

Gunn JCB Limited

conditions of sale

definitions

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| 1.1 | "Company" | Gunn JCB Ltd; |
| 1.2 | "Customer" | the customer of the Company; |
| 1.3 | "Contract" | any contract entered into for the supply of Goods by the Company to the Customer; |
| 1.4 | "Goods" | any Goods forming the subject matter of any Contract including (where the context so admits) Machinery, Parts and Services; |
| 1.5 | "Machinery" | any vehicles or equipment other than Parts forming the subject matter of any Contract |
| 1.6 | "Parts" | any parts forming the subject matter of any Contract whether supplied fitted to Machinery or otherwise |
| 1.7 | "Sales Order" | the Company's sales order documentation in force from time to time |
| 1.8 | "Services" | any services provided by the Company to the Customer either as a contract for the supply of services alone or the services element of any contract to supply goods and services. |

quotations, contracts and variations

- 2.1 Any quotations provided by the Company are subject to alteration or withdrawal at any time without notice.
- 2.2 These conditions shall be incorporated in all Contracts to the exclusion of any terms or conditions referred to by the Customer and supersede any previous conditions of sale of the Company. Acceptance of any delivery or performance by or on behalf of the

Customer shall in any event be conclusive evidence of the Customer's acceptance of these conditions.

- 2.3 Each Contract supersedes all previous oral or written communications between the Company and the Customer. The Company does not authorise the giving of representations on its behalf by any person unless confirmed in writing and signed by a director of the Company or the Company Secretary.
- 2.4 No amendment of any Contract or these conditions shall bind the Company unless in writing and signed by a director of the Company or the Company Secretary.

price and payment

- 3.1 The purchase price of Machinery is the price set out on the Sales Order or as otherwise agreed in writing between the parties. The purchase price of Parts and Services is the price set out in the Company's current price lists from time to time or as agreed between the parties in writing. Unless otherwise agreed in writing prices are inclusive of delivery. Prices are exclusive of Value Added Tax (where applicable) and all other tax or duties which will be charged at the prevailing rate. The Company is entitled to add any increase in purchase price prior to the actual date of delivery in accordance with clause 3.2
- 3.2 The Company 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 Customer and the actual date of delivery. The Customer shall not be entitled to rescind from the contract because of such an increase in price except where the increase exceeds 10% of the VAT inclusive price.

- 3.3 The Machinery purchase price less any deposit/trade in payment referred to on the Sales Order or as agreed in writing between the parties shall be paid by the Customer to the Company before the date of delivery without any deduction or other set off whatsoever, unless otherwise agreed in writing by the Company prior to delivery.
- 3.4 Unless credit arrangements have been made in writing in advance all accounts for Parts and Services are due for payment immediately and the Company reserves the right to withhold Goods until payment is received.
- 3.5 Without prejudice to any other rights of the Company, if the invoice is not paid in full by the due date interest shall be payable on any overdue amount from the date on which payment was due to that on which it is made (whether before or after judgement) on a daily basis at the rate of three (3) per cent over the base rate from time to time quoted by the Company's bankers, compounded monthly.
- 3.6 The Customer shall also pay all legal costs (on an indemnity basis) and other costs incurred by the Company in recovering any amounts owing from the Customer and any Goods in which title has been retained by the Company. Such costs shall be due for payment immediately on invoice.
- 3.7 The Company reserves the right to apply amounts received first in settlement of interest on overdue debts and then of debts due beginning with the oldest.

- 3.8 If the Customer:
3.8:1 fails to make any payment when and as due;
3.8:2 exceeds any financial limit on the Customer's account from time to time applied by the Company, or other circumstances occur entitling the Company to terminate the Contract, then the price of all such Goods as have been delivered or prepared for any order of the Customer shall become immediately due and payable.

delivery, risk and performance

- 4.1 Machinery and Parts shall be delivered and risk in them shall pass to the Customer when they are made available at the delivery point which in the case of Machinery shall be at the point agreed in the Sales Order or otherwise agreed in writing between the parties, and in the case of Parts shall be the Company's UK premises or as otherwise agreed in writing between the parties.
- 4.2 Subject to clause 4.1, trade terms referred to by the Company shall, to the extent consistent with these conditions, be defined in the edition of "Incoterms" then current.
- 4.3 The Company will endeavour, subject to these conditions, to comply with any delivery date and place given by it but shall not be liable for any loss, damage or expense (whether direct or indirect) arising from any delay or failure in delivery or performance from any cause whatsoever nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance or repudiate the Contract.
- 4.4 Times quoted for delivery or performance are subject to the availability of goods for the Contract and are based on the Customer supplying all necessary delivery instructions. Where any Goods are

to be supplied from stock, times quoted are subject to the availability of stock at the expected date of delivery.

- 4.5 The Customer shall reimburse the Company for all costs and expenses (including insurance) as may be incurred by the Company in arranging for and effecting delivery of Machinery or Parts including any additional costs and claims incurred if the Machinery or Parts are not unloaded with reasonable despatch.
- 4.6 The Customer shall be responsible for unloading and all costs and risks relating thereto.
- 4.7 Where Goods are to be delivered at a point other than the Company's premises the Company reserves the right to deliver the Goods at the nearest point of suitable access to the agreed point of delivery.
- 4.8 If any goods are lost, stolen or mislaid after despatch and prior to their arrival at the place of delivery the Company shall endeavour to ensure that a suitable replacements(s) is/are despatched to the Customer as soon as possible. If the Company is unable to supply a suitable replacement(s) the Company may at its option repay to the Customer such part of the whole of the purchase price as the Customer has paid to the Company which relate to the goods that have been lost, stolen or mislaid, provided however that nothing in this clause shall be deemed to confer on the Customer any right to claim damages for non-delivery against the Company.
- 4.9 Notwithstanding the terms of this clause the Customer may at his option and by arrangement with the Company collect Machinery and/or Parts from the Company at a time and place convenient to the Company.

- 4.10 If the Customer fails to take delivery of any Goods on which the Company has performed work when tendered, or to provide adequate delivery instructions or to collect them when notified they are ready for collection, the Company at its discretion may exercise any or all of the following rights:
- 4.10:1 to store the Goods or materials at the risk of the Customer;
 - 4.10:2 to require the Customer to pay all storage, transportation, handling or other charges (including expenses in connection with the delay or detention of delivery vehicles) incurred by the Company as a result of such failure;
 - 4.10:3 to require the Customer to pay for the Goods (including any work) as though delivery or performance had been completed.

title

- 5.1 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Company and not pass to the Customer (who shall, nevertheless, subject to the conditions stated below, be entitled to resell them as principal only, and to use them in the ordinary course of business) until the Company has received in cash or cleared funds payment in full of the price of the Goods and of all other debts for any other Goods or Services owed to it by the Customer on any account.
- 5.2 Until title passes:
- 5.2:1 the Customer shall hold the Goods as bailee for the Company and ensure that they are at all times clearly identified as the property of the Company;
 - 5.2:2 the Company shall be entitled at any time on demand to:
 - 5.2:2:1 repossess, remove from other equipment (without being liable for any damage thereby occasioned) and sell all or any of the Goods and thereby terminate (without any liability to the Customer) the Customer's right to use or sell them; and

5.2:2:2 enter any premises where the Goods are located for the purpose of inspecting or repossessing them.

5.3 The Company shall, without prejudice to any other remedy, be entitled to maintain an action for the price of the Goods even if title in them has not passed to the Customer.

5.4 The Company transfers to the Customer only such title and rights of use as the Company has in any Goods and in the case of material provided by any third party shall transfer only such title and rights as that party had and has transferred to the Company.

goods damaged on arrival

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

6.1:1 uplift the said Goods and procure that a suitable replacement(s) be delivered to the Customer under the same terms and conditions as govern this contract;

6.1:2 arrange for an engineer or other person to repair the Goods at the place of delivery;

6.1:3 arrange with the Customer for the Customer to repair the Goods and reimburse the Customer for the expense incurred in so doing.

6.2 the Company shall not be liable for any consequential or other loss arising from the damaged condition of the Goods.

trading in

- 7.1 The Company may agree to purchase used goods from the Customer and deduct the price agreed for such goods from the price due and payable on the Goods to be purchased by the Customer. Such used goods shall be delivered by the Customer to the Company and accepted on the following terms:
- 7.1:1 after examination by the Company the used goods shall be delivered complete (with accessories where appropriate) in the same condition as when examined by or described to the Company subject only to any subsequent fair wear and tear. The Company will be the sole judge of whether the goods are in the same condition as when previously examined;
- 7.1:2 the Customer warrants that any used goods which the Company agrees to purchase are not the subject of any hire purchase agreement or other legal encumbrance and the Customer has full title to them. If any of the said used goods are the subject of a hire purchase agreement or other legal encumbrance the Company shall be entitled at its option:
- 7.1:2:1 to make such payment as will finally discharge the hire purchase agreement or other encumbrance and the agreed trade in price for the said used goods shall be reduced by the amount so paid; or
- 7.1:2:2 to reject the said used goods in which circumstances the Customer shall be obliged to pay the full price for the Goods;
- 7.1:3 the Customer agrees to pay to the Company on demand such further sums as shall be required to recompense the Company for any loss sustained by the Company through the year of manufacture of the said used goods traded in not being as described during negotiation notwithstanding examination by the Company.
- 7.2 Where the Company has taken possession of any used goods which are to be traded in by the Customer, the Company will be free to sell the said goods and pass on valid title to them and will then account to

the Customer for the agreed trade in price or its equivalent against the price of the Goods.

- 7.3 If for whatever reason the Customer does not take possession of or pay the full price for the Goods against which the used goods are being traded then the Company may at the Company's option either:
- 7.3:1 return the used goods to the Customer; or
 - 7.3:2 sell the used goods and account to the Customer for the agreed price less any loss or expenses incurred by the Company as a result of the Customer's failure to take possession of or pay the full price for the Goods.

parts

- 8.1 The Company will reimburse the Customer for the value of any Parts returned only if:
- 8.1:1 the supplier of any Parts that were specifically ordered by the Company for the Customer has agreed to the return of them without any penalty and therefore without any loss being suffered by the Company;
 - 8.1:2 the returned Parts are accompanied by details of the advice note and number and invoice number relating to the original order;
 - 8.1:4 the Parts are returned unused, in their original packaging and in the same condition as originally supplied.
- 8.2 The Company may at its discretion make a reduction in the price of a replacement Part where the Customer returns the Part to be replaced to the Company prior to the supply by the Company to the Customer of the replacement Part.
- 8.3 The Customer may at the discretion of the Company be required to pay to the Company a handling charge of 10% of the net invoice price of any Parts returned.

JCB Products warranty

9.1 In this clause 9, and in clause 11, the following words and expressions mean:

"Company's Warranty"	any written warranty from time to time given by the Company to the Customer in relation to JCB Products
"JCB Dealer"	a person, persons or corporate body who has entered into a JCB Dealer Agreement in relation to JCB Products including, without limitation the Company
"JCB Machine"	a machine which has been manufactured by the Manufacturer
"JCB Parts"	parts, equipment and ancillary products for use with or repair of JCB Machines marketed by JCB
"JCB Products"	new and unused JCB Machines and JCB Parts
"JCB"	where the context so admits JCB Sales Limited and/or J C Bamford Excavators Limited and/or JCB Service and/or JCB Earthmovers Limited and/or JCB Materials Handling Limited and/or JCB Heavy Products Limited and/or JCB Compact Products Limited and/or JCB Landpower Limited
"the Manufacturer"	the JCB company which manufactured the JCB Product
"Warranty Period"	the period of the Manufacturer's

Warranty

- 9.2 The Company undertakes as its sole warranty in respect of JCB Products to make good by repair or replacement, at its option, carried out by a duly appointed JCB Dealer, free of all charge, any defects in JCB Products arising in the Company's opinion from faulty materials or workmanship which shall become apparent within a period of one year in the case of JCB Machines and 90 days (or other period stipulated by the Company) in the case of replacement JCB Parts, from the date of receipt by the Customer of the JCB Product concerned, subject to the provisions of clause 9.3.
- 9.3 The above sole warranty is subject to the following conditions:
- 9.3:1 the Company's Warranty does not extend to failures, defects or damage attributable to wear and tear, improper adjustment, neglect, misuse, alteration of specification or accident;
 - 9.3:2 all defective JCB Parts must be returned by the Customer to the Company immediately together with full particulars of the defect, the JCB Machine number and the date the JCB Machine was supplied;
 - 9.3:3 the Company's Warranty does not extend to proprietary or other components not of JCB's manufacture but the Company will so far as it is able to do so under the terms of any such guarantee at the time of the Customer's request for the same pass on to the Customer the benefit of any guarantee in respect of proprietary or components not of JCB's manufacture;
 - 9.3:4 in the event of the rejection by the Company of any claim the JCB Part or JCB Parts returned will be destroyed unless specific instructions to the contrary were given when the JCB Parts or JCB Parts were returned;
 - 9.3:5 the warranty in clause 9.2 shall be construed as strictly limited in its application to new JCB Products;

- 9.3:6 the Company accepts no responsibility for damage by fire or accident of any kind to any JCB Products returned to the JCB Dealer or the Manufacturer under the terms of the Company's Warranty, nor does the Company, any other JCB Dealer or the Manufacturer accept responsibility for any accident occurring to such JCB Products whilst on its or their premises;
- 9.3:7 the Company's Warranty shall cease to have effect if the number or name plate or other numbers or marks affixed to any JCB Products are removed, defaced, altered or tampered with.
- 9.4 The Company will so far as it is able to do so under the terms of any such warranty, at the time of the Customer's request for the same pass on to the Customer the benefit of any manufacturer's warranty in respect of second hand JCB Products and in respect of new and second hand non JCB Products.

claims

- 10.1 The Company shall have no liability in respect of any claim by the Customer under these conditions unless:
- 10.1:1 notice of the claim is given to the Company in writing within 7 days of the discrepancy or defect becoming apparent and in any event before the goods are further used or resold; and
- 10.1:2 the Customer has afforded the Company reasonable opportunity and facilities for the investigation of any claim and the making good of any discrepancy or defect and complied with any request by the Company for photographic or other evidence of or reports relating to the alleged defect or maintenance or operating records and, if the Company so requests, the return, securely packed, of any Goods (including the packing) for examination or rectification by the Company, the cost of transportation to be borne by the Customer but credited by the Company if the claim is accepted; and

- 10.1:3 the Customer has paid the full amount of all invoices due to the Company prior to the date of the claim.
- 10.2 No Goods may be returned unless the Company has requested their return and allocated a returns number and such returns number is marked on the packaging of the Goods.
- 10.3 Where a claim is accepted, any replaced items shall belong to the Company and may be disposed of by the Customer only in accordance with the Company's instructions.
- 10.4 Goods in respect of which no claim is made in accordance with these conditions shall be deemed to have been accepted by the Customer in accordance with the Contract and the Company reserves the right to charge the Customer with any administration, handling or other costs it incurs in connection with any claim it does not accept.

extent of liability

- 11.1 Except as expressly provided in clause 9 or as otherwise agreed in writing by the Company neither the Company (nor any third party) shall have any obligation duty or liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever in connection with any Goods other than for death or personal injury resulting from its negligence or for fraud on the part of any of its employees whilst acting in the course of their employment. Without prejudice to the generality of the foregoing, neither the Company (nor any third party) accepts any liability, express or implied as to the conformity of any Goods to any particular description, or as to the quality or fitness for any particular purpose of any Goods (except as against any person dealing as a consumer as defined in the Unfair Contract Terms Act 1977) or for any indirect or consequential loss or damage, or for any direct or indirect loss or damage constituting

wasted time or expenditure, loss of profit, use or business revenues or liability by way of indemnity, contribution or otherwise.

- 11.2 Except for death or personal injury caused by its negligence:
 - 11.2:1 the Company shall be discharged of all liability to which these conditions apply unless (without extending statutory limitation) proceedings are begun and served within twelve (12) months after the Customer became aware (or should reasonably have become aware) of the facts giving rise to such liability;
 - 11.2:2 the Company's liability in connection with the Goods shall in no circumstances exceed their invoice price.
- 11.3 Any claim by the Customer or acceptance of liability by the Company in respect of any particular Goods shall not entitle the Customer to reject or refuse to pay for any other Goods comprised in the same or any other Contract.
- 11.4 The Customer's acceptance of delivery of the Goods shall be conclusive evidence that the Consumer has examined the Goods and found them to be complete, in accordance with the description on the Sales Order or as agreed in writing between the parties, in good order and condition and fit for the purpose (if any) for which they were supplied.
- 11.5 The Company accepts no responsibility for loss or damage to machines, Machinery, vehicles or their contents whilst on the Company's premises or in charge of its employees howsoever caused at any time.
- 11.6 Nothing in these conditions shall affect the statutory rights of a Customer who is a Consumer as defined in Article 2(1) of the Consumer Transactions (Restrictions or Statements) Order 1976.

indemnification

12. The Customer shall be responsible for and shall indemnify and hold harmless the Company against any and all claims, proceedings, costs, damages, liabilities and expenses incurred or suffered by the Company arising from:
- 12.1 any instructions, data, drawings, specifications, tooling, equipment, materials (including "free-issue" items), services or other items supplied by or on behalf of the Customer to the Company or from any failure to supply the same or any inaccuracy, insufficiency or default in them or from any infringement or alleged infringement of the rights of any third party resulting from the Company's use of any of the foregoing items;
- 12.2 the Customer's use or possession of the Goods and against all claims, loss, damage and expense whatsoever arising from any proceedings or otherwise on account of any personal injury to or death of any third party or damage to property occasioned by the Goods.

termination or suspension

13. If the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other agreement with the Company, is unable to pay its debts in the ordinary course of its business, has a receiver, manager, administrator, administrative receiver or trustee in bankruptcy (as the case may be) appointed for all or any part of its undertaking, assets or income, has a resolution passed or a petition presented to any court for its winding up (compulsorily or voluntarily), enters into any composition or arrangement with its creditors (whether formal or informal), has any distraint or execution levied on any of its assets, suffers any action similar to any of the foregoing in any jurisdiction or ceases to trade or the Company bona fide believes that any of the

foregoing matters may occur, then, in any such event, the Company shall, without prejudice to any other remedy, be entitled, at its discretion, without liability to the Customer, by giving the Customer written notice at any time or times, to suspend its performance of or (whether or not such performance has previously been suspended) terminate such Contract.

force majeure

14. The Company shall not be liable for any delay or other failure to perform the whole or any part of the Contract resulting from any cause whatsoever beyond the Company's control existing at the date of the Contract or arising thereafter (including but not limited to fire, explosion, breakdown or failure of plant or machinery, lack or failure of transportation facilities, fuel supplies, supply of labour, materials, power or supplies, strike, lockout or labour dispute (whether or not at the Company's works), illness, epidemic, flood, drought, war, civil commotion, or restriction of any authority or governmental agency) and the time for performance shall be extended by the period of any such delay.

severability

15. If any provision of this Agreement is or becomes invalid or unenforceable, such invalidity or unenforceability shall not invalidate the remaining provisions of the Agreement.

Contracts (Rights of Third Parties) Act 1999

16. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to benefit from or enforce any term of this Agreement. This clause does not affect any right or remedy of a third party which exists or is available apart from that Act.

Data Protection Act 1998

17. The Customer authorises the Company and any finance company used to purchase any Goods, Machinery, Parts or Service to carry out checks (including enquiries relating to directors and other individuals) with credit reference agencies and to disclose such information to one another. The Customer further acknowledges that the agencies concerned may keep and share information supplied to them with other businesses in assessing applications for credit and/or fraud prevention.

general

- 18.1 Work on any materials (including "free-issue" items) supplied by the Customer is carried out by the Company on the express understanding that the Company accepts no responsibility for any distortion, faults, errors or defects which arise during or as a result of the work from any cause whatsoever including any mistake or negligence on the part of the Company except that subject to the availability of capacity and facilities the Company will endeavour to correct or re-perform any such work at the Customer's expense and risk.
- 18.2 The acceptance of any cancellation for the Contract requested by the Customer shall be at the Company's discretion and take effect only when written confirmation of such acceptance has been given by a director of the Company or the Company Secretary of the Company.
- 18.3 Any specifications, drawings, particulars of weights and dimensions and other technical information contained in the Company's quotations, catalogues, price lists, advertisements or elsewhere are approximate only and intended merely to present a general idea of the Goods and (unless otherwise agreed in writing by the Company) are not to form part of the Contract. The Company reserves the right

to discontinue the sale of particular products or alter their designs and specifications without notice and to deliver Goods conforming to the altered design or specification in fulfilment of any Contract. No Contract shall constitute a sale by sample notwithstanding that any products may have been exhibited to or inspected by the Customer.

- 18.4 Any performance figures given by the Company are based upon details provided by manufacturers or experience, trials or testing but unless expressly agreed in writing by a director or the Company Secretary of the Company no liability is accepted if such performance figures are not achieved.
- 18.5 The Company shall have no liability for any advice, opinion or information furnished by the Company, its servants or agents unless given in writing by a person authorised in writing by a director of the Company or the Company Secretary to give the same, in response to a written request by the Customer referring to the Contract.
- 18.6 All drawings, designs or other data (whether or not patentable or patented) and all rights therein (including copyright and design rights) and all materials, tools, patterns or other items prepared or made available by the Company for the Contract shall, unless otherwise agreed by the Company, be and remain the Company's property and the Customer shall not copy or reproduce the same in whole or in part in any form or allow others to do so.
- 18.7 The Company may at its discretion sub-contract all or any of its obligations under the Contract but the Contract shall not be assigned by the Customer without the Company's prior written consent.

18.8 The Company shall have a lien on any goods (including materials supplied by the Customer on which the Company has carried out or is to carry out work) in the Company's possession for all sums due at any time from the Customer on any account and shall be entitled to keep possession of or at its option sell or dispose of the same as agent for and at the expense of the Customer and apply any proceeds in and towards the payment of such sums on twenty eight (28) days written notice to the Customer.

18.9 No time or other indulgence granted by the Company to the Customer shall affect or prejudice the rights of the Company or the obligations or liabilities of the Customer hereunder nor shall any waiver by the Company of any breach hereof operate as a waiver of any subsequent or any continuing breach hereof.

law, jurisdiction and construction

19.1 The Contract shall be governed by English law and the parties consent to the exclusive jurisdiction of the English courts in all matters relating to the Contract except to the extent the Company invokes the jurisdiction of the courts of any other country.

19.2 The headings of conditions are for convenience of reference only and shall not affect their interpretation.

notices

20. Any notice to be given under the Contract shall be in writing and if sent by telecopier or forwarded by first class prepaid letter post to the receiving party at its business address as last notified in writing to the other party shall be deemed to have been given on the date of the telecopy (if receipt is confirmed in writing) or 2 working days (or 7 working days in the case of Customers outside the United Kingdom) following the date of posting.

Gunn JCB Limited

company number: 527818

registered office: Atlantic Street Works, Broadheath, Altrincham,
Cheshire, WA14 5DN

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