

# STANDARD TERMS AND CONDITIONS

## ROLL-LIFT USA

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## **PREAMBLE:**

These terms and conditions are referred to below as the ROLL-LIFT USA Standard Terms and Conditions.

### **Applicability of Standard and Special Terms and Conditions**

These ROLL-LIFT USA Standard Terms and Conditions consist of (A) Standard Terms and Conditions and (B) Special Terms and Conditions. Depending on the nature of the order or activities, or any part thereof which can reasonably be regarded as independent, the Special Terms and Conditions as set out below will apply in addition to the Standard Terms and Conditions.

When Special Terms and Conditions are applicable, they will prevail over these Standard Terms and Conditions in respect of subjects or parts of subjects that conflict with the Standard Terms and Conditions. Where subjects or parts thereof dealt with in the Special Terms and Conditions do not conflict with subjects already dealt with in the Standard Terms and Conditions, the relevant provisions of the Special Terms and Conditions will always be treated as an addition to the provisions of the Standard Terms and Conditions.

If it is not apparent from the order or activities which Special Terms and Conditions are applicable, or if this cannot reasonably be ascertained, or if the Special Terms and Conditions are ineffective for any reason whatever, the Standard Terms and Conditions will always apply.

## **(A) STANDARD TERMS AND CONDITIONS**

### **1. Definitions**

- a. 'ROLL-LIFT USA Standard Terms and Conditions': this complete set of terms and conditions comprising both Standard Terms and Conditions and Special Terms and Conditions;
- b. 'Roll-Group': the group of enterprises (including Roll-Lift USA Inc.), located either in or outside the United States of America and associated directly and/or indirectly with the Roll-Lift-USA, Inc.;
- c. 'Roll-Lift': Roll-Lift USA, Inc., the enterprise that concludes or intends to conclude a Contract with a Customer;
- d. 'Customer': the party which procures or hires, or intends to procure or hire, Equipment, Personnel and/or Services from Roll-Lift;
- e. 'Customer Group': the Customer, its own customer, the enterprises associated with the Customer and/or its own customer and their own contractors and subcontractors, customers, directors and members of staff;
- f. 'Contract': the separate agreement between Roll-Lift and the Customer for the provision by Roll-Lift of Equipment, Personnel and/or Services, together with all schedules and/or amendments and/or additions thereto;
- g. 'Equipment': the equipment and/or materials which the Roll-Lift provides and/or will provide under the Contract;
- h. 'Personnel': the employees, subordinates and auxiliary persons whom the Roll-Lift provides and/or will provide under the Contract;
- i. 'Services': the services which Roll-Lift provides and/or will provide under the Contract;
- j. 'Hire': the hiring of the Equipment and/or Personnel under the Contract;
- k. 'Project': the Hire and/or the Services together;
- l. 'Project Period': the term of the Project as agreed in the Contract;
- m. 'Change Order': an order placed by the Customer with Roll-Lift for modifications and/or additions to and/or extensions of the Hire, the Services, the Project and/or the Project Period;
- n. 'Work': the construction work and/or the transport and/or other activities of the Customer for which the Customer is hiring the Equipment and/or Personnel and/or procuring the Services;
- o. 'Load': the freight, object or objects which must be transported and/or lifted and/or moved and/or stored and/or transhipped and/or salvaged in any way whatever;
- p. 'Location': the site where the Equipment will be used, where the Personnel will perform activities and/or where the Services will be provided;
- q. 'Documentation': the drawings, (technical) specifications, designs, calculations, models, prototypes and other documents provided or yet to be provided by anyone in relation to and/or in connection with the Project and/or the Work;
- r. 'Contract Price': the price for the Project as agreed under the Contract;
- s. 'Party': Roll-Lift or the Customer;
- t. 'Parties': Roll-Lift and the Customer jointly.

## **2. Applicability**

- 2.1 The ROLL-LIFT USA Standard Terms and Conditions form an integral part of each Contract between Roll-Lift and the Customer and apply to all subsequent contracts resulting from or relating to a Contract, and to all quotations, offers, letters of intent, orders, order confirmations and other documents and acts made and/or done in preparation for and/or prior to and/or in connection with a Contract.
- 2.2 Any terms and conditions, of whatever nature and howsoever called or described, which the Customer applies and/or to which the Customer refers are not applicable and are hereby expressly rejected by Roll-Lift.
- 2.3 In the event of a conflict between the ROLL-LIFT USA Standard Terms and Conditions and the provisions of the Contract, the provisions of the signed Contract will prevail.
- 2.4 The most recent version of the ROLL-LIFT USA Standard Terms and Conditions is applicable. The most recent version can be found on the website of Roll-Lift.

## **3. Offer and acceptance**

- 3.1 All quotations and offers issued or made by Roll-Lift, including any brochures, price lists and/or other documents supplied by Roll-Lift in preparation for and/or prior to the conclusion of a Contract, are without obligation.
- 3.2 Except as expressly stated otherwise, each quotation and/or offer is based on performance by Roll-Lift in normal circumstances and during normal working hours.
- 3.3 Each quotation and/or offer issued or made by Roll-Lift relates exclusively to the services, and the scope thereof, as specified in the quotation and/or the offer. Except as expressly stated otherwise, quotations and offers are exclusive of any charge for additional work.
- 3.4 A Contract will be concluded only when it is confirmed in writing by Roll-Lift or by the performance of the Services and/or Hire.
- 3.5 No amendment and/or addition to a Contract or to the ROLL-LIFT USA Standard Terms and Conditions will take effect unless it has been agreed and confirmed in writing by Roll-Lift.

## **4. Contract Price**

- 4.1 Except as expressly stated otherwise in the Contract, the Contract Price is based on performance during normal working hours on a daily and/or weekly basis and in normal circumstances and under normal working conditions as applicable in the country or state where the Equipment is used, the Personnel perform their activities and/or the Services are provided.
- 4.2 The Contract Price includes only the charge for the Hire and/or the Services as specified in the Contract.
- 4.3 The Contract Price is exclusive of GST, VAT and exclusive of all (sales) taxes, costs, penalties and/or incremental penalties levied by government and/or other authorities in respect of and/or in connection with the Contract (with the exception of corporation tax and/or other tax on income for which Roll-Lift is liable).
- 4.4 If the cost price of one or more elements of the Contract Price over which Roll-Lift has no influence rises substantially after the date of execution of the Contract, Roll-Lift will be entitled to increase the Contract Price accordingly. To qualify as substantial a price rise must be at least 5% (five per cent).
- 4.5 The provisions of this article are also applicable to the (extra) costs of modifications, additions and/or extensions, regardless of whether or not they are included in Change Orders.

## 5. Change Order

- 5.1 The Customer may submit written Change Orders to Roll-Lift for its consideration.
- 5.2 Roll-Lift shall not be obligated to execute Change Orders.
- 5.3 Roll-Lift will charge the Customer additionally for the costs of all amendments and/or additions to and/or extensions of the Contract as a consequence of an executed Change Order. Except in the case of amendments as referred to in paragraph 5.4, the costs will be calculated in accordance with the applicable unit prices. In the absence of such unit prices or if the specific unit prices are not applicable to the Change Order, the charge will be determined on a fair and reasonable basis.
- 5.4 Change Orders and/or amendments which reduce the scope of the overall Services or Hire are permitted with Roll-Lift's written approval, unless the cancelled Services and/or Hire will, at any stage, be performed by the Customer itself or by third parties. The cancellation of Services and/or Hire will be treated as a termination or, as the case may be, partial termination of the Contract and will give rise to a payment obligation as set out in paragraph 14.3.

## 6. Payment

- 6.1 Payment must be made by the Customer within the payment period specified in the Contract or, if no payment period is specified in the Contract, within 30 (thirty) days of the date of the invoice.
- 6.2 Except as otherwise agreed between the Parties, payment must be made into a bank account specified by Roll-Lift, without any deduction, set-off or withholding of any kind.
- 6.3 Payments by the Customer to Roll-Lift may never be dependent upon receipt by Customer of payments from third parties, including the Customer's own customer.
- 6.4 If the Customer has not made payment by the due date at the latest, the Customer will be in default without any notice of default being required, and will owe Roll-Lift default interest equal to 1.5% (one and a half per cent) per month on the overdue amounts or the maximum amount allowable by law, whichever is less. Such interest will accrue from the relevant due date of each past due invoice until payment.
- 6.5 In the event of payment default by the Customer, all costs and expenditure (including reasonable attorneys' fees, both in and out of court) incurred by Roll-Lift in collecting the amount due will be payable by the Customer.
- 6.6 Roll-Lift is entitled to retain property of the Customer in its possession as security for the payment of all sums due from the Customer to Roll-Lift (under the Contract) until the Customer has paid the sums due or has provided appropriate security. Roll-Lift will also have this right of retention if the Customer becomes subject to an order for winding up or files a bankruptcy petition.

## 7. Documentation and Information

- 7.1 All Documentation is and will remain the property of the Party that has supplied it to the other Party and all intellectual property rights therein are and will remain vested in the Party that has supplied the Documentation to the other Party.

- 7.2 Each Party is liable and responsible to the other Party for the accuracy, correctness and completeness of the Documentation and information supplied by it or on its behalf. Each Party may rely fully on the accuracy, correctness and completeness of the Documentation and information supplied to it by or on behalf of the other Party. Each Party indemnifies the other Party against all consequences of any inaccuracy, incorrectness and incompleteness of the Documentation and information supplied by it or on its behalf to the other Party.

If expressly provided for in the Contract and in so far as this falls within the scope of the Contractor's normal business activities and professional expertise, the Contractor will check the Documentation supplied by or on behalf of the Customer for errors, omissions and/or points that are unclear. However, the Customer is and will remain fully responsible and liable at all times for the consequences of errors, omissions and/or points that are unclear in such Documentation.

- 7.3 The Customer will guarantee the structural integrity of the Load, including the suitability of the Load for the method used during the activities. Unless explicitly agreed otherwise, Roll-Lift will not be responsible for the structural integrity of the Load or for the suitability of the Load for the method used.

- 7.4 The Customer is responsible for checking what the soil pressures will be during the activities and guarantees that the soil can withstand the requisite soil pressure. The Customer is liable for all consequences, loss, damage and/or costs that arise if it transpires that the soil is unable to withstand the soil pressure during the activities.

## 8. Performance

- 8.1 Roll-Lift may at any time arrange for all or part of the Services and/or the Hire to be performed by third parties.
- 8.2 If the said third parties are ever held non-contractually liable for the activities or services for which they have been used by the Roll-Lift, they will be entitled to invoke all provisions of the present ROLL-LIFT USA Standard Terms and Conditions concerning the exclusion or limitation of liability and concerning the governing law and jurisdiction.
- 8.3 Unless expressly agreed otherwise in the Contract, all times, time schedules and/or periods for performance by Roll-Lift specified in the Contract or a Change Order or otherwise agreed between the Parties will merely be an estimate and will not be binding on Roll-Lift.
- 8.4 If, however, a time or period is expressly agreed to be binding in the Contract:
  - a) such time or period will not start until the Customer has fulfilled all its own obligations, including payment of all amounts due, and until all other requirements and conditions have been met, and
  - b) such time or period will be suspended during any period in which the Customer fails to fulfil its obligations and any period in which any requirement or condition is not met.
- 8.5 Under no circumstances will Roll-Lift be obliged to carry out any activities or comply with any instructions and/or directions of any Party whatever if this would be unsafe and/or potentially dangerous to life or property, this being a matter to be decided by Roll-Lift at its exclusive and reasonable discretion.

## 9. General obligations of the Parties

- 9.1 Unless expressly agreed otherwise, the Customer is responsible for obtaining all permits, licenses, road closures and other approvals which are necessary for the Project, the Work and the Location and will arrange for these to be obtained.

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INTENTIONAL MISCONDUCT, OR GROSS NEGLIGENCE**

- 9.2 The Customer must ensure that the Location is properly accessible, that the Equipment can be mobilized properly and safely and that the Project, the Hire and/or the Services can start on the agreed date and can be performed without interruption or hindrance.
- 9.3 Unless expressly agreed otherwise, the Customer is responsible for providing sound hoisting, anchor, jacking and/or lashing points, which should be sufficiently strong for the performance of the Work.
- 9.4 The Customer must provide good working conditions at the Location (in particular as regards health and safety) and ensure that they are completely in accordance with the required criteria and with local regulations and requirements.
- 9.5 The Parties must comply with all laws, rules, regulations, decisions, orders and/or other requirements and instructions of government and/or other authorities.
- 9.6 The Parties will supply each other, free of charge, with all information that is reasonably necessary in connection with the performance of the Contract, including – but not limited to – relevant technical documentation.

**10. Liability**

- 10.1 In so far as Roll-Lift is or can be held liable under these ROLL- LIFT USA Standard Terms and Conditions and/or the Contract, Roll-Lift will only be liable (without prejudice to the following paragraphs of this article) for any occurrence, loss, costs or damage proximate caused directly by any act or omission on the part of Roll-Lift.
- 10.2 With the exception of the insurance excess as provided for in paragraph 10.4, the Customer will be fully liable – and Roll-Lift will under no circumstances be liable – for any occurrence, loss, costs or damage which come(s) or should come under the cover of the insurance policy or policies taken out by the Customer and/or the Customer Group as provided for in paragraph 11.2.
- 10.3 Unless expressly provided otherwise in the Special Terms and Conditions or the Contract, Roll-Lift will not be liable to Customer for any loss of profit, loss of use, loss of contracts and/or economic loss and/or for any indirect or consequential damage and/or for multiple damages and/or punitive damages. Damage or loss suffered by the Customer Group as referred to in this paragraph will be treated as damage or loss suffered by the Customer. Customer will release, hold harmless, defend, and indemnify (to the extent permitted by local law) Roll-Lift accordingly.
- 10.4 In so far as the acts or omissions of a Party result in a claim under the other Party's insurance, the former will be liable for the latter's insurance excess. The liability under this paragraph will in any event not exceed USD 25,000 (twenty-five thousand United States Dollar) per occurrence. Each Party indemnifies (to the extent permitted by local law), releases and hold harmless the other Party against all claims, costs, liabilities and damage suffered by the other Party, its Group and insurers which exceed the above-mentioned liability limit.
- 10.5 The total aggregate liability of the Roll-Lift Group will be limited to the Contract Price. The Customer will defend, indemnify (to the extent permitted by local law), release, and hold harmless Roll-Lift and its subcontractors against all claims, costs, liabilities and so forth of the Customer Group which exceed the above-mentioned liability limit.
- 10.6 Under no circumstances will Roll-Lift be liable for any loss, costs or damage suffered as a consequence of delay in performance by Roll-Lift.
- 10.7 **THE CUSTOMER WILL INDEMNIFY (TO THE FULLEST EXTENT PERMITTED BY LOCAL LAW), RELEASE, DEFEND AND HOLD HARMLESS ROLL-LIFT AND ITS PERSONNEL AND SUBCONTRACTORS AGAINST AND IN RESPECT OF ALL CLAIMS, DEMANDS, ACTIONS AND PROCEEDINGS WHICH ARE MADE AND/OR INSTITUTED AGAINST ROLL-LIFT AND/OR ITS PERSONNEL AND/OR ROLL-LIFT'S SUBCONTRACTORS IN RESPECT OF ANY OCCURRENCE, LOSS, COSTS, PENALTIES OR DAMAGES ARISING FROM**

**11. Insurance**

- 11.1 During the term of the Contract Roll-Lift may take out and maintain liability insurance providing cover of USD 5.000,000 (five million United States Dollar ) per occurrence for property damage and personal injury proximate caused by any act or omission on the part of Roll-Lift. A claim under this insurance may be made only if the Contractor is liable under these ROLL-LIFT USA Standard Terms and Conditions and/or the Contract.
  - 11.2 The Customer shall take out and maintain – or arrange for a member of the Customer Group to take out and maintain – primary transport (Cargo/Load), CAR (Construction All Risks), EAR (Erection All Risks) or comparable insurance during the term of the Contract, the Project, the Services, the Hire and the Work, which provides at least adequate cover in respect of loss of equipment and/or property damage and/or personal injury caused to or by the Load and/or the Work. The insurance should provide cover at the Location and during transport. Roll-Lift shall be named as an additional named insured under the policies described herein.
  - 11.3 The Parties must also take out all compulsory insurance as required by law.
  - 11.4 The insurance referred to in paragraph 11.1 will in all cases be deemed to be the primary insurance in relation to the policies taken out by Roll-Lift and its subcontractors. The insurance referred to in paragraph 11.2 will provide that the insurers waive any right of subrogation against Roll-Lift, Roll-Lift Group, its subcontractors and its employees and subordinates. Roll-Lift will be named as co-insured in the policy or on the certificates.
  - 11.5 Customer will, on request, supply the Roll-Lift with a certificate and/or proper proof of the existence of the insurance policy or policies in accordance with the provisions of this article 11.
- 12. Force majeure**
- 12.1 'Force majeure' means any circumstances, conditions and/or occurrences which are beyond the control of either Party, are not attributable to the fault or negligence of either Party and cannot be avoided or prevented by taking reasonable measures, and which temporarily or permanently prevent the performance of any obligation (with the exception of payment obligations) under the Contract, such as trade union strikes, mutiny, quarantine, epidemics, war (whether declared or undeclared), acts of terrorism, blockades, embargos, riots, demonstrations, civil commotion or disorder, fire, storm and/or other extreme weather conditions and/or other acts of nature, provided that neither Party has caused or contributed to such occurrences.
  - 12.2 If the performance of obligations under the Contract is temporarily prevented by force majeure, the performance of those obligations (with the exception of payment obligations) will merely be postponed and the force majeure will not constitute a reason for failing to perform the Contract.
  - 12.3 If the performance of obligations under the Contract is permanently prevented by force majeure – or is temporarily prevented for a period that is expected to last at least 60 (sixty) days – each Party will have the right to terminate the Contract in accordance with the provisions of paragraph 14.2 of these Standard Terms and Conditions.

### 13. Delay and Suspension

- 13.1 Roll-Lift may temporarily suspend its performance in whole or in part if the Customer has failed to fulfil one or more of its obligations or has ceased to fulfil one or more of its obligations, including payment of any amount due, and/or if the Customer is in default in some other way, without any prior announcement or notice of default being necessary.
- 13.2 If the start and/or continuation of the Project, the Services and/or the Hire or the return of the Equipment to Roll-Lift is delayed and/or suspended as a result of one or more circumstances not caused by Roll-Lift (including unworkable weather conditions, but excluding force majeure situations as referred to in article 12), the Customer must reimburse Roll-Lift for the direct internal and external costs incurred as a consequence of the delay, which will be charged additionally. The costs incurred for the Equipment and Personnel will be calculated on the basis of the applicable unit prices. In the absence of such unit prices the charge will be determined on a fair and reasonable basis.
- 13.3 If the start and/or continuation of the Services and/or the Hire is delayed and/or suspended as a result of one or more circumstances caused by Roll-Lift, Roll-Lift will not be liable for any loss, costs or damage unless liquidated damages have been agreed in the Contract. The liquidated damages will be the sole (financial) remedy available to the Customer and the only obligation of the Contractor if the start and/or continuation of the Services and/or the Hire is delayed and/or suspended as a consequence of one or more circumstances caused by the Contractor. Liquidated Damages shall in no event be considered damage or loss as per clause 10.3.
- 13.4 Unless a different percentage has been expressly agreed in writing in the Contract, the total liquidated damages will never exceed 10% (ten per cent) of the Contract Price.

### 14. Cancellation and termination

- 14.1 Each Party will be entitled to cancel and/or terminate the Contract with immediate effect, without recourse to the courts or arbitrators and without being obliged to pay any compensation to the other Party, in each of the following circumstances:
- a) in the cases and circumstances referred to in paragraph 13.1, after the Party in default has been given notice to remedy the default and 10 (ten) working days have passed without the default having been remedied (and therefore without the notice to remedy/notice of default having been complied with);
  - b) if the (majority) control of the business of the other Party is directly or indirectly transferred to a third party;
  - c) if the other Party is declared bankrupt, applies for or obtains (provisional) court protection from creditors (moratorium) or otherwise loses the unfettered control of its business or assets, without any prior notice being necessary.
- 14.2 Both Roll-Lift and the Customer are entitled to terminate all or part of the Contract, subject to 10 (ten) working days' notice, in the event of a circumstance or fact that constitutes force majeure as provided for in article 12 and if the performance of the Contract is permanently impossible or is temporarily impossible for a period that is expected to last at least 60 (sixty) days. Notice of termination of this kind may be given only after the relevant circumstance constituting force majeure has lasted for at least 30 (thirty) consecutive days.
- 14.3 The Customer will also be entitled to terminate all or part of the Contract for reasons other than those referred to in paragraphs 14.1 and 14.2. If it terminates the Contract for reasons other than those referred to in paragraphs 14.1 and 14.2, the Customer must pay:
- a) for the Services, the Hire and activities that have been performed until the date of termination, including (but not limited to) the costs of engineering and other costs incurred before the date of termination; and
  - b) all costs which Roll-Lift must incur as a consequence of the termination, including (but not limited to) demobilisation costs and costs and/or penalties which Roll-Lift must pay to third parties; and
  - c) an amount equal to 50% (fifty per cent) of the contract value of the activities that have been terminated and not performed.

### 15. Warranty and Complaints

- 15.1 Roll-Lift undertakes to deliver, perform and complete entirely in accordance with the Contract and these ROLL-LIFT USA Standard Terms and Conditions.
- 15.2 Roll-Lift will comply with all rules, schemes, regulations and measures relating to health, safety, the environment and working conditions.
- 15.3 Unless expressly agreed otherwise in writing in the Contract, no warranty period will apply to the Services after their performance.
- 15.4 Complaints relating to the Services provided by Roll-Lift and/or the performance by Roll-Lift must be submitted in writing by the Customer to Roll-Lift immediately after the provision of the relevant Service or after the relevant performance, failing which no complaint will be deemed to exist and the Customer will be deemed to have approved the full and proper performance by Roll-Lift.

### 16. Prescription and lapse

- 16.1 All claims under the Contract will lapse upon the expiry of 24 (twenty four) months.
- 16.2 Each claim against Roll-Lift will lapse upon the expiry of 24 (twenty-four) months.

### 17. Governing law and Jurisdiction

- 17.1 All contracts to which these terms and conditions apply and all subsequent contracts resulting therefrom, including any disputes relating to the existence, validity and/or termination thereof, will be governed exclusively by and construed in accordance with the laws of the Texas.
- 17.2 The parties to this Contract acknowledge the Contract shall be performable in Liberty County, Texas. For all disputes arising in connection with the Contract or subsequent contracts resulting therefrom, including disputes relating to the existence, validity and/or termination thereof, the parties irrevocably submit to the jurisdiction of the State District Courts or Federal District Court sitting in Liberty County Texas to the exclusion of other courts.

### 18. Miscellaneous

- 18.1 Except as expressly agreed otherwise in writing or provided in these ROLL-LIFT USA Standard Terms and Conditions, the Parties are not entitled to assign one or more of their rights and/or obligations under the Contract to a third party.
- 18.2 The headings of the articles of these ROLL-LIFT USA Standard Terms and Conditions are for convenience only and do not affect the interpretation of the relevant provisions.
- 18.3 In the event of any conflict among the provisions of these Terms and Conditions and any other contract or agreement between Customer and Roll-Lift, the terms of these Terms and Conditions will control.
- 18.4 If any provision or any part of the Contract or of these ROLL-LIFT USA Standard Terms and Conditions is void or unenforceable for any reason whatever, the voidness or unenforceability will be limited to that provision and will have no further effect. Any such void or unenforceable parts of the Contract or these ROLL-LIFT USA Standard Terms and Conditions will be replaced (or deemed to have been replaced) by provisions which are neither void nor unenforceable and which differ as little as possible from the void and/or unenforceable provisions, taking into account the intentions of the Contract, the ROLL-LIFT USA Standard Terms and Conditions and the relevant provisions.

**(B) SPECIAL TERMS AND CONDITIONS:****I HIRE OF EQUIPMENT AND/OR PERSONNEL****Applicability**

These 'Special Terms and Conditions I' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if Equipment and/or Personnel will be made available to the Customer and if instructions are given to carry out work which will be charged on the basis of unit prices (cost-plus work). In the event of a conflict between these Special Terms and Conditions I and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions I will prevail with respect to the activities referred to above.

**1. Equipment**

- 1.1 The Equipment may only be used at the Location and only in accordance with the specifications and within the Equipment's capacity limits. No other use is permitted.
- 1.2 The Customer acknowledges that the Equipment is and will at all times remain the property of Roll-Lift and/or Roll-Lift Group and/or Roll-Lift's suppliers and/or Roll-Lift's subcontractor(s).
- 1.3 Except as provided otherwise in the Contract, the Equipment will be mobilized and demobilized by the Roll-Lift at the Customer's expense.
- 1.4 When it is delivered, the Equipment will function properly, be well maintained, in good working order and free from defects. Customer acknowledges that the Customer has inspected the Equipment prior to taking possession thereof, finds it in good working order and repair, and suitable for Customer's needs.
- 1.5 The Customer is obliged to inspect the state and condition of the Equipment upon delivery. If the Equipment does not meet the requirements set out in paragraph 1.4, the Customer must inform Roll-Lift accordingly in writing immediately upon receipt of the Equipment, failing which the Customer will be deemed to have received the Equipment in the state and condition described in paragraph 1.4.
- 1.6 The Customer may not hire out or sublet the Equipment and/or grant any rights of any nature in respect of the Equipment to any party.
- 1.7 The Customer must take good care of the Equipment and use the Equipment with due care. The Customer is responsible and liable to Roll-Lift for all defects and/or damage caused to the Equipment during the Hire and the Project Period. The Contract Price is based on normal usage based on an 8 hour day, 40 hours per week, and 160 hours per 4 week period. If Customer exceeds the normal usage times set forth herein Customer shall pay for the excess hours at a rate of 1.5 times the hourly rate set out in the Contract Price.
- 1.8 Roll-Lift reserves the right to replace the Equipment with equivalent Equipment.
- 1.9 Roll-Lift will perform repairs and maintenance of the Equipment where necessary during the Project Period arising from normal wear and tear. The Customer is not permitted to carry out repairs and/or maintenance itself without Roll-Lift's express written consent. If repairs and/or maintenance are necessitated by acts, omissions or improper use by or on behalf of the Customer, the costs associated with such repairs and/or maintenance, including (without limitation) the costs of labor, materials, transport and travelling expenses, shall be payable by the Customer immediately. In addition to the costs of repair Customer shall also pay Roll-Lift's indirect and consequential damages arising from Customer's damage to Roll-Lift's equipment including but not limited to damages for loss of use, delay damages, replacement of Equipment, rental charges for the time period covering when the Equipment is unavailable for lease because of repairs, and lost profits.
- 1.10 The Equipment must be returned clean, undamaged and in the same state and condition as it was when received.

**1.11 THE CUSTOMER WILL INDEMNIFY (TO THE EXTENT PERMITTED BY LOCAL LAW), RELEASE, DEFEND AND HOLD HARMLESS ROLL-LIFT AND ITS PERSONNEL AND SUBCONTRACTORS AGAINST AND IN RESPECT OF ALL CLAIMS, DEMANDS, ACTIONS AND PROCEEDINGS WHICH ARE MADE AND/OR INSTITUTED AGAINST ROLL-LIFT AND/OR ITS PERSONNEL AND/OR THE ROLL-LIFT'S SUBCONTRACTORS OF ANY OCCURRENCE, LOSS, COSTS, PENALTIES OR DAMAGE RESULTING FROM THE OPERATION, USE AND POSSESSION OF THE EQUIPMENT BY CUSTOMER WHICH ARISES FROM CUSTOMER'S NEGLIGENT ACTS OR OMISSIONS, INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE.**

**2. Personnel**

- 2.1 If the Contract also provides for the provision of Personnel, Roll-Lift must ensure that the Personnel in question have the expertise, qualifications and skills specified in the applicable legislation and, where applicable, in the Contract, and that they are fully qualified to perform the work as set out in the Contract.
  - 2.2 If the Customer provides personnel to operate the Equipment, the Customer must ensure that the personnel it assigns and/or hires to operate the Equipment has all the expertise, qualifications and skills required to perform the work with the Equipment. The Customer is fully responsible for the Personnel it assigns to operate the Equipment.
  - 2.3 The Customer will be fully responsible and liable for and fully indemnifies (to the extent permitted by local law) and releases Roll-Lift against any consequences, loss, costs and damage (with the exception of any loss and/or damage referred to in Article 10.3 of the Standard Terms and Conditions) arising from any act or omission on the part of the Personnel, except in the case of intentional acts by Personnel designed to cause the damage, costs and/or loss.
  - 2.4 The Personnel are deemed to be 'borrowed servants'. The Personnel will perform the work under the supervision, on the instructions and under the control of the Customer and in the Customer's name.
  - 2.5 The Customer will be fully responsible for and provide a safe working environment for the Personnel and ensure that (health and safety at work) legislation is complied with during the Project and/or Hire. The Customer will release, indemnify, defend and hold harmless Roll-Lift against and in respect of all claims, demands, actions and proceedings which are made and/or instituted against Roll-Lift and/or Personnel and/or Roll-Lift's subcontractors in respect of any occurrence, loss, costs, penalties or damage for which the Customer is liable under this Article.
  - 2.6 The Customer will comply with all rules, schemes, regulations and measures relating to health, safety, the environment and working conditions.
- 3. Performance**
- 3.1 Roll-Lift will not perform any work or Services and/or provide any Equipment and/or Personnel other than as specified in the Contract or subsequently agreed in writing by the Parties.
  - 3.2 Except as provided otherwise in the Contract, the Customer is responsible for obtaining all permits, licenses and other approvals which are required for the performance of the work with the Equipment and/or the use of Personnel, and will arrange for these to be obtained.
  - 3.3 Roll-Lift is entitled to inspect the Equipment at any time. The Customer is required to give Roll-Lift its full cooperation for that purpose at Roll-Lift's request.

**4. Minimum charge**

- 4.1 If the Contract is terminated as set out in paragraphs 14.2 and 14.3 of the Standard Terms and Conditions, or if a Change Order is given as set out in paragraph 5.4 of the Standard Terms and Conditions, the Customer will be required to make the payments referred to in paragraph 14.3 of the Standard Terms and Conditions, with the proviso that the minimum amount payable will be the charge for the minimum period specified in the Contract.
- 4.2 If the Equipment cannot be used for a period that is expected to last at least 60 (sixty) days and if the impossibility to use the Equipment is not due to the use, abuse or improper use of the Equipment by, under the supervision of or on behalf of the Customer and if the Equipment cannot be replaced within a reasonable time, the Customer will be entitled, in derogation from paragraph 14.1(a) of the Standard Terms and Conditions, to terminate the Hire of the Equipment in question after Roll-Lift has been given notice to remedy the default and 20 (twenty) working days have passed without the default having been remedied. The Customer will not be required to pay any rental charges for the Equipment during any period in which the Equipment cannot be used under the circumstances described in this paragraph 4.2.

## **(B) SPECIAL TERMS AND CONDITIONS:**

### **II TRANSPORT**

#### **Applicability**

These 'Special Terms and Conditions II' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if Roll-Lift undertakes transport. In the event of a conflict between these Special Terms and Conditions II and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions II will prevail with respect to the activities referred to above.

#### **A. TRANSPORT**

##### **1. Roll-Lift's obligations**

- 1.1 Roll-Lift is obliged to take receipt of the Load at the agreed place and time and in the agreed manner and to advise the Customer of the vehicle's carrying capacity, except where the Customer may be deemed to be aware thereof.
- 1.2 Roll-Lift is obliged to deliver the Load received for transport to its destination in the same state and condition in which the Roll-Lift received it.
- 1.3 Roll-Lift is obliged to deliver the Load received for transport to its destination within a reasonable time.
- 1.4 If Roll-Lift does not meet the obligation set forth in paragraph 1, either Party may terminate the Contract with respect to the Load of which Roll-Lift has not taken receipt. However, the Customer may do so only after it has notified Roll-Lift in writing of a final deadline for fulfilling this obligation and if Roll-Lift has not met its obligation on expiry of that deadline. Notice of termination must be given in writing by registered letter to the other Party and the Contract will end at the time of receipt of such notice. After the termination, Roll-Lift is required to compensate the Customer for the loss suffered as a result of the termination, with the proviso that such compensation will not exceed the charge or price for the transport in question.
- 1.5 If and in so far as circumstances permit, Roll-Lift is required to inspect the correct loading and stowage by or on behalf of the Customer and to ensure that there is no overloading. Such inspection by Roll-Lift shall not relieve the Customer of its duty to accurately inform Roll-Lift of the load's characteristics and transportation requirements.

##### **2. Roll-Lift's liability**

- 2.1 Under no circumstances will Roll-Lift be liable for any loss, costs or damage suffered as a consequence of delay in performance by Roll-Lift.

##### **3. Special risks**

- 3.1 If Roll-Lift has failed to meet the obligations upon it by virtue of paragraphs 1.2 and 1.3, Roll-Lift will nevertheless not be liable for any loss or damage this causes, without prejudice to article 2, to the extent that such failure is the consequence of the special risks inherent in any of the following circumstances:
  - a) transport of the Load in an open vehicle if this has been expressly agreed;
  - b) lack or deficiency of packaging of the Load where the Load should have been properly packed in view of its nature or the transport method;
  - c) handling, loading, stowage or unloading of the Load by the Customer, the addressee or persons acting on behalf of the Customer or the addressee;
  - d) the nature of the Load itself, where the Load is prone to full or partial loss or damage due to causes related to that nature, in particular as a result of combustion, explosion, melting, breakage, fracture, corrosion, decay, dehydration, desiccation, leakage, normal loss of quality or the actions of vermin or rodents;

- e) heat, cold, changes in temperature or humidity, but only if it has not been agreed that the transport will be undertaken with a vehicle that is specifically equipped to protect the Load from these influences;
- f) incomplete or insufficient addressing, numbering, lettering or marking of the packages;
- g) transport of live animals.

#### **4. Compensation**

- 4.1 Without prejudice to the provisions of paragraph 10.5 of the Standard Terms and Conditions, the compensation payable by Roll-Lift for its failure to meet the obligation upon it by virtue of paragraph 1.2 will be limited to USD 2 (two United States Dollar) per kilogram, subject to a maximum of an amount equal to the insurance excess referred to in paragraph 11.2 of the Standard Terms and Conditions. Roll-Lift is not liable for any loss or damage other than that proximate caused by loss of and/or damage to the Load, including the damage referred to in paragraph 10.3 of the Standard Terms and Conditions.

#### **5. Indemnity and Hold Harmless Clause**

- 5.1 If the Customer fails to meet any of the obligations imposed on it by law or the ROLL-LIFT USA Standard Terms and Conditions, the Customer is obliged to indemnify (to the extent permitted by law), release, defend, and hold harmless Roll-Lift against any loss or damage suffered by Roll-Lift as a result of such failure should Roll-Lift be held liable by a third party in connection with the transport of the Load.
- 5.2 If auxiliary persons of Roll-Lift are held liable in connection with the transport of the Load, such persons may invoke any limitation and/or exclusion of liability that may be invoked by Roll-Lift by virtue of the ROLL-LIFT USA Standard Terms and Conditions or any other statutory or contractual provisions.



**(B) SPECIAL TERMS AND CONDITIONS:**

**III STORAGE, TRANSSHIPMENT,  
WAREHOUSING AND  
DELIVERY**

**Applicability**

These 'Special Terms and Conditions III' apply in addition to the Standard Terms and Conditions and any other applicable Special Terms and Conditions if Roll-Lift takes care of storage, transshipment, warehousing and delivery of the Load. In the event of a conflict between these Special Terms and Conditions III and the Standard Terms and Conditions or any other applicable Special Terms and Conditions, these Special Terms and Conditions III will prevail with respect to the activities referred to above.

**1. Liability**

- 1.1 The Customer is liable to Roll-Lift and/or third parties for any loss, damage and/or costs arising from incorrect and/or false and/or incomplete descriptions, specifications, statements, as well as for any loss, damage and/or costs arising from defects in the Load and/or packaging not notified to Roll-Lift in advance, even if such loss, damage and/or costs have arisen without fault on the part of the Customer. If the weight is not specified or not specified correctly, the Customer is liable for any loss, damage and/or costs resulting therefrom.
- 1.2 The Customer is liable for any loss or damage resulting from non-performance, late performance or defective performance by the Customer of any obligation imposed on it by these terms and conditions or by a separate Contract concluded between Roll-Lift and the Customer, except as otherwise provided in these Standard and Special Terms and Conditions.
- 1.3 Roll-Lift is not liable for any loss of and/or damage to the Load, except in the case of intentional acts by Roll-Lift that are solely designed to cause the loss and/or damage.

**2. Insurance of the Load**

- 2.1 Except as expressly agreed otherwise in writing, the Customer shall take out insurance to cover the Load during storage, warehousing, delivery and transshipment. The insurance will in all cases be deemed to be the primary insurance in relation to the policies taken out by Roll-Lift and its subcontractors. The insurance referred to in this article will provide that the insurers waive any right of subrogation against Roll-Lift, its subcontractors and its employees and subordinates. Roll-Lift will be named as an additional named in the policy.
- 2.2 If, in the case of loss of or damage to the Load arising from any cause whatsoever, Roll-Lift's cooperation is requested or required in order to assess the loss or damage, Roll-Lift will lend its cooperation. Roll-Lift may make its cooperation conditional on the payment of or the provision of security for any claim it has on the Customer on any account whatsoever.

**3. Taking back the Load for compelling reasons prior to expiry of the warehousing period**

- 3.1 Roll-Lift is entitled at any time to require that the Load received for warehousing be taken back prior to expiry of the warehousing period if there are compelling reasons to do so, without observing a notice period and without being required to pay any compensation to the Customer.
- 3.2 A compelling reason is a circumstance of such a nature that the Customer cannot reasonably expect Roll-Lift to continue the storage.
- 3.3 Such a reason is deemed to exist, inter alia, if the Customer fails to meet one or more of the provisions of these terms and conditions, if it becomes apparent that the presence of the Load is likely to cause loss of or damage to any other load, the storage location or tools or equipment or is likely to cause injury to people and, furthermore, if the Load is perishable or if the Load undergoes changes which, in Roll-Lift's opinion, justify the expectation of a reduction in value and the Customer fails to give instructions to avoid and prevent this.

- 3.4 The Customer's obligation to pay the fees to Roll-Lift will continue until the date on which the Load is taken back.