Credit Application Form

|  |  |
| --- | --- |
| Company Name: |  |
| Invoice Address: |  |
|  |  |
|  |  |
| Post Code: |  |
| Company Registration No: |  |
| VAT Registration No: |  |
| Tel: |  |
| Fax: |  |
|  |  |
| Buyer: |  |
| Tel: |  |
| Email: |  |
| Accounts Payable Contact: |  |
| Tel: |  |
| Email Address For Invoices/Statements: |  |
|  |  |
| How Long Trading: |  |
| Monthly Credit Required: |  |

Trade References

(Please provide 2 trade references below;)

|  |  |  |  |
| --- | --- | --- | --- |
| Name: |  | Name: |  |
| Address: |  | Address: |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| Email Address: |  | Email Address: |  |
| Tel: |  | Tel: |  |

*All supplies of goods and/or services and hire of equipment are subject to our terms and conditions of business (as amended from time to time) which are enclosed with this credit application form. By signing this credit application form you are acknowledging that you have read and understood our terms and conditions of business and agree to be bound, and abide by, them. Payment terms are 30 days net monthly*

|  |  |
| --- | --- |
| Signed: |  |
| Print Name: |  |
| Position: |  |
| Date: |  |

For Office Use only;

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Account Code: |  | Date Opened: |  | Credit Limit: |  |
| Credit Rating: |  | Sales Person: |  | Rate: |  |

Enc – Tusk Lifting Ltd Terms and Conditions of Business 2016



**TUSK LIFTING LTD - TERMS AND CONDITIONS OF BUSINESS 2015**

**The Customer's attention is particularly drawn to the provisions of clause** [**12.**](#_bookmark7)

1. **INTERPRETATION**
   1. Definitions. In these Conditions, the following definitions apply:

|  |  |
| --- | --- |
| **Business Day** | a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business. |
| **Conditions** | these terms and conditions as amended from time to time in accordance with clause [16.7.](#_bookmark13) |
| **Contract** | the contract between Tusk Lifting and the Customer for the supply of Goods and/or Services and/or the hire of Equipment in accordance with these Conditions. |
| **Customer** | the person, firm or company who purchases the Goods and/or Services and/or hires the Equipment from Tusk Lifting. |
| **Delivery Location** | has the meaning set out in clause [4.1.](#_bookmark1) |
| **Deposit** | the deposit (if any) for the hire of the Equipment the amount of which  is set out in the Quotation (or as otherwise agreed between Tusk Lifting and the Customer). |
| **Equipment** | the items of equipment the Customer is to hire from Tusk Lifting as set out in Quotation and all substitutions, replacements or renewals  of such equipment and all related accessories, manuals and instructions provided for it (if any). |
| **Equipment Hire Commencement Date** | the date that the Customer takes Transfer of the Equipment. |
| **Equipment Hire Payments** | the payments made by or on behalf of the Customer for the hire of the Equipment as set out in the Quotation. |
| **Equipment Hire Period** | the period of hire in respect of the Equipment as set out in clause 7.3. |
| **Force Majeure Event** | has the meaning given to it in clause [15.1.](#_bookmark12) |
| **Goods** | the goods (or any part of them) to be supplied by Tusk Lifting to the Customer as set out in the Quotation. |
| **Goods Specification** | any specification for the Goods, including any relevant plans or  drawings, that is agreed in writing by the Customer and Tusk Lifting (if any). |
| **Intellectual Property Rights** | patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any  part of the world. |
| **Tusk Lifting** | Tusk Lifting Ltd incorporated and registered in England and Wales with company number 10497383 and whose registered office is at  Unit 49D Sadler Forster Way, Teesside Industrial Estate, Stockton On Tees, TS17 9JY. |
| **Tusk Lifting Materials** | has the meaning set out in clause [8.1.7.](#_bookmark4) |
| **Quotation** | Tusk Lifting’s written quotation for the supply of Goods and/or Services and/or hire of Equipment that is issued to the Customer. |
| **Services** | the services to be supplied by Tusk Lifting to the Customer as set out in the Quotation. |
| **Service Specification** | any description or specification for the Services that is agreed in writing by the Customer and Tusk Lifting (if any). |
| **Transfer** | the transfer of physical possession of the Equipment to the Customer. |
| **Total Loss** | the Equipment is, in Tusk Lifting’s reasonable opinion or the opinion  of its insurers, damaged beyond repair, lost, stolen, seized or confiscated. |
| **VAT** | value added tax chargeable under the Value Added Tax Act 1994. |

* 1. Construction. In these Conditions, the following rules apply :
     1. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
     2. a reference to a party includes its personal representatives, successors or permitted assigns;
     3. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
     4. any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
     5. a reference to **writing** or **written** includes e-mails.

# BASIS OF CONTRACT

* 1. The Quotation constitutes an offer by Tusk Lifting to sell the Goods and/or Services and/or hire the Equipment to the Customer in accordance with these Conditions.
  2. The Quotation shall be deemed to be accepted by the Customer when:
     1. the Customer signs the Quotation and returns this to Tusk Lifting;
     2. the Customer indicates its acceptance (by any means including (without limitation) by conduct) of the Quotation; or
     3. Tusk Lifting commences the supply of the Services at the request of the Customer; or
     4. Tusk Lifting delivers the Goods to the Customer in accordance with these Conditions at the request of the Customer; or
     5. Transfers the Equipment to the Customer takes place at the request of the Customer; (whichever is earlier)

at which point and on which date the Contract shall come into existence.

* 1. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Tusk Lifting which is not set out in the Contract.
  2. Any samples, drawings, descriptive matter or advertising issued by Tusk Lifting and any descriptions of the Goods or Equipment or illustrations or descriptions of the Services contained on Tusk Lifting’s website and/or in Tusk Lifting's catalogues, brochures or in any other materials are issued or published for the sole purpose of giving an approximate idea of the Goods, Equipment and Services described in them. They shall not form part of the Contract or have any contractual force.
  3. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

# GOODS

* 1. To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify Tusk Lifting against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Tusk Lifting in connection with any claim made against Tusk Lifting for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Tusk Lifting's use of the Goods Specification. This clause [3.1](#_bookmark0) shall survive termination of the Contract.
  2. Tusk Lifting reserves the right to amend the Goods and/or the Goods Specification if required by any applicable statutory or regulatory requirements or which do not materially affect the nature or quality of the Goods.

# DELIVERY OF GOODS

* 1. Unless otherwise agreed between the parties, Tusk Lifting (or a third party acting on the instructions of Tusk Lifting for the purposes of delivery) shall deliver the Goods to such location as the parties may agree (**Delivery Location**) at any time after Tusk Lifting notifies the Customer that the Goods are ready. Notwithstanding the foregoing, Tusk Lifting (or a third party acting on the instructions of Tusk Lifting for the purposes of delivery) will deliver the Goods to the nearest point to the Delivery Location that is, in the sole opinion of the relevant delivery driver, secure and safe and that will not cause damage or harm to any person or property (whether of Tusk Lifting or a third party). Such location shall, for the purpose of these Conditions, be the Delivery Location.
  2. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. If the parties agree that the Customer is to collect the Goods from Tusk Lifting then delivery shall be completed when possession of the Goods is given to the Customer (or a third party that is collecting the Goods on the instructions of the Customer) at the location where the relevant Goods are stored awaiting collection.
  3. Where required, the Customer shall be responsible for providing all necessary equipment and labour for loading/unloading the Goods on to/off of the relevant delivery vehicle at the Delivery Location and all other locations (as the case may be). Whether or no loading/unloading of the Goods requires equipment and/or labour is to be determined by Tusk Lifting (or the third party acting on the instructions of Tusk Lifting for the purposes of delivery) in its/their absolute and sole discretion,
  4. If the relevant delivery vehicle delivering the Goods is kept waiting at the Delivery Location for an unreasonable amount of time (such to be determined by Tusk Lifting in its absolute and sole discretion acting reasonably and in good faith), save for when this delay is caused by Tusk

Lifting (or the third party acting on the instructions of Tusk Lifting for the purposes of delivery), Tusk Lifting reserves the right to charge the Customer for such waiting time at Tusk Lifting’s standard rates from time to time.

* 1. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Tusk Lifting shall not be liable for any delay in delivery of the Goods that is caused by any third party causing (by any means) such delay in delivery of the Goods (including, without limitation, Tusk Lifting’s supplier(s)), a Force Majeure Event or the Customer's failure to provide Tusk Lifting with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
  2. If Tusk Lifting fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Tusk Lifting shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by any third party causing (by any means) such failure in delivery of the Goods (including, without limitation, Tusk Lifting’s supplier(s)), a Force Majeure Event, the Customer's failure to provide Tusk Lifting with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
  3. If the Customer fails to accept or take delivery of the Goods within 3 Business Days of Tusk Lifting notifying the Customer that the Goods are ready, then except where such failure or delay is caused by any third party causing (by any means) such delay/failure in delivery of the Goods (including, without limitation, Tusk Lifting’s supplier(s)), a Force Majeure Event or by Tusk Lifting's failure to comply with its obligations under the Contract in respect of the Goods:
     1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the 3rd Business Day following the day on which Tusk Lifting notified the Customer that the Goods were ready; and
     2. Tusk Lifting shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
  4. If 5 Business Days after Tusk Lifting notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, Tusk Lifting may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
  5. Tusk Lifting may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

# TITLE AND RISK IN THE GOODS

* 1. The risk in the Goods shall pass to the Customer on completion of delivery.
  2. Title to the Goods shall not pass to the Customer until the earlier of:
     1. Tusk Lifting receives payment in full (in cash or cleared funds) for the Goods and any other goods that Tusk Lifting has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
     2. the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause [5.4.](#_bookmark2)
  3. Until title to the Goods has passed to the Customer, the Customer shall:
     1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Tusk Lifting's property;
     2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
     3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Tusk Lifting's behalf from the date of delivery;
     4. notify Tusk Lifting immediately if it becomes subject to any of the events listed in clause [13.1.2](#_bookmark9) to clause [13.1.12;](#_bookmark11) and
     5. give Tusk Lifting such information relating to the Goods as Tusk Lifting may require from time to time.
  4. Subject to clause [5.5,](#_bookmark3) the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Tusk Lifting receives payment for the Goods. However, if the Customer resells the Goods before that time:
     1. it does so as principal and not as Tusk Lifting’s agent; and
     2. title to the Goods shall pass from Tusk Lifting to the Customer immediately before the time at which resale by the Customer occurs.
  5. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause [13.1.2](#_bookmark9) to clause [13.1.12,](#_bookmark11) then, without limiting any other right or remedy Tusk Lifting may have:
     1. the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
     2. Tusk Lifting may at any time:
        1. require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
        2. if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

# SUPPLY OF SERVICES

* 1. Tusk Lifting shall provide the Services to the Customer.
  2. Tusk Lifting shall provide the Services to the Customer in accordance with the Service Specification (if any) in all material respects.
  3. Tusk Lifting shall use all reasonable endeavours to meet any performance dates, times or other timescales for the Services as agreed with or specified to the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
  4. Tusk Lifting shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Tusk Lifting shall notify the Customer in any such event.
  5. Tusk Lifting warrants to the Customer that the Services will be provided using reasonable care and skill.
  6. To the extent that the Services are to be provided in accordance with a Service Specification supplied by the Customer, the Customer shall indemnify Tusk Lifting against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Tusk Lifting in connection with any claim made against Tusk Lifting for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Tusk Lifting's compliance with the Service Specification. This clause 6.6 shall survive termination of the Contract.
  7. Tusk Lifting reserves the right to amend the Service Specification if required by any applicable statutory or regulatory requirements.

# EQUIPMENT HIRE

* 1. Tusk Lifting shall hire the Equipment to the Customer subject to the Contract.
  2. Tusk Lifting shall not, other than in exercise of its rights under the Contract or applicable law, interfere with the Customer’s quiet possession of the Equipment.
  3. The Equipment Hire Period starts on the Equipment Hire Commencement Date and shall, unless the Contract is terminated earlier in accordance with its terms, continue until the Customer informs Tusk Lifting in writing that the Equipment is no longer required to be hired when the Equipment Hire Period shall, subject to the remainder of this clause 7.3, cease. Notwithstanding the foregoing, if the Equipment is not returned to, or collected by, Tusk Lifting (in accordance with the Contract) within 48 hours of Tusk Lifting being notified in writing that the Equipment is no longer required in accordance with this clause 7.3, the Equipment Hire Period will be deemed to continue until Tusk Lifting are notified again in writing, in accordance with this clause 7.3, that the Equipment is no longer required and the provisions of this clause 7.3 shall again apply to such written re-notification. For the avoidance of doubt, the aforementioned deemed continuation of the Equipment Hire Period shall include the aforementioned 48 hour period.
  4. Unless otherwise agreed between the parties, Transfer of the Equipment shall be made by Tusk Lifting. Tusk Lifting shall use all reasonable endeavours to effect Transfer by the date and time agreed between the parties. The Customer shall procure that a duly authorised representative of the Customer shall be present at the Transfer of the Equipment. Acceptance of Transfer by such representative shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by Tusk Lifting, the Customer's duly authorised representative shall sign a delivery note (or other relevant document) confirming such acceptance. Notwithstanding the foregoing, if any damage or other error is discovered in the Equipment that was present at the time of Transfer but could not have been discovered based on a visual inspection of the Equipment at the time of Transfer, Tusk Lifting will repair or replace the relevant Equipment but only if such damage or error is notified to Tusk Lifting within 48 hours of Transfer.
  5. To facilitate Transfer, the Customer shall at its sole expense provide all requisite materials, facilities, labour, equipment, access and suitable working conditions to enable Transfer to be carried out safely and expeditiously.
  6. The Equipment shall at all times remain the property of Tusk Lifting, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the Contract).
  7. The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Transfer. The Equipment shall remain at the sole risk of the Customer during the Equipment Hire Period and any further term during which the Equipment is in the possession, custody or control of the Customer (**Equipment Risk Period**) until such time as the Equipment is redelivered to Tusk Lifting. During the Equipment Hire Period and the Equipment Risk Period, if requested to do so by Tusk Lifting, the Customer shall, at its own expense, obtain and maintain the following insurances:
     1. insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as Tusk Lifting may from time to time nominate in writing;
     2. insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as Tusk Lifting may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
     3. insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as Tusk Lifting may from time to time consider reasonably necessary and advise to the Customer.
  8. All insurance policies procured by the Customer pursuant to clause 7.7 shall be endorsed to provide Tusk Lifting with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon Tusk Lifting’s request name Tusk Lifting on the policies as a loss payee in relation to any claim relating to the Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.
  9. The Customer shall give immediate written notice to Tusk Lifting in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.
  10. If the Customer fails to effect or maintain any of the insurances required under clause 7.7, Tusk Lifting shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
  11. The Customer shall, on demand, supply copies of the relevant insurance policies referred to in clause 7.7 (or other insurance confirmation acceptable to Tusk Lifting) and proof of premium payment to Tusk Lifting to confirm the insurance arrangements.
  12. The Customer must satisfy itself that the Equipment is in date, safe to use and fit for purpose before each use of the Equipment. Tusk Lifting will inspect the Equipment every 6 months from the Equipment Hire Commencement Date and, if any defect is found, shall repair the Equipment or, if not able to be repaired, replace the Equipment (at Tusk Lifting’s sole discretion) accordingly however the Customer still remains responsible for satisfying itself that the Equipment is in date, safe to use and fit for purpose before each of use of the Equipment. The obligation on Tusk Lifting to repair or replace any defective Equipment as set out in this clause 7.12 shall not apply to any defect caused by the Customer or any of its employees, agents, subcontractors or other representatives or by any third party during the Equipment Risk Period.

# CUSTOMER'S OBLIGATIONS / RESPONSIBILTIES

* 1. In respect of the supply of Goods and/or Services, the Customer shall:
     1. ensure that the terms of the Quotation and (if submitted by the Customer) any Goods Specification and Service Specification are complete and accurate;
     2. co-operate with Tusk Lifting in all matters relating to the Goods (including delivery thereof) and the Services;
     3. provide Tusk Lifting, its employees, agents, consultants, subcontractors and other representatives and personnel, with access to the Customer's (and any relevant third party’s) premises, locations and other facilities as required by Tusk Lifting to provide the Services and/or delivery of the Goods;
     4. provide Tusk Lifting with such information and materials as Tusk Lifting may reasonably require to supply the Services and/or deliver the Goods, and ensure that such information is accurate in all material respects;
     5. prepare the Customer's (and any relevant third party’s) premises, locations and other facilities for the supply of the Services;
     6. obtain and maintain all necessary licences, permissions and consents which may be required for the Services and/or the Goods (including delivery thereof); and
     7. keep and maintain all materials, equipment, documents and other property of Tusk Lifting (**Tusk Lifting Materials**) at the Customer's premises, locations and other facilities in safe custody at its own risk, maintain Tusk Lifting Materials in good condition until returned to Tusk Lifting, and not dispose of or use Tusk Lifting Materials other than in accordance with Tusk Lifting's written instructions or authorisation.
  2. In respect of the hire of the Equipment, the Customer shall during the term of the Contract:
     1. ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
     2. take such steps (including compliance with all safety and usage instructions provided by Tusk Lifting) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
     3. maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Equipment Hire Commencement Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
     4. make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of Tusk Lifting unless carried out to comply with any mandatory modifications required by law or any regulatory authority or unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in Tusk Lifting immediately upon installation;
     5. keep Tusk Lifting fully informed of all material matters relating to the Equipment;
     6. at all times keep the Equipment in the possession or control of the Customer and keep Tusk Lifting informed of its location;
     7. permit Tusk Lifting or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter any premises, locations or other facilities at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
     8. maintain operating and maintenance records of the Equipment and make copies of such records readily available to Tusk Lifting, together with such additional information as Tusk Lifting may reasonably require;
     9. not, without the prior written consent of Tusk Lifting, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
     10. not without the prior written consent of Tusk Lifting, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify Tusk Lifting against all losses, costs or expenses incurred as a result of such affixation or removal;
     11. not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of Tusk Lifting in the Equipment and, where the Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that Tusk Lifting may enter such land or building and recover the Equipment both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of Tusk Lifting of any rights such person may have or acquire in the Equipment and a right for Tusk Lifting to enter onto such land or building to remove the Equipment;
     12. not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify Tusk Lifting and the Customer

shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify Tusk Lifting on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

* + 1. not use the Equipment for any unlawful purpose;
    2. not re-hire the Equipment to any third party without Tusk Lifting’s prior written consent;
    3. ensure that at all times the Equipment remains identifiable as being Tusk Lifting’s property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
    4. unless otherwise agreed between the parties, deliver up the Equipment to Tusk Lifting at the end of the Equipment Hire Period or on earlier termination of the Contract at such address as Tusk Lifting requires, or if necessary allow Tusk Lifting or its representatives access any premises, location or other facilities where the Equipment is located for the purpose of removing the Equipment; and
    5. not do or permit to be done anything which could invalidate the insurances referred to in clause 7.7,

and the Customer acknowledges that Tusk Lifting shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents, sub-contractors or other representatives, and the Customer undertakes to indemnify Tusk Lifting on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by Customer to comply with the terms of the Contract.

* 1. If Tusk Lifting's performance of any of its obligations in respect of the Services, the Goods and/or the Equipment ((including, without limitation, the supply, sale, hire, delivery or transfer thereof (as applicable)), is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (including, without limitation, those obligations contained in this clause 8) (**Customer Default**):
     1. Tusk Lifting shall without limiting its other rights or remedies have the right to suspend performance of the Services, delivery of the Goods and/or hire of Equipment until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Tusk Lifting's performance of any of its obligations;
     2. Tusk Lifting shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Tusk Lifting's failure or delay to perform any of its obligations as set out in this clause [8.3;](#_bookmark5) and
     3. the Customer shall reimburse Tusk Lifting on written demand for any costs or losses sustained or incurred by Tusk Lifting arising directly or indirectly from the Customer Default.
  2. Notwithstanding anything else contained in these terms and conditions, upon the return of the Equipment to Tusk Lifting at the end of the Equipment Hire Period in accordance with clause 8.2.16:
     1. if it is discovered that the Equipment has any damage to it that was not present at the time of Transfer of the Equipment to the Customer (fair wear and tear excepted), the cost of repair of such damage (or replacement of the Equipment if deemed necessary in the absolute and sole discretion of Tusk Lifting) shall be charged to the Customer by Tusk Lifting;
     2. if the damage mentioned in clause 8.4.1 above is internal damage (to be assessed in the absolute and sole discretion of Tusk Lifting), the Customer, in addition to being liable for the cost of repair or replacement in accordance with clause 8.4.1, shall also be liable for the cost of any lost hire time in respect of the relevant Equipment and the cost of labour and parts necessary for the repair and/or replacement.
  3. If the Equipment cannot be returned to Tusk Lifting by the Customer (for any reason), the Customer shall be liable for the cost of replacing the relevant Equipment.

# CHARGES, HIRE PAYMENTS AND PAYMENT

* 1. The price for Goods shall be the price set out in the Quotation or, if no price is quoted, the price set out in Tusk Lifting's price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer when it pays for the Goods (if applicable).
  2. The charges for Services shall be set out in the Quotation which shall specify if they are to be on a fixed price or on a time and materials basis.
  3. If the charges for the Services are to be on a time and material basis:
     1. the charges shall be calculated in accordance with Tusk Lifting's fee rates, as set out in the Quotation;
     2. Tusk Lifting’s fee rates exclude VAT (as defined below), which Tusk Lifting shall add to its invoices at the appropriate rate; and
     3. Tusk Lifting shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Tusk Lifting engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Tusk Lifting for the performance of the Services, and for the cost of any materials.
  4. If the charges for the Services are to be on a fixed price basis, any fixed price quoted excludes:
     1. the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom Tusk Lifting engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by Tusk Lifting for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Tusk Lifting; and
     2. VAT (as defined below), which Tusk Lifting shall add to its invoices at the appropriate rate,

and Tusk Lifting reserves the right to increase the fixed price quoted in the event that the original scope of the Services has changed including, without limitation, delays in the proposed timetable for the Services.

* 1. Tusk Lifting reserves the right (at any time) to:
     1. amend its price lists; and/or
     2. amend any price, cost, rate or other charge quoted to the Customer prior to the Contract having been formed in accordance with these Conditions.
  2. In respect of Goods, Tusk Lifting shall invoice the Customer on or at any time after completion of delivery. In respect of Services, Tusk Lifting shall invoice the Customer monthly in arrears or such other period as Tusk Lifting determines in its absolute and sole discretion.
  3. Unless otherwise agreed between the parties, in respect of the hire of Equipment, the Customer shall pay the Equipment Hire Payments to Tusk Lifting weekly in arrear and Tusk Lifting shall be able to invoice the Customer accordingly. The Equipment Hire Payments are exclusive of all costs and charges of packaging, insurance, transport of the Equipment, which shall be paid by the Customer in addition to the Equipment Hire Payments. If the Customer is in possession, custody or control of the Equipment for any additional period of time beyond the Equipment Hire Period, the Customer shall be liable to pay Tusk Lifting for such additional time the price of which shall be calculated by reference to Tusk Lifting’s standard hire charges in respect of the Equipment from time to time.
  4. The Customer shall pay each invoice submitted by Tusk Lifting in Pounds Sterling (£):
     1. unless otherwise agreed between the parties, within 30 days of the end of the month following the month in which the relevant invoice was raised; and
     2. in full and in cleared funds to a bank account nominated in writing by Tusk Lifting, and time for payment shall be of the essence of the Contract.
  5. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Tusk Lifting to the Customer, the Customer shall, on receipt of a valid VAT invoice from Tusk Lifting, pay to Tusk Lifting such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods or hire of the Equipment at the same time as payment is due for the supply of the Services or Goods or hire of the Equipment.
  6. If the Customer fails to make any payment due to Tusk Lifting under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC Bank PLC’s base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
  7. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Tusk Lifting may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Tusk Lifting to the Customer.
  8. The Deposit (if any) is a deposit against default by the Customer of payment of any Equipment Hire Payments or any loss of or damage caused to the Equipment. The Customer shall, before Transfer, pay the Deposit to Tusk Lifting. If the Customer fails to make any Equipment Hire Payments in accordance with the Contract, or causes any loss or damage to the Equipment (in whole or in part), Tusk Lifting shall be entitled to apply the Deposit against such default, loss or damage. The Customer shall pay to Tusk Lifting any sums deducted from the Deposit within ten (10) Business Days of a demand for the same. The Deposit (or balance thereof) shall be refundable within five (5) Business Days of the end of the Equipment Hire Period. If the Deposit is not paid to Tusk Lifting, Tusk Lifting shall not be required to Transfer the Equipment to the Customer until such time as the Deposit has been paid to Tusk Lifting.

# INTELLECTUAL PROPERTY RIGHTS

* 1. All Intellectual Property Rights in or arising out of or in connection with the Services and/or the Contract shall be owned by Tusk Lifting.
  2. The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on Tusk Lifting obtaining a written licence from the relevant licensor on such terms as will entitle Tusk Lifting to license such rights to the Customer.
  3. All Tusk Lifting Materials are the exclusive property of Tusk Lifting.

# CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause [11](#_bookmark6) shall survive termination of the Contract.



# LIMITATION OF LIABILITY

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

* 1. Nothing in these Conditions shall limit or exclude Tusk Lifting's liability for:
     1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
     2. fraud or fraudulent misrepresentation;
     3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
     4. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
     5. defective products under the Consumer Protection Act 1987; or
     6. any breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973; or
     7. any other liability which cannot be excluded by law.
  2. Subject to clause [12.1:](#_bookmark8)
     1. Tusk Lifting shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of revenue, loss of business or any indirect or consequential loss or damage arising under or in connection with the Contract ; and
     2. Tusk Lifting shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss or damage arising as a result of:
        1. the Equipment where such has been operated by, or was otherwise under the control and/or supervision of, the Customer or any of its employees, agents, sub-contractors or other representatives; and
        2. the acts or omissions of any employees, agents or other personnel that are engaged on the Services where such employees, agents or other personnel had been acting under the control, instructions and/or supervision of the Customer or any of its employees, agents, sub-contractors or other representatives;
     3. Tusk Lifting's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed:
        1. in respect of the supply of Goods and/or Services, the amount paid by the Customer in respect of the Services and/or Goods under the Contract; or
        2. in respect of the hire of Equipment, the Equipment Hire Payments paid by the Customer under the Contract.
  3. The Contract sets forth the full extent of Tusk Lifting’s obligations and liabilities in respect of the Goods, Services and Equipment and its/their hiring, sale and supply (as applicable). In particular, except as expressly stated in the Contract, Tusk Lifting does not give any representations, warranties or undertakings in relation to the Services, Goods or Equipment and its/their hiring, sale and supply (as applicable). Any condition, warranty or other term concerning the Goods, Services and Equipment and its/their hiring, sale and supply (as applicable) which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.
  4. This clause [12](#_bookmark7) shall survive termination of the Contract.

# TERMINATION

* 1. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
     1. the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
     2. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
     3. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
     4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
     5. the other party (being an individual) is the subject of a bankruptcy petition or order;
     6. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
     7. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
     8. the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
     9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
     10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause [13.1.2](#_bookmark9) to clause [13.1.9](#_bookmark10) (inclusive);
     11. the other party's financial position deteriorates to such an extent that in Tusk Lifting's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
     12. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
  2. Without limiting its other rights or remedies, Tusk Lifting may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
  3. Without limiting its other rights or remedies, Tusk Lifting may suspend the supply of Services, all further deliveries of Goods and/or all existing or pending hire of Equipment under the Contract or any other contract between the Customer and Tusk Lifting if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause [13.1.2](#_bookmark9) to clause [13.1.12,](#_bookmark11) or Tusk Lifting reasonably believes that the Customer is about to become subject to any of them.
  4. If Tusk Lifting decides, in its absolute and sole discretion, to allow the Customer to terminate the Contract, Tusk Lifting reserves the right to impose such conditions on termination as it thinks fit including, without limitation, charging the Customer such fees and expenses as Tusk Lifting shall determine.
  5. On termination of the Contract for any reason:
     1. Tusk Lifting’s consent to the Customers possession of the Equipment shall terminate and Tusk Lifting may, by its authorised representatives, without notice and at the Customer’s expense, retake possession of the Equipment and for this purpose may enter any premises, locations or other facilities at which the Equipment is located;
     2. the Customer shall immediately pay to Tusk Lifting all of Tusk Lifting's outstanding unpaid invoices and interest and, in respect of Services supplied, Goods delivered and/or Equipment hired but for which no invoice has yet been submitted, Tusk Lifting shall submit an invoice, which shall be payable by the Customer immediately on receipt;
     3. the Customer shall pay to Tusk Lifting, on demand, all Equipment Hire Payments and other sums due but unpaid at the date of such demand together with any interest accrued and any costs and expenses incurred by Tusk Lifting in recovering the Equipment and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs);
     4. the Customer shall return all Tusk Lifting Materials which have not been fully paid for. If the Customer fails to do so, then Tusk Lifting may enter the Customer's premises, locations or other facilities and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
     5. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
     6. clauses which expressly or by implication have effect after termination shall continue in full force and effect.
  6. This clause 13.6 shall only apply if a minimum or fixed Equipment Hire Period has been agreed between Tusk Lifting and the Customer in writing (including in the Quotation). In the event that a minimum or fixed Equipment Hire Period has been so agreed, upon termination of the Contract or return of the Equipment prior to expiry of the minimum or fixed Equipment Hire Period, without prejudice to any other rights or remedies of Tusk Lifting, the Customer shall pay to Tusk Lifting on demand a sum equal to the whole of the Equipment Hire Payments that would (but for the termination/return (as applicable)) have been payable if the Contract had continued from the date of such demand to the end of the minimum or fixed Equipment Hire Period (as applicable). The sums payable pursuant to this clause shall be agreed compensation for Tusk Lifting’s loss and shall be payable in addition to any other sums payable under the Contract. Such sums may be partly or wholly recovered from any Deposit.

# INDEMNITY

* 1. The Customer shall indemnify Tusk Lifting against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Tusk Lifting arising out of or in connection with:
     1. the Customer’s, or any of its employees, agents, sub-contractors or other representatives, breach or negligent performance or non- performance of the Contract;
     2. the enforcement of the Contract;
     3. any claim made against Tusk Lifting by a third party arising out of or in connection with the provision of the Services, supply of the Goods or the hire of the Equipment, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Customer, its employees, agents, subcontractors or other representatives;
     4. any claim made against Tusk Lifting by any of the employees, agents or other personnel engaged on the Services for death, personal injury or damage to property that is attributable to the acts or omissions of the Customer, its employees, agents, subcontractors or other representatives; and
     5. any claim made against Tusk Lifting by the Customer or a third party arising out of or in connection with the hire of the Equipment, to the extent that such claim arises as a result of an event at a time when the Equipment is/was in the possession, custody or control of the Customer, or its employees, agents, sub-contractors or other representatives, or otherwise being operated by the Customer, or its employees, agents, sub-contractors or other representatives, or under the Customer’s instructions or supervision, or that of its employees, agents, sub-contractors or other representatives.

# FORCE MAJEURE

* 1. For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Tusk Lifting including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Tusk Lifting or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
  2. Tusk Lifting shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
  3. If the Force Majeure Event prevents Tusk Lifting from providing any of the Services and/or Goods or hiring the Equipment for more than 6 weeks, Tusk Lifting shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

# GENERAL

* 1. **Assignment and other dealings.**

|  |  |  |
| --- | --- | --- |
|  | 16.1.1  16.1.2 | Tusk Lifting 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.  The Customer shall not, without the prior written consent of Tusk Lifting, assign, transfer, charge, subcontract, declare a trust over or |
|  | deal in any other manner with all or any of its rights or obligations under the Contract. |
| 16.2 | **Notices.** |  |
|  | 16.2.1 | Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party |
|  |  | may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid |
|  | 16.2.2 | first-class post or other next working day delivery service, or by commercial courier or e-mail.  A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to |
|  |  | in clause 16.2.1; 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 e-mail, one Business Day after transmission. |
|  | 16.2.3 | The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action |
| 16.3 | **Severance.** |  |
|  | 16.3.1 | If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the |
|  |  | minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part- |
|  |  | provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract. |
|  | 16.3.2 | If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend |
|  |  | such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision. |

* 1. **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
  2. **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
  3. **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
  4. **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by Tusk Lifting.
  5. **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non- contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
  6. **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).