

TERMS AND CONDITIONS OF BUSINESS

The Customer's attention is particularly drawn to the provisions of clause 13.

1 INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Agency Terms	The Institute of Chartered Shipbrokers Standard Trading Conditions 2007 or any updated or replacement version of the aforementioned in force at the Commencement Date.
AV Dawson	A.V. Dawson Limited incorporated and registered in England and Wales with company number 00626633 and whose registered office is at Riverside Park Road, Middlesbrough, TS2 1UT.
AV Dawson Materials	has the meaning set out in clause 9.1.10.
BIFA Terms	British International Freight Association (BIFA) Standard Trading Conditions 2017 Edition or any updated or replacement version of the aforementioned in force at the Commencement Date.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Conditions	these terms and conditions as amended from time to time in accordance with clause 17.7.
Contract	the contract between AV Dawson and the Customer for the supply of Goods and/or Services and/or the hire of Equipment and/or Personnel in accordance with these Conditions and which includes the Quotation and, where relevant in accordance with clause 2.7 below, the applicable Standard Industry Terms.
CMR Terms	the Convention on the Contract for the International Carriage of Goods by Road Regulations 1956 or any updated or replacement version of the aforementioned in force at the Commencement Date.
CPA Terms	the Construction Plant Hire Association Contract Conditions for Logistics (October 2006) or any updated or replacement version of the aforementioned in force at the Commencement Date.
Customer	the person, firm or company who purchases the Goods and/or Services and/or hires the Equipment and/or Personnel from AV Dawson.
Delivery Location	has the meaning set out in clause 4.1.
Deposit	the deposit amount in respect of the Equipment set out in the Quotation or as otherwise agreed in writing between AV Dawson and the Customer and paid in accordance with clause 10.14 (if any).

Equipment	the items of equipment the Customer is to hire from AV Dawson as set out in the Quotation and all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.
Equipment Hire Commencement Date	the date that the Customer takes Transfer of the Equipment.
Equipment Hire Payments	the payments made by or on behalf of the Customer for the hire of the Equipment as set out in the Quotation or, if no such payments are quoted, the payments set out in AV Dawson's published price list as at the Commencement Date.
Equipment Hire Period	the period of hire in respect of the Equipment as set out in the Quotation.
Force Majeure Event	has the meaning given to it in clause 16.1.
Goods	the goods (or any part of them) to be supplied by AV Dawson to the Customer as set out in the Quotation.
Goods Specification	any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and AV Dawson (if any).
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world
Personnel	the individual(s) (whether identified by name, position or otherwise) the Customer is to hire from AV Dawson as set out in the Quotation and all substitutions or replacements of such individual(s) and all related equipment and materials provided with those individuals (save for any Equipment).
Personnel Hire Commencement Date	the date that the Customer has agreed to hire the Personnel from or the date on which the Personnel is/are at the Customer's disposal from (whichever is earlier).
Personnel Hire Payments	the payments made by or on behalf of the Customer for the hire of the Personnel as set out in the Quotation or, if no such payments are quoted, the payments set out in AV Dawson's published price list as at the Commencement Date.

Personnel Hire Period	the period of hire in respect of the Personnel as set out in the Quotation.
Quotation	AV Dawson's written quotation for the supply of Goods and/or Services and/or hire of Equipment and/or Personnel provided to the Customer.
RHA Terms	Road Haulage Association Limited Conditions of Carriage 2020 or any updated or replacement version of the aforementioned in force at the Commencement Date.
Services	the services to be supplied by AV Dawson to the Customer as set out in the Quotation.
Service Specification	any description or specification for the Services that is agreed in writing by the Customer and AV Dawson (if any).
Standard Industry Terms	the Agency Terms, RHA Terms, CPA Terms, BIFA Terms, the UKWA Terms, the CMR Terms and the Terminal Terms (as applicable).
Terminal Terms	Terminal Operator's and Stevedore's Terms and Conditions issued October 2000 and revised April 2007 or any updated or replacement version of the aforementioned in force at the Commencement Date.
Transfer	the transfer of physical possession of the Equipment to the Customer.
Total Loss	the Equipment is, in AV Dawson's reasonable opinion or the opinion of its insurers, damaged beyond repair, lost, stolen, seized or confiscated.
UKWA Terms	United Kingdom Warehousing Association Contract Conditions For Logistics 2019 or any updated or replacement version of the aforementioned in force at the Commencement Date.
VAT	value added tax chargeable under the Value Added Tax Act 1994.

1.2 Construction. In these Conditions, the following rules apply:

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

2 BASIS OF CONTRACT, TERM AND STANDARD INDUSTRY TERMS

- 2.1 The Quotation constitutes an offer by AV Dawson to the Customer for the supply of the Goods and/or Services and/or hire the Equipment and/or Personnel in accordance with these Conditions. The Quotation is only valid for a period of 28 days from its date of issue, or for any alternative period explicitly stated in the Quotation, after which it will automatically expire and cease to constitute an offer. All Quotations can be withdrawn, varied and/or supplemented by AV Dawson any time before the Commencement Date.
- 2.2 The Quotation shall **only** be deemed to be accepted between the parties when (and at no time before):
- 2.2.1 the Customer signs and returns the Quotation to AV Dawson and either (i) AV Dawson confirms written acceptance of that signed Quotation to the Customer or (ii) AV Dawson does any of the things listed in clauses 2.2.3 to 2.2.6 (inclusive) below; or
 - 2.2.2 the Customer signifies its acceptance of the Quotation to AV Dawson (either verbally, in writing or otherwise) and either (i) AV Dawson confirms written acceptance of the Customer's acceptance or (ii) AV Dawson does any of the things listed in clauses 2.2.3 to 2.2.6 (inclusive) below; or
 - 2.2.3 AV Dawson commences the supply of the Services; or
 - 2.2.4 AV Dawson delivers the Goods to the Customer in accordance with these Conditions; or
 - 2.2.5 AV Dawson Transfers the Equipment; or
 - 2.2.6 AV Dawson supplies, or otherwise makes available, the Personnel to the Customer, (whichever is earlier)

at which point and on which date the Contract shall come into existence (**Commencement Date**).

- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of AV Dawson which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by AV Dawson and any descriptions of the Goods, Equipment or Personnel or illustrations or descriptions of the Services contained in AV Dawson's catalogues, brochures or in any other materials are issued or published for the sole purpose of giving an approximate idea of the Goods, Equipment, Personnel and Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 The Contract is made up of the following:
- 2.6.1 the Quotation;
 - 2.6.2 these Conditions; and
 - 2.6.3 the Standard Industry Terms (if applicable in accordance with, and subject always to, clause 2.7 below),

If there is any conflict or ambiguity between the terms of the documents listed in clause 2.6 above, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

- 2.7 Subject always to clause 2.6 above, the Standard Industry Terms will be deemed to be incorporated into, and form part of, the Contract as follows:
- 2.7.1 when AV Dawson is providing ship agency services, the Agency Terms will apply;
 - 2.7.2 when AV Dawson is hiring to the Customer any construction plant, the CPA Terms will apply;
 - 2.7.3 when any cargo or similar is being unloaded, loaded or otherwise handled by AV Dawson from/to a ship or vessel, the Terminal Terms will apply;
 - 2.7.4 when AV Dawson is providing any warehousing or storage services, the UKWA Terms will apply;

2.7.5 when AV Dawson is providing any road haulage services, the RHA Terms and/or the CMR Terms will apply (as specified to the Customer in the Quotation or otherwise in writing or, if not so specified:

2.7.5.1 the CMR Terms will apply in respect of any road haulage services that are part of a European supply chain; or

2.7.5.2 the RHA Terms shall apply in all other cases (including, without limitation, in respect of any road haulage services that are purely domestic (in that the road haulage services and the wider supply chain services relating thereto are all undertaken within the United Kingdom) or part of a non-European supply chain; and

2.7.6 when AV Dawson is providing any freight forwarding services, the BIFA Terms will apply.

2.8 In relation to the Contract, the Customer acknowledges and agrees that:

2.8.1 the lease or licence to, or the grant of any other proprietary right or interest in, any property owned, leased or licenced by AV Dawson to the Customer is not subject to the Contract but will be subject to a separate lease, licence or similar agreement agreed between AV Dawson and the Customer;

2.8.2 all lifts are subject to LOLER regulations and the appropriate Health and Safety laws and regulations;

2.8.3 all sale of Goods, supply of Services, hire of Equipment and hire of Personnel are subject to availability and in the event that any of the aforementioned are unavailable at any time, AV Dawson may terminate the Contract (or the relevant part thereof that is unavailable) with immediate effect by giving written notice to the Customer or, if the unavailability is temporary, AV Dawson may suspend performance of its relevant obligations under the Contract until such time as the Goods, Services, Equipment and/or Personnel (as applicable) become available by giving written notice to the Customer;

2.8.4 AV Dawson is not a COMAH site and therefore is limited to the volume of hazardous products it can store on site at any one time;

2.8.5 AV Dawson's standard operating hours are 08:00-17:00 Monday to Friday (excluding normal public and bank holidays in England) (**Operating Hours**) and unless otherwise agreed in the Quotation, all operations and activities to be undertaken by AV Dawson pursuant to the Contract will take place during the Operating Hours. Office opening times and standard operating hours vary by department. Our current arrangements are detailed at www.av-dawson.com/index.php/contact; and

2.8.6 all specialised lifting gear is to be provided by the shipper or will be for the shipper's account and will not be AV Dawson's responsibility or cost.

3 GOODS

3.1 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify AV Dawson against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by AV Dawson in connection with any claim made against AV Dawson for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with AV Dawson's use of the Goods Specification. This clause 3.1 shall survive termination of the Contract.

3.2 AV Dawson reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements or which do not materially affect the nature or quality of the Goods.

3.3 In the event that the Quotation specifies that the Contract for the sale of Goods is on an ongoing basis, AV Dawson shall provide the Goods from the Commencement Date (or such other date as is specified in the Quotation) until the date specified for termination of the supply of the Goods in the Quotation (or for such period as specified in the Quotation) unless the Contract is terminated earlier in accordance with its terms (**Goods Supply Period**).

4 DELIVERY OF GOODS

- 4.1 Unless otherwise agreed between the parties, AV Dawson shall make available the Goods at AV Dawson's site (**Delivery Location**) or, if expressly agreed by AV Dawson in writing, deliver the Goods to such location as the parties may agree (**Delivery Location**) at any time after AV Dawson notifies the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. AV Dawson shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide AV Dawson with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If AV Dawson fails to deliver the Goods, its liability shall be limited to the reasonable costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. AV Dawson shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide AV Dawson with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.5 If the Customer fails to accept or take delivery of the Goods when the Goods arrive at the Delivery Location or, if the Goods are being collected, the Customer fails to collect the Goods on the date specified for collection by AV Dawson, then except where such failure or delay is caused by a Force Majeure Event or by AV Dawson's failure to comply with its obligations under the Contract in respect of the Goods:
- 4.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the next Business Day following the day on which the Goods arrived at the Delivery Location or AV Dawson specified the Goods be ready for collection; and
- 4.5.2 AV Dawson shall store the Goods until delivery/collection takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If 5 Business Days after deemed delivery of the Goods in accordance with clause 4.5.1 above the Customer has not taken delivery nor collected the Goods, AV Dawson may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.7 AV Dawson may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 TITLE AND RISK IN THE GOODS

- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.2 Title to the Goods shall not pass to the Customer until AV Dawson receives payment in full (in cash or cleared funds) for the Goods and any other goods that AV Dawson has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as AV Dawson's property;
- 5.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 5.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on AV Dawson's behalf from the date of delivery;
- 5.3.4 notify AV Dawson immediately if it becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.11; and
- 5.3.5 give AV Dawson such information relating to the Goods as AV Dawson may require from time to time.

- 5.4 The Customer may not resell or use the Goods before AV Dawson receives payment for the Goods in full.
- 5.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.11, then, without limiting any other right or remedy AV Dawson may have:
 - 5.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - 5.5.2 AV Dawson may at any time:
 - 5.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - 5.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6 SUPPLY OF SERVICES

- 6.1 AV Dawson shall provide the Services to the Customer from the Commencement Date or such other date as is specified in the Quotation. In the event that the Quotation specifies that the Contract for the supply of the Services is on an ongoing basis, AV Dawson shall provide the Services from the Commencement Date (or such other date as is specified in the Quotation) until the date specified for termination of the supply of the Services in the Quotation (or for such period as specified in the Quotation) unless the Contract is terminated earlier in accordance with its terms (**Service Supply Period**).
- 6.2 AV Dawson shall provide the Services to the Customer in accordance with the Service Specification (if any) in all material respects.
- 6.3 AV Dawson shall use all reasonable endeavours to meet any performance dates, times or other timescales for the Services as agreed with or specified to the Customer, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 6.4 AV Dawson 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 AV Dawson shall notify the Customer in any such event.
- 6.5 AV Dawson warrants to the Customer that the Services will be provided using reasonable care and skill.
- 6.6 To the extent that the Services are to be provided in accordance with a Service Specification supplied by the Customer, the Customer shall indemnify AV Dawson against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by AV Dawson in connection with any claim made against AV Dawson for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with AV Dawson's compliance with the Service Specification. This clause 6.6 shall survive termination of the Contract.
- 6.7 AV Dawson reserves the right to amend the Service Specification if required by any applicable statutory or regulatory requirements.
- 6.8 When AV Dawson is supplying any ship agency services as part of the Services, the Customer acknowledges and agrees that AV Dawson is acting as the Customer's agent in providing the relevant ship agency services agreed from time to time between AV Dawson and the Customer and that AV Dawson has the authority to so act including, without limitation, enter into contracts, agreements, commitments and other arrangements on behalf of, and in the name of, the Customer as required in connection with the relevant Services.

7 EQUIPMENT HIRE

- 7.1 AV Dawson shall hire the Equipment to the Customer for the Equipment Hire Period subject to the Contract.
- 7.2 AV Dawson shall not, other than in exercise of its rights under the Contract or applicable law, interfere with the Customer's quiet possession of the Equipment.
- 7.3 The Equipment Hire Period starts on the Equipment Hire Commencement Date and shall continue for the Equipment Hire Period unless the Contract is terminated earlier in accordance with its terms.

- 7.4 Transfer of the Equipment shall be made by AV Dawson at AV Dawson's site or, if expressly agreed by AV Dawson in writing, at an alternative agreed location. AV Dawson shall use all reasonable endeavours to effect Transfer by the date and time agreed between the parties or as otherwise specified in the Quotation. The Customer shall procure that a duly authorised representative of the Customer shall be present at the Transfer of the Equipment. Acceptance of Transfer by such representative shall constitute conclusive evidence that the Customer has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by AV Dawson, the Customer's duly authorised representative shall sign a receipt confirming such acceptance.
- 7.5 To facilitate Transfer, the Customer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Transfer to be carried out safely and expeditiously.
- 7.6 The Equipment shall at all times remain the property of AV Dawson, and the Customer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the Contract).
- 7.7 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Customer on Transfer. The Equipment shall remain at the sole risk of the Customer during the Equipment Hire Period and any further term during which the Equipment is in the possession, custody or control of the Customer (**Equipment Risk Period**) until such time as the Equipment is redelivered to AV Dawson. During the Equipment Hire Period and the Equipment Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:
- 7.7.1 insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as AV Dawson may from time to time nominate in writing;
 - 7.7.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as AV Dawson may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
 - 7.7.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as AV Dawson may from time to time consider reasonably necessary and advise to the Customer.
- 7.8 All insurance policies procured by the Customer pursuant to clause 7.7 shall be endorsed to provide AV Dawson with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon AV Dawson's request name AV Dawson on the policies as a loss payee in relation to any claim relating to the Equipment. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 7.9 The Customer shall give immediate written notice to AV Dawson in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Customer's possession or use of the Equipment.
- 7.10 If the Customer fails to effect or maintain any of the insurances required under clause 7.7, AV Dawson shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
- 7.11 The Customer shall, on demand, supply copies of the relevant insurance policies referred to in clause 7.7 (or other insurance confirmation acceptable to AV Dawson) and proof of premium payment to AV Dawson to confirm the insurance arrangements.

8 HIRE OF PERSONNEL

- 8.1 AV Dawson shall hire the Personnel to the Customer for the Personnel Hire Period subject to the Contract.
- 8.2 The Personnel Hire Period starts on the Personnel Hire Commencement Date and shall continue for the Personnel Hire Period unless the Contract is terminated earlier in accordance with its terms.
- 8.3 AV Dawson shall ensure that the Personnel are made available to the Customer from the Personnel Hire Commencement Date and for the duration of the Personnel Hire Period.
- 8.4 The risk of death, personal injury or damage to the property of the Personnel shall pass to the Customer on the Personnel Hire Commencement Date and remain with the Customer for the Personnel Hire

Period and for any further period in which the Personnel is at the disposal of or otherwise under the control of the Customer (**Personnel Risk Period**) until such time as the Personnel return to being under AV Dawson's control. During the Personnel Hire Period and the Personnel Risk Period, the Customer shall, at its own expense, obtain and maintain insurance against such risks relating to the Personnel as may be required by law, together with such other insurance as AV Dawson may from time to time consider reasonably necessary and advise to the Customer.

- 8.5 All insurance policies procured by the Customer pursuant to clause 8.4 shall be endorsed to provide AV Dawson with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon AV Dawson's request name AV Dawson on the policies as a loss payee in relation to any claim relating to the Personnel. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 8.6 The Customer shall give immediate written notice to AV Dawson in the event of any death or injury to the Personnel (or any of them) or damage to any of the Personnel's property.
- 8.7 If the Customer fails to effect or maintain any of the insurances required under clause 8.4, AV Dawson shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.
- 8.8 The Customer shall, on demand, supply copies of the relevant insurance policies referred to in clause 8.4 or other insurance confirmation acceptable to AV Dawson and proof of premium payment to AV Dawson to confirm the insurance arrangements.
- 8.9 The Personnel are hired to the Customer under a contract for services and, for the avoidance of doubt, no employment relationship is established between the Personnel and the Customer under the Contract.
- 8.10 The Customer is responsible for the identification of the work to be undertaken by the Personnel and for the supervision of the Personnel during such work. It is the Customer's responsibility to provide AV Dawson with accurate and complete details of its requirements for Personnel (including number, skill set, qualifications and other relevant requirements) and AV Dawson shall use its reasonable endeavours to ensure that the Personnel hired to the Customer meet such requirements so far as is practicable.
- 8.11 All information relating to all Personnel will be retained by AV Dawson in compliance with its obligations under relevant data protection, privacy and other applicable laws and regulations. Any sharing of such information that includes personal data will be shared only the consent of the relevant Personnel. Any information regarding the Personnel that is retained by the Customer will be returned/destroyed (at AV Dawson's option) on expiry of the Personnel Hire Period.
- 8.12 Unless otherwise agreed in writing by AV Dawson, the Customer is responsible for providing the Personnel with all necessary clothing, personal protective equipment, safety equipment, training and all other materials, equipment or information as is necessary for the Personnel to carry out the work/duties required of them by the Customer.
- 8.13 Unless otherwise specified in the Quotation, AV Dawson reserves the right to replace/substitute any Personnel at any time without prior notice and without any liability on its part. In the event that the Quotation specifies a specific person or persons to be or to be included in the Personnel, AV Dawson reserves the right to replace/substitute any such specific Personnel at any time and without any liability on its part by giving written notice to the Customer if the relevant specific Personnel are unavailable due to illness, injury or otherwise or if the specific Personnel are no longer under the control of AV Dawson (for example, due to ceasing to be employed or engaged by AV Dawson).
- 8.14 The Customer agrees that it will not, on its own account or in partnership or association with any person, firm, company or organisation, or otherwise and whether directly or indirectly during, or for a period of twelve months from, the end of the term of the Contract, solicit or entice away or attempt to entice away or authorise the taking of such action by any other person, the Personnel or any other employee, worker or consultant of AV Dawson.

9 CUSTOMER'S OBLIGATIONS / RESPONSIBILITIES

- 9.1 In respect of the supply of Goods and/or Services, the Customer shall:
 - 9.1.1 ensure that the terms of the Quotation and (if submitted by the Customer) any Goods Specification and/or Service Specification are complete and accurate;

- 9.1.2 co-operate with AV Dawson in all matters relating to the Goods (including delivery thereof) and the Services;
 - 9.1.3 provide AV Dawson, its employees, agents, consultants, subcontractors and other representatives and personnel, with access to the Customer's (and any relevant third party's) premises, locations and other facilities as required by AV Dawson to provide the Services and/or delivery of the Goods;
 - 9.1.4 provide AV Dawson with such information and materials as AV Dawson may reasonably require to supply the Services and/or deliver the Goods, and ensure that such information is accurate in all material respects;
 - 9.1.5 prepare the Customer's (and any relevant third party's) premises, locations and other facilities for the supply of the Services;
 - 9.1.6 ensure that all items should be fitted with and have clearly identified suitable lifting points and lifting diagrams should be provided by the Customer to AV Dawson where appropriate (AV Dawson reserves the right to review and revise the Charges once lift plans and detailed stowage plans have been submitted);
 - 9.1.7 in respect of ship agency services only, within a reasonable period of becoming aware of the same, perform any contracts (or similar), made on its behalf by AV Dawson;
 - 9.1.8 in respect of ship agency services only, inform AV Dawson within a reasonable time if any contract concluded on its behalf by AV Dawson will not be performed by it, and of the reason for such non-performance;
 - 9.1.9 obtain and maintain all necessary licences, permissions and consents which may be required for the Services and/or the Goods (including delivery thereof); and
 - 9.1.10 keep and maintain all materials, equipment, documents and other property of AV Dawson (**AV Dawson Materials**) at the Customer's premises, locations and other facilities in safe custody at its own risk, maintain AV Dawson Materials in good condition until returned to AV Dawson, and not dispose of or use AV Dawson Materials other than in accordance with AV Dawson's written instructions or authorisation.
- 9.2 In respect of the hire of the Equipment, the Customer shall during the term of the Contract:
- 9.2.1 ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
 - 9.2.2 take such steps (including compliance with all safety and usage instructions provided by AV Dawson) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health and safety when it is being set, used, cleaned or maintained by a person at work;
 - 9.2.3 maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Equipment Hire Commencement Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
 - 9.2.4 make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of AV Dawson unless carried out to comply with any mandatory modifications required by law or any regulatory authority or unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in AV Dawson immediately upon installation;
 - 9.2.5 keep AV Dawson fully informed of all material matters relating to the Equipment;
 - 9.2.6 at all times keep the Equipment in the possession or control of the Customer and keep AV Dawson informed of its location;
 - 9.2.7 permit AV Dawson or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter any premises, locations or other facilities at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;

- 9.2.8 maintain operating and maintenance records of the Equipment and make copies of such records readily available to AV Dawson, together with such additional information as AV Dawson may reasonably require;
- 9.2.9 not, without the prior written consent of AV Dawson, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 9.2.10 not without the prior written consent of AV Dawson, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify AV Dawson against all losses, costs or expenses incurred as a result of such affixation or removal;
- 9.2.11 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of AV Dawson in the Equipment and, where the Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that AV Dawson may enter such land or building and recover the Equipment both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of AV Dawson of any rights such person may have or acquire in the Equipment and a right for AV Dawson to enter onto such land or building to remove the Equipment;
- 9.2.12 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Customer shall notify AV Dawson and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify AV Dawson on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 9.2.13 not use the Equipment for any unlawful purpose;
- 9.2.14 ensure that at all times the Equipment remains identifiable as being AV Dawson's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- 9.2.15 deliver up the Equipment at the end of the Equipment Hire Period or on earlier termination of the Contract at such address as AV Dawson requires, or if necessary allow AV Dawson or its representatives access any premises, location or other facilities where the Equipment is located for the purpose of removing the Equipment;
- 9.2.16 not do or permit to be done anything which could invalidate the insurances referred to in clause 7.7;
- 9.2.17 ensure that the terms of the Quotation are complete and accurate;
- 9.2.18 co-operate with AV Dawson in all matters;
- 9.2.19 provide AV Dawson, its employees, agents, consultants, subcontractors and other representatives and personnel, with access to the Customer's (and any relevant third party's) premises, locations and other facilities as required by AV Dawson to hire the Equipment;
- 9.2.20 prepare the Customer's (and any relevant third party's) premises, locations and other facilities for the hire of the Equipment;
- 9.2.21 provide AV Dawson with such information and materials as AV Dawson may reasonably require, and ensure that such information is accurate in all material respects;
- 9.2.22 obtain and maintain all necessary licences, permissions and consents which may be required; and
- 9.2.23 comply with all applicable laws and regulations,

and the Customer acknowledges that AV Dawson shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Customer or its officers, employees, agents, sub-contractors or other representatives, and the Customer undertakes to indemnify AV Dawson on demand against the same, and against all losses, liabilities,

claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of the Contract.

- 9.3 In respect of the hire of the Personnel, the Customer shall, during the term of the Contract:
- 9.3.1 comply with all applicable laws and regulations;
 - 9.3.2 not do or permit to be done anything which could invalidate the insurances referred to in clause 8.4;
 - 9.3.3 discharge and comply with all its obligations, duties and regulations (whether statutory or otherwise) including, without limitation, those relating to the place, nature and system of work, health and safety and working time;
 - 9.3.4 inform the Personnel of all of the Customer's policies, procedures and any other rules or obligations that are applicable to the Personnel during the Personnel Hire Period and keep the Personnel informed of all updates and amendments thereto;
 - 9.3.5 ensure that the terms of the Quotation are complete and accurate;
 - 9.3.6 co-operate with AV Dawson in all matters;
 - 9.3.7 assist AV Dawson (as reasonably required by AV Dawson) in any performance, disciplinary, grievance or other review or procedure in respect of any Personnel;
 - 9.3.8 allow AV Dawson access to the Personnel on reasonable notice for any reasonable reason including random substance testing and general update meetings;
 - 9.3.9 provide AV Dawson, its employees, agents, consultants, subcontractors and other representatives and personnel (including the Personnel), with access to the Customer's (and any relevant third party's) premises, locations and other facilities as required by AV Dawson to hire the Personnel to the Customer;
 - 9.3.10 prepare the Customer's (and any relevant third party's) premises, locations and other facilities for the hire of the Personnel;
 - 9.3.11 provide AV Dawson with such information and materials as AV Dawson may reasonably require, and ensure that such information is accurate in all material respects;
 - 9.3.12 obtain and maintain all necessary licences, permissions and consents which may be required; and
 - 9.3.13 provide AV Dawson with details of:
 - 9.3.13.1 the dates and times on which, and the location where, the Personnel are required by the Customer;
 - 9.3.13.2 the position, experience, training, qualifications, skill set and/or other requirements the Customer has in relation to the Personnel; and
 - 9.3.13.3 any other information AV Dawson reasonably requires.
- 9.4 If AV Dawson's performance of any of its obligations in respect of the Services, the Goods, the Equipment and/or the Personnel (including, without limitation, the supply, sale, hire, delivery or transfer thereof (as applicable)), is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (including, without limitation, those obligations contained in this clause 9) (**Customer Default**):
- 9.4.1 AV Dawson shall without limiting its other rights or remedies have the right to suspend performance of the Services, delivery of the Goods and/or hire of Equipment and/or Personnel until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays AV Dawson's performance of any of its obligations;
 - 9.4.2 AV Dawson shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from AV Dawson's failure or delay to perform any of its obligations as set out in this clause 9.4; and
 - 9.4.3 the Customer shall reimburse AV Dawson on written demand for any costs or losses sustained or incurred by AV Dawson arising directly or indirectly from the Customer Default.

10 CHARGES, HIRE PAYMENTS AND PAYMENT

- 10.1 The price for Goods shall be the price set out in the Quotation or, if no price is quoted, the price set out in AV Dawson's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport/delivery of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 10.2 The charges for Services shall be set out in the Quotation which shall specify if they are to be on a fixed price or on a time and/or materials basis.
- 10.3 If the charges for the Services are to be on a time and/or material basis:
- 10.3.1 the charges shall be calculated in accordance with AV Dawson's fee rates, as set out in the Quotation or, if no such fee rates are quoted, the fee rates set out in AV Dawson's published price list as at the Commencement Date;
 - 10.3.2 the charges are based the performance of the Services during the Operating Hours and any performance of Services outside of the Operating Hours will be subject to additional charges;
 - 10.3.3 AV Dawson's fee rates exclude VAT (as defined below), which AV Dawson shall add to its invoices at the appropriate rate; and
 - 10.3.4 unless otherwise set out in the Quotation, AV Dawson shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom AV Dawson engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for any cost, fee or expense charged by third parties and required by AV Dawson for the performance of the Services, and for the cost of any materials. Such expenses, materials and third-party services shall be invoiced by AV Dawson separately.
- 10.4 If the charges for the Services are to be on a fixed price basis, unless the Quotation states otherwise, any fixed price quoted excludes:
- 10.4.1 performance of the Services outside of the Operating Hours which will be subject to additional charges; and
 - 10.4.2 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom AV Dawson engages in connection with the Services, the cost of any materials and the costs, fees or expenses charged by third parties and required by AV Dawson for the supply of the Services. Such expenses, materials and third-party services shall be invoiced by AV Dawson separately.
- 10.5 In respect of Goods, unless otherwise specified in the Quotation, AV Dawson shall invoice the Customer in advance at any time before delivery of the Goods. In respect of Services, unless otherwise specified in the Quotation, AV Dawson shall invoice the Customer monthly in advance (in respect of ongoing Services) or in advance at any time before performance of the Services (in respect of one-off Services). In respect of both Goods and the Services, unless otherwise specified in the Quotation, AV Dawson shall not be obliged to deliver the Goods or commence performance of the Services until the relevant charges in respect thereof have been paid in full.
- 10.6 In respect of the hire of Equipment, the Customer shall pay the Equipment Hire Payments to AV Dawson monthly in arrears or as otherwise set out in the Quotation and AV Dawson shall be able to invoice the Customer accordingly. The Equipment Hire Payments are exclusive of all costs and charges of packaging, insurance, transport/delivery of the Equipment, which shall be paid by the Customer in addition to the Equipment Hire Payments. If the Customer is in possession, custody or control of the Equipment for any additional period of time beyond the Equipment Hire Period, the Customer shall be liable to pay AV Dawson for such additional time the price of which shall be calculated by reference to AV Dawson's standard hire charges in respect of the Equipment from time to time.
- 10.7 In respect of the hire of Personnel, the Customer shall pay the Personnel Hire Payments to AV Dawson monthly in arrears or as otherwise set out in the Quotation and AV Dawson shall be able to invoice the Customer accordingly. The Personnel Hire Payments are exclusive of the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Personnel hired to the Customer by AV Dawson and the cost of any materials and equipment used by such Personnel. Such expenses, materials and equipment shall be paid for by the Customer in addition to the Personnel Hire Payments.

If the Personnel are working for the Customer, or are otherwise at the disposal of the Customer, for any additional period of time beyond the Personnel Hire Period, the Customer shall be liable to pay AV Dawson for such additional time the price of which shall be calculated by reference to AV Dawson's standard hire charges in respect of the Personnel from time to time.

10.8 Unless otherwise set out in the Quotation, the Customer shall pay each invoice submitted by AV Dawson in Pounds Sterling (£):

10.8.1 within 30 days of the date of the invoice; and

10.8.2 in full and in cleared funds to a bank account nominated in writing by AV Dawson, and

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

10.9 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by AV Dawson to the Customer, the Customer shall, on receipt of a valid VAT invoice from AV Dawson, pay to AV Dawson such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods or hire of the Equipment at the same time as payment is due for the supply of the Services or Goods or hire of the Equipment.

10.10 If the Customer fails to make any payment due to AV Dawson under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above Royal Bank of Scotland's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

10.11 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. AV Dawson may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by AV Dawson to the Customer.

10.12 Unless specifically and expressly specified otherwise in the Quotation, the price for the Goods, the charges for the Services, the Equipment Hire Payments and/or the Personnel Hire Payments (together, the **Charges**) are valid for the period of 12 months from the date of the Quotation and AV Dawson may increase the Charges (or any of them) on an annual basis thereafter (including, without limitation, in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and/or to cover any increase in the costs to AV Dawson in respect of the Goods, Services, Equipment and/or Personnel or anything connected thereto) including any increase in National Minimum Wage, National Living Wage or similar legal or regulatory obligations on AV Dawson; and/or any increase in any taxes, levies, duties, third party costs/charges or similar payable by AV Dawson in connection with the Goods, Services, Equipment, Personnel (or anything connected thereto). AV Dawson will notify the Customer of any such increase in the Charges (or any of them) by providing at least 7 days' written notice and such increase will take effect on expiry of that notice.

10.13 AV Dawson may increase Charges (or any of them) at any time if the Charges (or any of them) are quoted as payable in any currency other than £GBP Sterling (Great British Pounds Sterling) and there is a change in the daily spot exchange rate of that currency against sterling published by the Bank of England between the date the Charges (or any of them) were provided to the Customer (whether in the Quotation or otherwise) and the date of the relevant invoice(s) for the relevant Charges (or any of them). AV Dawson will act in good faith in implementing this clause 10.13.

10.14 The Deposit (if any) is a deposit against default by the Customer of payment of any Equipment Hire Payments or any loss of or damage caused to the Equipment. Unless otherwise specified in the Quotation, the Customer shall, on the date of this agreement, pay the Deposit to AV Dawson. If the Customer fails to make any Equipment Hire Payments in accordance with the Contract or causes any loss or damage to the Equipment (in whole or in part), AV Dawson shall be entitled to apply the Deposit against such default, loss or damage. The Customer shall pay to AV Dawson any sums deducted from the Deposit within ten (10) Business Days of a demand for the same. The Deposit (or balance thereof) shall be refundable within five (5) Business Days of the end of the Equipment Hire Period.

10.15 Notwithstanding anything else contained in the Contract, unless otherwise expressly and specifically stated in the Quotation:

- 10.15.1 the cost of labour and material for lashing, dunnage and special lifting equipment is excluded from the Charges (and any price, charges, quotes or other amounts given to the Customer) and shall be chargeable by AV Dawson to the Customer in addition;
 - 10.15.2 the Charges do not include any fees, charges or expenses levied by a third party in relation to the Contract or the operations or activities provided thereunder (including, without limitation, conservancy dues on goods, conservancy ships dues and other vessel related charges) and such fees, charges and expense shall be either payable directly by the Customer to the relevant third party or, if paid by AV Dawson on the Customer's behalf or otherwise in connection with the Contract, able to be charged by AV Dawson to the Customer in addition to the Charges;
 - 10.15.3 upon the Goods arrival at the Delivery Location, unless otherwise specified in the Quotation, AV Dawson will accept a maximum period of 40 minutes to complete delivery of the Goods (in respect of AV Dawson or its third-party delivery provider). If completion of the delivery of the Goods takes longer than 40 minutes, AV Dawson reserves the right to charge additional fees and expenses to the Customer (and the Customer shall pay such additional fees and expenses) in respect of such additional delivery time;
 - 10.15.4 abnormal load costs, exclude removal / re-instatement of utilities, cables, pipes and all other street furniture, are subject to route survey;
 - 10.15.5 AV Dawson can make additional reasonable charges to the Customer for any cancellations, demurrage, waiting time and storage that results from any customer or other third-party delays, including delays in customs clearances, in connection with the Contract;
 - 10.15.6 any operations or activities to be undertaken in connection with the Contract outside of the Operating Hours will result in additional fees and charges that can be charged to the Customer by AV Dawson; and
 - 10.15.7 any Charges that include haulage, transport, handling, or other onsite logistics services on AV Dawson's, the Customer's or any third party sites or locations are based on the fuel price at the date the Charges are provided to the Customer in accordance with the monthly figures of the appropriate Fuel Index (Index) as specified by AV Dawson from time to time but, if no such Index is specified, the Index shall be the appropriate Fuel Index specified at **www.portofmiddlesbrough.com/terms-conditions**. Following the Commencement Date, AV Dawson will issue to the Customer a monthly written confirmation of any changes in fuel surcharge based on the Index and the Charges shall be revised based on that change and apply to the Contract until the next monthly written confirmation. AV Dawson shall be able to change the identity of the Index at any time by providing at least one month's written notice to the Customer of the change and the new Index shall apply from the expiry of that written notice.
- 10.16 In addition to any other right or remedy available to AV Dawson, AV Dawson shall have a general and particular lien and power of sale on and over any and all equipment, products, materials and/or goods (including the Goods) (and any associated documentation or records) belonging to the Customer and in the possession, or under the control, of AV Dawson (or any of AV Dawson's offices, employees, agents, contractors or other representatives) as security for payment of all sums and amounts (whether due or not) payable to AV Dawson under or in connection with the Contract. If any such sums and amounts remain unpaid (in full or in part) after they become due in accordance with the Contract, AV Dawson is entitled to:
- 10.16.1 retain the relevant equipment, products, materials and/or goods;
 - 10.16.2 dispose of the relevant equipment, products, materials and/or goods in such manner and at such price as AV Dawson thinks fit on the expiry of 14 days' notice to the Customer, in writing, stating the amount due from the Customer to AV Dawson and AV Dawson's intention to dispose of the relevant equipment, products, materials and/or goods unless the amount is paid in full by the expiry of the notice period.

Any notice given under this clause 10.16 in person is deemed received at the time of delivery. Any notice given under this clause 10.16 by first-class post is deemed received on the second Business Day after posting to the Customer's last known address.

AV Dawson reserves the right to charge reasonable storage costs to the Customer (and the Customer shall pay such costs on demand) in respect of the storage of any equipment, products, materials and/or goods detained under the lien contained in this clause 10.16.

10.17 AV Dawson will apply the proceeds of any disposal under clause 10.16 in the following order:

- 10.17.1 payment of disposal costs;
- 10.17.2 payment of outstanding sums and amounts charged under or in connection with the Contract;
- 10.17.3 payment of any other costs and expenses, including the cost of storage of the relevant equipment, products, materials and/or goods by AV Dawson or its contractors, agents or representatives; and
- 10.17.4 payment of any remainder to the Customer.

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Goods, the Services, the hire of the Equipment, the hire of the Personnel and/or the Contract shall be owned by AV Dawson.
- 11.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods, the Services, the Equipment and/or the Personnel the Customer's use of any such Intellectual Property Rights is conditional on AV Dawson obtaining a written licence from the relevant licensor on such terms as will entitle AV Dawson to license such rights to the Customer.
- 11.3 All AV Dawson Materials are the exclusive property of AV Dawson.

12 CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 12 shall survive termination of the Contract.

13 LIMITATION OF LIABILITY

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 13.1 Nothing in the Contract shall limit or exclude AV Dawson's liability for:
 - 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 13.1.2 fraud or fraudulent misrepresentation;
 - 13.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 13.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 13.1.5 defective products under the Consumer Protection Act 1987; or
 - 13.1.6 any breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973; or
 - 13.1.7 any other liability which cannot be excluded by law.
- 13.2 Subject to clause 13.1:

- 13.2.1 AV Dawson shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of revenue, loss of business or any indirect or consequential loss or damage arising under or in connection with the Contract ; and
- 13.2.2 AV Dawson shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss or damage arising as a result of:
 - 13.2.2.1 the Equipment where such has been operated by, or was otherwise under the control and/or supervision of, the Customer or any of its employees, agents, sub-contractors or other representatives; and
 - 13.2.2.2 the acts or omissions of Personnel where such Personnel have been acting under the control, instructions and/or supervision of the Customer or any of its employees, agents, sub-contractors or other representatives;
- 13.2.3 Unless otherwise specified in any relevant Standard Industry Terms (that apply by virtue of clause 2.7 above and which shall then, in this respect, take precedence over this clause 13.2.3), AV Dawson's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed:
 - 13.2.3.1 in respect of the supply of Goods and/or Services, the amount paid by the Customer in respect of the Services and/or Goods under the Contract;
 - 13.2.3.2 in respect of the hire of Equipment, the Equipment Hire Payments paid by the Customer under the Contract; or
 - 13.2.3.3 in respect of the hire of Personnel, the Personnel Hire Payments paid by the Customer under the Contract.
- 13.3 The Contract sets forth the full extent of AV Dawson's obligations and liabilities in respect of the Goods, Services, Equipment and Personnel and its/their hiring, sale and supply (as applicable). In particular, except as expressly stated in the Contract, AV Dawson does not give any representations, warranties or undertakings in relation to the Services, Goods, Equipment or Personnel and its/their hiring, sale and supply (as applicable). Any condition, warranty or other term concerning the Goods, Services, Equipment and Personnel and its/their hiring, sale and supply (as applicable) which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.
- 13.4 This clause 13 shall survive termination of the Contract.

14 TERMINATION

- 14.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 14.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
 - 14.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 14.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a

- scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 14.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
 - 14.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
 - 14.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 14.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - 14.1.8 the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 14.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 14.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1.2 to clause 14.1.9 (inclusive); or
 - 14.1.11 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.
- 14.2 Without limiting its other rights or remedies, AV Dawson may terminate the Contract with immediate effect by giving written notice to the Customer:
- 14.2.1 if the Customer fails to pay any amount due under the Contract on the due date for payment;
 - 14.2.2 the Customer's financial position deteriorates to such an extent that in AV Dawson's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - 14.2.3 in the event that the Customer accepts or is deemed to have accepted the Quotation under clause 2.2.1 or clause 2.2.2, in AV Dawson's absolute and sole discretion (for any reason or no reason at all) at any time before:
 - 14.2.3.1 AV Dawson commences the supply of the Services; or
 - 14.2.3.2 AV Dawson delivers the Goods to the Customer in accordance with these Conditions; or
 - 14.2.3.3 AV Dawson Transfers the Equipment; or
 - 14.2.3.4 AV Dawson supplies, or otherwise makes available, the Personnel to the Customer.
- 14.3 Without limiting its other rights or remedies, AV Dawson may suspend the supply of Services, all further deliveries of Goods and/or all existing or pending hire of Equipment and/or Personnel under the Contract or any other contract between the Customer and AV Dawson if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.11 or clause 14.2.2, or AV Dawson reasonably believes that the Customer is about to become subject to any of them.
- 14.4 On termination of the Contract for any reason:
- 14.4.1 AV Dawson's consent to the Customer's possession of the Equipment shall terminate and AV Dawson may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the Equipment and for this purpose may enter any premises, locations or other facilities at which the Equipment is located;
 - 14.4.2 AV Dawson's consent to the Customer's use of the Personnel shall terminate and the Personnel shall return to AV Dawson immediately;

- 14.4.3 the Customer shall immediately pay to AV Dawson all of AV Dawson's outstanding unpaid invoices and interest and, in respect of Services supplied, Goods delivered and/or Equipment and/or Personnel hired but for which no invoice has yet been submitted, AV Dawson shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 14.4.4 the Customer shall pay to AV Dawson, on demand, all Equipment Hire Payments and other sums due but unpaid at the date of such demand together with any interest accrued and any costs and expenses incurred by AV Dawson in recovering the Equipment and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs);
 - 14.4.5 the Customer shall pay to AV Dawson, on demand, all Personnel Hire Payments and other sums due but unpaid at the date of such demand together with any interest accrued;
 - 14.4.6 the Customer shall pay to AV Dawson, on demand, all other sums due but unpaid under or in connection with the Contract at the date of such demand together with any interest accrued;
 - 14.4.7 the Customer shall return all AV Dawson Materials which have not been fully paid for. If the Customer fails to do so, then AV Dawson may enter the Customer's premises, locations or other facilities and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - 14.4.8 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 14.4.9 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 14.5 Upon termination of the Contract, without prejudice to any other rights or remedies of AV Dawson, the Customer shall pay to AV Dawson on demand a sum equal to the whole of the Equipment Hire Payments that would (but for the termination) have been payable if the Contract had continued to the end of the Equipment Hire Period. The sums payable pursuant to this clause shall be agreed compensation for AV Dawson's loss and shall be payable in addition to any other sums payable under the Contract. Such sums may be partly or wholly recovered from any Deposit.
- 14.6 Upon termination of the Contract, without prejudice to any other rights or remedies of AV Dawson, the Customer shall pay to AV Dawson on demand a sum equal to the whole of the Personnel Hire Payments that would (but for the termination) have been payable if the Contract had continued to the end of the Personnel Hire Period. The sums payable pursuant to this clause shall be agreed compensation for AV Dawson's loss and shall be payable in addition to any other sums payable under the Contract.
- 14.7 Upon termination of the Contract, without prejudice to any other rights or remedies of AV Dawson, the Customer shall pay to AV Dawson on demand a sum equal to the whole of the Charges for the supply of Services that would (but for the termination) have been payable if the Contract had continued to the end of the Service Supply Period. The sums payable pursuant to this clause shall be agreed compensation for AV Dawson's loss and shall be payable in addition to any other sums payable under the Contract.
- 14.8 Upon termination of the Contract, without prejudice to any other rights or remedies of AV Dawson, the Customer shall pay to AV Dawson on demand a sum equal to the whole of the Charges for the sale of Goods that would (but for the termination) have been payable if the Contract had continued to the end of the Goods Supply Period. The sums payable pursuant to this clause shall be agreed compensation for AV Dawson's loss and shall be payable in addition to any other sums payable under the Contract.

15 INDEMNITY

- 15.1 The Customer shall indemnify AV Dawson against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by AV Dawson arising out of or in connection with:
- 15.1.1 the Customer's, or any of its employees, agents, sub-contractors or other representatives, breach or negligent performance or non-performance of the Contract;

- 15.1.2 the enforcement of the Contract;
- 15.1.3 any claim made against AV Dawson by a third party arising out of or in connection with the provision of the Services, supply of the Goods, hire of the Equipment or hire of the Personnel, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Customer, its employees, agents, subcontractors or other representatives;
- 15.1.4 any claim made against AV Dawson by any of the Personnel for death, personal injury or damage to property that is attributable to the acts or omissions of the Customer, its employees, agents, subcontractors or other representatives or which otherwise arises during the Personnel Hire Period and/or the Personnel Risk Period; and
- 15.1.5 any claim made against AV Dawson by the Customer or a third party arising out of or in connection with the hire of the Equipment or the hire of the Personnel, to the extent that such claim arises as a result of an event:
 - 15.1.5.1 at a time when the Equipment is/was in the possession, custody or control of the Customer, or its employees, agents, sub-contractors or other representatives, or otherwise being operated by the Customer, or its employees, agents, sub-contractors or other representatives, or under the Customer's instructions or supervision, or that of its employees, agents, sub-contractors or other representatives; and
 - 15.1.5.2 at a time when the Personnel are/were acting under the instructions and/or supervision of the Customer, or its employees, agents, sub-contractors or other representatives.

16 FORCE MAJEURE

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

17 GENERAL

17.1 Assignment and other dealings.

- 17.1.1 AV Dawson may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 17.1.2 The Customer shall not, without the prior written consent of AV Dawson, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2 Notices.

- 17.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier or e-mail.

- 17.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- 17.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

17.3 Severance.

- 17.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 17.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 17.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by AV Dawson.
- 17.8 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 17.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

18 BREXIT

- 18.1 If at any time after Brexit a Brexit Trigger Event occurs which has or is likely to have an Adverse Impact on AV Dawson, AV Dawson may:
- 18.1.1 apply additional charges for any cancellations, demurrage, waiting time, and storage that results from delays in customs clearances, and that has not been previously agreed in writing;
- 18.1.2 require the Customer to negotiate an amendment to the Contract to alleviate the Adverse Impact, in accordance with clause 18.5; and
- 18.1.3 if renegotiation fails, terminate the Contract in accordance with clause 18.6.
- 18.2 In this clause 18, **Brexit** means the United Kingdom ceasing to be a member state of the European Union, regardless of which countries comprise the United Kingdom at such date.

- 18.3 In this clause 18, a **Brexit Trigger Event** means any of the following events if caused by Brexit or any discussions, proposals, negotiations or any other steps taken by the United Kingdom government or a body in any other jurisdiction in anticipation of or related to preparation for Brexit:
- 18.3.1 a change in the law or a new requirement to comply with any existing law or existing law ceasing to apply to a party;
 - 18.3.2 in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on imports or exports or any raw materials or components used by AV Dawson;
 - 18.3.3 in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required by AV Dawson to perform the Contract;
 - 18.3.4 a change to the business or economic environment in which AV Dawson operates which is not caused by clause 18.3.1 to clause 18.3.3 above or by any fluctuation in currency exchange rates.
- 18.4 In this clause 18, an **Adverse Impact** means any one of the following:
- 18.4.1 an adverse impact on AV Dawson's ability to perform the Contract in accordance with its terms and the law; and/or
 - 18.4.2 an increase in the costs incurred by AV Dawson in performing the Contract.
- 18.5 AV Dawson may initiate a negotiation under 18.1.1. by a notice (**Brexit Notice**) giving reasonable details of the relevant Brexit Trigger Event and Adverse Impact. AV Dawson may, at any time, serve a new Brexit Notice. On delivery of a Brexit Notice:
- 18.5.1 the parties shall meet within 7 days of the date of the Brexit Notice and as reasonably necessary thereafter to discuss in good faith amendments to the Contract;
 - 18.5.2 AV Dawson shall promptly comply with all reasonable requests made by the Customer for additional information and documents relating to the Adverse Impact suffered and the Brexit Trigger Event relied on, always provided that information so disclosed shall be confidential information; and
 - 18.5.3 any amendments to the Contract shall be recorded in writing, signed by the parties.
- 18.6 If the parties fail to agree a variation in accordance with clause 18.5 within 30 days of the date of the Brexit Notice, AV Dawson may, without affecting any other right or remedy available to it, terminate the Contract by giving the Customer not less than 7 days.