

STANDARD TERMS AND CONDITIONS FOR SERVICES

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Applicability of Standard and Special Terms and Conditions

These Standard Terms and Conditions consist of (A) Standard Terms and Conditions and (B) Special Terms and Conditions. Depending on the nature of the order or activities, or any part thereof which can reasonably be regarded as independent, the Special Terms and Conditions as set out below will apply in addition to the Standard Terms and Conditions.

When Special Terms and Conditions are applicable, they will prevail over these Standard Terms and Conditions in respect of subjects or parts of subjects that conflict with the Standard Terms and Conditions. Where subjects or parts thereof dealt with in the Special Terms and Conditions do not conflict with subjects already dealt with in the Standard Terms and Conditions, the relevant provisions of the Special Terms and Conditions will always be treated as an addition to the provisions of the Standard Terms and Conditions.

If it is not apparent from the order or activities which Special Terms and Conditions are applicable, or if this cannot reasonably be ascertained, the Contractor shall decide which (if any) Special Terms apply. If the Special Terms and Conditions are ineffective for any reason whatever, the Standard Terms and Conditions will always apply.

(A) STANDARD TERMS AND CONDITIONS

1. Definitions

- a. **'Confidential Information'** means any commercial, financial or technical information, information relating to methods or products, information relating to the Hire and/or Services, plans, drawings, specifications, inventions, processes, initiatives, know-how or trade secrets, which are confidential in nature or have been identified as such, or which are developed by a party in performing its obligations under, or otherwise pursuant to the Contract.
- b. **'Contract Price'**: the price for the Project as agreed under the Contract;
- c. **'Contract'**: the separate agreement between the Contractor and the Customer for the provision by the Contractor of Equipment, Personnel and/or Services, including (not limited to) the Contract Price, Project Period, the scope of the Equipment and/or Services, together with all schedules and/or amendments and/or additions thereto;
- d. **'Contractor Group'**: the group of enterprises (including the Contractor), associated directly and/or indirectly with the Contractor.
- e. **'Contractor'**: the NXGEN entity that concludes or intends to conclude a Contract with a Customer;
- f. **'Coronavirus Event'** means any event, circumstance, action or inaction that directly or indirectly results from or is connected with Coronavirus, or any actual or suspected outbreak of Coronavirus, including but not limited to officially mandated or recommended quarantines, social distancing, transport, travel or working bans or restrictions
- g. **'Coronavirus'** means, collectively and individually COVID-19 disease, SARS-CoV-2 virus or any other or similar name given to the pandemic by the International Committee on Taxonomy of Viruses (ICTV) and any variants thereof.
- h. **'Customer Group'**: the Customer, its own customer, the enterprises associated with the Customer and/or its own customer and their own contractors and subcontractors, customers, directors and members of staff;
- i. **'Customer'**: the party which procures or hires, or intends to procure or hire, Equipment, Personnel and/or Services from the Contractor;
- j. **'Documentation'**: the drawings, (technical) specifications, designs, calculations, models, prototypes and other documents provided or yet to be provided by anyone in relation to and/or in connection with the Project and/or the Work;
- k. **'Equipment'**: the equipment and/or materials which the Contractor provides and/or will provide or use under the Contract;
- l. **'Hire'**: the hiring of the Equipment and/or Personnel under the Contract;
- m. **'Load'**: the freight, goods, object or objects which must be transported and/or lifted and/or moved and/or stored and/or transhipped and/or weighed and/or salvaged, under the Contract;
- n. **'Location'**: the site where the Equipment will be used, where the Personnel will perform activities and/or where the Services will be provided;
- o. **'Parties'**: the Contractor and the Customer jointly.
- p. **'Party'**: the Contractor or the Customer;
- q. **'Person Appointed'**: a person with deemed authority from the Contractor with authority to assess, plan and organise the Services; to select suitable or appropriate plant and equipment, ensuring it has been adequately inspected and maintained; to provide instruction and supervision for the work to be undertaken safely; and to stop the work whenever he considers safety requires
- r. **'Personnel'**: the employees, subordinates and auxiliary persons whom the Contractor provides and/or will provide under the Contract;
- s. **'Project Period'**: the term of the Project as agreed in the Contract;
- t. **'Project'**: the Hire and/or the Services;
- u. **'Services' or 'Product'**: the services and/or activities which the Contractor provides and/or will provide under the Contract;
- v. **'Standard Terms and Conditions'**: this complete set of terms and conditions comprising both Standard Terms and Conditions and Special Terms and Conditions;
- w. **'Variation Order'**: an order placed by the Customer with the Contractor for modifications and/or additions to and/or extensions of the Hire, the Services, the Project and/or the Project Period
- x. **'Work'**: the construction work and/or the transport and/or other activities of the Customer for which the Customer is hiring the Equipment and/or Personnel and/or procuring the Services;

2. Applicability

- 2.1 These Standard Terms and Conditions form an integral part of each Contract (including any and all Variation Orders thereto) between the Contractor and the Customer and apply to all subsequent contracts resulting from or relating to a Contract, and to all quotations, offers, letters of intent, orders, order confirmations and other documents and acts made and/or done in preparation for and/or prior to and/or in connection with a Contract.
- 2.2 Any terms and conditions, of whatever nature and howsoever called or described, which the Customer applies and/or to which the Customer refers are not applicable and are hereby expressly rejected by the Contractor.
- 2.3 In the event of a conflict between the Standard Terms and Conditions and the provisions of the Contract, the provisions of the Contract will prevail.
- 2.4 Not Used

3. Offer and acceptance

- 3.1 All quotations and offers issued or made by the Contractor, including any brochures, price lists and/or other documents supplied by the Contractor in preparation for and/or prior to the conclusion of a Contract, are without obligation.
- 3.2 Except as expressly stated otherwise, each quotation and/or offer is based on performance by the Contractor in normal circumstances and during normal working hours.
- 3.3 Each quotation and/or offer issued or made by the Contractor relates exclusively to the services, and the scope thereof, as specified in the quotation and/or the offer. Except as expressly stated otherwise, quotations and offers are exclusive of any charge for additional work.
- 3.4 A Contract will be concluded only when it is confirmed in writing by the Contractor or by the performance of the Services and/or Hire.
- 3.5 No amendment and/or addition to a Contract or to the Standard Terms and Conditions will take effect unless it has been agreed and confirmed in writing by the Contractor.
- 3.6 The Customer warrants that he is either the owner of the Load(s) or is authorised by the owner of the Load(s) to have the Services carried out in respect of the Load(s).
- 3.7 These Standard Terms of 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 trade, custom, practice or course of dealing

4. Contract Price

- 4.1 Except as expressly stated otherwise in the Contract, the Contract Price is based on performance during normal working hours on a daily and/or weekly basis and in normal circumstances and under normal working conditions as applicable in the country where the Equipment is used, the Personnel perform their activities and/or the Services are provided.
- 4.2 The Contract Price includes only the charge for the Hire and/or the Services as specified in the Contract.
- 4.3 The Contract Price is exclusive of VAT and exclusive of all taxes, costs, penalties and/or incremental penalties levied by government and/or other authorities in respect of and/or in connection with the Contract (with the exception of corporation tax and/or other tax on income for which the Contractor is liable).
- 4.4 If the cost price of one or more elements of the Contract Price over which the Contractor has no influence rises substantially after the date of conclusion of the Contract, the Contractor will be entitled to increase the Contract Price accordingly. To qualify as substantial a price rise must be at least 3% (three per cent).
- 4.5 The provisions of this article are also applicable to the (extra) costs of modifications, additions and/or extensions, regardless of whether or not they are included in Variation Orders.

5. Variation Order

- 5.1 The Customer is entitled to submit written Variation Orders to the Contractor.
- 5.2 The Contractor will be obliged to execute Variation Orders unless the activities entailed by the Variation Order do not form part of the normal business activities of the Contractor and/or if other projects of the Contractor, its subcontractors or the Contractor Group could be substantially delayed as a result and/or as provided for in paragraph 5.4.
- 5.3 The Contractor will charge the Customer additionally for the costs of all amendments and/or additions to and/or extensions of the Contract as a consequence of a Variation Order. Except in the case of amendments as referred to in paragraph 5.4, the costs will be calculated in accordance with the applicable unit prices. In the absence of such unit prices or if the specific unit prices are not applicable to the Variation Order, the charge will be determined on a fair and reasonable basis accounting for market conditions at the time.
- 5.4 Variation Orders and/or amendments which reduce the scope of the overall Services or Hire are permitted, unless the cancelled Services and/or Hire will, at any stage, be performed by the Customer itself or by third parties. The cancellation of Services and/or Hire will be treated as a termination or, as the case may be, partial termination of the Contract and will give rise to a payment obligation as set out in paragraph 14.4.

6. Payment

- 6.1 Payment must be made by the Customer within the payment period specified in the Contract or, if no payment period is specified in the Contract, within 30 (thirty) days of the date of the invoice.
- 6.2 Except as otherwise agreed between the Parties, payment must be made into a bank account specified by Contractor, without any deduction, set-off or withholding of any kind (except for any deduction or withholding required by law).
- 6.3 Payments by the Customer to the Contractor may never be dependent upon receipt by Customer of payments from third parties, including the Customer's own

- customer.
- 6.4 If the Customer has not made payment by the due date at the latest, the Customer will be in default without any notice of default being required, and will owe the Contractor default interest equal to 1.5% (one and a half per cent) per month on the overdue amounts. Such default interest will accrue from the relevant due date.
- 6.5 In the event of payment default by the Customer, all costs and expenditure (including all costs of legal assistance, both in and out of court) incurred by the Contractor in collecting the amount due will be payable by the Customer, subject to a minimum of EUR 500 (five hundred euros).
- 6.6 The Contractor is entitled to retain property of the Customer in its possession as security for the payment of all sums due from the Customer to the Contractor (under the Contract) until the Customer has paid the sums due or has provided appropriate security. The Contractor will also have this right of retention if the Customer becomes subject to an order for winding up or is declared bankrupt, enters into a debt payment programme, or similar in the country where the Customer is registered, or has applied for court protection from creditors (moratorium).
- 6.7 If the Customer fails to make any payment due to the Contractor by the final date for payment, the Contractor can in its absolute discretion, suspend all or any part of the Hire and or Services at any time by giving the Customer not less than 3 days' notice in writing of such intention and stating the grounds for suspension. Where the Contractor exercises its right of suspension under this condition 6.7, it shall be entitled to be paid at the standby rates and prices, for all personnel and Equipment affected, as set out in the Contract for the suspension duration. The Contractor will only resume the Services following receipt of full payment including, late payment interest and amounts for the period of suspension calculated using the rates and prices in the Contract and only when practicable for the Contractor to do so.
- 6.8 If all or part of the Hire and or Services are suspended in accordance with condition 6.7 for a period that exceeds 30 days, the Contractor has the right to terminate the Contract upon giving 3 days' written notice to the Customer, and the Customer will pay the Contractor in accordance with 14.4 of these Standard Terms and Conditions. The Contractor will not be liable for any damage, loss, injury suffered or costs, charges, expenses, fines, levies or duties, loss of profits, sales, custom or any (other) indirect or consequential loss arising out of or suffered by the Customer or any other connected third party as a result of this suspension and/or termination. The Customer will indemnify, defend and hold harmless Contractor accordingly

7. Documentation and Information

- 7.1 All Documentation is and will remain the property of the Party that has supplied it to the other Party and all intellectual property rights therein are and will remain vested in the Party that has supplied the Documentation to the other Party.
- 7.2 Customer shall be liable and responsible to the Contractor for the accuracy, correctness and completeness of all Documentation and all information supplied by it or on its behalf. Contractor may fully rely on the accuracy, correctness and completeness of the Documentation and information supplied to it by or on behalf of the Customer. Customer indemnifies, defends and holds harmless Contractor Group for and against all costs; losses; damages; expenses; liabilities; proceedings; claims or otherwise incurred and/or received by Contractor, arising from the inaccuracy, incorrectness and incompleteness of the Documentation and or information supplied by it or on its behalf to Contractor.
- 7.3 Not Used.
- 7.4 The Customer will guarantee the structural integrity of the Load, including the suitability of the Load for the method used during the activities. Unless explicitly agreed otherwise, the Contractor will not be responsible or liable for the structural integrity of the Load or for the suitability of the Load for the method used. The Customer shall indemnify, defend and hold harmless Contractor Group for and against any and all consequences (including loss, damage and/or costs) arising from the structural integrity of the Load, including the suitability of the Load for the method used during the activities, regardless of cause.
- 7.6 The Customer is responsible for checking what the ground bearing pressures will be during the activities and guarantees that the ground (surface and subsurface) can withstand the required ground pressure.
- 7.7 The Customer is liable for all consequences, loss, damage and/or costs that arise if the ground (surface and subsurface) is unable to withstand the ground bearing pressures during the activities. The Customer shall indemnify, defend and hold harmless Contractor Group for and against any and all consequences (including loss, damage and/or costs) arising from the ground not being able to withstand the ground pressures during the activities, regardless of cause.

8. Performance

- 8.1 The Contractor may at any time arrange for all or part of the Services and/or the Hire to be performed by third parties.
- 8.2 If the said third parties are ever held non-contractually liable for the activities or services for which they have been used by the Contractor, they will be entitled to invoke all provisions of these Standard Terms and Conditions concerning the exclusion or limitation of liability and concerning the governing law and jurisdiction.
- 8.3 Unless expressly agreed otherwise in the Contract, all times, time schedules and/or periods for performance by the Contractor specified in the Contract or a Variation Order or otherwise agreed between the Parties will merely be an estimate and will not be binding on the Contractor.
- 8.4 If, however, a time or period is expressly agreed to be binding in the Contract:
- a) such time or period will not start until the Customer has fulfilled all its own obligations, including payment of all amounts due, and until all other requirements and conditions have been met, and

- b) such time or period will be suspended during any period in which the Customer fails to fulfil its obligations and any period in which any requirement or condition is not met.

- 8.5 Under no circumstances will the Contractor be obliged to carry out any activities or comply with any instructions and/or directions of any Party whatsoever if this would be unsafe and/or potentially dangerous to life or property, this being a matter to be decided by the Contractor at its exclusive and reasonable discretion.

9. General obligations of the Parties

- 9.1 Unless expressly agreed otherwise, the Customer is responsible for obtaining all permits, licenses, road closures and other approvals which are necessary for the Project, the Work and the Location and will arrange for these to be obtained.
- 9.2 The Customer must ensure that the Location is properly accessible, that the Equipment can be mobilized properly and safely and that the Project, the Hire and/or the Services can start on the agreed date and can be performed without interruption or hindrance.
- 9.3 Unless expressly agreed otherwise, the Customer is responsible for providing sound hoisting, anchor, jacking and/or lashing points, which should be sufficiently strong for the performance of the Project and or Work.
- 9.4 The Customer must provide good working conditions at the Location (in particular as regards health and safety) and ensure that they are completely in accordance with the required criteria and with local regulations and requirements.
- 9.5 The Parties must comply with all laws, rules, regulations, decisions, orders and/or other requirements and instructions of government and/or other authorities.
- 9.6 The Customer will supply the Contractor, free of charge, with all information that is reasonably necessary in connection with the performance of the Contract, including – but not limited to – relevant technical documentation.
- 9.7 The Customer shall:
- ensure the Contractor can perform the Services and or Hire (where applicable) uninterrupted and on a clear site with adequate approaches suitable for the safe and reasonable movement of the Contractor's plant and Equipment;
 - supply, and confirm in writing, all information which the Contractor requests or which the Customer is aware may be necessary or useful to the Contractor including (but without limitation) in relation to compliance with the Code of Practice;
 - ensure the centre of gravity and weight of material, design, the integrity and orientation of the lifting points of the lifted Load(s) are appropriate for the method of lifting.
 - ensure that the ground or floor where the Contractor's Equipment is to operate will be firm, level and in good condition, and will provide proper support for the Contractor's plant and Equipment;
 - Provide free of charge, diesel fuel, electricity supply, plant equipment as required by Contractor, site labour for operating plant equipment (i.e. Fork lift truck, crane, hot works, safe access etc.) and lighting to the Contractor
 - inform the Contractor of the location of anything on or near the site which will or is likely to be damaged by, or to damage, the contractor's Equipment, or to affect its stability, which will or is likely to affect the health or safety of any person involved in the Services and or Hire related thereto or which will or is likely to impact on provision of the Services and or Hire;
 - co-operate with the Contractor in all matters relating to the Services and or Hire;
 - provide the Contractor free of charge, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation, welfare, mess, toilet facilities and other facilities as reasonably required by the Contractor;
 - provide the Contractor with information and materials the Contractor may reasonably require in order to supply the Services and or Hire, and ensure that such information is complete, correct and accurate in all material respects;
 - obtain and maintain all necessary licenses, permissions and consents which may be required before the date on which the Services and or Hire are to start;
 - keep all the Contractor's materials, plant and equipment, documents and other property entrusted to it (Contractor Materials) at its premises in safe custody at its own risk, keeping them in good condition until returned to the Contractor. The Customer will not dispose of or use the Contractor Materials other than in accordance with these terms and the Contractor's written instructions or authorisation;
 - ensure that the contents of the Method Statement are true and accurate and entry into the Contract, will be deemed to be the Customer's confirmation to that effect;
 - inform the Contractor before the Contract starts of the correct weight, centre of gravity and dimensions of the Load(s) and provide it with drawings showing the longitudinal and transverse centre of gravity;
 - ensure that the Load(s) where required have suitable lifting, lashing and jacking points;
 - inform the Contractor in writing of any requirements regarding the size, type weight or other specifications of the vehicle(s) to be used in transporting the Load(s) whether due to the nature of the Load(s) or any collection or delivery location;
 - inform the Contractor immediately it is aware of any change in circumstances or information used by or provided to the Contractor relating to the Contract;
 - inform the Contractor of the location, area covered by and ownership of any private property over which the Services and or Hire are to be provided. The Customer will obtain all permissions from such property's owner so that the Services and or Hire can lawfully be provided;
 - ensure that there is proper, unrestricted and sufficient access for the Contractor's vehicles/machinery/plant/Equipment/labour to all places where the Services and or Hire are to be performed and that all obstructions (including doors where necessary) have been removed before the Services and or Hire are to be provided;
 - comply with all requirements of Customs & Excise in relation to the Services and or Hire and provide the Contractor with accurate and adequate

documentation required by Customs & Excise to be produced by the Contractor and/or the Customer.

- t) pay duties or taxes, import levies, deposits and outlays of whatsoever nature levied by any authority payable in respect of the Load(s) as and when they fall due and any outlays made by the Contractor on behalf of the Customer in the absolute discretion of the Contractor will be a Variation Order and will be payable to the Contractor by the Customer immediately on demand;
- u) anticipate and inform the Contractor of all of the services required to be carried out by the Contractor for the purpose of performing the Contract and will ensure that the Contractor has had proper opportunity to prepare and submit to the Customer a Method Statement for all such services prior to the commencement of the Contract;
- v) at its own expense will procure all permissions and authorisations to allow the Contractor free access to, and movement at, any location involved in provision of the Services and or Hire. To the extent that the Customer fails to do so, the Customer authorises the Contractor to obtain such permissions and authorisations
- w) provide the key dates/milestones of the Services and or Hire to the Contractor, which will be subject to the Contractor's approval; and
- x) comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and will maintain such authorisations
- y) all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.
- z) pay all third party charges in relation to the movement of Load(s), including but not limited to, escorts, street furniture removal, port charges, cargo handling charges, customs clearance charges, stevedoring charges, all port storage charges, all port dues and all import duties
- aa) Advise Contractor of any special protection required and or present on the Load(s) before Contractor commences the Services and or Hire

10. Liability (THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE)

- 10.1 In so far as the Contractor is or can be held liable under these Standard Terms and Conditions and/or the Contract, the Contractor will only be liable (without prejudice to the following paragraphs of this article) for any occurrence, loss, costs or damage caused directly by any act or omission on the part of the Contractor or its subcontractors.
- 10.2 With the exception of the insurance excess as provided for in paragraph 10.4, the Customer will be fully liable – and the Contractor will under no circumstances be liable – for any occurrence, loss, costs or damage which come(s) or should come under the cover of the insurance policy or policies taken out by the Customer and/or the Customer Group as provided for in paragraph 11.2.
- 10.3 Unless expressly provided otherwise in the Special Terms and Conditions or the Contract, Contractor shall not be liable to Customer for any loss of profit, loss of use, loss of contracts and/or economic loss and/or for any indirect damage and/or for multiple damages and/or punitive damages. Damage or loss suffered by the Customer Group as referred to in this paragraph will be treated as damage or loss suffered by the Customer. The Customer will indemnify, defend and hold harmless Contractor accordingly.
- 10.4 In so far as the acts or omissions of Contractor results in a claim under the Customer's insurance, the Contractor will be liable for the Customer's insurance excess. The liability under this paragraph will in any event not exceed EUR 25,000 (twenty-five thousand euros) per occurrence. Customer shall indemnify the Contractor against all claims, costs, liabilities, expense and damage which exceed the above-mentioned liability limit.
- 10.5 Notwithstanding anything to the contrary contained in the Contract or these Standard Terms and Conditions, with the exception of intent or deliberate recklessness on the part of the Contractor, to the fullest extent of the law, the total liability of the Contractor Group whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract will be limited to twenty percent (20%) of the Contract Price or EUR 250,000 whichever is the lower amount. The Customer will indemnify the Contractor Group and its subcontractors against all claims, costs, liabilities and so forth of the Customer Group which exceed the above-mentioned liability limit.
- 10.6 Under no circumstances will the Contractor be liable for any loss, costs or damage suffered as a consequence of delay in performance by the Contractor, except as provided in paragraph 13.3.
- 10.7 The Customer will indemnify, defend and hold harmless the Contractor and its Personnel and subcontractors against and in respect of all claims, demands, actions and proceedings which are made and/or instituted against the Contractor Group and/or its Personnel and/or the Contractor's subcontractors in respect of any occurrence, loss, costs, penalties or damage for which the Customer is liable under these Standard Terms and Conditions and the Contract, regardless of cause and irrespective of Contractor Group, its Personnel and or its subcontractor's negligence.
- 10.8 The Contractor is not liable for demurrage charges however incurred in relation the Services and or Hire or their provision including (but without limitation) cranes, railway wagons, road vehicles, ships or sea going craft used in connection with the Services and or Hire. The Customer will indemnify, defend and hold harmless the Contractor in respect of all liability for such charges.

11. Insurance

- 11.1 During the term of the Contract the Contractor will take out and maintain liability insurance providing cover of EUR 2,500,000 (two million five hundred thousand euros) per occurrence and EUR 5,000,000 in the aggregate for property damage and personal injury caused by any act or omission on the part of the Contractor. A claim under this insurance may be made only if the Contractor is liable under these Standard Terms and Conditions and/or the Contract.
- 11.2 The Customer will take out and maintain – or arrange for a member of the Customer Group to take out and maintain – primary transport, CAR

(Construction All Risks), EAR (Erection All Risks) or comparable insurance during the term of the Contract, the Project, the Services, the Hire and the Work. The insurance shall provide as a minimum cover the full replacement value of the Load and cover in respect of loss of equipment and/or property damage and/or personal injury caused to or by the Load and/or the Project and/or Work and any loss or damage to property caused by the negligence of Contractor. The insurance should provide cover at the Location and during transport (whether on land, sea or otherwise).

- 11.3 Unless expressly agreed otherwise, the Contractor will insure its Equipment against loss and property damage during the Project, the Hire and/or the Services.
- 11.4 The Parties must also take out all compulsory insurance as required by law.
- 11.5 The insurance referred to in paragraph 11.2 will in all cases be deemed to be the primary insurance in relation to the policies taken out by the Contractor and its subcontractors. The insurance referred to in paragraph 11.2 will provide that the insurers waive any right of subrogation against the Contractor, Contractor Group, its subcontractors and its employees and subordinates. The Contractor will be named as co-insured in the policy.
- 11.6 Each Party will, on request, supply the other Party with a certificate and/or proper proof of the existence of the insurance policy or policies in accordance with the provisions of this article 11.

12. Force Majeure

- 12.1 'Force Majeure' means any circumstances, conditions and/or occurrences which are beyond the control of either Party, are not attributable to the fault or negligence of either Party and cannot be avoided or prevented by taking reasonable measures, and which temporarily or permanently prevent the performance of any obligation (with the exception of payment obligations) under the Contract, such as trade union strikes, mutiny, quarantine, epidemics, war (whether declared or undeclared), acts of terrorism, blockades, embargos, riots, demonstrations, civil commotion or disorder, fire, storm and/or other extreme weather conditions and/or other acts of nature, provided that neither Party has caused or contributed to such occurrences.
- 12.2 If the performance of obligations under the Contract is temporarily prevented by Force Majeure, the performance of those obligations (with the exception of payment obligations) will merely be postponed and the Force Majeure will not constitute a reason for failing to perform the Contract.
- 12.3 If the performance of obligations under the Contract is permanently prevented by Force Majeure – or is temporarily prevented for a period that is expected to last at least 60 (sixty) days – each Party will have the right to terminate the Contract in accordance with the provisions of paragraph 14.3 of these Standard Terms and Conditions.
- 12.4 Notwithstanding anything to the contrary, under a Contract where the Contractor is providing a Hire, the payment of the Hire shall continue to accrue for the full period of the Force Majeure period.
- 12.5 Notwithstanding anything to the contrary, under a Contract where the Contractor is providing a Service, the Customer shall pay the Contractor at the standby rates contained within the Contract for all Equipment and Personnel affected by Force Majeure for the full period of Force Majeure. Where no such standby rates are present in the Contract, payment shall be at market rates accounting for any specific risks, such as the location, availability, demand of Equipment and or Personnel etc.

13. Delay and Suspension

- 13.1 Contractor may temporarily suspend its performance in whole or in part if the Customer has failed to fulfil one or more of its obligations or has ceased to fulfil one or more of its obligations, including payment of any amount due, without any prior announcement or notice of default being necessary. Resumption of Contractor's performance shall only re-commence within a reasonable time of the Customer rectifying the applicable failure or cessation of its obligations.
- 13.2 If the start and/or continuation of the Project, the Services and/or the Hire or the return of the Equipment to the Contractor is delayed and/or suspended as a result of one or more circumstances not caused by the Contractor (including unworkable weather conditions, but excluding Force Majeure situations as referred to in article 12), the Customer shall reimburse the Contractor for the direct internal and external costs incurred as a consequence of the delay, which will be charged additionally. The costs incurred for the Equipment and Personnel will be calculated on the basis of the applicable unit prices. In the absence of such unit prices the charge will be determined on a fair and reasonable basis.
- 13.3 If the start and/or continuation of the Services and/or the Hire is delayed and/or suspended as a result of one or more circumstances caused by the Contractor, the Contractor will not be liable for any loss, costs or damage unless liquidated damages have been agreed in the Contract. The liquidated damages will be the sole (financial) remedy available to the Customer and the only obligation of the Contractor if the start and/or continuation of the Services and/or the Hire is delayed and/or suspended as a consequence of one or more circumstances caused by the Contractor.
- 13.4 Unless a different percentage has been expressly agreed in writing in the Contract, the total liquidated damages will never exceed 10% (ten percent) of the Contract Price.

14. Cancellation and termination

- 14.1 Contractor shall be entitled to cancel and/or terminate the Contract with immediate effect in the cases and circumstances referred to in paragraph 13.1, after the Customer has been given notice to remedy the default and 10 (ten) working days have passed without the default having been remedied;
- 14.2 Each Party will be entitled to cancel and/or terminate the Contract with immediate effect, without recourse to the courts or arbitrators and without being obliged to pay any compensation to the other Party, in each of the following circumstances:
 - a) if the (majority) control of the business of the other Party is directly or indirectly transferred to a third party;

- b) if the other Party is declared bankrupt, applies for or obtains (provisional) court protection from creditors (moratorium) or otherwise loses the unfettered control of its business or assets, without any prior notice being necessary.
- 14.3 Both the Contractor and the Customer are entitled to terminate all or part of the Contract, subject to 10 (ten) working days' notice in the event of Force Majeure as provided for in article 12.3
- 14.4 If the Customer terminates the Contract (including under 14.3) or where the Contractor terminates the Contract (including under 14.3), the Customer must pay:
- for the Services, the Hire and any activities that have been performed until the date of termination, including (but not limited to) the costs of engineering, any and all third party costs and other costs incurred before the date of termination; and
 - all costs which the Contractor must incur as a consequence of the termination, including (but not limited to) demobilization costs and all costs and/or penalties which the Contractor must pay to third parties; and
 - an amount equal to 50% (fifty per cent) of the Contract Price that has not yet been earned. Where the Contract only involves a Hire, an amount equal to the remaining originally planned Hire Period or three (3) months Hire for all Equipment and Personnel, whichever is the higher.

15. Warranty and Complaints

- 15.1 The Contractor undertakes to deliver, perform and complete in accordance with the Contract and these Standard Terms and Conditions.
- 15.2 The Contractor will comply with all rules, schemes, regulations and measures relating to health, safety, the environment and working conditions.
- 15.3 Unless expressly agreed otherwise in writing in the Contract, no warranty period will apply to the Services after their performance.
- 15.4 Complaints relating to the Services provided by the Contractor and/or the performance by the Contractor must be submitted in writing by the Customer to the Contractor immediately (in any case, no later than 24 hours) after the provision of the relevant Service or after the relevant performance, failing which no complaint will be deemed to exist and the Customer will be deemed to have approved the full and proper performance by the Contractor.

16. Prescription and lapse

- 16.1 All claims under the Contract will lapse upon the expiry of 12 (twelve) months.
- 16.2 Each claim against the Contractor will lapse upon the expiry of 3 (three) months following completion of the Services or end of Hire, as applicable.

17. Governing law and Jurisdiction

- 17.1 All contracts to which these terms and conditions apply and all subsequent contracts resulting therefrom, including any disputes relating to the existence, validity and/or termination thereof, will be governed exclusively by and construed in accordance with the laws of England and Wales.
- 17.2 The English Courts, shall have exclusive jurisdiction for this Contract, to the exclusion of other courts.

18. Dispute Resolution

Adjudication

- 18.1 For Services and/or Hire carried out within the United Kingdom, both Parties shall have a right to refer any difference or dispute arising under or in connection with the Contract to adjudication and the procedure set out in Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations 1998 (or any amendment or re-enactment thereof for the time being in force) will apply. The specified nominating body to select adjudicators shall be the Construction Plant-hire Association acting by its President or Chief Executive for the time being. The Parties shall comply forthwith with any decision of the adjudicator.

Expert Determination

- 18.2 For Services and/or Hire carried out outside of the United Kingdom: any dispute which relates to a delay by either Party or to Variation Order arising from delay, other than a delay caused by the Contractor, may be referred by either Party to expert determination by an expert (Expert). The Expert will be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Business Days, or if the person appointed is unable or unwilling to act, the Expert will be appointed by the Contractor.

The Expert will act on the following basis:

- he/she will act as an expert and not as an arbitrator and will act fairly and impartially;
- the Expert's determination will (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;

the Expert will decide the procedure to be followed in the determination and will be requested to make his/her determination within 30 Business Days of his appointment or as soon as reasonably practicable thereafter and the parties will assist and provide the documentation that the Expert requires for the purpose of the determination;

- the determination process will be conducted in private and will be confidential; and
- the Expert will determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid

Arbitration

- 18.3 For Services and or Hire carried out outside of the United Kingdom, any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, will be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) Rules, which Rules are deemed to be incorporated by reference into this condition. The number of arbitrators will be three. The seat, or legal place, of arbitration will be London Court of International Arbitration, London, UK. The language to be used in the arbitral proceedings will be English. The decision will be binding and final for both parties.

19. COVID-19

- 19.1 If, by reason of a Coronavirus Event, the Contractor incurs additional costs and/or is hindered, prevented from or delayed in performing the Services and/or Hire or its other obligations under the Contract and or these Standard Terms and Conditions, Contractor shall not be considered in default under the Contract or these Standard Terms and Conditions.
- 19.2 Contractor shall be entitled to a Variation Order in accordance with Article 5 of these Standard Terms and Conditions to the extent it incurs additional costs and/or suffers delay in the performance of the Services and/or Hire or its other obligations under the Contract or these Standard Terms and Conditions by reason of a Coronavirus Event.
- 19.3 Insofar as it affects the performance of the Contractor, a Coronavirus Event shall not be treated as Force Majeure.

20. Customer Security

- 20.1 The Contractor may require the Customer to execute a Parent Company Guarantee from an entity acceptable to the Contractor and/or Payment Bank Guarantee on terms and in a form acceptable to the Contractor. Where the Contractor so requires, it will not be obliged to provide any Services and or Hire or do anything else pursuant to the Contract until such guarantee(s) are duly executed and delivered to the Contractor.
- 20.2 Notwithstanding clause 6, credit terms extended by the Contractor to the Customer are at the Contractors discretion and shall be based upon the information gathered and or received pertaining to the Customers credit worthiness prior to the Commencement Date. If the Contractor's assessment of the Customer's credit worthiness returns a result that is not acceptable to Contractor, then Contractor may request and Customer shall be obliged to pay Contractor for Services in advance of the Services and or Hire being performed. Such advance payment shall be a condition precedent to Contractors performance of the Services.
- 20.3 The Contractor may reconsider credit terms for the Customer at any time. The Contractor will conduct periodic credit assessments of the Customer's financial position throughout the duration of the Contract. Should any credit assessment conducted by the Contractor demonstrate that the Customer's financial position has deteriorated further security or credit arrangements may be required. The Contractor is not obliged to provide any Services and or Hire or do anything else pursuant to the Contract should the credit assessment of the Customer deteriorate significantly from that carried out prior to Commencement Date

21. Assignment

- 21.1 The Contractor may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 21.2 The Customer will not, without the prior written consent of the Contractor, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract, such consent not to be unreasonably withheld or delayed

22. Miscellaneous

- 22.1 The headings of the articles of these Standard Terms and Conditions are for convenience only and do not affect the interpretation of the relevant provisions.
- 22.2 If any provision or any part of the Contract or of these Standard Terms and Conditions is void or unenforceable for any reason whatever, the voidness or unenforceability will be limited to that provision and will have no further effect. Any such void or unenforceable parts of the Contract or these Standard Terms and Conditions will be replaced (or deemed to have been replaced) by provisions which are neither void nor unenforceable and which differ as little as possible from the void and/or unenforceable provisions, taking into account the intentions of the Contract, the Standard Terms and Conditions and the relevant provisions.
- 22.3 The Contract and these Standard Terms and Conditions 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.
- Each Party agrees that it will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each Party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 22.4 Any samples, drawings, presentations, descriptive matter or advertising issued by the Contractor, and any descriptions or illustrations contained in the Contractor's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services and or Hire described in them. They will not form part of the Contract or have any contractual force

- 22.5 A waiver of any right or remedy is only effective if given in writing and will not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy will not:
- a) waive that or any other right or remedy; or
 - b) prevent or restrict the further exercise of that or any other right or remedy.
- 22.6 Any notice or other communication given to a party under or in connection with the Contract will be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this condition, and will be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email. A notice or other communication will be deemed to have been received: if delivered personally, when left at the address referred to above; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, 1 Business Day after transmission
- 22.7 The Customer will pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).
- 22.8 No one other than a party to the Contract will have any right to enforce any of its terms.

23. Confidentiality

- 23.1 The Customer, its advisers, representatives and any other person or company within the control of the Customer will keep confidential all Confidential Information of the Contractor and will only use the same as required to perform the Contract. The provisions of this condition will not apply to:
- a) any information which was in the public domain at the date of the Contract;
 - b) any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - c) any information which is independently developed by the Customer without using information supplied by the Contractor; or
 - d) any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- 23.2 Confidential Information will not be used by the Customer other than to put into effect the Contract and any Confidential Information will not be disclosed to any third party including any employee of the Customer unless it is necessary that such information be so provided for the purpose of contractual negotiations or for the purpose of carrying out the Contract.
- 23.3 The Customer will ensure that any employee, servant or agent of the Customer and any other party to whom the Customer divulges Confidential Information in so far as it is permitted by this condition is aware of the existence of the confidentiality condition and has agreed in writing to be bound by this condition.
- 23.4 The Customer will indemnify the Contractor for and against any losses, damage, liability, costs and expenses otherwise incurred as a result of any the unauthorized disclosure of such documents or information by the Customer to others.
- 23.5 The Customer will not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 23.6 The above provision of this condition 23 will survive termination of the Contract, however arising.

24. GDPR

The Contractors GDPR Data Processor Clauses are hereby incorporated in to this Agreement and any Order. The GDPR Data Processor Clauses can be requested from Contractor in writing. Company hereby agrees that by entering in to any Order with Contractor, it has knowledge of and agrees to its obligations under the Contractors GDPR Data Processor Clauses

25. Business Ethics and Anti-Bribery

- 25.1 The Customer shall uphold the highest standards of business ethics in the performance of the Contract. Honesty, fairness and integrity shall be paramount principles.
- 25.2 The Customer warrants and undertakes that it and its associated persons, shall in relation to the Contract, (whether directly or indirectly through third parties), comply with all applicable laws in respect of the performance of its obligations under the Contract including without limitation all applicable laws and regulations relating to taxation, exchange controls, customs matters, anti-corruption, anti-trust, anti-money laundering, trade sanctions and criminal matters.
- 25.3 In particular, the Customer shall fully comply with the provisions of: (i) the Bribery Act 2010 (as enacted in the United Kingdom and as supplemented and/or amended from time to time), (ii) the Foreign Corrupt Practices Act 1977 (as enacted in the United States of America, supplemented and/or amended from time to time), and (iii) all applicable laws of any country or countries in which any of the obligations of the Contract is to be performed, collectively called "Applicable Anti-Bribery Laws".

(B) SPECIAL TERMS AND CONDITIONS:

(I) HIRE OF EQUIPMENT AND/OR PERSONNEL

Applicability

These 'Special Terms and Conditions I' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if Equipment and/or Personnel will be made available to the Customer and if instructions are given to carry out work which will be charged on the basis of unit prices (cost-plus work). In the event of a conflict between these Special Terms and Conditions I and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions I will prevail with respect to the activities referred to above.

1. Equipment

- 1.1 The Equipment may only be used at the Location and only in accordance with the specifications and within the Equipment's capacity limits. No other use is permitted.
- 1.2 The Customer acknowledges that the Equipment is and will at all times remain the property of the Contractor and/or the Contractor Group and/or the Contractor's suppliers and/or the Contractor's subcontractor(s).
- 1.3 Except as provided otherwise in the Contract, the Equipment will be mobilized and demobilized by the Contractor at the Customer's expense.
- 1.4 When it is delivered, the Equipment will function properly, be well maintained, in good working order and free from defects.
- 1.5 The Customer is obliged to inspect the state and condition of the Equipment upon delivery. If the Equipment does not meet the requirements set out in paragraph 1.4, the Customer must inform the Contractor accordingly in writing immediately upon receipt of the Equipment, failing which the Customer will be deemed to have received the Equipment in the state and condition described in paragraph 1.4.
- 1.6 The Customer may not hire out or sublet the Equipment and/or grant any rights of any nature in respect of the Equipment to any party.
- 1.7 The Customer must take good care of the Equipment and use the Equipment with due care. The Customer is responsible and liable to the Contractor for all defects and/or damage caused to the Equipment during the Hire and the Project Period.
- 1.8 The Contractor reserves the right to replace the Equipment with equivalent Equipment.
- 1.9 The Contractor will take care of repairs and maintenance of the Equipment where necessary during the Project Period. The Customer is not permitted to carry out repairs and/or maintenance itself without the Contractor's express written consent. If repairs and/or maintenance are necessitated by acts, omissions or improper use by or on behalf of the Customer, the costs associated with such repairs and/or maintenance, including (without limitation) the costs of labour, materials, transport and travelling expenses, will be payable by the Customer.
- 1.10 The Equipment must be returned clean, undamaged and in the same state and condition as it was when received.

2. Personnel

- 2.1 If the Contract also provides for the provision of Personnel, the Contractor must ensure that the Personnel in question have the expertise, qualifications and skills specified in the applicable legislation and, where applicable, in the Contract, and that they are fully qualified to perform the work as set out in the Contract.
- 2.2 If the Customer provides personnel to operate the Equipment, the Customer must ensure that the personnel it assigns and/or hires to operate the Equipment has all the expertise, qualifications and skills required to perform the work with the Equipment. The Customer is fully responsible for the personnel it assigns to operate the Equipment.
- 2.3 The Customer will be fully responsible and liable for and fully indemnifies the Contractor against any consequences, loss, costs and damage (with the

exception of any loss and/or damage referred to in Article 10.3 of the Standard Terms and Conditions) arising from any act or omission on the part of the Personnel.

- 2.4 The Personnel are deemed to be 'borrowed servants'. The Personnel will perform the work under the supervision, on the instructions and under the control of the Customer and in the Customer's name.
- 2.5 The Customer will be fully responsible for and provide a safe working environment for the Personnel and ensure that (health and safety at work) legislation is complied with during the Project and/or Hire. The Customer will indemnify, defend and hold harmless the Contractor against and in respect of all claims, demands, actions and proceedings which are made and/or instituted against the Contractor and/or Personnel and/or the Contractor's subcontractors in respect of any occurrence, loss, costs, penalties or damage for which the Customer is liable under this Article.
- 2.6 The Customer will comply with all rules, schemes, regulations and measures relating to health, safety, the environment and working conditions.

3. Performance

- 3.1 The Contractor will not perform any work or Services and/or provide any Equipment and/or Personnel other than as specified in the Contract or subsequently agreed in writing by the Parties.
- 3.2 Except as provided otherwise in the Contract, the Customer is responsible for obtaining all permits, licences and other approvals which are required for the performance of the work with the Equipment and/or the use of Personnel, and will arrange for these to be obtained.
- 3.3 The Contractor is entitled to inspect the Equipment at any time. The Customer is required to give the Contractor its full cooperation for that purpose at the Contractor's request.

4. Minimum charge

- 4.1 If the Contract is terminated as set out in paragraphs 14.2 and 14.3 of the Standard Terms and Conditions, or if a Variation Order is given as set out in paragraph 5.4 of the Standard Terms and Conditions, the Customer will be required to make the payments referred to in paragraph 14.4 of the Standard Terms and Conditions, with the proviso that the minimum amount payable will be the charge for the minimum period specified in the Contract. For the purpose of 14.4 (c) of the Standard Terms and Conditions, the activities terminated and not performed shall be calculated using the original duration of the Hire (plus any extension to the Hire) now being reduced owing to the Termination.
- 4.2 If the Equipment cannot be used for a period that is expected to last at least 60 (sixty) days and if the impossibility to use the Equipment is not due to the lack of work available; an obligation of the Customer under the Contract; Force Majeure; use, abuse or improper use of the Equipment by, under the supervision of or on behalf of the Customer and if the Equipment cannot be replaced within a reasonable time, the Customer will be entitled, in derogation from paragraph 14.1(a) of the Standard Terms and Conditions, to terminate the Hire of the Equipment in question after the Contractor has been given notice to remedy the default and 20 (twenty) working days have passed without the default having been remedied. The Customer will not be required to pay any Hire charges for the Equipment during any period in which the Equipment cannot be used under the circumstances described in this paragraph 4.2. The non-payment of Hire charges under 4.2 shall be the full extent of the Contractor's liability under 4.2.

5. Insurance

- 5.1 The Customer will procure and maintain, for the full period of the Hire and or Services, insurance to cover the full new replacement value of the Equipment. The insurance, as a minimum, shall cover loss of and or damage to the Equipment during and arising from the Hire and/or the Services. The insurance policy shall name Contractor as a co-insured and shall provide that the insurers waive any and all rights of subrogation against the Contractor Group. If the Customer fails in any of its obligations under this clause, or if for any reason the insurance does not respond, the Customer will itself be liable to the Contractor for the full extent of the loss of and or damage to the Equipment.

(B) SPECIAL TERMS AND CONDITIONS:

(II) TRANSPORT SERVICES

Applicability

These 'Special Terms and Conditions II' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if the Contractor undertakes transport. In the event of a conflict between these Special Terms and Conditions II and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions II will prevail with respect to the activities referred to above.

A. TRANSPORT

1. Contractor's obligations

- 1.1 The Contractor is obliged to take receipt of the Load at the agreed place and time and in the agreed manner and to advise the Customer of the vehicle's carrying capacity, except where the Customer may be deemed to be aware thereof.
- 1.2 The Contractor is obliged to deliver the Load received for transport to its destination in the same state and condition in which the Contractor received it.
- 1.3 The Contractor is obliged to deliver the Load received for transport to its destination within a reasonable time.
- 1.4 If the Contractor does not meet the obligation set forth in paragraph 1, either Party may terminate the Contract with respect to the Load of which the Contractor has not taken receipt. However, the Customer may do so only after it has notified the Contractor in writing of a final deadline for fulfilling this obligation and if the Contractor has not met its obligation on expiry of that deadline. Notice of termination must be given in writing by registered letter to the other Party and the Contract will end at the time of receipt of such notice. After the termination, the Contractor is required to compensate the Customer for the loss suffered as a result of the termination, with the proviso that such compensation will not exceed the charge for the transport in question.
- 1.5 If and in so far as circumstances permit, the Contractor is required to inspect the correct loading and stowage by or on behalf of the Customer and to ensure that there is no overloading.

2. Contractor's liability

- 2.1 Except in circumstances amounting to Force Majeure, the Contractor is liable for damage to and/or loss of the Load in so far as the Contractor has not met the obligation mentioned in paragraph 1.2 and the damage and/or loss is caused by a negligent act or omission on the part of the Contractor.
- 2.1 Under no circumstances will the Contractor be liable for any loss, cost or damage suffered as a consequence of delay in performance by the Contractor, except as provided in paragraph 13.3 of the Standard Terms and Conditions.
- 2.2 The Contractor is liable for the actions of its employees or persons in the same way as it is liable for its own actions.
- 2.3 The Contractor may not evade its liability by referring to the defective condition of the vehicle or equipment which it uses, except where the latter has been made available to the Contractor by the Customer, the addressee or the recipient. The term 'equipment' does not include a ship or railway wagon carrying the vehicle.
- 2.4 Without prejudice to the provisions of paragraph 10.5 of the Standard Terms and Conditions, the liability of Contractor for:
 - a. its failure to meet the obligation upon it by virtue of paragraph 1.2
 - b. loss of or damage to the Loads to the extent resulting from Contractor's acts or omissions

will be limited to EUR 3.40 (three euros and forty cents) per kg, subject to a maximum of an amount equal to GBP 25,000.

The Contractor is not liable for any loss or damage other than that caused by loss of and/or damage to the Load, including the damage referred to in paragraph 10.3 of the Standard Terms and Conditions

- 2.5 The Customer shall indemnify, defend and hold harmless the Contractor for any and all amounts over the above limits referred to in clause 2.5, regardless of cause and or fault and irrespective of Contractor's negligence.
- 2.6 The Contractor shall not be liable for:
 - a) non-delivery of the Load(s) or parts of the Load(s) unless advised thereof in writing within 7 days of the termination or completion of the Services, and the claim is made in writing within 14 days, after the termination or completion of the Services; and
 - b) any other loss unless advised thereof in writing within 28 days of the commencement of Services.

3. Customer Obligations

- 3.1 the Contractor is provided at the Customer's cost with:
 - (a) sacrificial plates to allow the Load(s) to be bolted through existing holes in the Contractor's bolster; and
 - (b) packing, saddles, cradles, chains, timber, cables and dunnage necessary to prevent damage to the Load(s) during the performance of the Contract, the Customer will ensure that such sacrificial plates, packing, saddles, cradles, chains, timber, cables and dunnage are suitable for the purpose for which they are required.
- 3.2 The Customer will ensure that:
 - a) the approved route specified in the Method Statement is available at the time of movement of the Load(s).
 - b) transportation of the Load(s) can and will be performed without interruption or delay of any kind whatsoever.
 - c) suitable arrangements are in place to load and unload Load(s) from the

Contractor's vehicle within 2 hours of that vehicle arriving on site.

d) a complete, accurate and correct engineering/transportation drawing(s) is provided to the Contractor.

e) where required, the Load(s) can be conveyed on twin bogies giving two-point support at agreed centres and that the saddles have adequate securing and fastening points

4. Special risks

- 4.1 If the Contractor has failed to meet the obligations upon it by virtue of paragraphs 1.2 and 1.3, the Contractor will nevertheless not be liable for any loss or damage this causes, without prejudice to article 2, to the extent that such failure is the consequence of the risks inherent in any of the following circumstances:
 - a) transport of the Load in an open vehicle if this has been expressly agreed;
 - b) lack or deficiency of packaging of the Load where the Load should have been properly packed in view of its nature or the transport method;
 - c) handling, loading, stowage or unloading of the Load by the Customer, the addressee or persons acting on behalf of the Customer or the addressee;
 - d) the nature of the Load itself, where the Load is prone to full or partial loss or damage due to causes related to that nature, in particular as a result of combustion, explosion, melting, breakage,
 - e) fracture, corrosion, decay, dehydration, desiccation, leakage, normal loss of quality or the actions of vermin or rodents;
 - f) heat, cold, changes in temperature or humidity, but only if it has not been agreed that the transport will be undertaken with a vehicle that is specifically equipped to protect the Load from these influences;
 - g) incomplete or insufficient addressing, numbering, lettering or marking of the packages;
 - h) Transport of live animals.

5. Not Used

6. Indemnity and Himalaya clause

- 6.1 If the Customer fails to meet any of the obligations imposed on it by law or the Contract or the Standard Terms and Conditions, the Customer is obliged to indemnify, defend and hold harmless the Contractor against any loss or damage suffered by the Contractor as a result of such failure should the Contractor be held liable by a third party in connection with the transport of the Load.
- 6.2 If auxiliary persons of the Contractor are held liable in connection with the transport of the Load, such persons may invoke any limitation and/or exclusion of liability that may be invoked by the Contractor by virtue of the Standard Terms and Conditions or any other statutory or contractual provisions.

B. INTERNATIONAL TRANSPORT

1. Applicable Convention

- 1.1 The term 'Applicable Convention' as used herein refers to the mandatory provisions of the international convention applicable to the agreed transport.
 - *In the case of international carriage of goods by land and/or road:* the Convention on the Contract for the International Carriage of Goods by Road (CMR), signed in Geneva on 19 May 1956.
 - *In the case of international carriage of goods by sea:* the Hague-Visby Rules laid down in the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (Brussels, 25 August 1924), as amended by the Protocol of 23 February 1968 and the Protocol of 21 December 1979.
 - *In the case of international carriage of goods by inland waterway:* the Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI), signed in Budapest on 22 June 2001.
- 1.2 The Standard Terms and Conditions and Special Terms and Conditions, including Special Terms and Conditions II section A, will apply to international transport, except as otherwise provided by the mandatory provisions of the Applicable Convention with respect to the transport in question.
- 1.3 Contrary to the provisions of the Standard Terms and Conditions and Special Terms and Conditions, including Special Terms and Conditions II section A, the Contractor will be liable for loss of and/or damage to the Load if and as provided in the Applicable Convention with respect to the agreed transport.
- 1.4 Without limiting the Customer's insurance requirements under the Standard Terms and Conditions, the Customer will take out insurance to protect the Parties from liability for damage to and/or loss of the Load, which insurance must provide at least adequate cover against property loss and/or damage to the Load during transport. The insurance policy will provide that any right of subrogation against the Contractor and its subcontractors is waived. The Contract Price is based on the fact that the Customer takes out the aforesaid insurance and that the insurance excess does not exceed EUR 25,000 (twenty-five thousand euros) per occurrence.

(B) SPECIAL TERMS AND CONDITIONS:

(III) STORAGE, TRANSSHIPMENT, WAREHOUSING AND DELIVERY SERVICES

Applicability

These 'Special Terms and Conditions III' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if the Contractor takes care of storage, transshipment, warehousing and delivery of the Load. In the event of a conflict between these Special Terms and Conditions III and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions III will prevail with respect to the activities referred to above.

1. Liability

- 1.1 The Customer is liable to the Contractor and/or third parties for any loss, damage and/or costs arising from incorrect and/or false and/or incomplete descriptions, specifications, statements, as well as for any loss, damage and/or costs arising from defects in the Load and/or packaging not notified to the Contractor in advance, even if such loss, damage and/or costs have arisen without fault on the part of the Customer. If the weight is not specified or not specified correctly, the Customer is liable for any loss, damage and/or costs resulting therefrom.
- 1.2 The Customer is liable for any loss or damage resulting from non-performance, late performance or defective performance by the Customer of any obligation imposed on it by these terms and conditions or by a separate Contract concluded between the Contractor and the Customer, except as otherwise provided in these Standard and Special Terms and Conditions.
- 1.3 The Contractor is not liable for any loss of and/or damage to the Load, except in the case of intentional acts by the Contractor that are solely designed to cause the loss and/or damage.

2. Insurance of the Load

- 2.1 Except as expressly agreed otherwise in writing, the Customer is required to take out insurance to cover the Load during storage, warehousing, delivery and transshipment. The insurance will in all cases be deemed to be the primary insurance in relation to the policy taken out by the Contractor and its subcontractors. The insurance referred to in this article will provide that the insurers waive any right of subrogation against the Contractor, its subcontractors and its employees and subordinates. The Contractor will be named as co-insured in the policy.
- 2.2 If, in the case of loss of or damage to the Load arising from any cause whatsoever, the Contractor's cooperation is requested or required in order to assess the loss or damage, the Contractor will lend its cooperation. The Contractor may make its cooperation conditional on the payment of or the provision of security for any claim it has on the Customer on any account whatsoever.

3. Taking back the Load for compelling reasons prior to expiry of the warehousing period

- 3.1 The Contractor is entitled at any time to require that the Load received for warehousing be taken back prior to expiry of the warehousing period if there are compelling reasons to do so, without observing a notice period and without being required to pay any compensation to the Customer.
- 3.2 A compelling reason is a circumstance of such a nature that the Customer cannot reasonably expect the Contractor to continue the storage.
- 3.3 Such a reason is deemed to exist, inter alia, if the Customer fails to meet one or more of the provisions of the Contract or the Terms and Conditions, if it becomes apparent that the presence of the Load is likely to cause loss of or damage to any other load, the storage location or tools or equipment or is likely to cause injury to people and, furthermore, if the Load is perishable or if the Load undergoes changes which, in the Contractor's opinion, justify the expectation of a reduction in value and the Customer fails to give instructions to avoid and prevent this.
- 3.4 The Customer's obligation to pay the fees due to the Contractor will continue until the date on which the Load is taken back.

(B) SPECIAL TERMS AND CONDITIONS:

(IV) CONTRACT LIFTING SERVICES

Applicability

These 'Special Terms and Conditions IV' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if the Contractor undertakes Contract Lifting Services. In the event of a conflict between these Special Terms and Conditions IV and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions IV will prevail with respect to the activities referred to above

1. The Customer will:
 - a. provide drawings of lifting study and lifting procedure and warrants that such drawings will be complete, correct and accurate;
 - b. ensure that plant and Equipment is correctly positioned and level at all the times during the lifting and that access to the vicinity of the equipment is restricted to authorised personnel only.
2. The Customer will clear the site of all vehicles property, plant, equipment and persons not involved in the Contract Lift and, for that purpose, adequately segregate the vicinity where the Services are performed with set up barricades, tapes or cones, to the extent that the Contractor requires.
3. The Contractor will provide the operator and Equipment to perform the Contract Lift.
4. The Contractor will perform the Contract Lift in accordance with the relevant Code of Practice.
5. At the Customer's request, the Contractor will provide the Customer with any available information relevant to the qualifications and competence of the Person Appointed by the Contractor in accordance with the Code of Practice to have overall control of any lifting operation under the lifting contract.
6. The work will be carried out in daylight during normal working hours, unless otherwise agreed in writing and accepted by the Contractor.
7. The Contractor reserves the right to provide alternative suitable lifting Equipment.
8. The Customer will not undertake any tandem lifts without prior written approval from the Contractor.

(B) SPECIAL TERMS AND CONDITIONS:

(V) WEIGHING SERVICES

Applicability

These 'Special Terms and Conditions V' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if the Contractor undertakes Weighing Services. In the event of a conflict between these Special Terms and Conditions V and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions V will prevail with respect to the activities referred to above

1. The Customer will provide, at its own expense:
 - a. clear, free and unrestricted access where the Weighing Services will be provided for Contractor's weighing Equipment;
 - b. load spreading steelwork and support for the Contractor's Equipment for weighing operation;
 - c. such other assistance as the Contractor requires including but not limited to craneage, forklifts, welfare, lighting etc. for, handling, assembly, disassembly, offloading and reloading of Contractor Equipment
2. The Contractor shall not be liable for any errors, inconsistencies, inaccuracies in any weighing report produced by the Contractor, including but not limited to the weight and or center of gravity of the Load(s) contained in the weighing report. The Customer shall indemnify, defend and hold harmless Contractor Group for and against all consequences, accordingly.

(B) SPECIAL TERMS AND CONDITIONS:

(VI) FREIGHT FORWARDING SERVICES

Applicability

These 'Special Terms and Conditions VI' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if the Contractor undertakes Freight Forwarding Services. In the event of a conflict between these Special Terms and Conditions VI and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions VI will prevail with respect to the activities referred to above

1. The Contractor will select the mode of transport used to move Load(s), unless otherwise agreed in writing.
2. The Contractor is irrevocably authorised to act as the Customer's agent for providing Freight Forwarding Services and the Customer will indemnify the Contractor against all claims and demands made against the Contractor as a result of its acting in that agency capacity.
3. Where the Customer instructs the Contractor to seek release of any Load(s) which are being held by any port, customs or other authority, the Contractor will act as the Customer's agent in doing so. The Customer will indemnify the Contractor in respect of all costs, losses, expenses and proceedings of whatever nature relating directly or indirectly to the Contractor's acts or omissions pursuant to this condition 3.
4. The Contractor will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, pets or plants, unless otherwise agreed in writing.
5. Unless it has otherwise agreed in writing, the Contractor will not accept or deal with goods that are in its opinion:
 - a) likely to harbour or encourage vermin or other pests; or
 - b) likely to taint or affect other goods.
6. If the Contractor reasonably believes any Load(s) to be dangerous, unsafe, or a risk to other Load(s) such that it cannot provide the Services safely and as originally intended, it may stop provision of the Services in relation to those Load(s). It will notify the Customer of any decision to do so and will use reasonable endeavours to return the Load(s) concerned to the Customer at the Customer's expense if it is safe to do so. If such Load(s) cannot be safely returned, the Contractor will be at liberty to dispose of them as it reasonably decides without further liability to the Customer. The Customer will pay all the Contractor's costs in relation to any such disposal.
7. The Customer will not deliver or attempt to deliver anything of the kind referred to in condition 5 to the Contractor without the Contractor's written prior agreement.
8. The Customer will be liable to the Contractor and will fully indemnify and keep the Contractor indemnified in respect of all costs, proceedings, losses and liabilities resulting if the Customer delivers anything to the Contractor contrary to condition 5.
9. The Contractor may deal in such manner as it thinks fit with anything delivered to it contrary to condition 7.
10. The Customer will provide such proof of weight, value, cost of making good damage and other information and evidence as required by the Contractor, applicable law, or other competent authority. Such proof and information will be provided to the Contractor or such other person direct.
11. The Customer warrants that all Load(s) will be presented for transport in packaging suitable for the proposed methods of carriage.
12. The Customer is liable for and will pay on demand all such freight, duties, charges and expenses due in respect of the Load(s).
13. Where liability for general average arises in connection with the Load(s), the Customer will promptly provide security by way of bond or guarantee to the Contractor in favour of the Contractor or any other party designated by the Contractor in a form acceptable to the Contractor.
14. Except under special arrangements made upon the Commencement date in writing between the Parties, the Contractor accepts no responsibility or liability arising from any failure to adhere to agreed departure or arrival dates of Load(s). Customer shall indemnify and keep indemnified Contractor accordingly.
15. The Contractor shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by, or paid to, freight forwarders
16. Should the Customer or Consignee or Owner of the Load(s) fail to take delivery at the appointed time and place when and where the company is entitled to deliver, the Contractor shall be entitled to store the Load(s), or any part thereof, at the sole risk of the Customer or Consignee or Owner, whereupon the Contractor's liability in respect of the Load(s), or that part thereof, stored as aforesaid, shall wholly cease. The Contractor's liability, if any, in relation to such storage, shall be governed by these conditions. All costs incurred by the Contractor as a result of the failure to take delivery shall be deemed as Additional Charges, and such costs shall, upon demand, be paid by the Customer
17. No insurance will be effected except upon express instructions given in writing by the Customer and accepted in writing by the Contractor, and all insurances effected by the Contractor are subject to the usual exceptions and conditions of the policies of the insurers or underwriters taking the risk. Unless otherwise agreed in writing, the Contractor shall not be under any obligation to effect a separate insurance on the goods, but may declare it on any open or general policy held by the Contractor.
18. Insofar as the Contractor agrees to effect insurance, the Contractor acts solely as agent for the Customer.
19. Except under special arrangements previously made in writing by an officer of the Contractor so authorised, or made pursuant to or under the terms of a printed document signed by the Contractor, any instructions relating to the delivery or release of the Load(s) in specified circumstances (such as, but not limited to, against payment or against surrender of a particular document) are accepted by the Contractor, where the Contractor has to engage third parties to effect compliance with the instructions, only as agents for the Customer.
20. Despite the acceptance by the Contractor of instructions from the Customer to collect freight, duties, charges, dues, or other expenses from the Consignee, or any other Person, on receipt of evidence of proper demand by the Contractor, and, in the absence of evidence of payment (for whatever reason) by such Consignee, or other Person, the Customer shall remain responsible for such freight, duties, charges, dues, or other expenses.
21. The Contractor shall not be under any liability in respect of such arrangements as are referred to under conditions 19 and 20 hereof save where such arrangements are made in writing, and in any event, the Contractor's liability in respect of the performance of, or arranging the performance of, such instructions shall not exceed the limits set out in these conditions.

(B) SPECIAL TERMS AND CONDITIONS:

(VII) BARGE / VESSEL PROVISION SERVICES

Applicability

These 'Special Terms and Conditions VII' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if the Contractor undertakes Barge / Vessel Provision Services. In the event of a conflict between these Special Terms and Conditions VII and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions VII will prevail with respect to the activities referred to above

BARGE / VESSEL PROVISION SERVICES

1. The terms and conditions entered into by the Contractor (including but not limited to any LayCan periods and or demurrage rates) for the procurement or provision of any and all barges and or vessels required under the Contract will be deemed to be incorporated herein. Customer shall assume all liabilities of the Contractor under said terms and conditions and Customer shall indemnify, defend and hold harmless Contractor accordingly.
2. The Customer will procure and maintain for the period of the Contract all required cargo insurance (including a waiver of subrogation in favour of Contractor) in respect of the Load(s) and will be responsible for payment of such insurance.
3. The Customer will pay all third party charges in relation to movement of Load(s) including but not limited to, port charges, cargo handling charges, customs clearance charges, stevedoring charges, all port storage charges, all port dues and all import duties.
4. The Customer will provide all sea fastening material. Any design or installation of sea fastening required to be done by Contractor will be agreed prior to performance and in any event will be limited to the barge deck only.
5. The Customer will provide free of charge to Contractor, all assist tugs & berthing and will pay any and all wharfage fees.
6. Any and all additional periods required for tug(s)/barge(s)/vessel(s) whether required for loading/offloading or arising from any and all delay(s) due to weather, berth availability or any event outside of Contractor's control, will be deemed a Variation Order and Customer shall reimburse Contractor in accordance with Article 5 of the Standard Terms and Conditions (Variation Order).

(B) SPECIAL TERMS AND CONDITIONS:

(VIII) STANDALONE ENGINEERING SERVICES

Applicability

These 'Special Terms and Conditions VII' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if the Contractor undertakes Standalone Engineering Services. In the event of a conflict between these Special Terms and Conditions VIII and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions VIII will prevail with respect to the activities referred to above

STANDALONE ENGINEERING SERVICES

1. Definitions

1. **"Documentation"**: the material, drawings, specifications (including technical specifications), designs, calculations, models, prototypes and other documents, that are or will be made available by the Customer to NXGEN concerning and/or in connection with the Work and or Product;
2. **"Product"**: the engineering concept, drawings, studies or other results that are produced by NXGEN in the context of the Contract
3. **"Specifications"**: the agreed requirements set down for the Product.

2. Insurance

1. NXGEN will take out professional liability insurance with cover to the amount of EUR 1,000,000.00 per calendar year during the period of the Contract.

3. Use, Title and Confidentiality

1. The Customer's Documentation will serve as the basis for carrying out the Work and for the Product.
2. The Customer shall make the Documentation considered necessary by NXGEN available in good time and free of charge.
3. The Customer guarantees that the Documentation it provides, or is provided on its behalf will be accurate, complete and correct. The Customer shall at all times be and remain liable for the consequences of inaccuracy, incorrectness, incompleteness, errors, omissions and/or lack of clarity in the Documentation.
4. NXGEN guarantees that the Product will meet the Specifications based on information provided and at details at the time.
5. Intellectual property rights in or arising from the Product shall remain with NXGEN unless otherwise agreed in writing.
6. The Customer is entitled to use the Product for the intended purpose as long as the Customer has fulfilled its obligations in accordance with the Contract and insofar as the intended purpose does not conflict with the stipulations of the Contract.
7. The Product is based on NXGEN's current technology, engineering concepts and material. A third party must not assume anything about the Product, but must investigate for itself the possibilities, limitations or circumstances that in its opinion are relevant to the operational use of the Product. The Product is intended solely for preparing for operational implementation by NXGEN, unless agreed otherwise.
8. NXGEN shall not be liable for any consequences thereof. The Parties will keep the Documentation and the Product strictly confidential,
9. unless agreed otherwise. The Documentation and the Product will not be made available to third parties or be made public in any way.

4. LIMITATION AND LAPSING OF LIABILITY (THE CLIENT'S ATTENTION IF PARTICULARLY DRAWN TO THIS CLAUSE)

1. If through its own fault or negligence NXGEN fails to comply with the Contract, it shall be bound only to fulfilling (or again fulfilling) its obligations under the Contract. Customer shall have no further claims against NXGEN arising from such failure to comply with the Contract.
2. All claims by the Customer by virtue of the Contract become null and void after fourteen days has have passed from the time the Customer knew or should have known about the event giving rise to such claim.
3. Customer waives right to make any claims after 1 (one) month has passed beginning upon completion of the Work or delivery of the Product, whichever occurs earliest.
4. Subject to 10.1 and notwithstanding anything to the contrary contained in the Contract or these General Terms and Conditions, with the exception of intent or deliberate recklessness on the part of NXGEN, to the fullest extent of the law, the total liability of NXGEN whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract will be limited to twenty percent (20%) of the Contract Price or EUR 50,000 whichever is the lower amount. The Customer will indemnify NXGEN, its affiliates, and its subcontractors against all claims, costs, liabilities and so forth of the Customer Group which exceed the above-mentioned liability limits.
5. NXGEN shall not be liable to the Customer for any loss of profit, loss of use, loss of contracts and/or economic loss and/or for any indirect damage and/or for multiple damages and/or punitive damages. Damage or loss suffered by the Customer Group as referred to in this paragraph will be treated as damage or loss suffered by the Customer. The Customer will indemnify, defend and hold harmless NXGEN accordingly.
6. NXGEN shall not be liable to Customer Group for its use of the Product or anything arising therefrom. Customer shall indemnify, defend and hold harmless NXGEN for and against any loss, damages, claims, liability, expense or otherwise incurred and or received by Customer Group arising from the Product.
7. No warranty / guarantee period will apply to the Work and or the Product

(B) SPECIAL TERMS AND CONDITIONS:

(IX) BARE LEASE

Applicability

These 'Special Terms and Conditions IX apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if the Contractor undertakes a Bare Lease. In the event of a conflict between these Special Terms and Conditions IX and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions IX will prevail with respect to the activities referred to above

Definitions

Bare Lease means the Equipment is hired without operatives and not part of a Service by NXGEN

Equipment means the vehicle or the machine, which is the subject of such an offer or Contract

1. Subject of the Contract

1.The Contract concerns the lease or hire of a specific Equipment on a Bare Lease basis. The Equipment is described in the Contract itself and is also described together with all component parts, accessories and parts in the "packing list", which together with the on-hire report and the off-hire report forms part of the Contract.

2.The Parties agree that only the damage marked in advance by NXGEN in the on-hire report can be deemed to have been in existence prior to the Equipment leaving the NXGEN depot. All other damage falls within the risk and responsibility of the Customer, except for damage caused by gross negligence on the part of NXGEN.

3.Unless agreed otherwise the Equipment also includes its accessories, including but not limited to, tools, chain hoists, spare parts, beam parts, weights, blocks, as well as the accompanying documents, including the manual and prior service reports. The Customer will be at all times, except for in the event of intention or gross negligence on the part of NXGEN, liable for loss or damage of the accessories and accompanying documents.

2. Delivery

1.Upon delivery of the Equipment the Customer must sign an on-hire report, which will set out inter alia the number of hours and the odometer reading (if applicable) and the delivery date, and that the Customer agrees to the condition and any damage of the Equipment.

2.Delivery of the Equipment will take place together with the required vehicle registration papers, the keys, manuals or any other relevant documents mentioned in the Rental Contract, as applicable.

3.The location of the delivery of the Equipment is stated in the Contract

4.As soon as the Equipment has left the depot of NXGEN the risk and responsibility with regard to the Equipment transfers to the Customer.

3. End of the Contract

1.The Contract between NXGEN and the Customer will end as soon as the period stated in the Contract has expired.

2. The Equipment must be return delivered by the Customer on the end date included in the Contract to the depot of NXGENs option.

3. If the Customer does not return the Equipment on the agreed end date the Customer will be liable for a daily rate equivalent to 5 times the daily rent to be calculated on the basis of the monthly rent (whereby a month of 30 days is set out) or weekly rent (whereby a week is 7 days), for every day the Equipment remains not returned, which is without prejudice to the right of NXGEN to compensation in full. Customer will also be liable for this amount.

4.The Customer can terminate the Contract in writing by giving no less than 3 months notice. If the Contract is terminated by the Customer, the Customer will still owe all future rent instalments over the remaining duration of the Contract, or a hire payment equivalent to 3 months hire, whichever is higher. If the Customer does not return the Equipment in conformity with these general terms and conditions, the provisions with regard to late return delivery under these general terms and conditions will apply.

5.At the end of the Contract all claims of NXGEN against the Customer will be immediately due and payable.

6.In the event of total loss of the Equipment, serious damage of the Equipment or theft of the Equipment (whereby the Equipment has not been found again within 30 calendar days after the theft) NXGEN will be entitled to terminate the Contract with immediate effect. The Customer will be liable for the full replacement value of the Equipment and the remaining rent instalments to NXGEN.

7.The Contract can be terminated by NXGEN without notice of default and with immediate effect whereby NXGEN is permitted to take possession of the Equipment, without the requirement of any judicial intervention or judicial termination, if one of the following incidents occur:

- a. the Customer is the subject of a petition for bankruptcy, a composition with creditors, an insolvency application, or application for moratorium, or any similar legal concept in accordance with foreign law;
- b. the Equipment or the assets of the Customer is/are the subject of any enforceable or precautionary measures whatsoever;
- c. the Customer is or remains in default of the specific performance, or performance in at timely manner, of one or more provisions of the Contract;
- d. Claiming the Equipment by authorities;
- e. Cancellation by the insurer of the insurance with regard to the Equipment

8.In the event of termination of the Contract the Customer must immediately halt the use of the Equipment. The instructions concerning the return must be strictly adhered to.

9.NXGEN or the persons to be appointed by NXGEN will be entitled, in the event of termination of the Contract, to enter the building or site where the Equipment is situated, in order to be able to take possession of the Equipment.

10.The costs of repossession of the Equipment (including transport costs) will be at the expense of the Customer.

4. Return

1.At the end of the Contract the Customer must return the Equipment to the depot of NXGENs option. The Equipment must be returned in the same condition as included in the on-hire report. An off-hire report will be drawn up for this purpose at the return of the Equipment.

2.In the event of returning the Equipment the Customer must also deliver the provided vehicle registration documents (if applicable) and all other documents with regard to the Equipment, as well as the original keys delivered by NXGEN. In the event of the loss of the documents and/or Equipment the Customer must pay the costs attached thereto to NXGEN.

3.The Customer must pay the extra damage, which is evident from the off-hire report and the costs of the downward value adjustment, which have arisen during the lease period (other than the usual wear and tear).

5. Use of the Equipment

1.The Equipment can be exclusively operated by authorised and certified personnel in accordance with the instructions from the manufacturer.

2. The Equipment can be used by the Customer for 40 hours per week. If the use is exceeded by 20% or more the Customer will owe extra rent, to be calculated pro rata.

3.None of the instructions, manuals, or other information, which are delivered with the Equipment can be interpreted as NXGEN providing any guarantee. NXGEN does not guarantee that the Equipment is suitable for the use that the Customer wants to make thereof, unless expressly agreed in writing.

4.The Customer is only permitted to carry out repairs to the Equipment with the prior written consent of NXGEN, save for very minor repairs. NXGEN must be able to independently establish the extent of the damage and if the mechanics engaged are approved and if the repairs will be executed in accordance with the applicable guidelines or schemes.

5.The Customer is prohibited from moving the Equipment outside the geographical area which is stated in the Contract or from using the Equipment in the vicinity of the sea without the prior written consent of NXGEN.

6. Obligations of NXGEN, liability and indemnity

1.NXGEN will be obliged to make efforts to forward the off-hire report to the Customer within one month after the return delivery of the Equipment.

2.NXGEN will not be liable for direct or indirect damage on the part of the Customer or third parties, suffered and arisen due to the use of the Equipment, except for in the event of intention or gross negligence on the part of NXGEN.

3.NXGEN will not be liable for damage resulting from work and/or the failure by third parties to deliver goods or services, unless the cause thereof can be attributed to intention or gross negligence of NXGEN.

4.The Customer indemnifies NXGEN and will at all times keep NXGEN indemnified against all claims and/or causes of action, which third parties could make pending or could enforce against NXGEN, ensuing from or related to the ownership, the possession, the use, or the leasing of the Equipment, unless there is intention or gross negligence on the part of NXGEN.

7. Obligations of the Customer

1.The Customer will be responsible for ensuring that during the hire period approved mechanics will execute periodical servicing of the Equipment in accordance with the service schedule of the manufacturer of the Equipment. The Customer will ensure that this service is recorded. The costs of this service will be for the Customer, unless agreed otherwise.

2.If the Equipment cannot be used owing to repair work and/or servicing being executed, this shall not relieve Customer of its obligation to pay the rental rates. NXGEN will not be liable for damage suffered by the Customer as a result of the Equipment not being used, unless this is the direct result of intention or gross negligence on the part of NXGEN.

3.The Customer must forward the checklists for the periodical service and the periodical inspection of the Equipment on a monthly basis (in the first week of the next month) to NXGEN and also at the end of the Contract. If repairs by third parties have taken place the Customer must immediately (in any event within 2 days after receipt of the invoice) forward the invoices concerned to NXGEN.

4.The Customer must, once per year and at the end of the Contract, deliver the service history of the Equipment, whereby specified invoices will be submitted with regard to costs that exceed a value of EURO 1,000.

5.The Customer must take out and maintain, for the benefit of NXGEN, a) insurance for the full replacement value of the Equipment (comprehensive insurance),

b) insurance for damage caused by the Equipment or by the use thereof (third party insurance).

6. The minimum insured amount of the Equipment will amount to:

- a) Full replacement value of the Equipment
- b) GBP 5,000,000 per incident in the event of personal injury
- c) GBP 10,000,000 per incident in the event of damage caused by the Equipment.

The existence of the aforesaid insurances will not release the Customer from its liability towards NXGEN. The Customer will ensure with regard to the aforesaid insurances that NXGEN will be included as co-insured party in the insurance policy concluded by the Customer.

7. A copy of the insurance documentation will be provided by the Customer to NXGEN upon first request. If it appears that the Equipment is not insured or is underinsured NXGEN will be permitted to terminate the Contract with immediate effect or it may elect to arrange additional insurance at the expense of the Customer.

8. The Customer is not permitted to sublease the Equipment, or give it into use, or to give it as security, or to otherwise dispose thereof, or to judicially encumber it, all this in the broadest meaning of the words, without prior permission in writing for this from a director in accordance with the articles of association of NXGEN.

9. The Customer must at all times offer inspectors or mechanics engaged on the part of NXGEN full access to the Equipment and the Customer also guarantees for this purpose access to the site where the Equipment is situated.

8. Damage/theft

1. In the event of damage or theft of, or damage caused by, the Equipment the Customer must inform NXGEN of this within 24 hours after the arising or discovery thereof.

2. The Customer must, within 72 hours after the arising or discovery of the damage, submit to NXGEN statements of witnesses or other documents related to the incident, as well as an agreed statement of facts regarding a motor vehicle accident completed in duplicate.

3. The Customer must report the following to the police and have the police draw up an official report or police report if there is:

- a. Personal injury;
- b. Theft from or of the Equipment;
- c. Damage caused by an unknown counterparty, such as theft, vandalism, etc.;

4. The Customer must immediately after the arising of the damage offer the Equipment for loss assessment or repair to a company to be designated by NXGEN.

5. NXGEN will be entitled to recover all damages, losses, replacement costs from the Customer, except to the extent of intention of gross negligence on the part of NXGEN.

9. Duty of disclosure

1. The Customer undertakes to immediately inform NXGEN of all claims by third parties on the Equipment, assessments (pending) attachment levied on, or seizure of the Equipment by judicial or tax authorities, subject to submitting all documents that are useful concerning this. The Customer furthermore undertakes to inform third parties, who wish to enforce any claim on the Equipment, of the rights of NXGEN.