim specifying the weight, value and date of collection and date of delivery are submitted in writing within 14 days of the Carrier's responsibility having ended;
- c** damage of any description unless the damaged Goods are made available to the Carrier's representative for inspection for a reasonable period following notification of the claim;
- d** delay in delivery of whole or part of the Consignment unless the Carrier is informed in writing within three days of the date by which the delivery should have been made. Where no date for delivery has been agreed notification should be given within 6.3 days of the Carrier's responsibility for the Consignment having commenced.

**12.2** The Carrier shall not benefit from this exclusion of liability if the Customer provides evidence that:

- a** in all the circumstances, it was not reasonably possible so to advise the Carrier or make the damaged Goods available for inspection within the specified time limits; and
- b** such advice was given at the first reasonable opportunity.

**12.3** The Carrier shall not be liable for any claims and shall be discharged from all liability however arising if the Customer has failed to refer the claim to arbitration in accordance with Condition 15.3 within one year of the date that delivery was scheduled to or did take place, or in the event that no delivery date was agreed and no delivery took place within one year from the date of the Carrier collected the Goods.

## **13 Lien and power of sale**

**13.1** All Consignments delivered to the Carrier for carriage are and will be received by the Carrier and held by it subject to a lien for all carriage charges due to the Carrier from the Customer for the carriage, storage rent and/or warehousing charge of the Goods and other proper charges or expenses incurred in respect of or in connection with the carriage of the particular Consignment and all other goods which may have been carried by the Carrier for the Customer from time to time.

**13.2** If such a lien is not satisfied by payment within a reasonable time of the Carrier's demand for payment then the Carrier shall be entitled to invoke the power of sale set out in Condition 8 over the Goods in the Carrier's possession. Such sale shall be subject to the provisions of Conditions 8.2 and 8.3 above.

**13.3** The Carrier shall be entitled to charge to the Customer the cost of loading and unloading the Goods whilst a lien is being exercised together with warehouse rent and any other expenses incurred during all periods during which the lien on the Consignment or any part of the Consignment is being asserted and all these Conditions shall continue to apply whilst the lien is being exercised.

**13.4** If the Consignment is not the property of the Customer, the Customer warrants that he has the authority to grant to the Carrier a particular lien against the owner of the Goods. The Carrier may hold the Goods against the owner for any unpaid monies applicable to those Goods only, but he may not sell or dispose of the Goods in any way without the express consent of the owner.

## **14 Detention of Carrier's property**

**14.1** The Customer shall, except in the case of negligence by the Carrier, pay to the Carrier any cost or expense occasioned to it by the improper or excessive detention by the Consignor or Consignee of any vehicle, trailer, container or covering belonging to or under the custody or control of the Carrier without prejudice to any rights of the Carrier against any third party in respect of such detention.

## **15 Dispute resolution**

- 15.1** The parties will attempt, in good faith, to resolve any dispute or claim arising out of or relating to these Conditions promptly through negotiations between the respective representatives of the parties who have authority to settle the same.
- 15.2** Subject to Condition 15.4, if the dispute is not resolved through negotiation the parties may attempt to resolve the dispute or claim through mediation to settle such a dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give an Alternative Dispute Resolution (ADR) notice to the other party referring the dispute to mediation. A copy of the referral should be sent to CEDR.
- 15.3** Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR notice. Subject to Condition 15.4, no party may commence any court proceedings in relation to any dispute arising out of these Conditions until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 15.4** The provisions of Conditions 15.1 to 15.3 shall not apply to disputes relating to non-payment or late payment of any charges.

## **16 Confidentiality**

- 16.1** Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Condition 16.2.
- 16.2** Each party may disclose the other party's confidential information to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Conditions, or as required by law, a court of competent jurisdiction or any governmental or regulatory authority. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with Condition 16.1.

## **17 Governing law**

- 17.1** The parties shall agree the legal regime under which these Conditions shall be construed and interpreted and the courts which shall have jurisdiction. In the absence of such agreement, the Contract shall be subject to and construed and interpreted in accordance with English law and shall be subject to the jurisdiction of the courts of England.