



DELDEN CRANES LTD

Terms and Conditions of Sale

The Customer's attention is particularly drawn to the provisions of clause 11 (Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 8.00 am to 5.30 pm on any Business Day.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.8.

Contract: the contract between Delden and the Customer for the supply of Goods or Services or Goods and Services in accordance with these Conditions.

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

Customer: the person or firm who purchases the Goods or Services or Goods and Services from Delden.

Delden: Delden Cranes Limited registered in England and Wales with company number 01251365.

Delden Materials: has the meaning given in clause 8.1(g).

Delivery Location: has the meaning given in clause 4.2.

Delivery Point: when the Goods are supplied for export from the United Kingdom, the Customer's usual trading premises or such other location as the Customer specifies on the Order and which has been accepted by Delden.

Force Majeure Event: has the meaning given to it in clause 15.

Goods: the goods (or any part of them) as set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and Delden, as set out in the Order.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs,

rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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.

Order: the Customer's order for the supply of Goods or Services or Goods and Services, as set out in the Customer's purchase order form overleaf.

Services: the services (including assembly, erection, repairs and similar services) supplied by Delden to the Customer as set out in the Order.

Service Specification: the description or specification for the Services provided by Delden to the Customer, as set out in the Order.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but not email.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) Delden issuing written acceptance of the Order by signing it; or
- (b) any act by Delden consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**). Acceptance of the Goods and/or Services and any personnel supplied by Delden on site relating to the Order implies acceptance of all terms and conditions herein unless otherwise previously agreed in writing.

For the avoidance of doubt, these Conditions are not applicable to the hire of Delden's cranes (and/or plant, personnel or anything which is supplied by Delden to effect the hire) which is subject to the Construction Plant-hire Association's (CPA) Model Conditions for the Hiring of Plant 2021 ("the CPA Model Conditions").

- 2.3 Any samples, drawings, specifications of weight, performance, dimensions, consumption data, advertising or descriptions of the Goods or illustrations or descriptions of the Services contained in Delden's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by Delden shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods

- 3.1 The Goods are described in the Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify Delden against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Delden arising out of or in connection with any claim made against Delden for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Delden's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 Delden reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and Delden shall notify the Customer in any such event.

4. Delivery of Goods

- 4.1 Delden shall ensure that:
 - (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods,

where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

- (b) if Delden requires the Customer to return any packaging materials to Delden, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Delden shall reasonably request. Returns of packaging materials shall be at Delden's expense.

- 4.2 Delden shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Delden notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Goods may be delivered to the Customer in advance of any dates quoted for delivery on giving reasonable notice to the Customer. Delden shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Delden with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 Delden shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Delden with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept delivery of the Goods within three Business Days of Delden notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Delden's failure to comply with its obligations under the Contract in respect of the Goods:
 - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Delden notified the Customer that the Goods were ready; and
 - (b) Delden shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the day on which Delden notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, Delden may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

- 4.8 Delden may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.9 When the Goods are supplied for export from the United Kingdom these Conditions shall apply. Delivery of the Goods shall take place at the Delivery Point. Acceptance of any change to the Delivery Point requested by the Customer shall be at Delden's sole discretion and the Customer shall be liable for any additional expenses incurred by Delden as a result of such change. Delden shall arrange for suitable transport to the Delivery Point at the Customer's expense. On delivery, Delden (or its appointed carrier) shall provide the Customer with such export documents as are necessary together with a delivery note. Delivery or performance dates in relation to the supply by Delden of Goods for export are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery of the Goods for export. The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them. The Customer shall be responsible for arranging for testing and inspection of the Goods at Delden's premises or such other premises as may be specified by Delden before shipment. Delden shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment.

5. Quality of Goods

- 5.1 Delden warrants that on delivery, the Goods shall:
- (a) conform in all material respects with the Goods Specification; and
 - (b) be free from material defects in design, material and workmanship.
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to Delden within 48 hours after delivery of the Goods that it has discovered that some or all of the Goods do not comply with the warranty set out in clause 5.1 and which was apparent on reasonable inspection;
 - (b) Delden is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by Delden) returns such Goods to Delden's place of business at the Customer's cost,

Delden shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. If the Customer fails to give written notice as specified in clause 5.2(a) then, except in respect of any defect which is not one which would be apparent on reasonable inspection, the Goods shall conclusively be presumed to comply with the warranty set out in clause 5.1 and, accordingly, the Customer shall be deemed to have accepted the delivery of the Goods in question and Delden shall have no liability to the Customer with respect to that delivery.

In relation to Delden's liability for any latent defects in the Goods (which would not be apparent to the Customer on reasonable inspection and that became apparent thereafter), the Customer shall notify Delden in writing immediately upon their detection, but in no event later than 48 hours after such detection specifying the defect and the circumstances under which such defect with the Goods became apparent. If the Customer fails to comply with any of the requirements in this clause, then the respective Goods shall be deemed accepted. The Customer shall compensate Delden for any costs incurred as a result of or in relation to any unjustified claim and/or any claim that does not comply with the requirements of this clause.

5.3 Delden shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow Delden's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of or in relation to the Customer's use of improper fuel or other means used for the proper functioning of the Goods (such as oil etc.);
- (d) the defect arises as a result of Delden following any drawing, design or specification supplied by the Customer;
- (e) the Customer alters or repairs such Goods (including parts thereof) without the written consent of Delden;
- (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (g) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, Delden shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by Delden.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until Delden receives payment in full (in cash or cleared funds) for the Goods.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Delden's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Delden's behalf from the date of delivery;
- (d) notify Delden immediately if it becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d); and
- (e) give Delden such information as Delden may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

7. Supply of Services

- 7.1 Delden shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 Delden shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 Delden reserves the right to amend the Service Specification 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 Delden shall notify the Customer in any such event.
- 7.4 Delden warrants to the Customer that the Services will be provided using reasonable care and skill.

8. Customer's obligations

- 8.1 The Customer shall:
 - (a) ensure that the terms of the Order and any information it provides in either or both the Service Specification and the Goods Specification are complete and accurate;
 - (b) co-operate with Delden in all matters relating to the Services;
 - (c) provide Delden, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Delden to provide the Services;

- (d) provide Delden with such information and materials as Delden may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) if Delden has agreed to provide Services, prepare the Customer's premises for the supply of the Services;
- (f) 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;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of Delden (**Delden Materials**) at the Customer's premises in safe custody at its own risk, maintain Delden Materials in good condition until returned to Delden, and not dispose of or use Delden Materials other than in accordance with Delden's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Service Specification or the Goods Specification or both.

8.2 If Delden's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, Delden 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 Delden's performance of any of its obligations;
- (b) Delden shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Delden's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse Delden on written demand for any costs or losses sustained or incurred by Delden arising directly or indirectly from the Customer Default.

9. Charges and payment

9.1 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in Delden's published price list as at the date of delivery or, if there is no price set out in Delden's published price list, the price advised by Delden and agreed with the Customer; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

9.2 The charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with Delden's daily fee rates, as set out in the Order or, if no daily fee rates are quoted, as set out in its current price list at the date of the Contract;
- (b) Delden's daily fee rates for each individual person are calculated on the basis of a day from 8.00 am to 5.30 pm for Monday to Friday;
- (c) Delden shall be entitled to charge an overtime rate (as set out in the Order or, if no overtime rate is quoted, as set out in its current price list at the date of the Contract) of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b); and
- (d) Delden shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Delden engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Delden for the performance of the Services, and for the cost of any materials.

9.3 Delden reserves the right to:

- (a) increase the charges for the Services on an annual basis and calculated at Delden's sole discretion or in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period and shall be based on the latest available figure for the percentage increase in the Consumer Prices Index;
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Delden that is due to:
 - (i) any factor beyond the control of Delden (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Delden adequate or accurate information or instructions in respect of the Goods.

9.4 In respect of Goods, Delden shall invoice the Customer on or at any time after completion of delivery. In respect of Services, Delden shall invoice the Customer on completion of the Services.

9.5 The Customer shall pay each invoice submitted by Delden:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by Delden, and

time for payment shall be of the essence of the Contract.

- 9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Delden to the Customer, the Customer shall, on receipt of a valid VAT invoice from Delden, pay to Delden such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods or both, as applicable, at the same time as payment is due for the supply of the Services or Goods.
- 9.7 If the Customer fails to make a payment due to Delden under the Contract by the due date, then, without limiting Delden's remedies under clause 12, 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 9.7 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%.
- 9.8 All amounts due under the Contract 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).

10. Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Delden.
- 10.2 The Customer grants Delden a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Delden for the term of the Contract for the purpose of providing the Services to the Customer.

11. Limitation of liability

- 11.1 The limits and exclusions in this clause reflect the insurance cover Delden has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.
- 11.2 References to liability in this clause 11 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

(d) defective products under the Consumer Protection Act 1987.

11.4 Subject to clause 11.3, Delden's total liability to the Customer shall not exceed the contract price set out in the Order.

11.5 This clause 11.5 sets out the types of loss that are wholly excluded:

- (i) loss of profits;
- (ii) loss of sales or business;
- (iii) loss of agreements or contracts;
- (iv) loss of anticipated savings;
- (v) loss of use or corruption of software, data or information;
- (vi) loss of or damage to goodwill; and
- (vii) indirect or consequential loss.

11.6 Delden has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

11.7 This clause 11 shall survive termination of the Contract.

12. Termination

12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) the other party 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), obtaining a moratorium, 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;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

For the avoidance of doubt, on termination of the Contract, the Customer shall immediately indemnify Delden all of its incurred costs, expenses, damages, losses, unpaid invoices and interest (calculated on a full indemnity basis) up to the point when the Customer gave such written notice to Delden to terminate the Contract. Any payments received from the Customer that have subsequently been used by Delden towards the costs of manufacturing or ordering the Goods or have been paid by Delden to any third parties up to the point when the Customer gave such written notice to Delden to terminate the Contract will be non-refundable.

12.2 Without affecting any other right or remedy available to it, Delden may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
or
- (b) there is a change of control of the Customer.

12.3 Without affecting any other right or remedy available to it, Delden may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Delden if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d), or Delden reasonably believes that the Customer is about to become subject to any of them.

13. Consequences of termination

13.1 On termination of the Contract:

- (a) the Customer shall immediately pay to Delden all of Delden's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, Delden shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of Delden Materials or Goods which have not been fully paid for. If the Customer fails to do so, then Delden may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

13.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

14. Confidentiality

- 14.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 14.2.
- 14.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

15. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. Upon the occurrence of any such Force Majeure Event, Delden may cancel unfulfilled orders in full or in part by giving written notice thereof. Should Delden cancel such order in full or in part in accordance with this clause, Delden shall forthwith refund the Customer any advance payments as is attributable to the cancelled part of the Order and the Customer shall not be entitled to any other compensation and/or remedy with respect to the so cancelled Order (or part thereof).

16. General

16.1 Assignment and other dealings

- (a) Delden 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 Contract.
- (b) 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 Contract.

16.2 **Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) 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
 - (ii) sent by email to the following addresses (or an address substituted in writing by the party to be served):

Delden: simon@deldencranes.co.uk

Customer: as set out in the Order
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, 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
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 16.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

16.4 **Waiver.**

- (a) A waiver of any right or remedy is only effective if given in writing.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

16.6 **Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties.

- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 16.7 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 16.9 **Governing law.** The Contract 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.
- 16.10 **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 the Contract or its subject matter or formation.