

RWE Renewables UK
General Conditions of Contract for Mobile Crane
(with operators) for Contract Lift Operations

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1. Definitions and Interpretation

1.1 In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

"Ad hoc Services"	the additional services, if any, requested by the Employer pursuant to condition 3.8.
"Appointed Person"	the person or persons confirmed by the Contractor to the Employer pursuant to condition 2.2 as responsible for providing to the Employer all Method Statements, Site Specific Risk Assessments and other information required by the Employer in connection with the Services.
"Business Day"	a day (other than a Saturday, Sunday or a public holiday in England) when the banks in London are open for business but excluding any days on which the Site is not open for business.
"CIS Regulations"	the Finance Act 2004 and any regulations made under Section 74 of the Finance Act; the Income Tax (Construction Industry Scheme) Regulations 2005 (CIS 2004/2005) and the Income Tax (Construction Industry Scheme) (Amendments) Regulations 2007 (CIS 2004/672) and 2015 (CIS 2015/429) and any other statute or subordinate legislation relating to the construction industry scheme as modified from time to time or replaced whether before or after the date of the Contract.
"Commencement Date"	the date on which the Contractor is to commence provision of the Services as agreed pursuant to condition 3.3.
"Conditions"	these general conditions of contract.
"Contract"	means the contract comprising the Purchase Order and these Conditions.
"Contract Goods"	the item or items that are to be lifted.
"Contract Price"	the price for undertaking the Services as set out in the Purchase Order.
"Contractor"	the entity which is named as the Contractor in the Purchase Order.
"Employer"	the company from within the RWE Group which is named as the contracting entity in the Purchase Order.
"Employer's Contact"	all or any one of the individuals identified on the

Purchase Order.

"Event of Force Majeure"	as defined in condition 14.1.
"RWE Group"	RWE Aktiengesellschaft and its subsidiaries with "subsidiary" having the meaning ascribed to such term in Section 1159 of the Companies Act 2006.
"RWE Group Policy Document"	any relevant rules, policies or standard techniques used by the RWE Group including without limitation the provisions of the Employer's Sustainability Schedule attached as an appendix to the Purchase Order, the relevant Employer's health and safety requirements for working on the Employer's sites, the Employer's Code of Conduct and such other policies as the Employer may notify to the Contractor from time to time, copies of which shall be available for inspection at the Employer's offices.
"Manufacturer"	the relevant manufacturer of each Mobile Crane.
"Manufacturers' Recommendations"	the recommendations issued by the Manufacturer as to the operation, storage, maintenance and repair of the Mobile Cranes.
"Method Statement"	the method statement to be completed by each Appointed Person detailing the manner in which the Services are to be performed, and specifying the Mobile Cranes to be used for the Contract and identifying the Operators to be engaged to operate those Mobile Cranes.
"Mobile Cranes"	each mobile crane described in the Purchase Order.
"Operator(s)"	any employee, agent or sub-contractor of the Contractor who is provided to operate the Mobile Cranes.
"Purchase Order"	means the letter issued by the Employer to the Contractor setting out details of the Services to be carried out by the Contractor.
"Requirements"	all general or local Acts of Parliament and the regulations and bye-laws of any local or other statutory authority which may be applicable to the Services and the rules and regulations of all public bodies and companies whose property or rights are or may be affected in any way by the Services, all British Standards (including but not limited to BS7121) and the Manufacturer's

	Recommendations.
"RIDDER"	the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.
"Safety Incident"	an accident, incident or near-miss, whether or not death or personal injury or other property damage is caused.
"Scheduled Completion Date"	the date specified in the Purchase Order as the date by which the Services must be completed, as such date may be varied in accordance with conditions 3.3 and 8.1.
"Serious Incident"	(a) a fatal accident; or (b) an accident involving a serious injury, such as an amputation, fracture, electrical shock or burn, loss of sight (temporary or permanent), or any injury resulting in admittance to hospital for more than 24 hours.
"Services"	the supply and operation of Mobile Cranes, as set out in the Purchase Order, and any Ad Hoc Services.
"Site"	the site or sites at which the Services are required as set out in the Purchase Order.
"Site Meeting"	has the meaning given in condition 2.2.
"Site Specific Risk Assessment"	the risk assessment to be completed by each Appointed Person following a Site Meeting.
"Specification"	the specification for the Services, details of which are set out in the Purchase Order.
"Statutory Deduction"	the deduction in force at the time of payment under section 61 of the Finance Act 2004, or any re-enactment or update thereof.
"TUPE"	the Transfer of Undertakings (Protection of Employment) Regulations 2006.

- 1.2 In the Contract, unless the context otherwise requires a reference to a statute or statutory provision includes:
- (a) any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it; and
 - (b) any repealed statute or statutory provision which it re-enacts (with or without modification).

2. Provision of the Services

- 2.1 The Employer appoints the Contractor as one of its contractors to provide Services on a when needed basis. The appointment of the Contractor is not exclusive and nothing in the Contract shall be deemed to give the Contractor exclusive rights to supply mobile cranes to the Employer.
- 2.2 Within two Business Days of receipt of the Purchase Order the Contractor shall contact the Employer's Contact to arrange a meeting at the relevant Site (the "**Site Meeting**") and shall at the same time confirm the identity and contact details of the Appointed Person.
- 2.3 These Conditions shall prevail over any terms in any Purchase Order, any acknowledgement from the Contractor of such Purchase Order, or (subject to condition 17.2) in other correspondence between the parties relating to the subject matter of the Contract (including but not limited to any quote provided by the Contractor).
- 2.4 The Contract shall commence on the Commencement Date and shall (unless terminated at an earlier date pursuant to conditions 4.2, 12.9, 14.3 or 15) terminate automatically once the Services have been completed and paid for.
- 2.5 The Contractor shall respond to the Employer's Contact oral instruction within the time limit specified by the Employer's Contact and shall attend the Site with the Employer's Contact to carry out a Site Specific Risk Assessment and to devise a Method Statement for carrying out the emergency Services within the time period stipulated by the Employer's Contact.
- 2.6 The Contract Price for any emergency Services carried out by the Contractor shall be agreed in writing in advance (which for this purpose includes email).

3. Site Meeting and Planning the Services

- 3.1 At the Site Meeting the Employer shall provide the Contractor with all information in the Employer's possession in relation to the Site, including (but not limited to) any information on public utility notices; results of searches for basements, shafts or underground watercourses; confirmation of the weight of loads to be lifted by the Mobile Cranes; and the anticipated lifting point.
- 3.2 The Employer does not warrant the adequacy, accuracy or sufficiency of the information provided to the Contractor pursuant to condition 3.1. The Contractor shall take all necessary steps to secure all necessary information for undertaking the Services at the Site in accordance with the Contract and for checking the adequacy, accuracy and sufficiency of the information provided to the Contractor by the Employer.
- 3.3 At the Site Meeting, the Employer's Contact and the Appointed Person will identify all risks and hazards of undertaking the Services and agree:
 - (a) an exhaustive list of services required for and to be included in the Services;
 - (b) the Commencement Date and Scheduled Completion Date for the undertaking of the Services; and
 - (c) the date and exact Site location for delivery of the Mobile Crane.
- 3.4 The Employer's Contact shall confirm to the Appointed Person in writing within 2 Business Days of the Site Meeting the agreed position on the matters referred to in condition 3.3.

- 3.5 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and all information available in connection with them and to have fully acquainted and satisfied itself so far as is practicable, before commencing the Services as to:
- (a) their form and nature including the ground, subsoil and hydrological conditions;
 - (b) the means of communication with and the access to the Site and the accommodation the Contractor may require; and
 - (c) the Site conditions,
- and generally to have obtained for itself all necessary information as to risks, contingencies and all other circumstances which may influence or affect the Services. The Contractor shall not be entitled to make any claim for additional loss expense and/or time to complete the Services arising from the Contractor's failure to do so.
- 3.6 No later than 10 Business Days prior to the delivery of the Mobile Cranes to the Site (or as soon as practicable prior to performing any emergency service, where instructions to perform emergency services are issued under condition 2.5), the Appointed Person shall provide to the Employer's Contact the Site Specific Risk Assessment and a Method Statement for carrying out the Services. The Contractor shall specify in the Method Statement the Operators who are to be engaged to operate the Mobile Cranes.
- 3.7 The Employer's Contact shall check the Site Specific Risk Assessment and Method Statement to ensure that appropriate hazards and risks identified at the Site Meeting have been addressed and, once so satisfied, shall confirm this to the Contractor. The reviewing of the Method Statement by the Employer's Contact or the giving of any comment or approval by the Employer's Contact shall not in any way relieve the Contractor of its obligations under the Contract or of its duty to check that all appropriate hazards and risks identified at the Site have been addressed.

Ad hoc services

- 3.8 The Employer may at any time request the Contractor to provide additional services beyond those specified in the Purchase Order ("**Ad Hoc Services**"). Any such request shall be made in writing and the Contractor shall respond to the request within 2 Business Days specifying the price applicable to the Ad Hoc Services. Where the Employer confirms in writing its acceptance of that price, the Contractor shall perform the Ad Hoc Services.

4. Delivery of Mobile Cranes to and Collection from the Site

- 4.1 The Contractor shall deliver the Mobile Cranes to, and shall collect the Mobile Cranes from, the Site at the times agreed with the Employer's Contact.
- 4.2 The Contractor shall commence the Services by the Commencement Date. If the Contractor fails to commence the Services by the Commencement Date other than due to an Event of Force Majeure, (without limiting to any other rights or remedies that may be available to the Employer) the Employer shall be entitled to terminate the Contract and engage another contractor to perform the Services.
- 4.3 If the Mobile Cranes are not collected from the Site by the time agreed pursuant to condition 4.1, the Employer shall have the right to arrange for the Mobile

Cranes to be removed from the Site and the Contractor shall reimburse the Employer the reasonable costs and expenses incurred by the Employer in effecting such removal.

- 4.4 The Contractor shall be responsible for loading and unloading the Mobile Cranes at the Site. All works for the setting up of the Mobile Cranes shall be the responsibility of the Contractor.
- 4.5 The Employer shall be entitled to reject any Mobile Cranes which do not comply with the Requirements, or which appear to the Employer not to be in a good condition at the commencement of the Services under the Contract.
- 4.6 The Contractor shall ensure that it complies at all times with all Requirements and RWE Group Policy Documents and shall complete all checklists identified in the RWE Group Policy Documents.

5. Supply of Operators and Operation of the Mobile Cranes

- 5.1 During the Contract, the Contractor shall provide sufficient Operators to ensure a safe and efficient lifting operation is undertaken in compliance with the Contract and the Requirements. All Operators working on the Mobile Cranes shall remain the responsibility of the Contractor, whether they are employees, agents or sub-contractors to the Contractor.
- 5.2 The Contractor shall employ or cause to be engaged in the performance of the Services only persons who are skilled and experienced in operating Mobile Cranes. The Contractor warrants that each member of its contract lifting team (including any Operator and the Appointed Person) is fully trained to undertake the specific duties required to safely carry out the Services and where appropriate has the skills and expertise to operate the Mobile Cranes competently and safely at the Site in accordance with the Requirements. The Contractor shall promptly on request provide to the Employer satisfactory evidence that the Operators have successfully completed such training.
- 5.3 The Contractor shall procure that all Operators comply with any arrangements for access and egress to a Site notified to the Contractor by the Employer. The Appointed Person shall highlight to the Employer any issues with such access and egress arrangements.
- 5.4 The Contractor shall not substitute different Operators from those Operators already provided under the Contract for the performance of the Contract without the prior written consent of the Employer. The Contractor shall ensure that all replacement Operators comply with the Employer's arrangements for access to and egress from the Site.
- 5.5 The Contractor shall at all times:
 - (a) faithfully and diligently perform its obligations under the Contract in accordance with the Specification, Method Statement, the Requirements and these Conditions;
 - (b) obey and procure that its Operators obey all lawful and reasonable directions of the Employer including, but not limited to, in relation to the works for which the Employer requires the Mobile Cranes;
 - (c) procure that, when at the Site, its employees including, but not limited to, the Operators, its sub-contractors and agents, work and act in accordance

with all Requirements and RWE Group Policy Documents and the reasonable directions of the Employer at all times; and

- (d) be responsible for making appropriate PAYE deductions for tax and national insurance contributions from the remuneration which it pays to its personnel and the Contractor agrees to indemnify the Employer in respect of any claims or demands which may be made by the relevant authorities against the Employer in respect of income tax relating to the provision of the Services.

5.6 The Contractor shall ensure that the Mobile Cranes are used in a proper and workmanlike manner and within any Manufacturers' Recommendations and particularly the Mobile Cranes' rated capacities.

5.7 The Contractor shall take all steps as required by the Requirements and as recommended by the Manufacturer of the Mobile Cranes or may otherwise be necessary to ensure that the Services are carried out properly and safely.

5.8 The Contractor shall ensure that any Mobile Cranes supplied for carrying out Services are suitable for undertaking the Services and fit for the purposes of carrying out the Services on any Site.

6. Servicing and Maintenance

6.1 The Contractor shall procure that grease and oil levels for each Mobile Crane at the Site are checked against and comply with the Manufacturers' Recommendations and that oils, grease and lubricants are added as necessary. Appropriate oils, grease and lubricants shall be provided by the Contractor and are deemed to be included in the Contract Price.

6.2 The Contractor shall ensure that each Mobile Crane is inspected and serviced in a proper and workmanlike manner in accordance with the Requirements and the Manufacturers' Recommendations. The Contractor shall ensure that any spares or replacement parts used are in accordance with the Manufacturers' Recommendations. Where routine servicing will be or is likely to be required to any Mobile Cranes during the Contract the Contractor shall inform the Employer at the Site Meeting and the Employer and the Contractor shall act in good faith to agree mutually acceptable arrangements for such servicing so as to minimise the disruption to any works being carried out by or on behalf of the Employer. The Contractor acknowledges that the Employer may, at its sole discretion (acting reasonably), decide that Site operational requirements require that servicing of Mobile Cranes does not take place during normal Site operating hours.

7. Breakdowns and non-availability of Mobile Cranes

7.1 The Contractor shall inform the Employer in writing of any breakdown or the unsatisfactory working of any Mobile Crane. The Contractor shall use all reasonable endeavours to ensure that breakdown repairs are carried out as soon as practicable and in any event within 2 Business Days of the fault being reported.

7.2 If a Mobile Crane cannot be repaired by the Contractor within 2 Business Days, the Contractor shall substitute a Mobile Crane of at least equal capability as soon as possible and in any event within 2 Business Days. The Contract Price shall be reduced on a pro rata basis to take account of any period of unavailability of a Mobile Crane.

- 7.3 Where the Services are being undertaken on a Site where a time limit or delay damages are imposed on the Employer for the delay in completing the Services and/or the Employer's works, the Contractor shall reimburse the Employer the reasonable additional direct costs incurred by reason of any delay brought about by any breakdown or non-availability of the Mobile Cranes.

8. Delay due to an Event of Force Majeure

- 8.1 The Scheduled Completion Date may be extended by the Employer's Contact if there is an Event of Force Majeure or on the instructions of the Employer, provided the Contractor and/or the Employer has informed the other of the Event of Force Majeure in accordance with condition 14.2. The Employer's Contact shall inform the Contractor in writing of the revised Scheduled Completion Date.

9. Notification of Safety Incidents

- 9.1 The Contractor shall notify the Employer of any Safety Incidents with the Mobile Cranes (whether or not such Safety Incidents occur whilst undertaking Services under the Contract).
- 9.2 The Contractor shall notify the Employer immediately following receipt of any prosecution, improvement notice, written warning or other correspondence received from the Health & Safety Executive, the Environment Agency, any local authority or the police which relates to any Safety Incidents involving Mobile Cranes owned or operated by the Contractor.
- 9.3 In addition to complying with RIDDOR the Contractor shall immediately notify the Employer in writing of any Safety Incident relating to the Contract so the Employer can make full and accurate notifications as required by law. The Contractor shall make notifications of any Serious Incident immediately by telephone, and in the case of any other Safety Incident without delay and in any event by no later than 10am on the Business Day immediately following the Safety Incident taking place.
- 9.4 The Contractor shall have in place an accident investigation procedure to deal with all Serious Incidents. Copies of all Serious Incident investigation reports shall be supplied by the Contractor to the Employer promptly following the conclusion of the investigation.

10. Ownership

- 10.1 The Employer agrees and acknowledges that the Employer has no right or interest in any Mobile Crane.

11. Insurance

- 11.1 The Employer agrees to indemnify the Contractor against:
- (a) any claim arising from or connected with the Contractor's work on the contract Site, in preparing the Site or performing the Contract, including claims of nuisance and claims of trespass to persons, property, land or air space;
 - (b) all other losses, damages or claims in respect of any matters arising from or in connection with the Contract, and for which, under these terms and conditions, the Employer is liable or for which under condition 13 the Contractor is not liable; and

- (c) any liability arising from or in connection with the Contract, to pay any amount in excess of the relevant limits referred to in condition 13.7 unless otherwise agreed between the Employer and the Contractor.
- 11.2 The Contractor will carry insurance to cover its potential liability under the Contract, having regard to the maximum amounts referred to in condition 13.7 unless otherwise agreed with the Employer in writing.
- 11.3 If the value of the Contract Goods exceeds the Contractor's liability limits referred to in condition 13.7, and the Employer requires the Contractor to increase its cover, it is the responsibility of the Employer to give the Contractor sufficient written notice of that fact with details of the value of the Contract Goods so that the Contractor's liability cover, if agreed by the Contractor, can be increased accordingly. The cost of any additional cover will be passed on to the Employer.
- 11.4 The Contractor undertakes and agrees to take out and maintain insurance cover in full force and effect at its own cost with an insurance office of repute to cover its liabilities under the Contract to the extent as would reasonably be expected, including (but not limited to) the insurance cover set out in conditions 11.5, 11.6 and 11.7.
- 11.5 The Contractor shall take out and maintain at its cost a third party legal liability insurance policy to cover loss, damage, injury or death to any third party, persons or property arising out of the Services provided by the Contractor. Such insurance shall have a limit of liability of a minimum of £5,000,000 each and every occurrence.
- 11.6 The Contractor shall take out and maintain at its cost employer's liability insurance in respect of its employees as required by the Requirements. Such insurance shall have a limit of liability of a minimum of £5,000,000 each and every claim and the level of such insurance shall be adjusted in line with the statutory minimum requirements prevailing from time to time.
- 11.7 The Contractor shall take out and maintain motor insurance in respect of vehicles used by it in the performance of the Services as required by the Requirements and such other insurances as are required to be taken out and maintained by the Contractor under the Requirements.
- 11.8 The Employer shall provide to the Contractor, and the Contractor shall provide to the Employer (and procure that its sub-contractors provide), all such reasonable assistance and necessary information and documentation for the purpose of making or processing claims under the insurances.
- 11.9 The Employer shall insure against its liability to indemnify the Contractor and all other liabilities of the Employer under the Contract.
- 11.10 The Contractor shall provide to the Employer, and the Employer shall provide to the Contractor, whenever reasonably requested, evidence of the placing of the insurance policies detailed above and evidence of the premium for these insurance policies being paid.

12. Contract Price and Payment Terms

- 12.1 The Contract Price includes payment for the supply and operation of the Mobile Cranes (including transport of the Mobile Cranes to and from the Site), servicing, lubricants, fuel, Operators, insurance, travel, accommodation and all other costs relating to the Services (including, but not limited to, provision of any timber mats

or any other equipment necessary as a result of any Site conditions and/or any hazards or risks identified at the Site). The Employer shall not be liable for any other costs, expenses, charges or payments of any kind incurred by the Contractor in the provision of the Services.

- 12.2 The Employer shall pay the Contractor the Contract Price and any price payable for Ad Hoc Services pursuant to condition 3.8, adjusted to take account of any additions or deductions that are due in accordance with the Contract. The Contractor shall submit an invoice to the Employer in accordance with the provision of the Purchase Order, showing any sums which the Contractor considers are due under the Contract.
- 12.3 The due date for the payment of sums properly due shall be the date on which the Employer receives the Contractor's invoice.
- 12.4 The Employer shall within 5 calendar days of the due date for payment issue a notice in writing to the Contractor specifying the amount of the payment it proposes to make in relation to the Contractor's invoice and the basis on which that amount is calculated. Subject to any Pay Less Notice, the Employer shall pay the Contractor the amount so notified on or before the final date for payment described in condition 12.5.
- 12.5 The final date for payment shall be the number of calendar days as expressed in the Purchase Order after receipt by the Employer of a valid VAT invoice for the amount notified under Clause 12.4.
- 12.6 If the Employer fails to give a payment notice in accordance with condition 12.4, the amount to be paid by the Employer in respect of the Contractor's invoice shall, subject to any Pay Less Notice served in accordance with condition 12.7, be the amount specified in the relevant invoice submitted by the Contractor in accordance with condition 12.2.
- 12.7 Where the Employer intends to pay less than the sum stated in the Employer's payment notice (or the sum stated in the Contractor's invoice where condition 12.6 applies), the Employer shall notify the Contractor in writing not less than 1 calendar day before the final date for payment specifying both the amounts it considers due to the Contractor on the date such notice is given and the basis on which that amount has been calculated ("**Pay Less Notice**"). Where a Pay Less Notice is given the payment to be made on or before the relevant final date for payment shall be not less than the amount stated as due in the Pay Less Notice.
- 12.8 If payment of any sum properly due is delayed after the final date for payment and where no effective Pay Less Notice has been served by the Employer under condition 12.7, the Contractor shall be entitled to receive interest on that sum in accordance with condition 12.11.
- 12.9 If the Employer fails to make any payment as provided in this condition 12, subject to any deduction that the Employer is entitled to make under the Contract, the Contractor shall be entitled:
 - (a) to stop work until the failure is remedied, by giving 14 calendar days written notice to the Employer, in which event any additional expense and cost incurred (including overheads and financing charges allocated to them but excluding any allowance for profit) by the Contractor as a result of the stoppage and the subsequent resumption of work shall be added to the aggregate of the Contract Price otherwise due; and/or

- (b) to terminate the Contract by giving 30 calendar days' written notice to the Employer, whether or not the Contractor has previously stopped work under this condition 12.9.

12.10 All invoices to be rendered by the Contractor pursuant to condition 12.2 must contain the information and be sent to the address specified in the Purchase Order.

12.11 If either party fails to pay any sum payable under the Contract when due (whether payable by agreement or by an order of the court or otherwise) the liability of that party shall be increased to include interest on that sum from the date when such payment was due until the date of the actual payment at a rate of 4% over the base rate from time to time of the Bank of England. Such interest shall accrue from day to day and shall be compounded annually.

12.12 Where under the Contract any party agrees to pay to any other party any sum or to furnish to any other party consideration which (in either case) is consideration for a taxable supply that sum or consideration shall be exclusive of Value Added Tax payable on it and the recipient of the supply shall pay an amount equal to such Value Added Tax in addition to any sum or consideration on receipt of a valid Value Added Tax invoice from the relevant party.

13. Liability

13.1 Each party shall inform the other of any default or breach under the Contract and afford the other a reasonable opportunity to correct such default or breach.

13.2 Each party accepts unlimited liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; and
- (c) any other liability which cannot by law be excluded or limited.

13.3 The Employer accepts liability for physical damage to the Contractor's tangible property resulting directly from the Employer's negligence up to £250,000 in aggregate in respect of the Contract. Except as provided in this condition 13.3 and condition 13.2, the Employer's liability in respect of all other defaults or breaches under the Contract (save for its liability to pay the Contract Price due and any interest due under condition 12.11) shall be limited to £250,000 in aggregate.

13.4 The Employer shall not be liable for the following loss or damage however caused and even if foreseeable:

- (a) economic loss including without limitation loss of profits, business, contracts, revenues, goodwill, production and anticipated savings of every description;
- (b) loss arising from any claim made by any third party; or
- (c) loss or damage arising from the Contractor's failure to fulfil its responsibilities or any matter under the Contractor's control.

13.5 Save for liability arising under condition 13.2, neither party shall be liable for indirect or consequential loss.

- 13.6 The Contractor shall be liable for loss or for damage or injury to persons or property when caused solely by the Contractor's negligence in the performance of the Contract, and shall not be liable for any such loss, or damage or injury due in whole or in part to any negligence on the part of the Employer or any third party.
- 13.7 The Contractor's liability, if any, arising from or in connection with the Contract:
- (a) for loss or destruction of or damage to the Contract Goods shall be limited to a total of £25,000 (twenty-five thousand pounds sterling) irrespective of the number of items being lifted/handled unless otherwise agreed with the Employer; and
 - (b) for any other loss, damage or injury shall be limited to a total sum of £5,000,000 (five million pounds sterling),
- unless in either case, a different amount is agreed in writing by the Contractor and the Employer prior to the commencement of the Contract.
- 13.8 Full details of any loss, damage or injury, which is or may be the subject of a claim by the Employer against the Contractor shall be notified by the Employer to the Contractor within seven days of the date of discovery thereof. Any proceedings to enforce any such claim by the Employer against the Contractor must be commenced not later than twelve months after the date of occurrence of the event giving rise to the loss, damage or injury.
- 13.9 The Contractor shall be liable for any damage caused through not acquainting himself fully of the Site conditions as stated in condition 3.5.
- 13.10 Except as provided in condition 13.2, the Contractor's liability under the Contract shall not exceed £5,000,000 in aggregate.
- 13.11 The Contractor shall not be liable for any loss, damage or injury caused by, or arising from or as the result of, any of the following:
- (a) any defect in the Contract Goods including any design defect and any defect relating to the lifting points on the contract goods;
 - (b) inaccurate or incomplete information given by the Employer;
 - (c) any instructions given by the Employer to the Contractor's employees;
 - (d) any defect in the equipment provided by the Employer;
 - (e) any act or omission of any personnel supplied by the Employer, or by any body or person under contract to the Employer in connection with the Contract Goods, except when correctly following the Contractor's instructions for the purpose of performing the Contractor's work under the contract;
 - (f) delay in commencing or completing the contract work due to circumstances beyond the Contractor's control including, but not limited to, any strike or other industrial action or adverse weather conditions; and
 - (g) unexpected or unforeseen subsidence or unstable ground conditions.
- 13.12 The Contractor shall not be liable or responsible for any of the following, however arising:
- (a) loss or damage of whatever nature due to or arising through any cause beyond the Contractor's reasonable control;

- (b) whether by way of indemnity or by reason of any breach of the contract, breach of statutory duty or misrepresentation or by reason of the commission of any tort (including but not limited to negligence) in connection with the contract, for any of the Employer's loss of profit, loss of the use of the plant or any other asset or facility, loss of production or productivity, loss of contracts with any third party, liabilities of whatever nature to any third party, and/or any other financial or economic loss or indirect or consequential loss or damage of whatever nature; and
- (c) loss or damage to the Contract Goods whilst in storage outside the control of the Contractor.

14. Force Majeure

- 14.1 Subject to condition 14.2, neither party shall be deemed to be in breach of the Contract, or otherwise be liable to the other, by reason of any delay in performance or non-performance of any of its obligations under the Contract to the extent that such delay or non-performance is due to any Act of God, explosion, lightning, tempest, flood, fire, terrorism, war, hostilities, act of public enemy, invasion, revolution or riot or is due to any cause beyond its reasonable control (an "**Event of Force Majeure**") provided that the following shall not be treated as Events of Force Majeure (i) a strike by or lockout or other industrial dispute or trade dispute involving any Operator, any other employees of the Contractor or any suppliers, agents or sub-contractors; or (ii) non-supply of machinery by any supplier to the Contractor; or (iii) the Contractor's failure to hire suitably qualified personnel or labour; or (iv) mechanical or electrical breakdown or failure of equipment, machinery or plant owned by or provided to the Contractor.
- 14.2 The party affected by the Event of Force Majeure shall immediately give the other party written notification of the nature and extent of the Event of Force Majeure and shall make all reasonable efforts to prevent and reduce to a minimum the effect of any Event of Force Majeure. The parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 14.3 If the Contractor is affected by the Event of Force Majeure and the written notice in relation to the Event of Force Majeure has not been withdrawn within 1 month, the Employer may terminate the Contract with immediate effect by serving a written notice on the Contractor. The service of such notice shall be without prejudice to any rights or obligations which have accrued prior to termination.
- 14.4 When the effects of the Event of Force Majeure cease both parties shall take all reasonable steps to ensure resumption of normal performance of their obligations under the Contract.

15. Termination

- 15.1 Without prejudice to any right or remedy either party may have against the other for breach or non-performance of the Contract, either party may, with immediate effect by notice in writing to the other, terminate the Contract on or at any time after the happening of any of the following events:
- (a) the other party commits a material breach of the Contract provided that where such breach is capable of remedy the party in breach has been advised in writing of the breach and has not rectified it within 30 days of

receipt. For the purposes of this condition 15.1 a breach shall be considered capable of remedy if time is not of the essence in performance of the obligation and if that party can comply with the obligation within the 30 day period;

- (b) the passing of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up or the dissolution of the other party;
- (c) the making of an administration order or the appointment of an administrator under the out of court procedure under the Enterprise Act 2002 or the appointment of a receiver or an administrative receiver over, or the taking possession or sale by an encumbrancer of, any of the other party's assets;
- (d) the other party makes an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;
- (e) the other party ceases to do business at any time for 30 consecutive days;
or
- (f) the other party for any reason whatsoever being substantially prevented from performing or becoming unable to perform its obligations.

16. Consequences of Termination

16.1 All rights and obligations of the parties shall cease to have effect immediately upon termination of the Contract except that termination shall not affect:

- (a) the accrued rights and obligations of the parties at the date of termination;
and
- (b) conditions 5.5(d), 7.3, 11, 13, 16, 17, 18, 20, 21 and 24, which shall remain in force.

16.2 Where the Contract terminates under conditions 4.2, 12.9, 14.3 or 15 the Contractor shall as soon as reasonably practicable, and in any event not more than 5 Business Days after receipt of written notice of termination of the Contract, remove the Mobile Cranes from the Site during normal operating hours at the Site. If the Mobile Cranes are not removed from the Site within this time period, the Employer shall have the right to arrange for the Mobile Cranes to be removed from the Site and the Contractor shall reimburse the Employer all reasonable costs and expenses incurred by the Employer in effecting such removal.

16.3 On expiry or termination of the Contract for any reason whatsoever the Employer shall be under no obligation to offer employment to any employee, Operator, agent, sub-contractor or member of the Contractor's team who has been operating any Mobile Cranes on any Site as part of the Services in accordance with the Contract.

16.4 On termination of the Contract for any reason whatsoever, the Contractor shall (subject to condition 17.5) be entitled to be paid the value of the Contract Price properly due under the Contract for Services completed by the date of termination (to the extent not already paid to the Contractor in accordance with the terms of the Contract). The Employer shall have no liability to the Contractor

for any loss of profit, loss of contracts, loss of revenue or any indirect or consequential losses arising out of or in connection with such termination.

- 16.5 It is acknowledged and agreed between the parties that TUPE does not apply to the transfer of the Services under the Contract.
- 16.6 Notwithstanding condition 16.5, the Contractor undertakes to hold harmless and fully indemnify and keep the Employer indemnified against any and all losses which the Employer and any relevant sub-contractor may incur arising out of or in connection with:
- (a) any claim or allegation relation to the employment and/or dismissal of any person whose employment transfers or is alleged to transfer to the Employer and or a relevant sub-contractor by virtue of TUPE; and
 - (b) any failure on the part of the Contractor to comply with Regulation 11 and/or 13 of TUPE.
- 16.7 The Contractor warrants that there is no organised grouping of employees whose principal purpose is carrying on the activities of the Services on behalf of the Contractor.

17. General

17.1 Assignment and Subcontracting

- (a) The Contract shall be binding on and enure for the benefit of the successors in title of the parties but, except as set out in condition 17.1(b), shall not be assigned or sub-contracted by any party without the prior written consent of the other; in addition, a party to the Contract may not hold the benefit of the Contract or any rights under it on trust for any third party or parties.
- (b) The Employer may assign the benefit of the Contract to any other member of the RWE Group.

17.2 Variation

No purported variation of the Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties.

17.3 Releases and Waivers

- (a) Any party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it in the Contract by any other party or parties without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.
- (b) No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under the Contract or otherwise.
- (c) The rights, powers and remedies conferred on any party by the Contract and the remedies available to any party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise.

17.4 **Costs and Expenses**

Each party shall bear its own costs and expenses incurred in the preparation, execution and implementation of the Contract.

17.5 **Set off**

The Employer may at any time set off any liability of the Contractor to the Employer against any liability of the Employer to the Contractor howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination. Any exercise by the Employer of its rights under this condition shall be without prejudice to any other rights or remedies available to the Employer under the Contract or otherwise.

17.6 **Confidentiality**

- (a) Except as referred to in condition 17.6(b), each party shall treat as strictly confidential and shall not disclose to any third party any information received or obtained as a result of entering into or performing the Contract which relates to the provisions or subject matter of the Contract, or the negotiations relating to the Contract.
- (b) Any party may disclose information which would otherwise be confidential if and to the extent that:
 - (i) it is required to do so by law or any securities exchange or regulatory or governmental body to which it is subject wherever situated;
 - (ii) it considers it necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on a confidential basis;
 - (iii) the information has come into the public domain through no fault of that party;
 - (iv) the information was previously disclosed to it without any obligation of confidence; or
 - (v) each party to whom it relates has given its consent in writing.

17.7 **No Partnership**

Nothing in the Contract shall create, or be deemed to create, a partnership between the parties.

17.8 **Entire Agreement**

The Contract sets out the entire agreement and understanding between the parties in respect of the subject matter of the Contract.

17.9 **Acknowledgement**

The Contractor acknowledges that it has entered into the Contract in reliance only upon the representations, warranties and promises specifically contained or incorporated in the Contract and, save as expressly set out in the Contract, the Employer shall have no liability in respect of any other representation, warranty or promise made prior to the date of the Contract unless it was made fraudulently.

17.10 **Invalidity**

To the extent that any provision of the Contract is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of the Contract and it shall not affect the enforceability of the remainder of the Contract nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

17.11 **Exclusion of Third Party Rights**

No express term of the Contract or any term implied under it is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

18. Notices

18.1 Any notice to be given to a party under the Contract shall be in writing (which excludes email) signed by or on behalf of the party giving it, and shall be delivered personally, or sent by recorded delivery, to the address of the party set out in the Purchase Order. Either party may, by a notice given in accordance with this condition 18, change its address for the purposes of this condition.

18.2 A notice shall be deemed to have been served:

- (a) at the time of delivery if delivered personally; or
- (b) 2 Business Days after posting in the case of an address in the United Kingdom and 5 Business Days after posting for any other address.

19. Data Protection

19.1 The Contractor warrants that it shall comply with its obligations under the Data Protection Act 1998.

19.2 The Contractor shall procure permission from all employees, Operators, agents and sub-contractors involved in discharging obligations under the Contract permitting the Employer to create and maintain records and details of:

- (a) each individual's name and National Insurance number; and
- (b) details of relevant training each individual has had (including but not limited to that training provided by or on behalf of the Employer).

19.3 The Employer warrants that it shall comply with the relevant provisions of the Data Protection Act 1998 in respect of the records referred to in condition 19.2.

20. Alternative Dispute Resolution

20.1 Subject to condition 20.5 and without prejudice to either party's rights under condition 20.3, if a dispute arises out of or in connection with the Contract, the parties shall:

- (a) within 21 days of written notice of the dispute being received by the receiving party in good faith seek to resolve the dispute through negotiations between the parties' senior representatives who have the authority to settle it;
- (b) not pursue any other remedies available to them until at least two months after the first written notification of the dispute.

- 20.2 The appointed representatives shall use all reasonable endeavours to resolve the dispute.
- 20.3 Either party may at any time refer any dispute or difference arising between the parties under the Contract to adjudication. The Technology and Construction Solicitors Association Adjudication Rules 2010, Version 3.1, as such rules may be amended or updated from time to time (the "**TeCSA Adjudication Rules**") shall apply to any adjudication and are hereby incorporated into the Contract.
- 20.4 The adjudicator shall be nominated under the provisions of the TeCSA Adjudication Rules. If he is unwilling or unable to act or fails to give his decision in accordance with the TeCSA Adjudication Rules a replacement adjudicator shall be nominated under the provisions of the TeCSA Adjudication Rules.
- 20.5 Nothing in this condition shall prevent either party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

21. CIS Scheme

The Employer is a "Contractor" for the purposes of the CIS Regulations. To the extent that the CIS Regulations apply to any payment under the Contract, the Contractor shall supply the Employer with details which allow the Employer to verify with Her Majesty's Revenue & Customs the Contractor's identity and whether payments made under the Contract should be made gross or net of the Statutory Deduction.

22. Pension Provisions

- 22.1 If the Contractor does not already have in place an occupational pension scheme that allows all eligible employees and earnings at or above the National Insurance lower earnings level to join within 12 months of starting work for it, or if the Contractor is not an exempt employer under the provisions of the Welfare Reform and Pensions Act 1999 (the "**Act**"), the Contractor shall provide to the Employer such evidence as the Employer may reasonably require that the Contractor has arranged for its relevant employees as defined in the Act to have access to a stakeholder pension scheme in accordance with the Act and the Stakeholder Pension Scheme Regulations 2000.
- 22.2 There will be no contract between the Employer and any of the Contractor's third party workers, and the Contractor will be responsible, at its cost, for all vetting and auditing of its third party workers (including but not limited to checking identities, c.v's, references, qualifications, DBS records, ISA checks, FSA compliance, rights to work in UK, driving licenses, etc). The Contractor will indemnify the Employer and the RWE Group against any loss, liability, damage, expense, claim, fine, demand, proceeding, charge, expense, claim, fine, demand, proceeding, charge, expense or cost suffered or incurred by it (and/or the RWE Group) as a result of any breach by the Contractor of its obligations under this clause.

23. System Access

- 23.1 During and in the course of furnishing the Services, the Contractor shall: (i) not access, and shall not permit anyone to access, the Employer's computing systems without the Employer's express written authorisation; (ii) employ anti-

virus procedures when appropriate; (iii) comply with the Employer's information security policies and procedures; (iv) ensure that it has in place a plan approved by the Employer in relation to ensuring business continuity both in relation to general day-to-day service disruptions and disaster recovery affecting either the Contractor's, the Employer's or the RWE Group's business.

23.2 Where authorised by the Employer in advance, the Employer may provide the Contractor with remote access to its computing systems. Where the Employer provides such access the Contractor will comply with the Employer's IT policies and procedures, including those relating to access to its systems (which will be provided on request).

23.3 The Contractor shall use any remote access only to provide Services. The Employer may terminate the Contractor's access to the Employer's systems at any time without notice to the Contractor. The Contractor shall immediately notify the Employer of any actual or threatened security breach in or unauthorised access to the Employer's systems.

24. Governing Law

24.1 The Contract and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it shall be governed by the laws of England and Wales.

24.2 Subject to condition 20, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with the Contract.