

DEFINITIONS

“We” or “Us” means DSM Contract Lifting Services Ltd.

“You”, “Your” or “the principal” refers to the party with whom we contract to provide goods and/or services.

1 GENERAL

- 1.1 Unless otherwise agreed in writing, these general terms shall apply to all and any contracts entered into by us for the provision of goods or services and/or the provision of such goods and/or services. We will not, unless otherwise agreed in writing, provide goods or services under any terms but these. Your terms and/or those of any third parties shall not under any circumstances apply to the contract and/or to the provision of such goods and/or services, even in the event where they have not been rejected or opposed explicitly by Us.
- 1.2 These terms shall also incorporate the CPA Conditions which have been provided with them. Where no CPA terms have been provided, then these terms shall apply in any event.
- 1.3 Where there is any conflict between these terms and any other term of the contract, be that a term in the CPA Conditions or otherwise, the contract shall be construed so that these terms shall take precedence over any other conflicting term.
- 1.4 The nullification or nullity of any provision of these terms shall not affect the validity of the remaining provisions of these terms.
- 1.5 You confirm and warrant that You are accepting these terms on Your own behalf and on behalf of any other parties who may have an interest in the goods and/or services being provided and/or who have an interest in any items being moved and/or transported and/or handled and/or stored pursuant to the provision of those goods and/or services.

ART. 2 – FORMATION OF THE AGREEMENT

2.1 Regardless of the form in which they are expressed, all our offers including the offer provided with this document, if any, shall not be binding. They shall become binding and a contract formed only after Our final acceptance of the order in writing.

2.2 Offers shall remain open for consideration for 8 days.

2.3 All prices mentioned by Us shall always be net prices without VAT or other charges and/or taxes of any nature.

2.4 The grounds on which any goods and/or services are to be provided shall be adequately compacted and feature a stable underground to allow for normal moving and installing of Our equipment as well as for providing the goods and/or services. The responsibility for ensuring this lies with You and You warrant that any ground and/or roads that is utilized is appropriate as set out in this clause. In addition, all the access roads and the grounds themselves shall have to be adequately accessible and practicable.

2.5 If the terms of clause 2.4 and/or clause 2.8 are not complied with, then You shall be in breach and You shall be responsible and liable for all and any extra costs and/or damage and/or losses that are incurred because of the state of the ground and/or road.

2.6 Furthermore, if the terms of clause 2.4 and/or clause 2.8 are not complied with, then You shall be in breach and You shall indemnify Us in respect of all and any costs and/or damage and/or losses and/or liability which We may incur because of the state of the ground or the road.

2.7 Furthermore, if the terms of clause 2.4 and/or clause 2.8 are not complied with, then We shall have the right to cancel the contract and if We do so cancel the contract, you will be liable to pay the total agreed price for the provision of goods and/or services under the contract in accordance with clause 4.3.

2.8 In the event that the provision of goods and/or services will require use of the public highway, you will ensure that We are granted free and unrestricted access to all necessary areas. It will be Your responsibility to arrange and ensure all road closures, removal of all vehicles and other obstacles. All responsibility for road closures and diversions are Yours. Should you wish for Us to act on Your behalf in arranging these services We will do so solely as Your agent and You will still be liable for all costs associated with the work plus our agent fee of 15%.

ART. 3 – CHANGES – PRICE REVISIONS

3.1 Our price, as confirmed in the order acceptance, covers only the provision of goods or services as confirmed in the order. Any changes, adjustments and additional work shall constitute a new and additional agreement, without prejudice to earlier commitments. We shall be entitled to charge for any changes, adjustments and/or additional work either at an agreed rate or in accordance with our normal rates. For the avoidance of doubt, any such additional agreement shall also be subject to these terms, as if it had been part of the original contract confirmed in the order confirmation.

3.2 The prices are based on the goods and/or services being provided on ordinary workdays. You will be responsible for extra charges if any goods and/or services are provided on Saturdays, Sundays and holidays.

3.3 The price does not include taxes and/or duties and/or charges and/or fees payable to authorities, for instance but not limited to import duties, fines, additional costs for police protection or escorting, removal of fences, buildings, street furniture or other expenses resulting from laws or regulations, including but not limited to guarantees and securities. Costs of this nature shall be payable by You on demand by Us. You shall also be responsible for an extra 15% for administrative costs.

3.4 Site rate and/or bonus which are locally or nationally agreed and differ from Our basic operator rates will be recharged at cost plus a cover charge to include the national insurance contribution.

3.5 You warrant that all the information, including but not limited to the weight and center of gravity of any goods, you have given is correct. You will be responsible to Us for all any extra costs, losses or damages which arise from the provision of inaccurate information.

3.6 If We are delayed in the provision of the goods and/or services covered by this contract due to adverse weather conditions, we shall be entitled to charge You for the period of any delay at our normal charging rates. This shall be in addition to the contract price. The decision of what amounts to adverse weather shall be solely Ours.

3.7 We reserve the right to withdraw our labour, services and equipment if the payment terms detailed above are not strictly adhered to

ART 4. – EXECUTION – DELAY – INTERRUPTION

4.1 The time of performance by Us shall not be of the essence of the contract. Furthermore, dates and timetables are provided for Your information only and are not contractually binding.

4.2 We have the right of using any and all means in providing the goods and/or services, in deviation from the confirmation of order, if required.

4.3 In the event of any cancellation of the order, you shall pay, unless otherwise agreed in writing, the total agreed price for the provision of the goods and/or services under the agreement.

4.4 In the event of any delay or postponement of the provision of the goods and/or services, regardless of its cause, with nothing excepted, You have to pay any and all costs, expenses and damages of any nature arising from such postponement or delay immediately. If the provision of the goods and/or services cannot be undertaken within a reasonable period because of the postponement or delay, then We shall be entitled to treat the contract as cancelled. In such circumstances, We will inform You in writing and You will be obliged to pay the contract price in accordance with clause 4.3. The decision as to what is a reasonable period, in all the circumstances, will rest solely with Us.

4.5 We shall not be liable to You or anyone in respect of any delay to the provision of the goods and/or services for whatever reason, even if such delay arises due to Our negligence.

4.6 If the provision of the goods and/or services is possible only with significant risk to the personnel and/or the equipment – as assessed solely by Us – We may cancel the contract and You shall be liable to pay for the portion carried out already, in proportion with the order as a whole, including the costs of any nature in connection therewith.

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ART. 5 – RISKS – LIABILITY

5.1 Where We lease or provide any equipment to You without a driver or operator, such equipment shall be leased or provided to be used only in accordance with the specifications and requirements of that equipment. Any such equipment is leased or provided without any responsibility on Our part. You shall be responsible for compliance with any and all labour and safety regulations applicable to the equipment leased. In the event of leasing or providing the equipment with a driver or operator, You shall be in charge of guarding, instructing, monitoring and controlling the equipment and personnel during the entire term that the equipment is leased or provided. You shall be solely responsible for the actions of any such driver or operator. Furthermore, you alone shall be entirely responsible in the event of any accident or otherwise which results directly or indirectly from the lease or provision of the equipment, its use or even caused by detention.

5.2 Although DSM Contract Lifting Services Ltd makes all efforts possible in providing the goods and/or services in the manner agreed, We shall not be liable for any faults or failure in the performance of the agreement or for any other breach of contract relating to the provision of the goods and/or services even where such occurs due to Our negligence, except where such a breach was undertaken intentionally by Us with intent to breach the contract.

5.3 In the event that We are liable to You, our maximum liability shall be the sum of £25,000. We will not be liable to You for any sum in excess of £25,000, even where the liability arises from Our negligence.

5.4 Under no circumstances shall Our liability be limited or excluded in respect to claims for death or personal injury. In all other cases, the exclusions, defenses and limitations of liability shall apply.

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ART 6. – INSURANCE

- 6.1 In the event that We transport, store, move and/or handle goods pursuant to the order, then You shall ensure that such goods are properly and fully insured against all and any loss and/or damage that could occur.
- 6.2 You will also ensure that such insurance includes a waiver of subrogation in favour of Us.
- 6.3 You will further ensure that if such loss and/or damage occurs that a claim is pursued under the said insurance.
- 6.4 Where any goods transported, stored and/or handled by Us are not owned by You, You shall also ensure that You have adequate liability insurance to cover any claim which may be brought against You in respect of the loss and/or damage of the goods being transported, moved, stored or handled by Us.
- 6.5 You will also ensure that such insurance includes a waiver of subrogation in favour of Us.
- 6.6 You will furthermore ensure that if any claim is made against You, that You will pursue a claim under the said insurance.
- 6.7 You will not bring any claim against Us, and We shall not be liable for any such claim, arising from the loss and/or damage to goods (of whatever nature) whilst being transported, moved, stored or handled by Us. This shall be the case even where the said loss and/or damage arises by reason of Our negligence.
- 6.8 Furthermore, You shall fully indemnify Us in respect of any claim brought against Us by any other party arising from the loss and/or damage to goods (of whatever nature) whilst being transported, stored or handled by Us. This shall be the case even where the said loss and/or damage arises by reason of Our negligence.
- 6.9 Where We lease or provide equipment to You, You shall ensure that the equipment is fully insured. Such insurance must cover all and any defects with the equipment and all and any liabilities which could arise from Your possession and/or use of equipment, including any acts or omissions of the personnel operating the equipment. Such insurance must provide cover for damage caused to third parties by the equipment and/or the personnel and for any damage of the goods being handled.

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6.10 You will also ensure that such insurance includes a waiver of subrogation in favour of Us.

6.11 You will furthermore ensure that if any claim is made against You, that You will pursue a claim under the said insurance.

6.12 Furthermore, You shall indemnify Us in respect of any claim brought against Us by any other party arising from the leasing, provision or use of such equipment. This shall be the case even where the circumstances of the claim arise from Our negligence.

ART. 7 – RE COURSE

7.1 You shall notify any complaint relating to damage caused to third parties, buildings or equipment, etc., as well as to any defective execution of the order by registered letter, within 2 days, at the latest, after the incident. If you fail to do this, the complaint concerned shall be declared as inadmissible.

7.2 On the occasion of the execution of the order, the principal or his employee shall sign the worksheet and enter any and all comments on this sheet.

7.3 We shall, in any event, be discharged from all liability whatsoever and howsoever arising unless proceedings are commenced against Us and we are given written notice of the same within one year of Our confirmation of the order.

ART. 8 – PAYMENTS

8.1 All invoices shall be payable at Our place of business. The customer shall be prohibited, at all times, from withholding or off-setting any payment.

8.2 Unless otherwise agreed, the invoice shall be payable within 30 days following the date of the invoice. The Late Payment of Commercial Debts (Interest) Act 1998 as amended and/or replaced from time to time shall apply to sums which are outstanding.

ART 9. – DISPUTES AND APPLICABLE LAW

9.1 The contract shall be subject to English law and to the non-exclusive jurisdiction of the English Courts. Except for provisions to the contrary, the laws of England shall be applicable to our agreements, legal actions and factual actions.

9.2 If any clause of these terms is found to be void or unenforceable, for whatever reason, all the other clauses shall remain in force.