

# FORSYTH



MOBILE CRANE HIRE



TRANSPORT SERVICES



TOWER CRANES



PROJECTS



Stirling, Scotland



01324 822141



01324 822 141



info@forsythofdenny.com



www.forsythofdenny.com

## GENERAL CONDITIONS OF HIRE FOR CRANE SUPPLY



## **CONDITIONS OF HIRE**

FORSYTH of Denny Ltd generally operate under the 2021 CPA Model Conditions of Hire (see Annex's below) :

- Annex A- 2021 CPA Model Conditions For The Hiring of Plant
- Annex B - CPA Standard Terms & Conditions For Contract Lifting Services 2021
- Annex C - Supplementary Conditions Applicable To Mobile Cranes (Wheeled & Crawler Mounted) 2021

....with the **additional** conditions set out herein.

### **Important Notes & Exclusions :**

The Hirer should pay specific heed to Clause 7(a), 7(b) of the 2021 CPA Conditions of Hire.

The Hirer should be aware that this specific FORSYTH of Denny Ltd 'Conditions of Hire' Document expressly exclude Clause 13 (d) iii and iv of said 2021 CPA Conditions. See page 14 of this document for further definitions of these exclusions that clearly define FORSYTH of Denny Ltd's definition of a 'Public Highway'.

## **ORDERING CRANES**

Cranes must be booked via the Central Hire Desk

- TELEPHONE (24 HRS) - +44 1324 822141

## **CONTACTS**

- Hire Desk Manager - Alan McCaig + 44 7771 872 482 [alan@forsythofdenny.com](mailto:alan@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.
- Cranes on long term hire must be off-hired the day previous to the crane leaving site.
- Cranes 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.
- Bookings that have not been supported by official Hirer's Purchase Order No by COB on the day prior to the scheduled booking, may not be provided.

## **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

WALLACE HOUSE

17 – 21 MAXWELL PLACE

STIRLINGSHIRE, FK8 1JH

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





## Scottish Borders Depot



FORSYTH of Denny Ltd

Station Rd

Earlston

Scottish Borders

TD4 6BY





NI Office

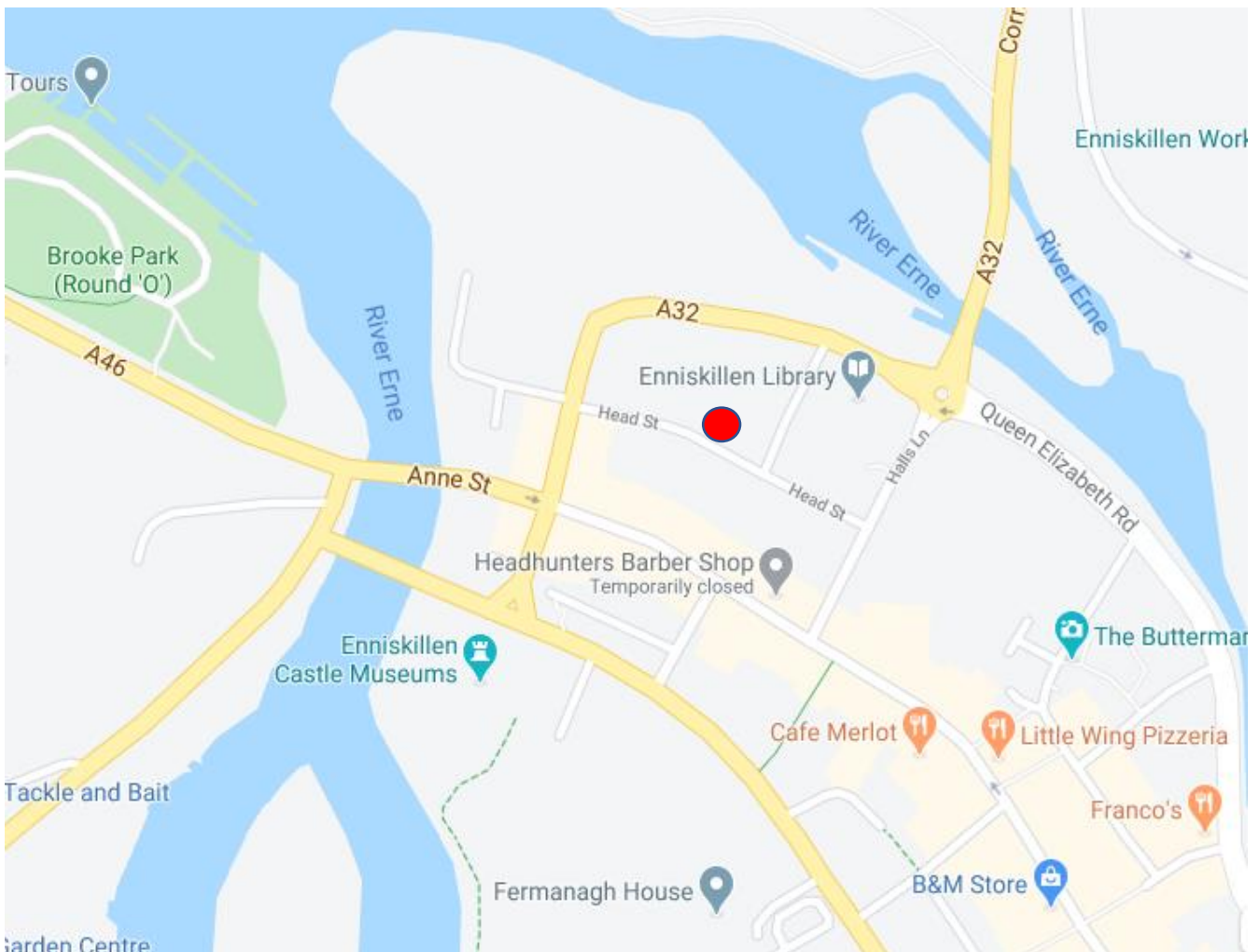
FORSYTH OF DENNY Ltd

23 ABBEY HSE

11 HEAD STREET

ENNISKILLEN

BT74 7JL





## General Terms

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

- Purchase Order number (PO). Bookings for services that have not been supported by official Hirer's Purchase Order No by COB on the day prior to the scheduled booking, may not be provided.
- Name of person responsible for the order.
- Exact site details – location plus directions to site.
- Any time restrictions arriving to site – residential areas etc.
- Any access restrictions en-route to site – roadways where construction traffic is not permitted etc.
- 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.**

**1) Small cranes 40T to 100T.**

- 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 crane has left depot: Full minimum hire.

**2) Cranes: 100T to 350T.**

- Up to 24 hrs: No charge if no logistics costs, i.e. ballast or sections delivered prior to start date. Otherwise logistics costs will be charged.
- Less than 24 hrs: 25% of hire + logistics costs.
- After crane has left depot: Full hire charge

**3) Heavy Cranes: 500T +**

- Up to 72 hrs: No charge if no logistics costs, i.e. ballast or sections delivered prior to start date. Otherwise logistics costs will be charged.
- Between 72 and 48 hrs: 50% of hire + logistics costs.
- Less than 48 hrs: Full hire charge

## SCOPE OF SUPPLY

**For non contract hire (CPA 'Hire' Terms) our scope of supply includes:**

- Certified Crane + Fuel
- Certified Driver.
- Certified Standard tackle.
- Standard Outrigger support mat / pads. (See outrigger load guide).

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

## Lifting Gear

All 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 Crane 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) all work is carried out in accordance with the BS7121-3:2017 + A1:2019 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 BS7121-3:2017 + A1:2019 series are notified to the contractor in writing.

The contractor should carry out lifting operations in accordance with the BS7121-3:2017 + A1:2019 series. The contractor should be given full authority by the employing organization to work in accordance with the BS7121-3:2017 + A1:2019 series including, where appropriate, authority to control and instruct the employing organization’s personnel.

**NOTE:** Although the BS7121-3:2017 + A1:2019 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 BS7121-3:2017 + A1:2019 series.

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

When a 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 BS7121-3:2017 + A1:2019, 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 BS7121-3:2017 + A1:2019 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**

**The Hirer must provide a hardstanding with sufficient Ground Bearing Capacity capable of withstanding the Crane's outrigger loadings as listed in the table below.**

Crane:	Max o/r loading	General Pad Size	Possible Resulting Pressure on Ground
Up to 50te:	~ 36T	.8m Diameter (.50m <sup>2</sup> )	72t/m <sup>2</sup>
Up to 80te:	~ 65T	1m diameter (.78m <sup>2</sup> )	83t/m <sup>2</sup>
Up to 100te:	~70T	1m diameter (.78m <sup>2</sup> )	89t/m <sup>2</sup>
Up to 200te:	~100T	2.4 x 2.4m ** (5.76m <sup>2</sup> )	17.3t/m <sup>2</sup>
Up to 300te:	~125T	2.4m x 2.4m ** (5.76m <sup>2</sup> )	21.7t/m <sup>2</sup>
Up to 500te:	~190T	3.5m x 2.4m ** (8.4m <sup>2</sup> )	22.6t/m <sup>2</sup>
Up to 1000te:	~340T	2.5m x 5.5m or 2.2m x 7.0m ** (say 13.75m <sup>2</sup> )	24.8t/m <sup>2</sup>
Larger Outrigger Mats are available on request			

**\*\* Only if support vehicle supplied as part of pre-agreed supply at time of order. For cranes on 'Taxi' or 'Travel Ballast' Configuration, smaller mats (~ 1.2m diameter composite Discs) will be supplied. Please contact the office for specific details.**

- c) All costs due to the recovery of cranes on failed ground will be due to the hirer.
- Recovery costs.
  - Stricken Crane hire cost + cost of additional 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 (d) iii and iv outline the exceptions to the hirer being liable for the loss.

However – Clause 13 (d) iii and iv are **EXPRESSLY EXCLUDED** from these Forsyth of Denny Ltd Terms for such times when a crane 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 cranes 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 a central white line & single lane in both directions capable of allowing 2 x 3m wide vehicles to safely pass each other.**

## **CONSEQUENTIAL LOSSES**

We do not accept any consequential losses due to crane 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.
- Crane 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 £25,000 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 £25,000 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 Ltd (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 Crane Operator, Slinger / Signaller, Crane Supervisor etc) 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 Ltd 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 or negligence caused by 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>Favco *</b>	<b>£200k</b>
<b>CWE **</b>	<b>£300k</b>
<b>40t</b>	<b>£325k</b>
<b>45t</b>	<b>£395k</b>
<b>50t</b>	<b>£495k</b>
<b>55t</b>	<b>£520k</b>
<b>60t</b>	<b>£520k</b>
<b>70t</b>	<b>£550k</b>
<b>80t</b>	<b>£575k</b>
<b>90t</b>	<b>£625k</b>
<b>100t</b>	<b>£700k</b>
<b>110t</b>	<b>£750k</b>
<b>130/140t</b>	<b>£850k</b>
<b>160t</b>	<b>£950k</b>
<b>200t</b>	<b>£1,1m</b>
<b>230t</b>	<b>£1.35m</b>
<b>500t</b>	<b>£2.9m</b>

\* Favco : 30t Telescopic Crawler Crane

\*\* CWE : Compact Knuckle Boom Crawler Crane



## CHARGE BASIS :

### Small Cranes 40T to 100T

- 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.

### Heavy Cranes

- 130T to 500T Normally priced individually.
- Mob – demob + 10 hrs = lump sum. Daily minimum is 10 hrs.

### Minimum Hire :

40t	-	8hrs
50t	-	8hrs
80t	-	10hrs
100t	-	10hrs
160t	-	10hrs
230t	-	10hrs
500t	-	10hrs

## 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

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 CRANE

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

# Annex A



## MODEL CONDITIONS FOR THE HIRING OF PLANT (With effect from October 2021)

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 when either 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 any time the Plant is being transported to or from site; or is left on site during evenings, nights, weekends, or any 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, welfare units, accommodation, vehicles, or equipment thereof, which the Owner agrees to hire to the Hirer including any personnel, 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 or any personnel supplied by the Owner 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 to the site, and where applicable any access road to the site and, unless otherwise agreed in writing, for unloading and loading of the Plant at the site or on the access road, 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 written notification is received by the Owner within 24 hours from the commencement of the Hire from the Hirer, 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 themselves 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, the Owner's agents, or insurers to have access to the Plant to inspect, test, adjust, repair, or replace the same. The Hirer shall allow such access during the Working Day. The Owner reserves the right

to charge the Hirer for any inspection or maintenance work carried out on the Plant during the Hire Period.

### 7. GROUND AND SITE CONDITIONS

- (a) The Hirer is deemed to have knowledge of the site, the site's access road, the property or land where the Plant is to be delivered or collected, loaded or unloaded, to work on, travel over, be transported over, be erected or dismantled on is suitable for the use of such Plant, and any electronic interference which may affect the Plant.
- (b) Subject to 7(a), if, in the opinion of the Hirer, the ground (including any private access road or track) is soft or unsuitable for the Plant, then the Hirer shall supply and lay suitable support in a suitable position for the Plant.
- (c) Any suitable support supplied by the Owner is provided solely to assist the Hirer under their duties within clause 7(b) and expressly not to relieve the Hirer of their 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 site costs and 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 repair, modify, or alter the Plant without the prior written permission of the Owner (including without limitation the changing or repair of any tyre/puncture). 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 their 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 adverse 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.

### 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 the Owner's 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) be liable for all loss of or damage to the Plant, 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) For the avoidance of doubt, notwithstanding any agreement by the Owner to waive hire charges after any agreed period of use of the Plant, the Hirer's obligations specified under clause 13(b) shall continue for the duration of the Hire Period.
- (d) Notwithstanding the above the Hirer shall not be responsible for damage, loss, or injury, subject to clauses 1(b) and 7:
  - (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 physically erected/dismantled on site, provided always that such erection/dismantling is under the exclusive control of the Owner or their agent;
  - (iii) after the Plant has safely been removed from the site, and until it 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 including the site's access road, after it has safely joined such highway) to the Owner by transport of the Owner or as otherwise arranged by the Owner (excluding always on such occasion that the Plant is on a Public Highway (or access road) during the currency of the hire and is being utilised by the Hirer)
  - (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 including the site's access road, prior to its leaving or after its joining such highway) under its own power with a driver supplied by the Owner (excluding always on such occasion that the Plant is on a Public Highway (or access road) during the currency of the hire and is being utilised by the Hirer).

### 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 the Owner may arrange for such repairs to be carried out on site or at any location of the Owner's 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 the Owner 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 tender 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. Where applicable, the Plant's telematics may be checked against the Hirer's statement or operator's signed timesheet, should any conflict arise, then the telematics will take precedence over all other records. (If there is any conflict between the signed timesheet and any other record taken, then the signed timesheet takes precedence.)
- (b) The Hirer shall be charged for any toolbox talks, briefings, inductions, mandatory training which the Owner's personnel have to attend prior to or when working on the Hire's site.
- (c) 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.
- (d) Breakdown time in respect of such periods shall be allowed for not more than the Working Day less the actual hours worked.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) The Hirer shall pay the Owner's invoice within 30 days net unless otherwise agreed.
- (i) Any query with the Owner's invoice must be raised in writing by the Hirer within 14 calendar days of receiving the invoice.
- (j) The Owner in their absolute discretion may agree to accept electronic records and data as an alternative to written statements of the number of hours, time record sheets and other information related to charging that the Hirer is required to provide to the Owner. Such electronic records and data may include but is not limited to telematics automatically generated by the plant and electronic log books.

### 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 at the Hirer's request, the Plant is actually worked or has been delivered to site or is on standby. The Hirer must inform the Owner if the Plant is going to be used at these times.

### 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 MONTH WITH QUALIFICATION AS TO HOURS

The full hire for the period in the Contract will be charged as per the Working Day or Working Week and an additional pro rata charge will be made for hours worked in excess of such period. An allowance will be made for breakdowns for up to the entirety of that Working Day providing always that where the actual hours worked are in excess of the breakdown time, the actual hours worked shall be chargeable. Idle time for this purpose shall be treated as actual working time. An allowance may be made for any Holiday Period that falls within the Working Day or Working Week, provided that the Plant is not available for the Hirer to use during that time.

### 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. PERIOD OF CHARGING

- (a) Within the Hire Period, an allowance may be made of not more than 1 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 1 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) Should the Hirer delay the commencement of the Hire Period for whatever reason, then the Owner reserves the right to charge the Hirer the idle time rate as defined in clause 25 for the intervening period.
- (c) 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.
- (d) 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 tanks, 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.



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

- a) Where the intended duration of the hire of the Plant is indeterminate or having been defined becomes indeterminate the Contract shall be terminable by 7 working 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 working 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 working 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 working days' notice, the Hirer's obligations under clause 13 shall continue for a further 3 working 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.
- d) Should the Hirer terminate the Contract once the Hire Period has commenced, the Owner reserves the right to charge the Hirer the balance of the Contract. Where the Hire Period has not commenced but insufficient notice of cancellation is provided by the Hirer to allow the Owner to mitigate the effects of late cancellation, the Owner reserves the right (at its absolute discretion) to charge the Hirer the full balance of the charges for the Hire Period.
- e) The Hirer may off-hire the Plant by written notification via an electronic device or application (app.). This off-hire will only be accepted by the Owner, provided the Owner issues an off-hire confirmation to the Hirer.

#### 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(f). 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 their home may 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 POWER

- (a) Fuel, fuel additives or power shall when supplied by the Hirer and where instructed or specified by the Owner, be of a grade and type specified. The Hirer shall be solely responsible for all damages, losses, costs, and expenses incurred by the Owner if the Hirer fails to supply, maintain, or use the wrong/contaminated fuel, fuel additives or power rating. Fuel, fuel additives or power when supplied by the Owner, to be charged at an agreed cost.
- (b) If the Plant requires an electrical supply to either safely operate or recharge, then the Hirer will be responsible for the cost of providing the correct electrical supply, which will be available prior to the Plant's delivery, and continue until the Plant has left the site. The Hirer shall ensure that all current Health and Safety and other applicable legislation and industry guidance is complied with including fitting, testing and inspection of the supply. The Hirer will indemnify the Owner against any and all damages, losses, or claims should the Hirer fail to do so.

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

The cost of re-sharpening or replacement of drill bits, blades, bucket teeth 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 the Hirer's 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 all relevant legislation, regulations, instructions, or guidance issued by the Government, Government Agencies, Local Authorities, statutory regulators, and Public/Corporate Bodies established by Parliament/Government including (without limitation) regulations under the Bribery Act, the Civil Aviation Act, the Construction (Design and Management) Regulations, the Environmental Acts, Factories Acts, the General Data Protection Regulation (GDPR), the 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) For the avoidance of doubt, the Hirer shall indemnify the Owner against any and all charges, fines, or losses that the Owner may become liable for as a result of the Hirer utilising the Plant during the Hire Period.

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

The Hirer shall not re-hire, sell, mortgage, charge, pledge, part with possession 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.

#### 34. TERMINATION AND SUSPENSION

- (a) 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 and fails to remedy such default within 10 working days or such other period as might be considered reasonable under the circumstances upon receiving written notice requiring it to do so;
  - (ii) The Hirer fails to observe and perform the terms and conditions of the Contract and fails to remedy such default within 10 working days of receiving written notice requiring it to do so;
  - (iii) The Hirer suffers, or the Owner reasonably believes that the Hirer shall suffer, any distress or execution to be levied against them;
  - (iv) The Hirer makes or proposes to make any arrangement with their 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.
- (b) In the event of termination under sub-paragraph (a) above:
  - (i) The Hirer must give the Owner or the Owner's 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.
- (c) The rights under sub-paragraph (a) and (b) 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.
- (d) 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 working 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.

#### 35. 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(d) and (e), 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.

#### 36. DISPUTE RESOLUTION

- (a) The Owner will determine which court will have exclusive jurisdiction and interpretation of the law for this Contract be it governed by the country where the Owner's Head Office or site 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 such equivalent legislation which confers on the parties the statutory right to adjudicate within the relevant jurisdiction (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.

#### 37. 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.

#### 38. 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.

## Annex B



### **STANDARD TERMS AND CONDITIONS FOR CONTRACT LIFTING SERVICES 2021**

**(THESE CONDITIONS ARE NOT TO BE USED FOR CONSUMER CONTRACTS)**

#### **1. SCOPE AND DEFINITIONS**

- 1.1 The terms and conditions set out in this document describe the trading policy and practice of the Company for its "Contract Lifting Services", as distinct from its crane-hire services, and form the Standard Contract Terms and Conditions for any Contract Lifting Services entered into by the Company.
- 1.2 "Contract Lifting Services" means the supply of a supervised lifting service including planning and execution of the lifting operation in accordance with the relevant Regulations and Codes of Practice.
- 1.3 These terms and conditions shall not be varied except with the Company's written agreement.
- 1.4 No other terms and conditions shall apply to any Contract Lifting Services contract entered into by the Company unless expressly agreed in writing by means of a quotation or otherwise between the Company and Client. In particular, any terms and conditions specified by the Client on an order form or otherwise, shall not be binding on the Company and shall not apply to any Contract Lifting Services contract unless agreed in writing by the Company prior to the commencement of the lifting operation. The contract does not create any right enforceable by or purport to confer any benefit on any person not a party to it except that a person who is a successor to or an assignee of the rights of the Company is deemed to become a party to the contract after the date of succession or assignment (as the case may be).
- 1.5 Unless otherwise agreed by the Company and the Client, these terms and conditions also apply to any additional work that the Company may agree to carry out for the Client, and which may arise from or is connected with any Contract Lifting Services contract.
- 1.6 The following words and phrases used in these terms and conditions have the meanings indicated:
  - 1.6.1. "Appointed Person" means the person given the authority to assess, plan and organise the work; to select suitable or appropriate plant and equipment, to ensure statutory documentation is current and in order; to provide instruction and supervision for the work to be undertaken safely; and to stop the work whenever they consider danger is likely to arise if it were to be continued.
  - 1.6.2. "Crane Supervisor" means the person who supervises the lifting operation within the safe system of work developed by the Appointed Person and has the authority to stop the operation if they deem it unsafe to continue.
  - 1.6.3 "Client" means the person or organisation requiring the lift to be carried out, and includes the Client's employees, agents, assignees, successors, and personal representatives.
  - 1.6.4. "Company" means the company or firm agreeing to carry out the Contract Lifting Services and includes its assignees, successors, and personal representatives.
  - 1.6.5. "Contract Equipment" means any Lifting Appliance and other equipment and accessories used or intended to be used by the Company in performing, or in connection with, the Contract Lifting Services.
  - 1.6.6. "Contract Goods" means the goods which are to be lifted by the Company in accordance with these terms and conditions.
  - 1.6.7 "Contract Lifting Services" may include the removal, transportation, storage, and installation of goods.
  - 1.6.8 "Contract Price" means the price agreed by the Company and the Client as payment for the performance by the Company of the Contract Lifting Services, which may be a lump-sum price or a time related schedule of rates.

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1.6.9 "Lifting Appliance" means work equipment for lifting or lowering loads and includes its attachments used for anchoring, fixing, or supporting it.

1.6.10. "Regulations and Codes of Practice" includes but is not limited to the Lifting Operations and Lifting Equipment Regulations 1998 (SI 1998 No. 2307), the Provision and Use of Work Equipment Regulations 1998 (SI 1998 No. 2306), the British Standard Codes of Practice for the Safe Use of Cranes (BS 7121), as amended from time to time, and/or any other Regulations or Codes of Practice which may supersede them.

## **2. QUOTATIONS AND CONTRACT PRICE**

- 2.1 Unless otherwise specified by the Company in writing, every quotation is open for acceptance for a period of thirty days, after which the quotation will be subject to confirmation.
- 2.2 Unless otherwise specifically noted by the Company in writing, every quotation is based on the assumption that the following circumstances apply:
  - 2.2.1. The work will be carried out under the Company's direction without interruption and on a clear site with adequate approaches suitable for the necessary movement of the Contract Equipment.
  - 2.2.2. The Client is responsible for ensuring that the site's ground or other surface will be firm, level and in good condition, and will provide proper support for the loads imposed by the Contract Equipment as stated by the Company and also including the weight of the item(s) to be lifted as stated by the Client.
  - 2.2.3. The Contract Lifting Services will be carried out in daylight during normal working hours unless otherwise agreed.
  - 2.2.4 All information provided by the Client is complete, true, and accurate.
- 2.3 Where all or any of the above circumstances do not apply, the Company may issue a revised quotation for the Contract Lifting Services. If this is not accepted by the Client, who shall be liable for the costs so far incurred by the Company, the Company may elect to be discharged from the contract without further liability to the Client.
- 2.4 Any additional work which the Company is required to perform must be authorised by the Client in writing and will involve an extra charge, additional to the Contract Price.
- 2.5 The Contract Price may be increased by the amount of any costs incurred by the Company as a result of delays or cancellations in commencing or completing the contract work due to circumstances beyond the Company's reasonable control including but not limited to adverse weather or industrial action.

## **3. FORMATION AND TERMINATION OF THE CONTRACT**

- 3.1 No contract is created before the Company accepts a written order for the carrying out of the Contract Lifting Services work. The commencement of the contract will be subject to availability of the Contract Equipment at the time requested.
- 3.2 If the Client terminates the contract without the written agreement of the Company, the Client is liable for the full Contract Price. If the Company has agreed in writing to the cancellation, the Client shall be liable for such reasonable proportion of the Contract Price as may be assessed by the Company at that time, together with all costs and charges incurred by the Company or to which it is committed.
- 3.3 A contract involving an unspecified number of lifts over an indeterminate period may be terminated by either party giving the other party not less than seven days' notice in writing or such other notice as may be agreed between the parties.

## **4. STATUS AND AUTHORITY OF CLIENT AND COMPANY**

- 4.1 The Client warrants that the Client is the owner or the authorised agent of the owner of the Contract Goods and is authorised to accept and does accept these terms and conditions for Contract Lifting Services.
- 4.2 The Client requires and authorises the Company to assume overall control of the Contract Lifting Services, to provide the Appointed Person and to plan, supervise, carry out and complete the Contract Lifting Services in accordance



with the relevant Regulations and Codes of Practice including, where considered by the Company to be appropriate, to control and instruct the Client's personnel involved in the work.

- 4.3 From information provided by the Company, the Client acknowledges that the site and the site's access road or track can withstand the loads that the Contract Equipment exerts during travelling, being erected/dismantled, or during operations. Should this not be the case, then the Client will provide and lay suitable support to avoid any damage to any underground, surface, or above ground services. Any subsequent damage which results in the Client's failure to comply with this is addressed in clause 8.5.2.
- 4.4 The Client undertakes to clear the contract site, including public highways and access roads or tracks where necessary, of all vehicles and personnel not directly involved with the Contract Lifting Services and, for that purpose, is responsible for setting up barricades, tapes, or cones, to the extent that the Company may at its discretion require for the performance of the contract. With respect to road closures, bus lane closures etc, irrespective of whether the Company has arranged these on behalf of the Client, the Client is ultimately responsible both for ensuring that the Company has clear and unrestricted access to all areas of operation and that the Client is responsible for all costs incurred should the operation be aborted due to the lack of such clear and unrestricted access, or other circumstances beyond the Company's control.
- 4.5 With the permission of the Client, which shall not be unreasonably withheld, the Company may arrange for the Contract Lifting Services, or any part of the work, to be carried out by agents, sub-contractors or independent contractors who, for the purposes of the contract shall be regarded as the Company and whose rights against and liabilities to, the Client shall be the same as those of the Company under these contract terms and conditions.

## **5. REGULATIONS AND CODES OF PRACTICE**

- 5.1 The Company will perform the Contract Lifting Services in accordance with the relevant Regulations and Codes of Practice.
- 5.2 At the Client's request, the Company will provide the Client with any available information relevant to the qualifications and competence of the Appointed Person provided by the Company, who, in accordance with the relevant Regulations and Codes of Practice will have overall responsibility for the Contract Lifting Services under the contract.
- 5.3 In the absence of written notice by the Client to the contrary, received by the Company prior to the commencement of the lifting operation, the Appointed Person and/or Crane Supervisor shall be deemed to be to the satisfaction of the Client.
- 5.4 The Client shall supply, or confirm, in writing all information available to the Client, which is requested by the Company and/or the Appointed Person or which the Client should be reasonably aware may be necessary, or useful, to facilitate compliance with the Regulations and Codes of Practice. This includes, but is not limited to, the location of anything on or near the site, above or below the ground, which is likely to be damaged by, or cause damage to the Contract Equipment, or which is likely to affect the health or safety of any person involved in the work.

## **6. LIABILITY OF THE COMPANY**

- 6.1 The Company shall be liable for loss or for damage or injury to persons or property when caused solely by the Company's negligence in the performance of the contract and shall not be liable for any such loss, or damage or injury due in whole or in part to any negligence on the part of the Client or any third party.
- 6.2 The Company's liability, if any, arising from or in connection with the Contract Lifting Services contract:
  - 6.2.1 For loss or destruction of or damage to the Contract Goods shall be limited to a total of £25,000 (twenty-five thousand pounds sterling) irrespective of the number of items being lifted/handled.
  - 6.2.2 For any other loss, damage or injury shall be limited to a total sum of

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£5,000,000 (five million pounds sterling)

Unless in either case, a different amount is agreed in writing by the Company and the Client prior to the commencement of the contract.

- 6.3 Full details of any loss, damage or injury, which is or may be the subject of a claim by the Client against the Company shall be notified by the Client to the Company within seven days of the date of discovery thereof.
- 6.4 Any proceedings to enforce any such claim by the Client against the Company must be commenced not later than twelve months after the date of occurrence of the event giving rise to the loss, damage or injury.

#### **7. EXCLUSION OF THE COMPANY'S LIABILITY**

- 7.1 The Company shall not be liable for any loss, damage or injury caused by, or arising from or as the result of, any of the following:
  - 7.1.1 Any defect in the Contract Goods including any design defect and any defect relating to the lifting points on the contract goods.
  - 7.1.2 Inaccurate or incomplete information given by the Client.
  - 7.1.3 Any instructions given by the Client to the Company's employees.
  - 7.1.4 Any defect in the equipment provided by the Client.
  - 7.1.5 Any act or omission of any personnel supplied by the Client, or by any body or person under contract to the Client in connection with the Contract Goods, except when correctly following the Company's instructions for the purpose of performing the Company's work under the contract.
  - 7.1.6 Delay in commencing or completing the contract work due to circumstances beyond the Company's control including, but not limited to, any strike or other industrial action or adverse weather conditions.
  - 7.1.7 Unexpected or unforeseen subsidence or unstable ground conditions.
- 7.2 The Company shall not be liable or responsible for any of the following, however arising:
  - 7.2.1 Loss or damage of whatever nature due to or arising through any cause beyond the Company's reasonable control.
  - 7.2.2 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 contract, for any of the Client's loss of profit, loss of the 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
  - 7.2.3 Loss or damage to the Contract Goods whilst in storage outside the control of the Company.

#### **8. INSURANCE**

- 8.1 The Company will carry insurance to cover its potential liability under the contract having regard to the maximum amounts referred to in clause 6.2.
- 8.2 The Company may, at its discretion, exclude the contract from cover under its existing policies and require a specific insurance policy to cover the contract to be provided by and at the expense of the Client. This specific insurance policy shall provide the Company with protection no less extensive than would have been the case if this clause 8.2 had not been invoked.
- 8.3 If the Company is of the opinion that the insurance cover held by the Client may be insufficient to meet any applicable requirements of clause 8.2 of the Client's liabilities under the contract, the Company may require the Client to take out at the Client's expense additional liability insurance cover or take out such cover itself and recover the cost from the Client as a debt.
- 8.4 If the value of the Contract Goods exceeds the Company's liability limits referred to in clause 6.2, and the Client requires the Company to increase its cover, it is the responsibility of the Client to give the Company sufficient written notice of that fact

with details of the value of the Contract Goods so that the Company's liability cover, if agreed by the Company, can be increased accordingly. The cost of any additional cover will be passed on to the Client.

- 8.5 The Client agrees to indemnify the Company against –
  - 8.5.1 Any claim arising from or connected with the Company's work on the contract site, in preparing the site or performing the contract, including claims of nuisance and claims of trespass to persons, property, land or air space.
  - 8.5.2 All other losses, damages or claims in respect of any matters arising from or in connection with the contract and for which, under these terms and conditions, the Client is liable or for which under clause 7 the Company is not liable; and
  - 8.5.3 Any liability arising from or in connection with the contract to pay any amount in excess of the relevant limits referred to in clause 6.2.
  - 8.5.4 The Client will be liable for any loss or damage to the Contract Equipment from either their own negligence, during non-working hours, or whilst it is in situ, except where this loss or damage is caused by the Company.
  - 8.5.5 Subject to the Client being liable within clause 8.5.4, then the Client may be charged two-thirds of the Contract Price whilst the Contract Equipment is being repaired or replaced.
- 8.6 The Client shall insure against its liability to indemnify the Company and all other liabilities of the Client under the contract.
- 8.7 If requested by the Company, the Client shall produce a copy of any insurance policy together with evidence of the premium having been paid, held by the Client and relevant to the contract.

#### **9. TRANSPORTATION OF CONTRACT GOODS**

- 9.1 The Company is not a common carrier.
- 9.2 If, under the contract, the Contract Goods, or any part of them, require transportation by air, sea, road or rail, the Company may either undertake the transportation or arrange for transportation by some other person or organisation.
- 9.3 In the latter event referred to in clause 9.2, unless otherwise agreed in writing by the Company, the Company's liability for the Contract Goods so transported shall be no greater than that of the person or organisation carrying out the transportation, that is, the airline, shipping company, haulage contractors or railway authority concerned, and the amount of compensation, if any, payable for loss of or damage to the Contract Goods during transportation shall be limited to the amount recoverable from that person or organisation in respect of that loss or damage.

#### **10. PAYMENT OF CHARGES**

- 10.1 All prices quoted are exclusive of VAT, which will be charged at the rate prevailing at the date of invoice.
- 10.2 All charges by the Company are payable strictly thirty days net from the date of the Company's invoice or as set out in the contract offer.
- 10.3 All charges are payable in full and the Client shall not withhold payment as retention or discount or for any reason whatsoever, regardless of any arrangements for payment to the Client by another party under any other contract.
- 10.4 The Company's policy is to enforce its right to add interest and administration costs for late payments under the Late Payment of Commercial Debts Regulations 2002 or any other subsequent Regulations that supersede them.
- 10.5 The Company shall have a general lien over any goods and equipment, or the property of the Client in the custody of the Company, for unpaid debts due and payable to the Company by the Client. The Company shall notify the Client when exercising the right of lien under this clause and if the Client fails to settle all such debts within one month of notification, the Company may sell, as agent of the Client, all or any of the items subject to the lien and apply the proceeds towards payment of the outstanding debt and the expenses of the sale together with interest accrued to that date.

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## 11. LAW OF THE CONTRACT

- 11.1 The Company will determine which court will have exclusive jurisdiction and interpretation of the law for this Contract be it governed by the country where the Company's Head Office or site is located.
- 11.2 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 such equivalent legislation which confers on the parties the statutory right to adjudicate within the relevant jurisdiction (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.
- 11.3 The Company and the Client shall comply forthwith with any decision of the adjudicator; and shall submit to summary judgment and enforcement (and/or, under Scottish 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 Scottish law, the Company, the Client, 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.

## FOOTNOTES

- 1) Acceptance of the Contract Equipment on site implies acceptance of all these terms and conditions.
- 2) These standard terms and conditions for Contract Lifting Services are the copyright of the Construction Plant-hire Association and must NOT be reproduced, stored in any retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise unless they are current members of the Construction Plant-hire Association.
- 3) Copies of these standard terms and conditions are only available from the Construction Plant-hire Association.



## Annex C



### **SUPPLEMENTARY CONDITIONS APPLICABLE TO MOBILE CRANES (WHEELED AND CRAWLER MOUNTED) 2021**

#### **TO BE READ IN CONJUNCTION WITH THE CPA MODEL CONDITIONS FOR THE HIRING OF PLANT 2021**

**EXPLANATORY NOTE:** The purpose of these Supplementary Conditions is to raise awareness of the Hirer's responsibilities under British Standard 7121 Code of Practice for the Safe Use of Cranes ("BS 7121") and to define contractually the extent of the Owner's and Hirer's responsibilities as between themselves. BS 7121 makes it clear that the Hirer is in overall control of the lifting operation and has responsibility for providing a suitably trained and experienced "appointed person" to ensure adequate planning and supervision of the operation. The Owner's responsibility is limited to providing a competent driver and a crane that is properly maintained, inspected, tested where necessary, thoroughly examined and certificated.

For the avoidance of doubt, when the hire is subject to the CPA's Model Conditions for the Hiring of Plant 2021 ("CPA Model Conditions"), the Owner is not a specialist sub-contractor and/or sub-contractor of the Hirer. The Owner will supply Plant pursuant to the CPA Model Conditions together with these Supplementary Conditions to form the Contract between the Owner and the Hirer.

Notwithstanding the above paragraph, it is a specific recommendation of BS 7121-1:2016 and subsequent amendments that where the Hirer does not have the expertise to carry out the lifting operation, the Hirer should employ the Owner or another competent organisation to undertake the work on a "Contract Lift" basis. Should the Hirer enter into a Contract Lift arrangement with the Owner it would be carried out under the CPA's Contract Lifting Services conditions; (copy available upon request).

#### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 These Supplementary Conditions are applicable to Mobile Cranes (wheeled and crawler mounted) only and shall be referred to as the "Supplementary Conditions".
- 1.2 Unless the context suggests otherwise words and terms in the Supplementary Conditions shall have the same meaning as in the CPA Model Conditions.
- 1.3 If any conflict shall appear between any provisions of the Supplementary Conditions and the provisions of the CPA Model Conditions then the former shall prevail.

#### **2. PLANNING, SUPERVISING, SLINGING, HANDLING**

- 2.1 In order to comply with the requirements of the Lifting Operations and Lifting Equipment Regulations 1998 (SI 1998 No. 2307) and BS 7121-1 the Hirer is responsible for the supervision of all aspects of the crane's activities from when it enters the site and until it leaves. This includes but is not limited to positioning, rigging, de-rigging, planning, supervising and controlling the lifting operations, including the preparation and distribution of risk assessments, method statements and for the safe slinging of the goods to be lifted or handled.
- 2.2 If advice or information is sought from and given by any person supplied by the Owner, the Hirer understands and accepts that such advice or information is given without responsibility and does not relieve or reduce the Hirer's requirement to make their own independent assessment as outlined above.

#### **3. GROUND AND SITE CONDITIONS**

Without prejudice to the terms of Clause 7 of the CPA Model Conditions the Hirer shall be entirely responsible for the preparation and maintenance of any ground upon which the crane or support vehicles will travel over or from which they will operate. The Hirer shall be fully liable to the Owner for any damage to the crane or support vehicle caused by ground conditions and shall indemnify the Owner and hold the Owner harmless against any liability, expense, loss or damage caused by ground conditions.

#### **4. TRAVELLING, ERECTION AND DISMANTLING**

- 4.1 Any time spent setting up, transporting and moving the crane and support vehicles, erecting and dismantling the jibs and transporting additional jibs sections or ballast

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is payable by the Hirer to the Owner at the rate specified in the Contract. The Hirer shall also allow the Owner, or any representative of the Owner, free and unrestricted access to the crane and support vehicles and to all areas of their operation.

- 4.2 Insofar as the Hirer's use of the crane will require any licence, permission or authorisation from any private or public body or government or Local Authority or the giving of notice to any such body, Government or Authority then the obtaining of any such licence, permission or authorisation, or the giving of any such notice, shall be the entire responsibility of the Hirer, who must ensure that sufficient notice is given to the Owner to guarantee compliance with the Road Vehicles (Authorisation of Special Types) (General) Order 2003 and subsequent amendments. This responsibility extends to ensuring that the site is clear of all obstructions and that traffic management arrangements are set up and operated correctly. Where the Owner is required to obtain such licence, permission or authorisation or to supply traffic management on the Hirer's behalf a charge will be added.
- 4.3 Subject to Clause 25 of the CPA Model Conditions, the Hirer shall be liable to the Owner for the agreed fees and charges regardless of any change in the Hirer's circumstances or the circumstances affecting the use to which the Hirer intends or intended to put the crane or support vehicle and any decision to accept a cancellation or variation of the Contract in any respect shall be at the Owner's full and entire discretion.

#### **5. SUPPLY OF ALTERNATIVE CRANE**

In the event that the Contract specifies a particular type of crane or support vehicle, the Owner reserves the right to supply a suitable alternative crane or support vehicle to that specified. Acceptance of the crane or support vehicle on site shall be acceptance of the variation of the Contract in respect of the crane or support vehicle supplied and the Owner shall have no liability to the Hirer in respect of that variation.

#### **6. PROVISION OF LIFTING ACCESSORIES**

If requested and specified by the Hirer in advance, the crane will be provided with specific certificated lifting accessories, subject to availability and at additional cost. The Owner accepts no responsibility for loss or delay should the lifting accessories prove unsuitable.

#### **7. LIMITATION OF LIABILITY**

Without prejudice to the terms of Clause 12 of the CPA Model Conditions, the Owner shall have no liability in respect of any damage including but not limited to:

- any goods or other items lifted or to be lifted;
- any surface or subsurface features such as underground services;
- any above ground structures, including any overhead cables, overhanging or protruding things, which might result from the travelling, positioning or working of the crane or of any support vehicle.

#### **8. INSURANCE**

- 8.1 The Hirer shall have adequate insurance to comply with its liabilities under the Contract. The Owner reserves the right at any reasonable time to require confirmation and evidence that the Hirer is complying with its insurance obligations.
- 8.2 At the discretion of the Owner it may be possible to give the Hirer an interest in the Owner's own Insurance Policy for a fee. This must be agreed in writing prior to the commencement of the work.