

NEW AND USED MACHINES/VEHICLES

1. Price
- The purchase price of any goods is the price, inclusive of Value Added Tax set out overleaf to which there shall be added any increase which the Seller shall be entitled to notify prior to the actual date of delivery in terms of sub-clause (b) hereof.
 - The Seller shall be entitled to give notification of an increase in the purchase price if there has been any increase in the Manufacturer's price between the conclusion of the contract with the Buyer and the actual date of delivery.
The Buyer shall not be entitled to resile from the contract because of such an increase in price except where:-
 - the increase exceeds 10% of the price, or,
 - where the goods are goods normally stocked by the Seller and the Seller will suffer no material loss as a result of the Buyer resiling.
 - The purchase price less any initial payment referred to overleaf shall be paid by the Buyer to the Seller on the actual date of delivery, unless otherwise agreed in writing. The Seller shall not be deemed to have received payment until cleared funds for the amount due are lodged in the Seller's bank account.

2. Delivery

- The goods shall be delivered by the Seller to the place and on the date or dates specified overleaf (the date of delivery) but if the Seller fails to meet the date of delivery it shall not be liable for any direct or indirect loss or damages suffered by the Buyer or any other party resulting from its failure to deliver the goods on the date and this contract shall not in any way be affected nor shall the Buyer have any rights to resile from this contract or any of the terms hereof as a result of any failure by the Seller to deliver the goods except where provided by and in terms of the sub-clause (e).
- The Seller shall arrange for and outlay the expense of delivery to the place of delivery specified overleaf; if however the place of delivery is on a site the obligation of the Seller is to deliver the goods only as near as any safe hard road permits all as determined by the Seller.
- The Buyer shall re-imburse the Seller for all costs and expenses including insurance as may be incurred by the Seller in arranging for and effecting delivery hereunder.
- The Buyer shall be responsible for unloading and for the cost and all risks incurred in unloading the goods and the Buyer shall be responsible for re-imbursing the Seller for any additional costs the Seller may incur under sub-clause (b) hereof if the goods are not unloaded with reasonable despatch.
- In the event of the goods being lost, stolen or mislaid after despatch and prior to their arrival at the place of delivery the Seller shall use its best endeavours to ensure that a suitable replacement(s) is/are despatched to the Buyer as soon as possible. If the Seller is unable to supply a suitable replacement(s) the Buyer shall be entitled to reclaim such part of the whole of the purchase price as he has paid to the Seller provided however that nothing in this clause shall be deemed to confer on the Buyer any right to claim damages for non-delivery against the Seller.
- Notwithstanding the terms of this Clause the Buyer may at his option and by arrangement with the Seller collect the goods from the Seller at a time and place convenient to the Seller.

3. Goods Damaged on Arrival

If the goods when delivered to the Buyer are found on examination by the Buyer to be damaged and such damage was not caused after delivery or during the unloading of the goods, the buyer shall forthwith and in any event not later than 48 hours after the goods have been unloaded inform the Seller in writing of the damage to the goods in which event the Seller may at its option on being satisfied of the damage aforesaid:-

- at the Seller's expense uplift the said goods and procure that a suitable replacement(s) be delivered to the Buyer under the same terms and conditions as govern this contract, or
- arrange for an engineer or other person to repair the goods at the place of delivery, or
- arrange with the Buyer for the Buyer to repair the goods and reimburse the Buyer for the expense incurred in so doing.
- The Seller shall not be liable for any consequential loss arising from the damaged condition of the goods.

4. Trading In

The Seller may agree to purchase used goods from the Buyer and to deduct the price agreed for such goods from the price due and payable on the goods to be purchased by the Buyer. Such used goods shall be delivered and accepted on the following terms:-

- The goods shall be delivered complete (with accessories where appropriate) in the same condition as when examined by or described to the Seller subject only to fair wear and tear. The Seller will be sole judge of whether the equipment is in the same condition as when previously examined or is as described.
- The said used goods are the Buyer's property absolutely and are not the subject of any hire purchase agreement or legal encumbrance. If the said used goods are the subject of a hire purchase agreement or other legal encumbrance the Seller shall be entitled at his option to make such payment as will finally discharge the hire purchase agreement or other encumbrance and the agreed price for the said used goods shall be reduced by the amount so paid.
- The Buyer agrees to pay to the Seller on demand such further sums as shall be required to recompense the Seller for any loss sustained by him through the year of manufacture of the said used goods traded in not being as described during the negotiation notwithstanding examination by the Seller.

If these Conditions are not complied with, the Seller shall not be bound to purchase the used goods.

Where the Seller has taken possession of any used goods which are being traded in, the Seller will be free to sell the said goods and pass on valid title to them and will be liable to the Buyer for the agreed price, provided however that if the Buyer does not take possession of or pay the full price for the goods against which the used goods are being traded-in for any reason the Seller may at the Seller's option either (a) return the goods to the Buyer or (b) sell the goods and account to the Buyer for the agreed price less such part of the agreed price as exceeds their true market value. In the event of a dispute between the Buyer and the Seller as to the true market value of the said goods the matter will be referred to Arbitration in terms of clause 18 hereunder.

Unless otherwise agreed in writing, a trade-in machine is due for delivery to the Seller within 24 hours of delivery to the Buyer of the machine against which it is being traded. In the event of a delay in the Seller obtaining possession of the machine because of the actions of the Buyer, the Seller may, at his sole discretion, submit reasonable hire charges to the Buyer for the period of delay and the Buyer shall be obliged to pay such charges plus VAT at the appropriate rate.

PARTS

5. Invoices for parts which are supplied on credit are payable by the last day of the month following the month during which the goods were supplied. The Seller will re-imburse the Buyer for parts returned only if:-

- The Supplier of parts specifically ordered by the Seller for the Buyer agrees to the return of the goods without any penalty and therefore without any loss being suffered by the Seller.
- The returned parts are accompanied by details of the Advice Note No./Invoice No. relating to the original order.

6. Parts supplied in replacement of Parts alleged to be defective and covered by manufacturer's warranty and Parts supplied under any Parts Service Exchange Scheme will be charged at the full retail price. A reduction in the charge for such parts will be allowed by the Buyer to the Seller provided (a) that the Parts replaced are returned to the Buyer within seven days from the date of supply of the replacement parts and (b) that the terms and conditions of the manufacturer's warranty or service exchange scheme are satisfied.

SERVICE

- (a) The Seller accepts no responsibility for loss or damage to machines or contents whilst on its premises or in the charge of its employees howsoever caused at any time.
- (b) The Seller will not be liable for consequential loss or damage due to use, breakdown or delay in repair of new or used goods.
- (c) All manufactured goods are supplied subject to terms and conditions laid down by the manufacturers of such goods.
- (d) All pricing estimates are provisional only and not binding on the Seller.
- (e) Unless credit arrangements have been made in advance all accounts for service are due for payment immediately and the Seller reserves the right to withhold goods until payment is received.

GENERAL

- Acceptance by the Buyer
The Buyer's acceptance of delivery of the goods shall be conclusive evidence that the Buyer has examined the goods and found them to be complete, in accordance with the description overleaf, in good order and condition and fit for the purpose, if any, for which they were supplied.
- Maintenance and Acceptance
Insofar as the Seller may have received any warranty or be entitled to any service in respect of the goods from the manufacturer thereof, the benefit of which is capable of being assigned or transferred wholly or in part to the Buyer the Seller may and will if requested in writing by the Buyer assign or transfer its rights to the Buyer. In the case of second hand goods and/or goods no longer under warranty of any sort from their manufacturers it is expressly stated that such goods are not warranted as to use and do not carry warranty by virtue only of their description which is hereby declared to be for the purpose of identification only and should in no way be taken as an indication of the fitness or otherwise of the goods for the purpose suggested by that description.
- Risk and Title
All goods are at the risk of the Buyer as soon as they are delivered or collected. Property and ownership of the goods will not pass until payment in full of all debts due in respect of goods supplied not only under this contract but under any other contract for the supply of goods has been received by the Seller. Debts owed to any company being a member of the same group of companies shall be deemed to be such debts.
In the event that the Buyer, being a company, becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or has a Receiver, Liquidator (including a Provisional Liquidator) or Administrator appointed to it, or being an individual, firm or partnership becomes apparently insolvent within the meaning of Section 7 of the Bankruptcy (Scotland) Act 1985 or has a Trustee in Sequestration appointed to his or its estate or equivalent thereof in any foreign jurisdiction the Seller will be entitled to terminate this contract or any other contract for the supply of goods and consequent upon termination to be entitled to re-possess the goods supplied under this or any other contract for the supply of goods.
- Representations, Warranties and Conditions
The Buyer shall not rely upon any representation as to the quality of the goods or as to their fitness for any particular purpose, unless the same shall have been expressly made by the Seller in writing. No condition or warranty whatsoever of any kind has been or is given or made by or on behalf of the Seller in relation to the quality of the goods or their fitness for any particular purpose and all conditions and warranties whether statutory or otherwise, whether express or implied, whether collateral or antecedent hereto or otherwise and whether in relation to the fitness of the goods for any particular purpose or the description, state, quality or condition of the goods on delivery or at any other time are hereby expressly excluded and extinguished. The Seller shall be under no liability for any loss or damage whatsoever in respect of or arising from or in connection with the use of the goods or any part thereof howsoever caused.
- Indemnification of Seller by Buyer
The Buyer shall indemnify and keep the Seller indemnified against any and all claims, costs and expenses whatsoever in any manner arising from the Buyer's use or possession of the goods and against all loss, damage and expense whatsoever arising from any action, case or proceedings or otherwise on account of any personal injury or death or damage to property occasioned by the goods or their use or on account of any infringement or alleged infringement by the operation or disposition of the goods.
- It is hereby agreed and declared that:-
 - The rights conferred on the Seller by this agreement shall be in addition to and not in substitution for the rights conferred on the Seller by statute.
 - Any liability the Seller might otherwise incur and any right or immunity the Buyer might otherwise possess in respect of any conditions, warranties and/or representations relating to the condition of the goods or to their merchantability or suitability or fitness for the particular or any purpose for which they are or may be required whether such conditions, warranties and/or representations are expressed or implied and whether they arise under this Agreement or under any prior agreement or in oral or written statements made by or on behalf of any persons in the course of negotiations in which the Buyer or his representative may have been concerned prior to this Agreement are hereby excluded.
 - The Seller shall not incur any liability to the Buyer nor shall the Buyer be entitled to rescind this Agreement if the goods delivered by the Seller to the Buyer do not correspond exactly to their description as contained in this Agreement.
 - No liability shall attach to the Seller either in contract, delict, tort or otherwise for loss, injury or damage sustained by the Buyer or by any third party by reason of any defect in the goods or because of any use or otherwise to which the goods are put whether such defect be latent or apparent on examination and the Seller shall not be liable to indemnify the Buyer in respect of any claim made against the Buyer by a third party for any such loss, injury or damage.
 - The Buyer hereby expressly undertakes to perform any obligations and accepts any liabilities which may be incumbent on the Seller in terms of the Health and Safety at Work Act 1974 or any statutory amendment, modification or re-enactment thereof and any notice issued under that Act or any statutory modification, re-amendment or re-enactment thereof.
- No dealer or supplier or person in the employ of such dealer or supplier is or is deemed to be the agent of or acting on behalf of the Seller for any purpose and no liability is to be attached to the Seller for any conditions, warranties or representations made by such dealer, supplier or other person.
- No time or other indulgence granted by the Seller to the Buyer shall affect or prejudice the rights of the Seller or the obligations or liabilities of the Buyer hereunder nor shall any waiver by the Seller of any breach thereof operate as a waiver of any subsequent or any continuing breach thereof.
- Any notice, demand or other written communication required or permitted to be given to the Buyer hereunder shall be deemed to have been validly given if served on the Buyer personally, or sent to him by post or left at the address of the buyer as stated overleaf or to or at the last known business address or private address, or in the case of a registered company to the last known registered office of the Buyer. Any such notice, demand or other communication sent by post shall be conclusively deemed to have been received by the Buyer within forty-eight hours after the time of posting.
- (a) In this Agreement words in the masculine shall include the feminine and words in the singular shall where the context so admits include the plural. If there is more than one Buyer the obligations of the Buyer hereunder shall be joint and several.
(b) This Agreement shall be governed by and construed in accordance with the law of the country in which the Seller's address stated overleaf is situated.
- Any dispute arising between the parties in relation to these Conditions or the meaning or interpretation thereof shall be referred to an independent arbiter to be appointed failing agreement by the President for the time being of the Law Society of Scotland. The decision of any such arbiter shall be final and binding and Section 3 (1) of the Administration of Justice (Scotland) Act shall not apply.