TOTAL CRANE SERVICES LIMITED

TERMS OF BUSINESS

1. GENERAL

(a) In these conditions: -

(i) The "Seller" means Total Crane Services.

(ii) The "Buyer" means the person, firm or company with whom the Seller contracts.

(b) Any agreement made between the Seller and the Buyer whether for the sale of goods or for work and materials or services hereinafter called the "Contract" shall only be subject to these terms and conditions. Any representation or warranty made by or on behalf of the Seller prior to the Contract whether orally or in writing is hereby expressly excluded and shall be of no effect. No servant or agent of the Seller has any authority to vary or add to these terms and conditions except with the Sellers confirmation in writing signed by one of its directors and issued from its head office at MORRISTON, Tunstall Road, Tunstall, Sittingbourne, Kent ME10 1YQ.

(c) A Seller's quotation shall be deemed to have been withdrawn unless the Buyer accepts the same within 28 days of the quotation.

(d) If the Seller enters into a contract without the Seller having submitted a written quotation or a standard acknowledgment of order form but in circumstances when the Buyer has had prior notice of these conditions then all goods and materials supplied or work done or services rendered shall be subject to these conditions.

2. CATALOGUES

Information of any kind contained in the Seller's catalogues price lists or other advertising literature is not guaranteed to be accurate and is intended merely to represent a general picture of the Seller's products and services and shall not form part of any contract between the Seller and the Buyer. The Seller reserves the right to amend the specification of its products and services and the Buyer is advised to check the specification set out in the Seller's quotation before placing his order.

3. DESIGNS

Where goods are made or materials supplied to the Buyer's own specification, pattern or design the Buyer warrants and undertakes full responsibility not only for the suitability and fitness of the specification pattern or design thereof but also that such specification, pattern or design does not infringe any patent, trademark, registered design, copyright or any other proprietary right and shall indemnify the Seller in full for any loss damage or expense whatsoever which the Seller may incur in the performance of the Contract by reason of any infringement thereof.

4. PRICE

(a) The Seller shall be entitled to adjust the Contract price in the event of any variation in the cost to the Seller of performing the Contract caused by: -

(i) Any increase or decrease in the cost of materials, wages, manufacturing costs or other overheads.

(ii) Any reason whatsoever beyond the Seller's control.

(b) The variations in price shall be based on the appropriate formula specified any the British Electrical and Allied Manufacturers Association (B.E.A.M.A.) details of which the Seller will provide upon request.

(c) Notwithstanding the normal prices charged any the Seller for individual items the Seller's minimum invoice charge will apply to all orders.

(d) The Seller's quoted price does not include value added tax, which will be charged at the appropriate rate.

(e) Unless otherwise provided the contract price does not include the cost of carriage or of offloading which should be arranged by the Buyer at his sole risk and expense.

5. DELIVERY

(a) The Seller will use its best endeavours to complete the Contract by the date and or dates specified but shall not be responsible for any direct or consequential loss arising from late completion of the Contract resulting form delays in the delivery of goods or materials to the Seller, strikes, industrial disputes, breakdowns, accidents, force majeure or any circumstances beyond the Sellers control. Performance of the Contract will be suspended until such time as work may be resumed and the Buyer shall accept late completion thereof unless the Buyer has cancelled the Contract in accordance with paragraph 7 of these conditions.

6. PAYMENT

(a) Unless agreed in writing, payment shall be made by the Buyer net cash within 30 days of the date of the Sellers invoice. The Seller shall be entitled to interest on any amount outstanding after the due date for payment at the rate of 4% above the base rate of Nat West Plc then in force. Payment shall be due and the Seller shall be entitled to sue for the price whether or not title in the goods and materials has passed by virtue of paragraph 10 of these conditions.

(b) If the Contract is performed in instalments then each instalment shall be treated as a separate contract and construed as such in accordance with these conditions. Failure by the Buyer to make payment by the due date pursuant to any Contract or instalment thereof shall entitle the Seller to suspend performance of this Contract or any other Contract between the Seller and Buyer but without prejudice to any other right the Seller may have.

(c) Payment may not be delayed or refused for any alleged defects in goods, work or materials, which the Seller undertakes to correct under the terns of its warranty.

7. DETERMINATIONS, SUSPENSION AND CANCELLATION

(a) If the Buyer shall fail to make any payment when it becomes due or shall commit any other breach of contract and fail to remedy the same within 7 days of receiving the Seller's request in writing so to do or the Seller has bonafide doubts about the Buyers' solvency, the Seller may defer or cancel any further performance of the Contract but without prejudice to its right to any unpaid price for goods or materials delivered or cost of work done in performance of the Contract and to damages for loss suffered in consequence of such determination.

(b) If the Seller is prevented from completing the Contract either wholly or in part in accordance with the terms thereof for any reason whatsoever beyond its reasonable control then further performance of the Contract shall be suspended for the period during which the Seller is so prevented provided that if the Contract is suspended for a continuous period of more than three months then either party may give the other written notice to terminate the Contract forthwith and then the Buyer shall pay for all goods and materials supplied and work completed before termination such payment to be made on or before the last day of the month following the month during which termination was effected. The Seller shall be under no liability whatsoever to the Buyer for any direct or consequential loss or damage suffered by the Buyer as a result of the Seller's inability to perform its obligations under the Contracts in these circumstances

8. DAMAGE IN TRANSIT AND SHORT DELIVERY

(a) Subject to paragraph 8(b) of these conditions the Seller undertakes to repair or at its discretion replace any goods or materials damaged in transit as a result of faulty packaging and make up any short delivery. Time for delivery of such goods or materials shall be extended for such

period as the Seller may reasonably require. Replacement goods will be delivered to the original contracted place of delivery. The Buyer may not reject goods or materials, which are the subject of short delivery.

(b) The Seller shall only be bound by its undertaking set out in paragraph 8(a) if: -

(i) The Buyer shall have given written notice of such damage in transit or short delivery with reasonable particulars thereof to the Seller and the carrier within 3 working days of his receipt of the goods or materials in question or before leaving port of shipment (which ever is earlier).

(ii) The seller's servants and/or agents are given full and free access to the goods or materials.

(iii) If requested the Buyer ensures the goods or materials are returned to the seller's premises within 21 days of the date of notice referred to in paragraph 8(b)(1).

9. WARRANTY

(a) (i) The Seller's liability in respect of any defect in or failure of goods or materials supplied, work done or services rendered or for any loss, injury or damage attributable thereto is limited to refunding the value of the goods or materials in question or making good by replacement or repair at its option, defects or failure which under proper maintenance use or conditions of storage appear within a period of 6 calendar months after delivery or completion of the Contract or the due date for delivery or completion(when delivery or completion is delayed by the Buyer) whichever is the earlier.

(ii) The Seller shall not be bound by the warranty set out in sub-paragraph 9(a) (i) if the defect has been caused by: -

(A) carelessness, improper treatment or any wilful act or omission including inadequate lubrication or by any omission to comply with any instructions given by the Seller or

(B) any use of the goods or materials with any other goods or materials otherwise in accordance with the Seller's specification.

(iii) It shall be a condition precedent to the Seller's liability under this warranty that the defective item is immediately returned to the Seller carriage paid upon being found defective or if that is not practicable immediate notice in writing of the defect is given to the Seller and the Buyer permits the Seller's servants and/or agents to inspect the same. Thereafter the Seller shall be given a reasonable period in which to complete the necessary repair or deliver the replacement.

(iv) The Seller shall not be liable for the cost of carriage or removal of the defective item or the cost of fitting a replacement.

(v) Notwithstanding the other provisions of this warranty if the defective item was not manufactured by the Seller the Buyer shall only be entitled to the benefit in so far as they may be transferred to the Buyer of any rights, which the Seller may have against the supplier of such parts or components in respect thereof. Notwithstanding the other provisions of these conditions the Seller's liability in respect of such items shall be limited to making the benefit of such rights available to the Buyer to the extent aforesaid.

(b) The Seller's liability under this warranty shall automatically cease if: -

(i) The Buyer shall not have complied with the payment terms referred to in paragraph 6 and/or 7of these conditions.

(ii) The Seller's servants and/or agents are denied access to the defective item.

(iii) The Buyer permits others to attempt any repair or replacement of defective items or work done.

(c) The warranty set out in paragraphs 9(a) and (b) of these conditions shall be in lieu of any warranties, conditions or undertakings whether express or implied by statute, or otherwise howsoever which warranties, conditions and undertakings are (subject to section 6(i) of the Unfair Contract Terms Act (1977)) expressly included.

(d) Save for liability for death for injury arising under the Consumer protection Act 1987 (which it proved is not excluded) the Seller's obligation to refund or replace as aforesaid shall constitute the full extent of the Seller's liability in respect of any loss or damage sustained by the Buyer whether caused by any breach of the Contract or by misrepresentation or by the negligence of the Sellers its servants or agents or arising from any other cause whatsoever and the Seller shall not be liable for any consequential, economic, direct or indirect loss suffered by the Buyer arising there from.

(e) Not withstanding sub clause (d) above the Buyer shall, except where he is a person who suffers personal injury or death or loss or damage to property such as to give rise to a claim under the Consumer Protection Act 1987, indemnity the Seller against all loss, damage liability, legal fees and costs arising from any such claim made against the Seller under the Consumer Protection act1987.

(f) Notwithstanding the provisions of this warranty if the Buyer is a consumer as defined by the section 12 of the Unfair Contracts Terms Act 1977 nothing herein contained shall operate, exclude or restrict any liability for breach of such obligations as they are mentioned in Section 6 (2) of the said Act.

10. TESTS

The Seller will reasonably comply with written request to carry out tests but the Buyer shall reimburse the Seller for all costs thereby incurred. All tests shall be carried out at a location selected by the Seller. The Buyers reasonable request in written to be present or represented will be granted. The Buyer will accept goods, materials and work as satisfactory after satisfactory completion of tests.

11. INSURANCE, TITLE AND ON-SITE EQUIPMENT

(a) Until payment in full has been received for all work, goods and materials compromised in the Contract the legal and beneficial ownership of the goods and materials comprised in this Contract shall be retained by the Seller notwithstanding the risk and the same shall pass to the Buyer at the time of delivery and installation, the Buyer will then be responsible for insurance thereof.

The Buyer shall hold the goods and materials as bailer and in a fiduciary capacity for the Seller and shall at all times take proper care of the goods and materials keeping them in such a manner as they may be clearly identified as belonging to the Seller. The Buyer shall at his own expense return the goods and materials to the Seller if he receives a request to do so. The Seller may at any time enter the Buyers property to verify the Buyers compliance with these requirements or to remove the goods and materials and if necessary to remove bolts or locks or other obstructions to gain entry.

(b) Where the Sellers Equipment is used on site the Buyer shall be responsible for any loss or damage unless solely the Seller causes such loss or damage.

12. SITE WORK

(a) If the Seller is required to work on the Buyer's premises or premises of a third party then the Buyer will insure that: -

(i) The Seller's servants and agents have free and safe access to that part of the premises where the work is to be carried out.

(ii) Proper and safe facilities for goods, material, plant and equipment are provided free of charge.

(iii) All facilities and services necessary to enable the work to be carried out are provided free of charge.

(b) Any building work and the provision of services will be the Buyer's responsibility.

(c) The Buyer shall indemnity the Seller in full for any consequential or direct costs, charges, expenses, loses or damages the Seller incurs as a result of; -

(i) The Buyer's failure to comply with any or all of the provisions of paragraph 11 (a, and b) of these conditions either at all or in sufficient time to permit the Seller to perform the Contract.

(ii) Claims arising from damage or injury to persons or property unless such damage or injury shall be proved to have been caused solely by the negligence of the Seller, its agents or servants.

(d) The Buyer shall be responsible for obtaining planning and other necessary consents for any structural building work involved with the site work.
(e) The Seller will not be responsible for any statement made by its agents or servants whilst on site unless such statements are confirmed in writing by one of its directors in accordance with paragraph 1 (b) of the conditions.

13. ERRORS

The Seller reserves the right to correct any clerical or typographical errors made by its agents or servants at any time.

14. HEALTH AND SAFTEY AT WORK ACT

The attention of the Buyer is drawn to provisions of legislation and statutory regulations relating to health and safety at work. The Seller will make available on request one copy of any documents, which it may have which the Buyer reasonably requires relating to the design, construction and installation of its products to insure that as far as it is reasonably practical they are safe and without risk to health when properly used. The Buyer shall make sure such documents are made available to any person who should have knowledge thereof.

15. SEVERANCE

If at any time one or more of the provisions of these conditions becomes invalid, illegal or unenforceable in any respect under any law or is held by a Court to be invalid and enforceability of the remaining provisions of these conditions shall not in any way be effected or impaired thereby.

16. INTERPRETATION

In these conditions the neuter gender shall include the masculine and feminine and vice versa and the singular numbers shall include the plural and vice versa. The headings in these conditions are for guidance only and shall be of no material effect.

17. WAIVER

Any time or indulgence granted by the Seller of its rights in respect of any breach by the Buyer of any terns or conditions herein contained shall not be a deemed grant of time or indulgence in respect of any other matters or as waiver by the Seller of its rights in respect of any other such breach.

18. CONFIDENTIALITY

All drawings, technical documents, commercial and financial information made known in any way to the Buyer and the Seller shall remain confidential and shall not be disclosed to third parties by the Buyer under any circumstances except where specific prior agreement is given in writing by a director of the Seller in accordance with paragraph 1 (b) of the conditions.

19. JURISDICTION

These conditions and each and every contract made pursuant thereto shall be governed by and construed in all respects in accordance with the laws of England and the courts thereof hereunder shall try Wales in any dispute arising.

NOTE: THE FOLLOWING CONDITIONS RELATE ONLY TO THOSE CONTRACTS, WHICH INVOLVE THE APPLICATION OF HEAT AT ANY LOCATION OTHER THAN THE SELLER'S PREMISES

20. FIRE

(a) (i) The Seller will notify the Buyer prior to the commencement of any work at the Buyers premises or those occupied by a third party which will involve the use of gas, cutting equipment, blow lamps, electrical welding torches or any other circumstances whereby it is reasonably foreseeable that such work will increase the normal hazards of fire.

(ii) If the Seller gives the Buyer a notice referred to in sub paragraph 20 (a) (i) the provision of paragraph (b) shall apply if the Buyer does not strictly comply with such provisions at all times then:

(A) The Seller will not liable for any damage to the property of the Seller and/ or the Buyer and/ or any third party caused by fire arising during the performance of the Contract

(B) The Buyer will indemnify the Seller against the Seller's losses as well as all damages, costs, penalties, claims and other liabilities whatsoever made against it in respect of any fire, which may arise during the performance of the Contract.

(b) (i) IN THIS PARAGRAPH 20

(A) "Location" shall mean any place in which work of the type described in sub paragraph 20 (a) (i) is to be or carried out.

(B) "Vicinity" shall mean that part of the premises or adjoining premises within a radius of not less than 15 metres of the Location.

(ii) Prior to the Seller commencing work on premises occupied by the Buyer or ant third party the Buyer shall: -

(A) Appoint one of his employees at the premises (the Fire Officer) to be responsible for fire safety and for seeing that reasonable precautions against fire are taken and who shall only grant the Seller permission to commence work after all such precautions have taken place.

(B) Inform all his employees, the employees of the Seller and of any third party working on the premises of the position of the fire fighting equipment on the premises.

(C) Ensure that the Fire Officer examines all property in the Vicinity of any Location where the Seller's servants or agents may be working including where reasonably practicable the area on the other side of any wall or partition within the Vicinity to ensure that no combustible material is in danger of ignition either directly or by conducted heat.

(D) That all such combustible materials shall be removed to a distance of not less than 50 metres from any Location or where it is impractical so to do ensure that all combustible materials in the Vicinity any other area where the Seller' servants or agents may be working and exposed to the risk of fire (other than anything on which the Seller is carrying out work at the time) shall be covered and fully protected by overlapping sheets or screens of non combustible material.

(iii) During the progress of work the Buyer shall: -

(A) Ensure that the Fire Officer or other responsible person remains within the Vicinity of any Location to see that there is no outbreak of fire.

(B) Ensure that there shall be available for immediate use suitable fire fighting equipment including an adequate fire extinguisher (which shall in any event have the capacity of at least two gallons) or other equivalent means of fire extinguishments of a type suitable for any combustible material upon the site and also for the premises it may be used.

(iv) At the end of each working session the Buyer shall be responsible for ensuring that a thorough examination is made within the Vicinity of each Location including where reasonably practicable the area on the other side of any wall or partition situate within the Vicinity to ensure that no risk of fire remains.