

**These terms and conditions apply to all quotations and contract for sale, hire or provision of services provided by or entered into by Atlas Winch & Hoist Services Ltd or any subsidiary or related company.**

**Attention is drawn in particular to clauses A7 and A8, which exclude or restrict the Company's liability or contain indemnities in the Company's favor in certain circumstances**

**A1. Definitions**

In these Terms and Conditions:-

- "Company"** means Atlas Winch & Hoist Services Ltd or any subsidiary or related company.
- "Company's Address"** means Knocklee House, Biggar, ML12 6BQ, or the usual place of work of any subsidiary or related company.
- "Customer"** means any person, firm, company, partnership, competent authority or other business entity who agrees to obtain services, purchase products or hire equipment from the Company under contract.
- "Contract"** means the agreement between the Company and the Customer and the Customer for any form of business conducted by or with the Company, incorporating these Terms and Conditions.
- "Delivery Address"** – means the address for delivery of Products or Equipment which shall be the Company's Address or such other address as may be agreed in Writing.
- "Equipment"** means the equipment, plant, machinery, tools, parts and accessories, including any installment, part or combination of same, which the Company is to hire to the Customer, or provide Services in respect of, in accordance with the Contract.
- "Estimated Delivery Date"** means the date on which the Company estimates that Products or Equipment will be delivered.
- "Hire Period"** means the period from the time the Equipment is dispatched by the Company to the Customer or collected by the Customer or its agents from the Company's Address until the time the Equipment is received back at the Company's Address or other such address as maybe agreed in writing.
- "Losses"** includes all actions, claims, demands, proceedings, damages, awards, payments, losses, costs, expenses, penalties, fines, compensation or other liabilities ( direct, indirect, consequential or otherwise including loss of profit, business, turnover or market share), legal or professional expenses and interest thereon.
- "Price"** means the charge made by the Company for the provision of Services, sale of Products or hire of Equipment as further defined in the Contract.
- "Product(s)"** means any goods, materials, equipment, machinery, products or articles of whatsoever nature, which the Company is to supply or sell to the Customer, or provide any services in respect of, under the Contract.
- "Quotation"** means the Company's quotation for the provision of Services, sale of Products or hire of Equipment, which terms includes any document issued by the Company indicating the terms on which Services are to be provided , Products sold or Equipment hired.
- "Services"** means any services or work provided by the Company to the Customer under the Contract including but not limited to the provision of any consultancy or advisory services, or the service, maintenance, refurbishment or provision of qualified operators for the use or operation of the Products or Equipment.
- "Terms and Conditions"** means the Terms and Conditions set out in this document and any other terms and conditions agreed pursuant to clause A2.2
- "Writing"** means any form of written communication including transmission by facsimile. It shall also include electronic mail ("Email") where the parties have agreed either expressly or by a course of dealing to communicate by Email and have provided each other with correct Email addresses accordingly, save that any email shall take effect only when received by the recipient.

**A2. Application**

- A2.1 All business conducted by the Company with the Customer, including any contract, quotations or pre-contractual negotiations, shall be subject to the Terms and Conditions to the exclusion of any and all other terms and conditions unless otherwise agreed in writing.
- A2.2 No variation or addition to these Terms and Conditions shall be binding unless agreed in Writing by the Company. Any and all statements, representations, advice or recommendations made or given by the Company during negotiations prior to the conclusion of a Contract are not binding unless incorporated into the Contract in Writing signed by both parties.
- A2.3 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.
- A2.4 If any provision of these Terms and Conditions is held by any competent court, tribunal or authority to be invalid or unenforceable in whole or in part the validity of the remainder of the provision and all other remaining provisions of these Terms and Conditions shall not be affected thereby.

**A3. Description of Contract**

- A3.1 No Contract shall be formed until the Company confirms in Writing its acceptance of the offer of business to be conducted with the Customer.
- A3.2 The Company will sell hire and/or provide Services and the Customer will pay the specified Price, in accordance with the Company's acceptance in A3.1 above

**A4. Performance of Contract**

- A4.1 Unless otherwise agreed in Writing, the place of performance of the Contract, including any delivery of Products or Equipment, shall be the Company's Address. Unless otherwise agreed in writing, it is the Customer's obligation and risk to take delivery or to deliver, as the case may be, any Product or Equipment the subject of the Contract from or to the Company's Address.
- A4.2 Where the Company agrees to sell or hire Products or Equipment to the Customer, the Company will use all reasonable effort to deliver any Product or Equipment by the Estimated Delivery Date. However, any dates specified by the Company for delivery of the Products or Equipment are intended to be an estimate only and if no dates are so specified, delivery will be within a reasonable time.
- A4.3 Unless otherwise agreed, The Customer will take delivery of the Products or Equipment within seven (7) days from receipt of notice in Writing from the Company to do so. If the customer fails to take delivery of the products or Equipment within seven (7) days (or any other period agreed pursuant to this clause) from receipt of notice in Writing from the Company then, without prejudice to any other right or remedy available to the Company, the Company may:
- A4.3.1 issue its invoice in respect of the Products or Equipment as if they have been delivered;
  - A4.3.2 store the Products or Equipment until actual delivery is made and charge the Customer for the costs of storage;
  - A4.3.3 sell, supply or hire Products or Equipment to a third party in any country at the best price obtainable;
  - A4.3.4 suspend other deliveries of Products or Equipment
- A4.4 The products or Equipment are at the risk of the Customer from the time of delivery and the Customer shall insure the Products or Equipment accordingly.
- A4.5 Notwithstanding clause A4.4 where the Company agrees to sell Products to the Customer, property in the Products shall not pass to the Customer until the Company has received payment of the price in full ( in cash cleared funds), including any additional sums which become due from the Customer under the Contract. The Customer hereby agrees to and grants the Company a continuing security interest in any and all such Products together with all accessions, attachments, substitutions and amalgamations thereto, and any proceeds or products derived from the sale thereof. Without prejudice to any other rights and remedies available to the Company under the Contract or law, in the event of any breach of Contract by the Customer, the Company shall have the right and entitlement without further notice to the customer to take possession of all or any part of the Products and to sell the same in a commercial manner in accordance with the applicable law and to apply the proceeds of such sale against any Losses suffered by the Company. The Customer hereby agrees to all that is necessary by law to give effect to such security.
- A4.6 Where the company agrees to hire Equipment to the Customer, The Company's Terms and Conditions for Hire of Equipment shall apply in addition to these Terms and Conditions. Where inconsistent, the Terms and Conditions for Hire of equipment shall prevail.

**A5. Price**

- A5.1 the Price for the provision of Services, purchases of Products or hire of Equipment shall be that agreed between the parties and confirmed in Writing by the Company.
- A5.2 All prices quoted by the Company in its Quotations are valid for thirty (30) days only. The Company reserves the right to amend any typographical, clerical or other error or omission on any documentation containing pricing information issued by or on behalf of the Company, and the Company shall have no liability to the Customer for any such errors or omissions.
- A5.3 Unless otherwise specified, the Price for any Services, products or Equipment provided by the Company to the customer shall be exclusive of any travel, accommodation, subsistence or other out – of- pocket expenses of the Company's employees, servants or agents ( which where applicable the Customer shall pay to the Company at cost) and shall exclude any costs, charges or taxes relating to storage, loading, carriage, unloading, delivery and insurance of any Products or Equipment or any licence fees, duties, local taxes or additional costs of such nature, which shall remain the liability of the customer.
- A5.4 Where applicable the Company is obliged to charge in addition to the price any value added tax in the United Kingdom.

**A6. Invoicing and Payment**

- A6.1 The Company will issue to the customer from time to time an invoice or invoices for the Price of any Services, Products or Equipment, together with any additional costs and/or charges payable to the Customer under clause A4.
- A6.2 Unless otherwise agreed in writing, payment of any invoice submitted by the Company to the Customer is due within thirty (30) days of the date of the invoice and payment within this time shall be of the essence of the Contract.
- A6.3 Receipts for payment of any invoice will only be issued upon request in Writing by the Customer.
- A6.4 If the Customer fails to make any payment of any invoice within the due time then, without prejudice to any right or remedy available to the Company, the Company shall be entitled to:
- A6.4.1 cancel the contract, and require immediate return at the Customer's expense of any Products or equipment;
  - A6.4.2 suspend further performance by the Company under the contract;
  - A6.4.3 charge the Customer interest on any unpaid amount from the date payment is due to the date payment in full is made on a daily basis at the per annum rate of 3% above the base bank rate from the time to time of RBS PLC;
  - A6.4.4 be reimbursed by the Customer for all Losses incurred by the Company in the collection of any overdue amount.

**A7. Warranties, Representations and Risk**

- A7.1 Unless otherwise agrees in Writing, no warranties or representations are given or made by the Company as to the availability, durability, use, storage, effectiveness, quality, suitability or fitness for any purpose of any product or Equipment sold or supplied hereunder, or for any Service provided hereunder, and any conditions or warranties implied or imposed by operation of law are hereby excluded.
- A7.2 Notwithstanding clause A7.1 above, the Company's sole obligation when providing any Services under the Contract is to exercise reasonable care and skill.
- A7.3 It is the Customers responsibility and risk that any order, specification, drawing or information provided to the Company to enable or assist the Company to perform the Contract is complete and accurate.
- A7.4 Where the Company is not the manufacturer of the Products or Equipment, the Company will endeavor, where applicable, to transfer to the Customer the benefit of any warranty or guarantee given to the Company.
- A7.5 The Company shall not be liable for a breach of any warranty or warranties, whether provided by the Contract, statute, the general law or otherwise, in respect of any products or Equipment sold or hires or any Services provided, unless the Customer gives written notice of the breach complained of within seven (7) days of the time the Customer discovers or ought to have discovered such breach and the Company is given a reasonable opportunity of remedying the breach.
- A7.6 The Company shall not be liable for any defect in the Product, Equipment or Services arising from fair wear and tear, willful damage or negligence by employees, servants or agents of the Customer or other persons not within the Company's reasonable control, abnormal working conditions, failure to follow the Company's instructions ( if any, whether oral or in Writing), or misuse, alteration or repair of the Product or Equipment or change in terms of Service without the prior approval in Writing of the Company.
- A7.7 Subject to clause A7.5 if any product or Equipment does not conform with any warranty or warranties provided by the contract, statute, the general law or otherwise, the Company shall at its option repair or replace such Products or Equipment (or any defective part or parts) or refund the Price of the products or Hire at the Contract rate provided that ( if the Company so requests and at its cost) the Customer returns the defective Products, Equipment pr part(s) to the Company. If the Company complies with this clause, it shall have no further liability for breach of any warranty or warranties whatsoever and howsoever arising in respect of the Product or Equipment,

**A8. Limitation of Liability and Indemnity**

- A8.1 the Company's liability to the Customer under the Contract for any loss or damage howsoever and whatsoever arising including any loss or damage arising from negligence and/or any act or omission of any person employed, hired or engaged by the Company shall not exceed the Price of the Contract.
- A8.2 The Company shall not in any event be liable to the customer for any consequential and/or indirect loss or damage whether for loss or for profit or otherwise, costs, expenses or other claims for consequential compensation whatsoever and whether caused by negligence of the Company its employees, servants agents or otherwise.
- A8.3 Unless otherwise agreed in Writing, the Customer shall fully indemnify the Company against any loss, damage or injury howsoever caused ( including by negligence) to the Customer's employees, servants or agents and / or property of the Customers employees, servants or agents during the execution of the Contract.
- A8.4 Nothing in these Terms and Conditions excludes or limits the Company's liability for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- A8.5 Where the Company agrees to sell or hire Products or Equipment to the customer, the Company will not be liable for any losses caused directly or indirectly by any delay in the delivery of the Products or Equipment (even if caused by the negligence of the Company, its employees, servants or agents), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds thirty (30) days.
- A8.6 Where the Company agrees to provide a Services to the Customer, The Company will not be liable for any losses caused directly or indirectly by any delay in the provision of the Services ( even if caused by the negligence of the Company, its employees, servants or agents). Unless otherwise agreed, the Customer shall not be entitled to cancel the contract solely because of such delay.

**A9 Termination**

- A9.1 The Company shall be entitled to terminate the Contract forthwith by notice in Writing to the Customer if:
- A9.1.1 the Customer commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within seven (7) days of receipt of notice in Writing of the breach requiring remedy of the same; or
- A9.1.2 the Customer makes any voluntary arrangement with its creditors ( being an individual or firm) becomes bankrupt or (being a Company) becomes subject to an administration order or goes into liquidation ( otherwise than for the purposes of solvent amalgamation or reconstruction); or
- A9.1.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

- A9.1 Contd./  
A9.1.4 the Customer ceases or threatens to cease to carry on business; or  
A9.1.5 where the Customer is resident in a jurisdiction other than Scotland, an event similar to any of those specified in clauses A9.1.2 and A1.9.3 occurs to or in relation to the Customer.
- A9.2 In the Event of termination by the Company pursuant to clause A9.1 above then, without prejudice to any right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries or Services due under it without any liability to the Customer and, if the Services have already been provided, Products delivered or Equipment hired out but not paid for, the price of the Services, Products or Equipment shall become immediately due and payable notwithstanding any previous agreement or arrangement to the Contrary and the Company shall be entitled to charge interest at the per annum rate of 3% above the base rate from the time to time of RBS PLC from the time of such cancellation or suspension until the Company receives payment.
- A9.3 The Customer shall be entitled to terminate the Contract by giving thirty (30) days notice in Writing of termination to the Company. In the event of termination by the Customer pursuant to this clause, the Company shall invoice the Customer and the Customer shall immediately pay to the Company the full Price together with any additional costs and/or charges payable by the Customer under Clause A4

**A10. Laws and Regulations**

- A10.1 The Customer shall comply with all laws and regulations relating to the ownership and use of the Products or Equipment including health and safety requirements.
- A10.2 The Customer shall ensure that all appropriate safety information (whether or not supplied by the Company) is distributed and drawn to the attention of its employees and all others who require it for the safe handling or use of the Products or Equipment.
- A10.3 The Customer shall indemnify the Company for any losses suffered by the Company attributable to a breach of this clause A10

**A11. Resources**

- A11.1 The Customer hereby agrees that, during the term of the Contract and for a period of twelve (12) months after expiry or termination howsoever caused, he will not solicit the Company's staff who are known by the Customer to have been employed or engaged in the performance of the Contract. For the purposes of this clause, 'Solicit' means a direct or indirect attempt to induce such person to take an engagement with such party as an employee, director, sub-contractor or independent contractor provided that this clause shall not apply to any engagement as a result of a general advertisement or recruitment campaign.

**A12 Confidentiality**

- A12.1 All techniques, processes, inventions, equipment, drawings, designs, specification, proposals and such information concerning Services, Products or Equipment or relating to the Company's business of which the Customer shall obtain knowledge or information (except to the extent that they are within or fall into the public domain other than by breach of Contract) shall remain both during and after completion of the business conducted under the Contract the absolute and exclusive property of the Company and the Customer shall keep confidential and retain the same with the utmost secrecy and shall use its utmost endeavors that all its employees, servants and agents shall abide by the terms of this provision as though it were binding upon each of them and the Customer shall not use same for its own purposes, nor shall it cause or permit anything which may damage or endanger the intellectual property of the Company or allow or assist others to do so.

**A13. Waiver**

- A13.1 No payment accepted by the Company and no neglect, delay or indulgence on the part of the Company in enforcing the contract or any of the Terms and Conditions thereof shall operate as a waiver of the Company's rights thereunder, unless in each case the Company expressly so agrees in Writing.

**A14 Force Majeure**

- A14.1 The Company shall not be liable to the Customer to be deemed to be in breach of the Contract by any reason of any delay in performing, or any failure to perform, any of the Company's obligations If the delay or failure was due to any cause beyond the Company's reasonable control including (without limitation):
- A14.1.1 act of God, storm flood, tempest or other weather conditions, explosion, fire or accident;
  - A14.1.2 war or threat of war, civil war, hostilities, sabotage, insurrection riot or civil disturbance or requisition;
  - A14.1.3 Governmental or local authority acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind;
  - A14.1.4 import or export regulations or embargoes;
  - A14.1.5 strikes, lock-outs or other industrial actions or trade disputes whether involving employees of the Company or of a third party;
  - A14.1.6 difficulties in obtaining raw materials, labour, fuel, parts, equipment, machinery or other essential supplies;
  - A14.1.7 failure or breakdown in equipment or machinery from power failure or other external causes

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**A15. Cross Claims and Set Off**

A15.1 The customer hereby waives any right to set-off under the Contract or otherwise and agrees to pay all sums due regardless of any equity, set-off or cross claim on the part of the Customer against the Company.

**A16. Notices**

A16.1 Any notice required to be given by either party under the contract shall be delivered or sent by pre-paid first class recorded delivery letter or facsimile addressed to the registered office of the party to be served or to such other place as may be designated by the party for the purpose of service and shall be deemed to have been served in the case of a notice delivered by hand, when delivered, in the case of a letter, forty-eight (48) hours after the time of posting, in the case of facsimile when dispatched.

**A17. Non- Assignment**

A17.1 The Customer shall not assign, further transfer or sub contract the Contract or any benefit, interest, right or obligation under the Contract, without the prior agreement of the Company in Writing.

**A18. Governing Law and Jurisdiction**

A18.1 The Contract shall be governed by and construed in accordance with the Laws of Scotland.

A18.2 The Customer hereby agrees for the benefit of the Company that any claims, disputes, legal actions, suits or proceedings it have against the Company arising out of or in connection with the Contract shall be subject to the exclusive jurisdiction of the Scottish Courts. In addition the Customer hereby agrees that the Company shall have the right to bring any claims, legal actions, suits or proceedings it may have against the Customer in the courts of any jurisdiction where the Customer or any of its property or assets may be found or located, and the Customer hereby irrevocably submits to the jurisdiction of any such court.