

David Stanley Sales Ltd. trading as

David Stanley Transport

Standard Trading Conditions

**The customer's attention is particularly drawn to the provisions of clause 18 (liability)**

1 **INTERPRETATION**

1.1 The following definitions apply in these Conditions:

**All Day Hire Services:** as defined in clause 8.

**Appointed Person:** the person appointed by the Company to plan a lift.

**Basic Lift Services:** as defined in clause 4.

**Booking:** the contract between the Company and the Customer for the supply of Services in accordance with these Conditions.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business (and the term "**close of Business**" shall mean 5pm on a Business Day in England).

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 14.

**Company:** David Stanley Sales Ltd and any sister or subsidiary company thereof.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 20.5.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression "**change of Control**" shall be construed accordingly.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Customer:** the person or firm who purchases Services from the Company.

**Customer Default:** has the meaning set out in clause 13.4.

**Data Controller:** has the meaning set out in section 1(1) of the Data Protection Act 1998.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including without limitation the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Demolition and Disposal Services:** as defined at clause 7.

**Goods:** any goods in respect of which Services are performed.

**Haulage Services:** as defined in clause 6.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights; moral rights, trademarks and service marks; business names and domain names; goodwill and the right to sue for passing off or unfair competition; rights in designs, planning, Lift Plans and all other professional advice; rights to use, and protect the confidentiality of, confidential information (including know-how); and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Lift Plan:** the plan and method statement prepared by an Appointed Person on behalf of the Company for the purposes of Basic Lift or Lift Planning Services as may be applicable.

**Lifting Equipment:** Lorry Loaders and/or mobile cranes and/or such other ancillary equipment as may be provided by the Company for the performance of the Services.

**Lorry Loader:** lorry mounted cranes used in the performance of the Services.

**Operating Personnel:** personnel (including drivers) supplied by the Company to operate the Lifting Equipment and/or any vehicle.

**RHA Conditions:** the current version of the Road Haulage Association Conditions of Carriage, copies of which are available from the Company on request.

**Services:** the services supplied by the Company to the Customer pursuant to the Booking.

**Site(s):** the location(s) at which the Services are to be performed, including any collection and/or delivery points for Haulage Services.

**Subcontractor:** a third party directly appointed by the Company.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.2 The following rules of interpretation apply in these Conditions:

1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes emails.

## 2 **BOOKINGS**

2.1 Any quotation, estimate or proposal given by the Company shall constitute an offer, and shall be valid for a period of 30 Business Days from its date of issue.

2.2 The Booking shall be deemed created and binding upon the parties at the point and on the date when the Customer accepts the Company's offer, either by:

2.2.1 instructing the Company to proceed (whether in writing or orally); and/or

2.2.2 paying monies to the Company on account of the Charges pursuant to clause 14.2 (if applicable).

2.3 All Bookings shall be subject to these Conditions and to the provisions of the RHA Conditions, which shall together apply to the Booking to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which may be implied by law, trade custom, practice or course of dealing. These Conditions are intended to be supplemental to the RHA Conditions. Where there is a conflict between these Conditions and the provisions of the RHA Conditions, these Conditions shall prevail unless otherwise stated herein.

### 3 **SUPPLY OF SERVICES**

3.1 The Company shall supply the Services to the Customer in all material respects in accordance with:

3.1.1 the Booking;

3.1.2 these Conditions and the RHA Conditions; and

3.1.3 any Lift Plan.

3.2 The Company shall use all reasonable endeavours to meet any performance dates specified in the Booking, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Company reserves the right to amend the Booking if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Company shall notify the Customer in such circumstances.

3.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

3.5 The Company reserves the right to refuse to provide the Services where in its opinion it would be unsafe to do so. The Company shall have no liability to the Customer in such circumstances and the provisions of clauses 15 and/or 16 shall apply.

3.6 The Services are:

3.6.1 Basic Lift Services (including All Day Hire Services);

3.6.2 Lift Planning Services;

3.6.3 Haulage Services; and

3.6.4 Demolition and Disposal Services.

### 4 **BASIC LIFT SERVICES**

4.1 "**Basic Lift Services**" means the provision of a Lorry Loader and Operating Personnel to perform repetitive lifts of the Goods in line with the Customer's instructions, where no conditions, hazards, obstructions or other factor requiring specialist management has been notified by the Customer to the Company.

- 4.2 Basic Lift Services, including the Basic Lift Plan, are provided by the Company without any prior knowledge or inspection of the Site at which the Basic Lift Services are to be performed. It is the Customer's responsibility to assess the suitability of the Site and planned operations for the Basic Lift Services in conjunction with the provisions of clauses 11 and 13.
- 4.3 The following assumptions shall apply for the provision of all Basic Lift Services:
- 4.3.1 full and clear HGV access up to and side on to the Goods to be lifted;
  - 4.3.2 no travelling over soft ground or grass;
  - 4.3.3 hard standing ground in the lift area;
  - 4.3.4 no overhead obstructions;
  - 4.3.5 no underground voids; and
  - 4.3.6 no height restrictions.
- 4.4 Prior to the provision of Basic Lift Services, the Company will (if requested by the Customer) provide the Customer with a basic Lift Plan which shall detail the process to be followed, but shall not contain any information, guidance or provisions specific to the Site where the Basic Lift Services are to be performed, or to the Goods to be lifted/transported. The basic Lift Plan shall in any event be available at all times during the actual performance of the Services by the Operating Personnel on Site.
- 4.5 The Company reserves the right to refuse to perform the Services without liability if in their reasonable opinion they determine, upon commencement of the Services, that the Site and/or the planned operations do not comply with the provisions of clause 4.3 or are otherwise not suitable for the provision of Basic Lift Services, whereupon the Customer shall be liable to pay cancellation charges in accordance with clause 15.

## 5 LIFT PLANNING SERVICES

- 5.1 **"Lift Planning Services"** means the provision of lifting services (using a Lorry Loader or a mobile crane) and Operating Personnel for intermediate and/or complex lifts where the Customer has notified the Company of actual or potential hazardous or complex conditions which necessitate bespoke specialist planning by the Company.
- 5.2 Without prejudice to the generality of clause 13, the Customer shall be responsible for providing the Company with all and any information relevant to the performance of the Lift Planning Services and to the Site, including but not limited to details of: access to the Site and proposed lift location; turning space; ground conditions; underground services; voids; soft ground; or any other factors which may affect the stability of the Lifting Equipment, or its wheels or stabilisers, and shall provide the Company with such information and such access to the Site prior to the preparation of the Lift Plan and the performance of the Services as the Company may require. The Customer shall also be responsible for supplying all information relevant to the Goods, including but not limited to the nature, condition, weight, lifting points, dimensions, and lifting method.
- 5.3 The Company shall be responsible for the planning and preparation of the Lift Plan and for the performance of the Lift Planning Services in line with the information provided by the Customer.

## 6 HAULAGE SERVICES

- 6.1 **"Haulage Services"** means the transportation of Goods on vehicles supplied by the Company, whether or not any other Services are provided.

6.2 For the purposes of the RHA Conditions, where the Company provides Basic Lift Services or Lift Planning Services as part of the loading or unloading of the Goods transported pursuant to this clause, the Company's period of responsibility shall be extended to include the provision of such Services by the Company, subject always to the provisions of these Conditions.

## 7 **DEMOLITION AND DISPOSAL SERVICES**

7.1 "**Demolition and Disposal Services**" shall mean the demolition and/or disposal of Goods in accordance with the Customer's instructions where this forms part of the Booking.

## 8 **ALL DAY HIRE SERVICES**

8.1 "**All Day Hire Services**" means the provision of Basic Lift Services (and, where required, Haulage Services with unlimited mileage) for a full working day in accordance with the provisions of this clause. This option is not available for Lift Planning Services.

8.2 Unless otherwise stated in the Booking, the period of the All Day Hire Services shall be a maximum of ten hours less any driving/rest breaks which the Operating Personnel may be legally obliged to take. The Lorry Loader and Operating Personnel must be made available, with the vehicle unloaded and returned to the Company's depot, within ten hours of commencement of the All Day Hire Services. Overtime shall be chargeable on an hourly basis at a rate of £120 per hour + VAT (or at such other rate as may be advised to the Customer prior to the creation of the Booking ) for any failure to comply with this clause.

8.3 For the purposes of clause 8.2, the ten hour period of All Day Hire shall commence upon the Operating Personnel departing the Company's depot and end on arrival back at the same depot (unless otherwise stated in the Booking). If the start or end location is not at the Company's depot then the equivalent travel time from or to the alternative locations from or to the Company's depot shall be calculated from Google maps and included into the hire period. The over time rate mentioned in clause 8.2 will be charged for any hours over the initial ten hour hire period.

8.4 In the unlikely event of Lorry Loader breakdown, the Company shall use reasonable endeavours to find a replacement Lorry Loader to complete the allocated work on the same day. If the Company is unable to supply such a replacement, the Company shall either arrange to complete the outstanding work on another mutually convenient date or issue a partial refund based on the hours of work for which the Lorry Loader was not available but shall not have any other liability to the Customer or any other party.

## 9 **OPERATING PERSONNEL AND SUBCONTRACTORS**

9.1 All Basic Lift and Lift Planning Services shall include the provision of a trained and certified operator who is appropriately qualified to carry out the Services at the Site(s) in line with the information provided by the Customer.

9.2 The Company shall be at liberty to use subcontractors in the performance of any of the Services.

## 10 **LIFTING EQUIPMENT**

10.1 The Company shall upon request supply technical information on the lifting capabilities and specifications of the Lifting Equipment being supplied, but shall in no circumstances (except where Lift Planning Services are provided) be responsible for assessing the suitability of the Lifting Equipment for the operations performed or planned by the Customer.

10.2 Any change to the specifications of the Lifting Equipment required by the Customer after a Booking is made shall be subject to availability and shall be subject to additional charges for which the Customer shall be responsible.

## 11 ACCESS TO SITE AND GROUND CONDITIONS

- 11.1 It is the responsibility of the Customer to ensure at all times that all ground conditions and all routes on, access to and egress from the Site(s) are suitable for the vehicles and Lifting Equipment that have been booked. Without prejudice to the generality of the foregoing, it is the responsibility of the Customer to:
- 11.1.1 ensure that the ground conditions are at all times sufficient to bear the maximum ground pressure as advised by the Company in the Lift Plan;
  - 11.1.2 ensure that all access, egress and turning points on Site, are suitable for the vehicle and Lifting Equipment booked and avoid soft and/or unsuitable ground conditions (and, in the event of any vehicle or Lifting Equipment becoming stuck in soft and/or unsuitable ground, the Customer shall be responsible for the resultant recovery costs);
  - 11.1.3 assess if the Company must follow any specific route(s) whilst accessing, on, or leaving the Site and, if so, meet all vehicles, Lifting Equipment and Operating Personnel supplied by the Company at the Site entrance and escort them to the location at which the Services are to be performed, or otherwise provide clear and full written directions as to the route(s) to be taken (and, for the avoidance of doubt, any failure by the Customer to comply with this clause shall be at the Customer's own risk and shall entitle the Company to assume that all ground conditions are suitable for access);
  - 11.1.4 all Site health and safety requirements are met and are properly communicated to the Company's Operating Personnel and/or Subcontractors.
- 11.2 Any failure by the Customer to comply with clause 11.1 shall be at the Customer's own and sole risk and shall require the Customer to indemnify the Company pursuant to clause 13.5 in the event of loss and damage.
- 11.3 If the Company identifies any factor which in its reasonable opinion renders the performance of the Services at the Site to be unsuitable or unsafe, it shall be at liberty to delay the performance of the Services pending completion of satisfactory corrective measures and/or cancel the Booking, in either case without liability and at the Customer's expense (and the provisions of clauses 15 and 16 shall apply). For the avoidance of doubt, however, nothing in this clause 11.3 shall impose a positive obligation on the Company to assess the suitability and/or safety of the Site for the performance of the Services.
- 11.4 Unless otherwise expressly agreed in writing at the time of the Booking, all Bookings assume that the Site(s) shall be open/accessible from 8:00am until 5:00pm on the day on which the Services are to be performed. Without prejudice to the generality of the provisions of clauses 15 and 16:
- 11.4.1 if the Company is unable to complete provision of the Services due to the Site not being open/accessible between these times, the Customer shall be liable to pay the Charges in full in accordance with clause 15.4, together with any other waiting time in accordance with clause 16 and any additional Charges to cover completion of the Services on an alternative date/time or the delivery of the Goods to another location; and
  - 11.4.2 where Haulage Services are provided, if the Company is unable to effect delivery of any Goods to the delivery Site and is unable to obtain instructions from the Customer, the Customer acknowledges and agrees that the Company may transport the Goods to its depot pending collection/redelivery at the Customer's expenses, and the Customer agrees to be responsible for all associated storage and transportation Charges.

## 12 LIFT PLANS

- 12.1 Where Basic Lift Service or Lift Planning Services are purchased, the Company shall be responsible for the completion of the Lift Plan in accordance with clauses 3 and 4 above.
- 12.2 The Lift Plan shall be based on information supplied to the Company by the Customer and/or (in the case of Lift Planning Services) made available to the Company/its Appointed Person on any Site visit. The Customer shall at all times be fully responsible for ensuring that all such information is complete, accurate and up to date.
- 12.3 Lift Plans remain the property of the Company at all times and all Intellectual Property Rights in or arising out of, or in connection with, the Lift Plans and the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Company.
- 12.4 The Customer agrees to accept and follow the provisions of the Lift Plan. The Customer shall be fully liable for any failure by it or any third party to follow the provisions of the Lift Plan and/or any directions, instructions and/or recommendations of the Appointed Person where applicable, and shall indemnify the Company in full in respect of any such failure.
- 12.5 Any samples, drawings, descriptive matter or advertising issued by the Company, including any descriptions or illustrations contained in the Company's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them, and do not form part of the Booking or any Lift Plan, or have any contractual force, unless expressly incorporated therein.

## 13 CUSTOMER'S OBLIGATIONS

- 13.1 This clause is in addition to and without prejudice to any other specific Customer obligations set out in these Conditions and/or in the RHA Conditions.
- 13.2 The Customer warrants, agrees and acknowledges that:
- 13.2.1 it is the owner of the Goods or is otherwise authorised by the owner of the Goods to engage the Company to provide Services in respect of the Goods pursuant to these Conditions;
  - 13.2.2 it shall ensure that all information, documents, materials and data provided to the Company for the purposes of the Booking and/or the Lift Plan are complete, accurate and up to date;
  - 13.2.3 it shall co-operate with the Company in all matters relating to the Booking and Services;
  - 13.2.4 it shall provide the Company, its employees, agents, consultants and subcontractors, with all access to premises and facilities as reasonably required by the Company;
  - 13.2.5 it shall prepare the Site for the supply of the Services;
  - 13.2.6 it shall obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 13.2.7 it shall comply with all applicable laws, including health and safety laws;
  - 13.2.8 it shall comply with all applicable obligations set out in these Conditions and the RHA Conditions;
  - 13.2.9 it shall ensure that all Goods are prepared, packaged, protected and secured, with all and any lifting and securing points clearly identified and marked, so as to withstand the rigours of transit/lifting as applicable to the Services to be performed;

- 13.2.10 it shall ensure that any of its own personnel or any third party personnel involved in the operations shall have sufficient knowledge, experience and understanding of the operations to be performed and the Lifting Equipment to be used;
  - 13.2.11 it shall ensure that all planning appropriate to the performance of the Services (not otherwise dealt with by the Company in the Lift Plan) is properly carried out, including the conduct of any risk assessments and/or the preparation of any method statements; and
  - 13.2.12 the Company shall have no liability where it performs Services in accordance with Customer's instructions.
- 13.3 The Customer shall co-operate in respect of any assessments or Site visits by the Company, including by its Appointed Person, or by any other subcontractor or third party used by the Company in the provision of the Services.
- 13.4 If the Company's performance of the Services or of any of its obligations under the Booking is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 13.4.1 without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
  - 13.4.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 13.4; and
  - 13.4.3 the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.
- 13.5 The Customer shall indemnify and hold harmless the Company from and against all claims, including third party claims, losses, costs, actions or causes of actions, including claims for costs and interest, arising out of or in connection with any breach by the Customer of clauses 11, 12 or 13, or of any of its other obligations in the Booking.

## 14 **CHARGES AND PAYMENT**

- 14.1 In consideration for the performance of the Services, the Customer shall be liable to pay the Charges for the Services as agreed at the time of the Booking, together with any overtime, waiting and/or cancellation charges as it may be liable to pay pursuant to these Conditions.
- 14.2 Where no credit terms have been agreed in writing between the parties:
- 14.2.1 the Customer shall pay the Charges in full and in cleared funds to a bank account nominated in writing by the Company at least seven days prior to the performance of any of the Services (or, where a Booking is made less than seven days before the Services are due to be performed, immediately upon creation of the Booking);
  - 14.2.2 any additional Charges incurred by the Customer following the creation of the Booking shall be payable by the Customer immediately upon submission of the relevant invoice; and
  - 14.2.3 in both cases, time for payment shall be of the essence, and the Company shall not be liable to perform any of the Services if the Customer fails to comply with this clause 14.2.



14.3 Where credit terms have been agreed in writing between the parties, the Company shall invoice the Customer upon completion of the Services, and the Customer shall pay each invoice submitted by the Company:

14.3.1 within 30 days of the date of the invoice (or in accordance with such other credit terms agreed by the Company and confirmed in writing to the Customer); and

14.3.2 in full and in cleared funds to a bank account nominated in writing by the Company, and

time for payment shall be of the essence.

14.4 All amounts payable by the Customer under the Booking are exclusive of amounts in respect of VAT chargeable from time to time.

14.5 If the Customer fails to make a payment due to the Company under the Booking by the due date, then, without limiting the Company's remedies under Clause 19, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 14.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

14.6 All amounts due under the Booking shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 15 AMENDMENTS TO BOOKINGS AND CANCELLATIONS

15.1 These provisions shall apply to all Bookings unless otherwise specified or agreed by the Company in writing at the time the Booking is placed.

15.2 If the Customer requests a change to the scope of the Services or to amend a Booking after a Booking has been made, the Company shall be at liberty to accept or reject such change depending on availability of Lifting Equipment, vehicles and/or Operating Personnel, and the Customer shall be responsible for any additional charges incurred as a result of such change.

15.3 The Customer may cancel any Booking by giving notice in writing to the Company up to two Business Days before the day on which the Services are due to commence. The Customer agrees to be bound by the following provisions for any such cancellations:

No. of Business Days before the day on which Services are due to commence	Time at which written notice received by the Company	Charges
2	Before 5pm (close of Business)	None (a full refund will be given for any Charges already paid)
2	5pm (close of Business) or later	Customer shall be liable to pay 50% of the Charges (plus VAT)
1	Before 12pm	Customer shall be liable to pay 50% of the Charges (plus VAT)
1 (or less)	12pm or later	Customer shall be liable to pay the Charges in full (plus VAT)

15.4 If the Company is prevented from carrying out the Services as a result of factors beyond its control (including any act or omission of the Customer, or any third party at whose Site the Services are to be performed, or adverse Site conditions (including access/egress), or weather conditions including high wind speeds), or if the Company, acting reasonably, considers that it

is unsafe to perform the Services as a result of any such factors, the Customer shall be liable to pay the Charges in full (plus VAT).

## 16 WAITING TIME

- 16.1 For the purposes of this clause, "Site Delay" means any delay in commencing loading/unloading; waiting in line at Sites or other sites, depots and/or factories; and any delays caused by problems with Site conditions including access to or egress from any site.
- 16.2 All Bookings are based upon the Services being completed within one hour of arrival on Site without any Site Delay occurring.
- 16.3 If there is a Site Delay the Company will be entitled to charge, and the Customer will be liable to pay, waiting time at a rate of £100 per hour or part thereof plus VAT, or at such other rate as may be advised to the Customer at the time of Booking.
- 16.4 This clause does not apply to All Day Hire Services, which are subject to the overtime provisions set out at clause 8.

## 17 DATA PROTECTION

- 17.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause, **Applicable Laws** means (for so long as and to the extent that they apply to the Company) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 17.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Company is the processor.
- 17.3 Without prejudice to the generality of this clause, insofar as applicable the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Company for the duration and purposes of the contract formed by the Booking.

## 18 LIMITATION OF LIABILITY

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE AND TO THE RELEVANT PROVISIONS OF THE RHA CONDITIONS, WHICH ALSO INCLUDE LIMITS OF LIABILITY AND TIME LIMITS FOR NOTIFYING AND BRINGING CLAIMS**

- 18.1 The limits and exclusions in this clause reflect the liability insurance cover the Company has been able to arrange at a commercially viable rate. The Customer is responsible for making its own arrangements for insuring the Goods during the performance of the Services, and/or the insurance of any excess loss over and above the limits set out herein unless otherwise agreed between the Customer and the Company in writing prior to the creation of the Booking.
- 18.2 The restrictions on liability in this clause 18 apply to every liability arising under or in connection with the Booking including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 18.3 The provisions of this clause are intended to be read in conjunction with the relevant liability provisions in the RHA Conditions, including the limits of liability included therein (the "RHA Limits"), save that where there is a conflict between the RHA Conditions and this clause 18, the latter shall prevail. Where a type of liability is deemed excluded in one set of Conditions, it shall be deemed excluded in the other set of Conditions as if set out therein.
- 18.4 Nothing in these Conditions limits any liability which cannot legally be limited, including liability for:

- 18.4.1 death or personal injury caused by negligence;
  - 18.4.2 fraud or fraudulent misrepresentation; or
  - 18.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 18.5 Subject to clause 18.4, the Company's total liability to the Customer shall not exceed:
- 18.5.1 in the case of Haulage Services for theft attractive or high risk Goods, the RHA Limits or £10,000 per incident, whichever is the lower;
  - 18.5.2 in the case of Haulage Services for all other Goods, the RHA Limits or £60,000 per incident, whichever is the lower;
  - 18.5.3 in the case of Basic Lift Services and Lift Planning Services and in all other cases, the RHA Limits or £30,000 per incident, whichever is the lower.
- 18.6 In no circumstances shall the Company be liable for:
- 18.6.1 any the types of loss and damage set out in clause 18.7;
  - 18.6.2 loss of profits;
  - 18.6.3 loss of sales or business;
  - 18.6.4 loss of agreements or contracts;
  - 18.6.5 loss of anticipated savings;
  - 18.6.6 loss of use or corruption of software, data or information;
  - 18.6.7 loss of or damage to goodwill; and
  - 18.6.8 indirect or consequential loss.
- 18.7 For the purposes of clause 18.6, and without limiting the Company's rights generally under these Conditions, the RHA Conditions or otherwise at law, the types of damage for which the Company excludes liability are:
- 18.7.1 damage to Goods caused by or contributed by the nature of or any inherent vice or defect in the Goods being handled (including Goods that are brittle, fragile or not designed to be lifted);
  - 18.7.2 scratching, bruising, scuffing, paint damage or any other type of surface damage;
  - 18.7.3 damage caused by the application of slings, hooks or other equipment, including Lifting Equipment;
  - 18.7.4 in the case of abnormal or oversized loads, damage caused by overhanging trees or any other hazards caused by the load exceeding the width of the vehicle;
  - 18.7.5 in the case of modular buildings, damage to external fittings (including but not limited to lights, aerials, plumbing connections and temporary sheeting);
  - 18.7.6 damage caused where lifting points are not notified to the Company correctly or at all;

- 18.7.7 damage caused by the Goods not being properly packed, prepared or secured for lifting or transportation;
  - 18.7.8 loss of or damage to loose items, including damage caused by loose items;
  - 18.7.9 any claims whatsoever for Goods in respect of which Demolition and Disposal Services are to be or have been performed;
  - 18.7.10 pursuant to clause 11, damage to any ground, Site ground or property caused by the unsuitability of the ground conditions on or off Site and/or inadequacy of turning space;
  - 18.7.11 any loss, damage or delay arising out of any breakdown, stoppage, delay, detention or non-arrival of any vehicle or Lifting Equipment due to the nature and/or conditions of the Site and/or the Goods;
  - 18.7.12 any loss, damage or delay caused by the Company acting in compliance with the Customer's instructions; and
  - 18.7.13 any loss, damage or delay caused by any breach by the Customer of its obligations under the Booking, or any failure by the Customer to follow the recommendations and advice of the Company including as set out in the Lift Plan.
- 18.8 This clause 18 shall survive termination of the Booking and the contract contained therein.

## 19 **TERMINATION**

- 19.1 Without affecting any other right or remedy available to it, and subject to clause 19.3 below, the Company may cancel any Booking without liability at any time with immediate effect by giving written notice to the Customer.
- 19.2 Without prejudice to the foregoing, the Company may cancel any Booking (or, at its discretion, suspend the provision of Services thereunder) without liability with immediate effect by giving written notice to the Customer if:
- 19.2.1 the Customer fails to comply with its obligations under clauses 11, 12, and/or 13;
  - 19.2.2 the Customer fails to pay any amount due under the Booking on the due date for payment;
  - 19.2.3 there is a change of Control of the Customer;
  - 19.2.4 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction, or the Company reasonably believes that the Customer is about to become subject to any such events;
  - 19.2.5 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 19.2.6 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Booking has been placed in jeopardy.

19.3 Strictly without prejudice to clause 15.4, where the Company advises the Customer that it exercises its rights under clause 19.1 solely for its own convenience, the Customer shall not be liable to pay any of the Charges and the Company shall refund any monies paid in advance by the Customer in respect of the cancelled Booking, but the Company shall have no further liability to the Customer in respect of the cancelled Booking. In all other cases where a Booking is cancelled or terminated pursuant to this clause 19, the Customer shall be liable to pay the Charges in accordance with clause 15 as if it and not the Company had cancelled the Booking.

## 20 GENERAL

20.1 **Force majeure.** Neither party shall be in breach of contract or liable for delay in performing, or failure to perform, any of its obligations under the Booking if such delay or failure result from events, circumstances or causes beyond its reasonable control.

### 20.2 Assignment and other dealings.

20.2.1 The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Booking.

20.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Booking without the prior written consent of the Company.

### 20.3 Confidentiality.

20.3.1 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 clause 20.3.2.

20.3.2 Each party may disclose the other party's confidential information to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Booking.

20.3.3 Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 20.3.

20.3.4 Each party may also disclose the other party's confidential information as required by law, a court of competent jurisdiction or any governmental or regulatory authority.

20.3.5 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Booking.

### 20.4 Entire agreement.

20.4.1 The Booking constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.4.2 Each party acknowledges that in entering into the Booking it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Booking. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

20.4.3 Nothing in this clause shall limit or exclude any liability for fraud.

- 20.5 **Variation.** Except as set out in these Conditions, no variation of the Booking shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 20.6 **Waiver.** A waiver of any right or remedy under the Booking or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or default. A failure or delay by a party to exercise any right or remedy provided under the Booking or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Booking or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.7 **Severance.** If any provision or part-provision of the Booking and/or these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Booking and/or these Conditions.
- 20.8 **Notices.**
- 20.8.1 Any notice or other communication given to a party under or in connection with the Booking shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the Booking.
- 20.8.2 Any notice or other communication shall be deemed to have been received:
- (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
  - (iii) if sent by fax or email, at the time of transmission, or, if sent after close of Business, on the next Business Day after transmission.
- 20.8.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 20.9 **Third party rights.**
- 20.9.1 Unless it expressly states otherwise, the Booking does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Booking.
- 20.9.2 The rights of the parties to rescind or vary the Booking are not subject to the consent of any other person.
- 20.10 **Governing law.** These Conditions, and the contract formed by the Booking, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 20.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Conditions, the Booking or their subject matter or formation.