

J A MACKENZIE LIMITED T/A J A MACKENZIE LIFTING AND HAULAGE SPECIALISTS

TERMS AND CONDITIONS

By signing this document you are agreeing to the terms and conditions stated below:

All our business, of whatever nature, including lifting, transportation, installation and de-installation, is subject to the following Terms and Conditions to the extent that they do not conflict with compulsory provisions of national or international law:

“Appointed Person” means the person given the authority to assess, plan and organise the work; to select suitable or appropriate plant and equipment, to ensure statutory documentation is current and in order; to provide instruction and supervision for the work to be undertaken safely; and to stop the work whenever he considers danger is likely to arise if it were to be continued.

“Crane Supervisor” means the person who supervises the lifting operation within the safe system of work developed by the Appointed Person and has the authority to stop the operation if he deems it unsafe to continue.

“Client” means the person or organisation requiring the lift to be carried out, and includes the Client’s employees, agents, assignees, successors and personal representatives.

“Company” means J A Mackenzie Lifting and Haulage Specialists and includes its assignees, successors and personal representatives.

“Contract Equipment” means any Lifting Equipment and other equipment and accessories used or intended to be used by the Company in performing, or in connection with, the works.

“Contract Goods” means the goods which are to be lifted by the Company in accordance with these terms and conditions.

“Work(s)” may include the removal, transportation, storage and installation of goods.

“Contract Price” means the price agreed by the Company and the Client as payment for the performance by the Company of the works.

“Lifting Equipment” means equipment for lifting or lowering loads and includes its attachments used for anchoring, fixing or supporting it.

“Regulations and Codes of Practice” means the Lifting Operations and Lifting Equipment Regulations 1998 (SI 1998 No. 2307), the Provision and Use of Work Equipment Regulations 1998 (SI 1998 No. 2306), the British Standard Codes of Practice for the Safe Use of Cranes (BS 7121), as amended from time to time, and/or any other Regulations or Codes of Practice which may supersede them.

1. Quotations and Pricing

1.1 Unless otherwise specified by the Company in writing, every quotation is open for acceptance for a period of thirty days, after which the quotation will be subject to confirmation.

1.2 Unless otherwise specifically noted by the Company in writing, every quotation is based on the assumption that the following circumstances apply:

- 1.2.1 The work will be carried out under the Company's direction without interruption and on a clear site with adequate approaches suitable for the necessary movement of the Contract Equipment.
- 1.2.2 The Client is responsible for ensuring that the ground or other surface will be firm, level and in good condition, and will provide proper support for the loads imposed by the Contract Equipment as stated by the Company and also including the weight of the item(s) to be lifted as stated by the Client, unless a site visit has been requested by the client in order for the ground to be assessed.
- 1.2.3 The work(s) will be carried out in daylight during normal working hours unless otherwise agreed.
- 1.2.4 All information provided by the Client is complete, true and accurate.
- 1.2.5 Where all or any of the above circumstances do not apply, the Company may issue a revised quotation for the work(s) . If this is not accepted by the Client, who shall be liable for the costs so far incurred by the Company, the Company may elect to be discharged from the contract without further liability to the Client.
- 1.2.6 Any additional work which the Company is required to perform must be authorised by the Client in writing and may involve additional charges.
- 1.2.7 The Contract Price may be increased by the amount of any costs incurred by the Company as a result of delays or cancellations in commencing or completing the contract work due to circumstances beyond the Company's reasonable control including but not limited to inclement weather or industrial action.
- 1.2.8 No contract is created before the Company accepts a written order for the carrying out of the work(s). The commencement of the contract will be subject to availability of the requisite personnel, vehicles and equipment necessary to complete the work(s).

2. Waiting Time

- 2.1 Waiting time exceeding 30 minutes on delivery or collection may be subject to a surcharge, or may result in the delivery or collection being abandoned at the discretion of the Company.
- 2.2 Where waiting time is anticipated to be excessive, every endeavour will be made to contact the Client to resolve the matter to the Client's satisfaction and the Company will endeavour to complete any work(s) that they have been contracted to undertake. However, the Client should be aware that drivers often work to tight deadlines and the Company cannot be held responsible in the event that a contract has to be abandoned due to circumstances beyond its control.

3. Ownership

- 3.1 The Client warrants that the Client is the owner or the authorised agent of the owner of the Contract Goods and is authorised to accept and does accept these terms and conditions for services provided by the Company and its authorised personnel.

4. Sub Contractors

- 4.1 With the permission of the Client, which shall not be unreasonably withheld, the Company may arrange for the work(s), or any part of the work, to be carried out by

agents, sub-contractors or independent contractors who, for the purposes of the contract shall be regarded as the Company and whose rights against and liabilities to, the Client shall be the same as those of the Company under these contract terms and conditions.

5. Regulations and Codes of Practice

- 5.1 The Company will perform the work(s) in accordance with the relevant Regulations and Codes of Practice.
- 5.2 At the Client's request, the Company will provide the Client with any available information relevant to the qualifications and competence of the personnel provided by the Company, who, in accordance with the relevant Regulations and Codes of Practice will have overall responsibility for the work(s) provided to the Client.
- 5.3 In the absence of written notice by the Client to the contrary, received by the Company prior to the commencement of the lifting operation, the personnel appointed by the Company to carry out the work(s) shall be deemed to be to the satisfaction of the Client.
- 5.4 The Client shall supply, or confirm, in writing all information available to the Client, which is requested by the Company and/or the Appointed Person or which the Client should be reasonably aware may be necessary, or useful, to facilitate compliance with the Regulations and Codes of Practice. This includes, but is not limited to, the location of anything on or near the site, above or below the ground, which is likely to be damaged by, or cause damage to the Contract Equipment, or which is likely to affect the health or safety of any person involved in the work.

6. Liability of the Company

- 6.1 The Company shall be liable for loss or for damage or injury to persons or property when caused **solely** by the Company'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 Client or any third party.
- 6.2 Full details of any loss, damage or injury, which is or may be the subject of a claim by the Client against the Company shall be notified by the Client to the Company within seven days of the date of discovery thereof. Any proceedings to enforce any such claim by the Client against the Company must be commenced not later than twelve months after the date of occurrence of the event giving rise to the loss, damage or injury.

7. Exclusion of the Company's Liability

- 7.1 The Company shall not be liable for any loss, damage or injury caused by, or arising from or as the result of, any of the following:
 - 7.1.1. Any defect in the Contract Goods including any design defect and any defect relating to the lifting points on the contract goods.
 - 7.1.2. Inaccurate or incomplete information given by the Client.
 - 7.1.3. Any instructions given by the Client to the Company's employees.
 - 7.1.4. Any defect in the equipment provided by the Client.
 - 7.1.5. Any act or omission of any personnel supplied by the Client

- 7.1.6. Delay in commencing or completing the contract work due to circumstances beyond the Company's control including, but not limited to, any strike or other industrial action or adverse weather conditions.
 - 7.1.7. Unexpected or unforeseen subsidence or unstable ground conditions.
 - 7.1.8. Defects in the packaging of Contract Goods, or insufficient or unstable packaging, palleting or crating of goods if this has been undertaken by the Client.
- 7.2 The Company shall not be liable or responsible for any of the following, however arising:
- 7.2.1 Loss or damage of whatever nature due to or arising through any cause beyond the Company's reasonable control.
 - 7.2.2 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 Client'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
 - 7.2.3 Loss or damage to the Contract Goods whilst in storage outside the control of the Company.

8. Insurance

- 8.1 The Company will carry insurance to cover its potential liability under the contract up to a maximum of £5,000,000.00.
- 8.2 The Company may, at its discretion, exclude the contract from cover under its existing policies and require a specific insurance policy to cover the contract to be provided by and at the expense of the Client. This specific insurance policy shall provide the Company with protection no less extensive than that already held by the Company.
- 8.3 If the value of the Contract Goods exceeds the Company's liability limits referred to above, and the Client requires the Company to increase its cover, it is the responsibility of the Client to give the Company sufficient written notice of that fact with details of the value of the Contract Goods so that the Company's liability cover, if agreed by the Company, can be increased accordingly. The cost of any additional cover will be passed on to the Client.
- 8.4 The Client agrees to indemnify the Company against –
 - 8.4.1 Any claim arising from or connected with the Company's work on the site where the work(s) are to be carried out,, in preparing the site or performing the contract, including claims of nuisance and claims of trespass to persons, property, land or air space.
 - 8.4.2 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 Client is liable or for which under clause 7 the Company is not liable; and
 - 8.4.3 Any liability arising from or in connection with the contract to pay any amount in excess of the relevant limits referred to above.

- 8.5 The Client shall insure against its liability to indemnify the Company and all other liabilities of the Client under the contract.
- 8.6 If requested by the Company, the Client shall produce a copy of any insurance policy together with evidence of the premium having been paid, held by the Client and relevant to the contract.

9. Transportation of Contract Goods

- 9.1 The Company is not a common carrier.
- 9.2 If, under the contract, the Contract Goods, or any part of them, require transportation by air, sea, road or rail, the Company may either undertake the transportation or arrange for transportation by some other person or organisation.
- 9.3 In the latter event referred to in clause 9.2, unless otherwise agreed in writing by the Company, the Company's liability for the Contract Goods so transported shall be no greater than that of the person or organisation carrying out the transportation, that is, the airline, shipping company, haulage contractors or railway authority concerned, and the amount of compensation, if any, payable for loss of or damage to the Contract Goods during transportation shall be limited to the amount recoverable from that person or organisation in respect of that loss or damage.

10. Payment of Charges

- 10.1 All prices quoted are exclusive of VAT, which will be charged at the rate prevailing at the date of invoice.
- 10.2 All charges by the Company are payable **strictly thirty days net** from the date of the Company's invoice for account holders or as set out in the contract offer.
- 10.3 All charges are payable in full and the Client shall not withhold payment as retention or discount or for any reason whatsoever, regardless of any arrangements for payment to the Client by another party under any other contract.
- 10.4 The Company's policy is to enforce its right to add interest and administration costs for late payments under the Late Payment of Commercial Debts Regulations 2002 or any other subsequent Regulations that supersede them.
- 10.5 The Company shall have a general lien over any goods and equipment, or the property of the Client in the custody of the Company, for unpaid debts due and payable to the Company by the Client. The Company shall notify the Client when exercising the right of lien under this clause and if the Client fails to settle all such debts within one month of notification, the Company may sell, as agent of the Client, all or any of the items subject to the lien and apply the proceeds towards payment of the outstanding debt and the expenses of the sale together with interest accrued to that date.

11. Law of the Contract

- 11.1 If the original contract site is in England or Wales, the proper law of the contract shall be English law. If the original contract site is in Scotland, the contract shall in all respects be construed and operated as a Scottish contract, and shall be interpreted in accordance with Scottish law. If the original contract site is in Northern Ireland, the proper law of Contract shall be Northern Ireland law.