

## CRANE COMMUNICATIONS LIMITED: TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES TO BUSINESS CUSTOMERS

The Buyer's attention is in particular drawn to the provisions of condition 11.3

### 1. INTERPRETATION

- 1.1. The definitions and rules of interpretation in this condition apply in these conditions.

**Acknowledgement of Order:** has the meaning set out in condition 2.6.

**Buyer:** the person, firm or company who purchases the Goods and/or Services from the Company.

**Buyer's Equipment:** any equipment, systems, cabling or facilities provided by the Buyer and used directly or indirectly in the supply of the Services.

**Commissioning Services:** the programming, testing and commissioning of the Goods to be carried out by the Company as set out in the Order and confirmed by the Acknowledgement of Order.

**Company:** Crane Communications Limited (registered number NI014794) whose registered office is at Unit B5, Sydenham Business Park, 17 Heron Road, Belfast, County Antrim, BT3 9LE.

**Company's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Company or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which the title passes to the Buyer.

**Contract:** the contract between the Company and the Buyer for the sale and purchase of the Goods and/or Services in accordance with these conditions.

**Deliverables:** all Documents, products and materials developed by the Company or its agents, subcontractors, consultants and employees in relation to the Services in any form including computer programs, data, reports and specifications (including drafts).

**Document:** includes, without limitation, in addition to any document in writing, any drawing map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Force Majeure Event:** has the meaning set out in condition 18.

**Goods:** the goods or any part of them set out in the Order and confirmed by the Acknowledgement of Order.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**In-put Material:** all Documents, information and materials provided by the

Buyer relating to the Services including (without limitation) computer programs, data, reports and specifications.

**Installation Services:** the installation of the Goods to be carried out by the Company as set out in the Order and confirmed by the Acknowledgement of Order.

**Maintenance Services:** the maintenance services relating to the Goods to be provided by the Company as set out in the Order and confirmed by the Acknowledgement of Order.

**Order:** the Buyer's acceptance of the Company's Quotation which acceptance may be written (including by email) or verbal.

**Owner:** the owner and/or occupier of the Premises to which the Goods are to be delivered and/or upon which the Services are to be provided.

**Pre-existing Materials:** all Documents, information and materials provided by the Company relating to the Services, which existed prior to the commencement of the Contract including computer programs, data, reports and specifications.

**Premises:** the premises where the Buyer directs that the Goods are to be delivered and/or Services are to be provided, which may be the Buyer's own premises (as owners or occupiers) or another Owner's premises and which may be different premises for each delivery of Goods and provision of Services and references to **Premises** shall be construed accordingly.

**Quotation:** means the written (which may be by email) or verbal quotation for Goods and/or Services and their price provided by the Company to the Buyer, as the same may be updated prior to the Buyer's Order being confirmed.

**Services:** such Installation Services and/or Maintenance Services and/or Commissioning Services as the Company provides, or agrees to provide in writing (including by email), to the Buyer together with any other services which the Company provides, or agrees to provide, in writing (including by email) or verbally to the Buyer;

**Specification:**

(i) in relation to Goods, the specification for the Goods (including any relevant plans or drawings) that is provided by the Buyer to the Company in writing (which may be by email); and

(ii) in relation to Services (a) the description or specification for Services provided by the Company to the Buyer on the Acknowledgement of Order; and (b) where applicable, the schedule for Maintenance Services provided by the Company to the Buyer.

**VAT:** value added tax chargeable under UK or law from time to time and any similar additional tax in any jurisdiction.

- 1.2. Headings in these conditions shall not affect their interpretation.
- 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5. Words in the singular include the plural and in the plural include the singular.

## 2. **APPLICATION OF TERMS**

- 2.1. Subject to any variation under condition 2.2 the Contract shall be on these conditions to the exclusion of all other terms and conditions and no terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document supplied by the Buyer or implied by trade custom, practice, or course of dealing shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.2. These conditions apply to all the Company's sales of Goods and provision of Services and any variation to these conditions and any representations about the Goods and/or Services (as relevant) shall have no effect unless expressly agreed in writing and signed by the Managing Director of the Company.
- 2.3. The Contract consists of the entire agreement between the parties and the Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4. If the Buyer is receiving only (i) Goods or (ii) Services (or a specific category of Services) from the Company, terms which are specified to apply to (i) Services only or (ii) Goods (or another category of Services) only respectively will not apply.
- 2.5. Each Order shall be deemed to be an offer by the Buyer to buy Goods and/or Services subject to these conditions.
- 2.6. No Order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order (which may be by email), or in the case of ad-hoc call out Services a verbal acknowledgement of order, is issued by the Company (the **Acknowledgement of Order**) or (if earlier) the Company delivers the Goods or starts to provide the Services (as relevant) to the Buyer.
- 2.7. Any Quotation given by the Company shall not consist of an offer and is given on the basis that no Contract shall come into existence until the Company despatches an Acknowledgement of Order to the Buyer or (if earlier) the Company delivers the Goods or starts to provide the Services (as relevant) to the Buyer . Any Quotation is valid for a period of 60 days only from its date, provided that the Company has not previously withdrawn it.

## 3. **DESCRIPTION OF GOODS**

All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

## 4. **DELIVERY OF GOODS**

- 4.1. The Company shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Buyer's order number and account reference, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage

instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

- 4.2. The Company shall deliver the Goods to the Premises, save where the parties agree that the Buyer shall collect the Goods in which case the Buyer shall collect the Goods from the Company's premises at Unit B5, Sydenham Business Park, 17 Heron Road, Belfast, County Antrim, BT3 9LE.
- 4.3. Any dates specified by the Company, or specified by the Buyer and agreed by the Company, for delivery of the Goods are intended to be an estimate and time for delivery is not of the essence. If no dates are so specified, delivery shall be within a reasonable time.
- 4.4. Delivery of the Goods shall be completed on the Goods' arrival at the Premises, save where the parties agree that the Buyer shall collect the Goods in which case delivery shall be completed upon collection from the Company's premises.
- 4.5. Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or provision of the Services (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 120 days.
- 4.6. If, following the delivery date specified or agreed in accordance with condition 4.3, for any reason the Buyer fails to accept or take delivery of any of the Goods the Company shall then notify the Buyer of the same and that the Goods are ready for delivery. If within seven days of the Company notifying the Buyer that the Goods are ready for delivery the Buyer fails to accept or take delivery of any of the Goods, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods:
  - 4.6.1. risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence) on the date of deemed delivery pursuant to condition 4.6.2;
  - 4.6.2. the Goods shall be deemed to have been delivered at 9am on the eighth day following the day on which the Company notified the Buyer that the Goods were ready for delivery; and
  - 4.6.3. the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.7. If eight days after the Company notified the Buyer that the Goods were ready for delivery the Buyer has not accepted or taken delivery of them, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods, the Company may resell or otherwise dispose of part or all of the Goods.
- 4.8. The Buyer shall provide at the delivery point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
- 4.9. The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the

provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

- 4.10. The quantity of any consignment of Goods as recorded by the Company on the delivery note referred to at condition 4.1 shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 4.11. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 10 days of the date which the Buyer requested and the Company agreed would be the intended delivery date (or the last day of a period specified for delivery where relevant).
- 4.12. If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions for the Goods or any relevant instructions, documents, licences or authorisations.

## 5. **QUALITY OF GOODS**

- 5.1. The Company warrants that (subject to the other provisions of these conditions) on delivery, and for a period of 12 months from the date of delivery (the **Warranty Period**), the Goods shall:
  - 5.1.1. conform in all material respects with their description and any applicable Specification;
  - 5.1.2. be free from material defects in design, material and workmanship;
  - 5.1.3. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - 5.1.4. be fit for any purpose held out by the Company.
- 5.2. The Company shall not be liable for a breach of any of the warranties in condition 5.1 unless:
  - 5.2.1. the Buyer gives written notice of the defect to the Company within a reasonable period of discovery and within the Warranty Period, and, if the defect is as a result of damage in transit to the Buyer, within 30 days of the time when the Buyer discovers or ought to have discovered the defect; and
  - 5.2.2. the Company is given a reasonable opportunity after receiving the notice of examining such Goods.
- 5.3. The Company shall not be liable for a breach of any of the warranties in condition 5.1 if:
  - 5.3.1. the Buyer makes any further use of such Goods after giving such notice;
  - 5.3.2. the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation,

commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

- 5.3.3. the Buyer alters or repairs such Goods without the written consent of the Company;
  - 5.3.4. the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer; or
  - 5.3.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- 5.4. Subject to conditions 5.2 and 5.3, if any of the Goods do not conform with any of the warranties in condition 5.1 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.
- 5.5. Except as provided in this condition 5, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in condition 5.1.
- 5.6. Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the Warranty Period.

**6. RISK/TITLE**

- 6.1. The Goods are at the risk of the Buyer from the time of delivery.
- 6.2. Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.2.1. the Goods; and
  - 6.2.2. all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3. Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 6.3.1. hold the Goods on a fiduciary basis as the Company's bailee;
  - 6.3.2. notify the Company immediately if it becomes subject to any of the events listed in conditions 16.1.4 to 16.1.15 (inclusive); and
- save where the following are not possible as a result of the Goods having been resold as permitted by these conditions:
- 6.3.3. store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - 6.3.4. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.5. maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company; and

6.3.6. give the Company such information relating to the Goods as the Company may require from time to time,

but the Buyer may resell the Goods subject to the provisions of condition 6.4.

- 6.4. The Buyer may resell the Goods before ownership has passed to it on the condition that any sale shall be effected in the ordinary course of the Buyer's business at full market value.
- 6.5. Without prejudice to any other rights the Company may have under the terms of this Contract or otherwise, if before title to the Goods passes to the Buyer the Buyer encumbers or in any way charges any of the Goods or if the Buyer becomes subject to any of the events listed in conditions 16.1.4 to 16.1.15 (inclusive), or the Company reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.
- 6.6. The Buyer grants, or shall procure that there is granted to, the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.7. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.8. Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 6.9. On termination of the Contract, howsoever caused, the Company's rights contained in this condition 6 shall remain in effect.

## **7. SERVICE PROVISION – COMPANY'S OBLIGATIONS AND QUALITY**

- 7.1. Installation Services and Commissioning Services shall be provided by the Company to the Buyer on such date as the parties shall agree which may be on or following delivery of the Goods (and dates may be different for Installation Services and Commissioning Services).
- 7.2. Maintenance Services shall be provided by the Company to the Buyer on the dates specified in the Acknowledgment of Order or (where applicable) separate maintenance schedule issued by the Company to the Buyer and shall be provided during such period as is specified in the same.
- 7.3. Other Services (for example, services whereby the Company is called out to Premises by a Buyer for a specific service provision) shall be provided on such dates as the parties shall agree.
- 7.4. The Company shall use reasonable endeavours to meet any such specified or agreed performance dates but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 7.5. The Company shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Buyer, in accordance in all material respects

with the Specification.

- 7.6. The Company warrants to the Buyer that the Services will be provided using reasonable care and skill.
- 7.7. The Company 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 the Company shall notify the Buyer in any such event. If the Company requests a change to the scope of the Services for any other reason, the Buyer shall not unreasonably withhold or delay consent to it, provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Buyer at least 30 days notice of any change.
- 7.8. The Company shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at the Premises and that have been communicated to it under condition 8.1.7, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of this obligations under the Contract.
- 7.9. The Company shall not be liable for a breach of conditions 7.5 or 7.6 unless the Buyer gives written notice of the breach to the Company within a reasonable period of discovery and the Company is given a reasonable opportunity after receiving the notice of investigating the alleged breach.
- 7.10. Subject to condition 7.11, if any of the Services do not conform with condition 7.5 or 7.6 the Company shall at its option provide replacement Services or refund the price of such Services.
- 7.11. Except as provided in this condition 7, the Company shall have no liability to the Buyer in respect of the Services' failure to comply with condition 7.5 or 7.6.
- 7.12. The Company shall not be liable for any non-provision of Services (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-provision within 10 days of the date which the Buyer requested and the Company agreed would be the intended Service provision date (or the last day of a period specified for Service provision where relevant).
- 7.13. If the Company fails to provide the Services, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement Services of similar description and quality in the cheapest market available, less the price of the Services. The Company shall have no liability for any failure to provide the Services to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Company with any relevant instructions, documents, licences or authorisations.

## 8. BUYER'S OBLIGATIONS

- 8.1. The Buyer shall:
  - 8.1.1. provide to the Company, in a timely manner, such In-put Material and other information as the Company may reasonably require;
  - 8.1.2. ensure that the terms of the Order, Specification (where provided by or confirmed by the Buyer) and any In-put Material or other information or specification it provides to the Company are complete and accurate in all material respects;



- 8.1.3. co-operate with the Company in all matters relating to the Services;
  - 8.1.4. where the Premises are not owned by the Buyer or the Buyer is not otherwise in occupation of the Premises as tenant or licensee the Buyer shall procure that all necessary consents are in place from the Owner such that the Company may enter upon the Premises as is required for the delivery of the Goods and/or provision of the Services;
  - 8.1.5. provide the Company, its agents, subcontractors, consultants and employees, in a timely manner at no charge, with access to the Premises, office accommodation, data and other facilities as reasonably required by the Company, or procure that the Company, its agents, subcontractors, consultants and employees are provided with such access;
  - 8.1.6. be responsible (at its own cost) for preparing and maintaining the relevant Premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from the Premises in accordance with all applicable laws, before and during the supply of the Services at those Premises, and informing the Company of all the Buyer's obligations and actions under this condition 8.1.6;
  - 8.1.7. inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Premises and under any contract to which the Buyer is party, or terms and conditions to which the Buyer is subject, in relation to the provision of Services by it on the Premises;
  - 8.1.8. ensure that all the Buyer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom and Ireland standards or requirements (as applicable);
  - 8.1.9. obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Company's Equipment, the use of In-put Material and the use of the Buyer's Equipment in relation to the Company's Equipment insofar as such licences, consents and legislation relate to the Premises and the Buyer's business, staff and equipment, in all cases before the date on which the Services are to start; and
  - 8.1.10. keep, maintain and insure the Company's Equipment in good condition, and shall not dispose of or use the Company's Equipment other than in accordance with the Company's written instructions or authorisation.
- 8.2. If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (a **Buyer Default**):
- 8.2.1. the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Company's performance of any of its obligations;

- 8.2.2. the Company shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this condition 8.2; and
- 8.2.3. the Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer Default.

## 9. PRICE

- 9.1. Subject to condition 9.2 and unless otherwise agreed by the Company in writing (which may be by email), the price for the Goods and Services shall be the amount set out in the Order as confirmed by the Acknowledgement of Order or schedule of maintenance (where relevant).
- 9.2. The price for Services in respect of which a fixed price has not been agreed, or in respect of which it has been agreed that the price shall be on a time and materials basis as follows:
  - 9.2.1. the charge payable shall be calculated in accordance with the Company's standard hourly fee rates in force on the date on which an Order for such Services is placed (such hourly fee rates are available at the Company's website at  [- 9.4.1. review and increase its fixed prices and its standard hourly fee rates for Services, provided that if such charges will affect an existing confirmed Order the Company will give the Buyer written notice \(which may be by email\) of any such increase a minimum of 30 days before the proposed date of the increase. If such increase is not acceptable to the Buyer, it may, within 20 days of such notice being received or deemed to have been received, terminate the Contract in respect of Services by giving written notice \(which may be by email\) to the Company; and
  - 9.4.2. increase the price of the Goods, by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods](http://www.[<b>relevant web page to be confirmed</b>]</a> and on request by the Buyer);</li><li>9.2.2. the Company's standard hourly fee rates for each individual person are calculated on the basis of a seven and a half-hour day, worked between 9:00 am and 5:30 pm on weekdays (excluding public holidays); and</li><li>9.2.3. the Company shall be entitled to charge an overtime rate of 50% of the standard hourly fee rate on a pro-rata basis for each part day for any time worked by individuals whom it engages on the Services outside the hours referred to in condition 9.2.2.</li></ul></li><li>9.3. All prices quoted for the Goods and Services shall be exclusive of any VAT (which the Company shall add to its invoices at the appropriate rate), and in the case of the Services referred to in condition 9.2 shall also be exclusive of the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Company 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 the Company for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Company.</li><li>9.4. The Company reserves its right to:<ul style=)

to the Company that is due to:

- (1) any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (2) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification in respect of the Goods; or
- (3) any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Company adequate or accurate information or instructions in respect of the Goods.

9.5. In respect of a rolling contract for Maintenance Services if the price for any renewal period is to be increased from the price in respect of the prior period (save where such increase has already been specified in the Acknowledgement of Order or schedule of Maintenance Services), the Company will give the Buyer notice of such price increase and the Buyer shall have the right to terminate the Contract for Maintenance Services in accordance with clause 9.4.1. If the Buyer does not send such notice of termination the Contract will be deemed to continue at the new price.

## 10. PAYMENT

10.1. In respect of Goods, the Company shall invoice the Buyer on or at any time after completion of delivery and in respect of Services the Company shall invoice the Buyer on or at any time after completion of the relevant Service provision.

10.2. The Buyer shall pay each invoice submitted by the Company:

10.2.1. within 30 days of the day which is the last day of the month in which the invoice was issued (in accordance with the issue date as stated on the invoice); and

10.2.2. in full and in cleared funds to a bank account nominated in writing by the Company (payment may be by cheque or electronic transfer) or in cash, and

time for payment shall be of the essence of the Contract.

10.3. Where any taxable supply for VAT purposes is made under the Contract by the Company to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

10.4. No payment shall be deemed to have been received until the Company has received cleared funds.

10.5. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

10.6. Where the Buyer has contracted to provide the Goods and/or Services to another party (a **Main Contractor**), which Main Contractor may have contracted to provide the same to a further party (also a **Main Contractor**) and so on, the Buyer's payment obligation to the Company shall be satisfied

if a Main Contractor makes payment directly to the Company of the amount due in full in accordance with the terms of this condition 10, which payment is specified to be in respect of the Buyer's payment obligations.

- 10.7. The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 10.8. If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the Sterling or Euro (as applicable) base lending rate from time to time of Santander Bank accruing on a daily basis until payment is made, whether before or after any judgment and compounding quarterly.
- 10.9. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by the Company to the Buyer.

## 11. **LIMITATION OF LIABILITY**

- 11.1. Without prejudice to any specific remedies granted pursuant to any other condition and without prejudice to any other limitation on liability specified elsewhere in these conditions, the provisions of this condition 11 set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
  - 11.1.1. any breach of these conditions;
  - 11.1.2. any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods;
  - 11.1.3. any use made by the Buyer of the Services, the Deliverables or any part of them; and
  - 11.1.4. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2. Nothing in these conditions excludes or limits the liability of the Company:
  - 11.2.1. for death or personal injury caused by the Company's negligence or the negligence of its employees, agents or subcontractors; or
  - 11.2.2. under section 5(3), Consumer Protection (Northern Ireland) Order 1987; or
  - 11.2.3. for any matter which it would be illegal or unlawful for the Company to exclude or attempt to exclude its liability; or
  - 11.2.4. for fraud or fraudulent misrepresentation; or
  - 11.2.5. for any liability incurred by the Buyer as a result of any breach by the Company of the condition as to title or the warranty as to quiet possession implied by section 12 of the Sale of Goods Act 1979 section 2 of the Supply of Goods and Services Act 1982.
- 11.3. Subject to condition 11.2:

11.3.1. the Company shall not be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract; and

11.3.2. the Company's total liability to the Buyer 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 not exceed twice the total price payable by the Buyer to the Company in respect of the supply of those Goods or provision of Services in respect of which the Buyer is claiming loss.

11.4. Except as set out in these conditions all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.5. If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Buyer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention or delay.

11.6. The Buyer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Buyer in writing.

## 12. **NON-SOLICITATION**

The Buyer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services, solicit or entice away from the Company or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.

## 13. **INTELLECTUAL PROPERTY RIGHTS**

13.1. As between the Buyer and the Company, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Company. Subject to condition 13.2, the Company licenses all such rights to the Buyer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Buyer to make reasonable use of the Deliverables and the Services. If the Contract terminates, this licence shall automatically terminate.

13.2. The Buyer acknowledges that, where the Company does not own any Pre-existing Materials, the Buyer's use of rights in Pre-existing Materials is conditional on the Company obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Company to license such rights to the Buyer.

## 14. **CONFIDENTIALITY, THE COMPANY'S PROPERTY AND DATA PROTECTION**

14.1. The Buyer 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 Buyer by the Company, its employees, agents, consultants or subcontractors and any other confidential information concerning the Company's business or its products which the Buyer may obtain.

- 14.2. The Buyer may disclose such information:
  - 14.2.1. subject to condition 14.3, to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Buyer's obligations under a contract pursuant to which it has agreed to provide the Goods and/or Services to a third party in the ordinary course of its business (a **Third Party Contract**); and
  - 14.2.2. as may be required by law, court order or any governmental or regulatory authority.
- 14.3. The Buyer shall procure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 14.
- 14.4. The Buyer shall not use any such information for any purpose other than to perform its obligations under a Third Party Contract.
- 14.5. All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Buyer (including Pre-existing Materials and the Company's Equipment) shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Buyer in safe custody at its own risk and maintained and kept in good condition by the Buyer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.
- 14.6. The Buyer acknowledges and agrees that details of the Buyer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Company in connection with the Goods and Services.

## 15. **ASSIGNMENT**

- 15.1. The Buyer shall not, without the prior written consent of the Company, assign, transfer, charge, mortgage, subcontract, declare, a trust of or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15.2. The Company may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 15.3. Each party that has rights under the contract is acting on its own behalf and not for the benefit of another person.

## 16. **TERMINATION**

- 16.1. Without prejudice to any other rights or remedies which the parties may have either party may terminate the Contract with immediate effect on giving written notice to the other:
  - 16.1.1. the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven

days after being notified in writing to make such payment; or

- 16.1.2. the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- 16.1.3. the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- 16.1.4. 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) is deemed unable to pay its debts within the meaning of section 103 of the Insolvency (Northern Ireland) Order 1989 or (being a natural person) 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 242 of the Insolvency (Northern Ireland) Order 1989 or (being a partnership) has any partner to whom any of the foregoing apply; or
- 16.1.5. 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 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; or
- 16.1.6. 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 that other party other than 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; or
- 16.1.7. the other party (being an individual) is the subject of a bankruptcy petition or order; or
- 16.1.8. 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; or
- 16.1.9. a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- 16.1.10. 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; or
- 16.1.11. 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; or
- 16.1.12. 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 condition

16.1.4 to condition 16.1.11 (inclusive); or

16.1.13. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

16.1.14. there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001); or

16.1.15. 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.

16.2. Without limiting its other rights or remedies, in respect of a rolling contract for Maintenance Services either party may terminate the Contract after the initial term (as specified in the Acknowledgment of Order or schedule of Maintenance Services) has expired by providing the other party with 30 days' prior written notice (which may be by email). Unless and until terminated in accordance with this condition or any other termination right set out in these Terms, the Contract for Maintenance Services will continue on such rolling basis as is set out in the Acknowledgment of Order or schedule of Maintenance Services.

16.3. Without limiting its other rights or remedies, either party may terminate the Contract by giving the other not less than 120 days' written notice.

16.4. Without limiting its other rights or remedies, the Company shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Company if:

16.4.1. the Buyer fails to make payment of any amount due under this Contract on the due date for payment; or

16.4.2. the Buyer becomes subject to any of the events listed in Condition 16.1.4 to condition 16.1.15, or the Company reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer in writing of the same.

## 17. CONSEQUENCES OF TERMINATION

17.1. On termination of the Contract for any reason:

17.1.1. the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;

17.1.2. the Buyer shall return all of the Company's Equipment, Pre-existing Materials and Deliverables. If the Buyer fails to do so, then the Company may enter the Premises and take possession of them. Until they have been returned or repossessed, the Buyer shall be solely responsible for their safe keeping;

17.1.3. the accrued rights and liabilities 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

17.1.4. on termination of the Contract (however arising), conditions which expressly or by implication have effect after termination shall survive



and continue in full force and effect.

18. **FORCE MAJEURE**

18.1. The Company:

18.1.1. reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business; and

18.1.2. shall have no liability to the Buyer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business,

in either case due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials (each being a **Force Majeure Event**), provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

19. **GENERAL**

19.1. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

19.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

19.3. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

19.4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

19.5. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

19.6. Subject to condition 6.3.1, nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

19.7. This Contract 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 laws of Northern Ireland, and the parties submit to the exclusive jurisdiction of the courts of Northern Ireland.

## 20. COMMUNICATIONS

20.1. The parties agree that, save where these conditions specify that verbal communication is sufficient, all communications (including notices) between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or, where these terms specifically permit, sent by email as follows:

**In case of communications to the Company:**

**Marked:** "For the attention of the Managing Director"

**By post or by hand:** to the Company's registered office or such other address as the Company shall notify to the Buyer in writing

**By fax:** to +44 (0) 2890 454 961 or such other fax number as the Company shall notify to the Buyer in writing

**By email:** [crane@cranecommunications.co.uk](mailto:crane@cranecommunications.co.uk) or such other email address as the Company shall notify to the Buyer in writing

**In the case of the communications to the Buyer:**

**By post or by hand:** to the registered office of the Buyer (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as the Buyer shall notify to the Company in writing

**By fax:** to any fax number of the Buyer set out in any document which forms part of the Contract or such other fax number as the Buyer shall notify to the Company in writing

**By email:** to any e-mail address of the Buyer set out in any document which forms part of the Contract or such other email address as the Buyer shall notify to the Company in writing

20.2. Communications shall be deemed to have been received:

20.2.1. if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

20.2.2. if delivered by hand, on the day of delivery; or

20.2.3. if sent by fax or email on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

20.3. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of a fax that the fax was sent to the specified fax number of the addressee with correct answerback, and in the case of e-mail, that the e-mail was sent to the specified e-mail address of the addressee.

20.4. Verbal communications purportedly made on behalf of the Company shall not bind the Company unless made by an authorised member of the Company's staff.