

MD Plant & Tractor Sales LIMITED

CONDITIONS OF SUPPLY OF GOODS OR SERVICES

YOUR ATTENTION IS DRAWN TO CLAUSE 9 IN THESE CONDITIONS THAT EXCLUDE OR LIMIT MD Plant & Tractor Sales LIMITED'S LIABILITY

1. Definitions In these Conditions:

"Business Day" means any day other than a Saturday, Sunday or public holiday in the United Kingdom

"Confidential Information" means information in any form (including, without limitation, trade secrets, models, software, computer outputs, personal data relating to customers or potential customers) whether written or oral, of a business, financial or technical nature which is marked or otherwise indicated as being or is, or ought reasonably to be, known to be confidential and which is disclosed by one party (the "Disclosing party") or any Affiliate or Supplier Group (as the case may be) to the other party (the "Receiving party");

"Contract" means a contract for the provision of Services and/or the supply of Goods by MD Plant & Tractor Sales Limited to the Customer whether made verbally or in Writing;

"Customer" means the party with whom MD Plant & Tractor Sales Limited contracts;

"Due Date" means the date of delivery;

("*trading name)" means MD Plant & Tractor Sales Limited (registered in England and Wales no.13529545). Registered office is situated at MD Plant & Tractor Sales Ltd and also, where the context so admits, any authorised representative (whether an employee or sub-contractor) of MD Plant & Tractor Sales Ltd, MD Plant & Tractor Sales Ltd or MD Plant & Tractor Sales Ltd (the other companies)

"Force Majeure" means an event which affects the performance by a party of its obligations under this Agreement and arises directly from an act of God, act of local government or government, war, fire, epidemic, flood, earthquake or storm, acts of terrorism, explosion, civil commotion (save that industrial action taken by the employees, of the party claiming that they have suffered such an event or any other circumstance within the reasonable control of such party shall not be considered to be a force majeure event);

"Goods" means all or any of the goods works and/or materials to be supplied by MD Plant & Tractor Sales Limited;

"Insolvency Event" means any one or more of a notice being issued to propose a resolution for winding up or dissolution, or such a resolution being passed; a petition for winding up or an administration or bankruptcy order being presented, or such an order being made; any steps being taken with a view to a voluntary arrangement or other assignment, composition or arrangement with all or any creditors or any moratorium, readjustment, rescheduling, forgiveness or deferral of all or any indebtedness; suspension of payments to all or any creditors and/or ceasing business; an encumbrance taking possession of all or any assets of a party; an administrator or receiver being appointed over a party or all or any of its assets; any action anywhere similar or analogous to any of

the foregoing; the other party having reasonable grounds for believing that any of the foregoing is imminent. For the avoidance of doubt if any of the foregoing occur in relation to a partner in any of the parties hereto it shall be deemed to occur in relation to that party;

“Literature” means MD Plant & Tractor Sales Ltd catalogues, pamphlets, price lists, website and advertising literature;

“Operators Manual” shall mean the manual produced by the manufacturer regarding the safe and correct use of the Goods as produced by the Goods’ manufacturer and provided by MD Plant & Tractor Sales Limited to the Customer.

“Services” means the work or services to be provided by MD Plant & Tractor Sales Limited under the Contract;

2. Basis of contract

2.1 The terms and conditions of this Agreement shall apply to the provision of all Goods and Services by MD Plant & Tractor Sales Limited to the Customer pursuant to this Agreement. No conditions of the Supplier or any other agreement with MD Plant & Tractor Sales Limited which deviates from this Agreement shall be effective unless expressly stated otherwise in this Agreement or otherwise agreed in writing by an authorised representative of the parties

2.2 Each order placed by the Customer shall be deemed to be an offer by the Customer to purchase the Goods or Services subject to these Conditions. The description of the Goods shall be as set out in the Literature.

2.3 No Contract shall come into existence until MD Plant & Tractor Sales Limited accepts the offer or (if earlier) MD Plant & Tractor Sales Limited delivers the Goods or Services to the Customer.

3. Information, Samples and Materials

3.1 All drawings, descriptive matter, specifications and advertising issued by MD Plant & Tractor Sales Limited and any descriptions or illustrations contained in MD Plant & Tractor Sales Limited’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They will not form part of the Contract.

3.5 The Conditions are incorporated in the Contract and contain the entire obligations between MD Plant & Tractor Sales Limited and the Customer in relation to the Goods and/or Services that are the subject of the Contract. In the case of any inconsistency between any letter or quotation incorporating or referring to the Conditions and any Order, letter or form of contract sent by the Customer to MD Plant & Tractor Sales Limited, whatever may be their respective dates, the provisions of the Conditions shall prevail. In the event of MD Plant & Tractor Sales Limited entering into the Contract without MD Plant & Tractor Sales Limited having submitted a written quotation or other letter or document incorporating or referring to the Conditions, but in circumstances where the Customer has had prior notice of the Conditions, then the Contract shall be subject to the Conditions. No variation of the Contract by the Customer shall be binding upon MD Plant & Tractor Sales Limited unless and until accepted in Writing by MD Plant & Tractor Sales Limited, such acceptance to be evidenced by the signature of an authorised representative of MD Plant & Tractor Sales Limited.

3.6 No representations or warranties made by or on behalf of MD Plant & Tractor Sales Limited, prior to the Contract (whether verbally or in Writing) shall form part of the Contract.

3.7 These terms and conditions will apply to all contractual dealings between MD Plant & Tractor Sales Limited and the customer unless and until expressly revoked or varied in writing.

4. Delivery

4.1 Any time quoted by MD Plant & Tractor Sales Limited for delivery of all or any of the Goods and/or performance of all or any of the Services is an estimate only and time shall not be of the essence.

4.2 MD Plant & Tractor Sales Limited reserves the right to deliver all or any of the Goods and/or the Services in advance of the estimated date. If a date has been determined by MD Plant & Tractor Sales Limited for the delivery of Services MD Plant & Tractor Sales Limited shall, subject to Clauses 4.1 and 4.2, use its reasonable endeavours to deliver the Services to the Customer on the agreed date.

4.5 If the Customer fails to take delivery of the Goods or fails to give MD Plant & Tractor Sales Limited adequate delivery instructions after notification by MD Plant & Tractor Sales Limited that the Goods are ready MD Plant & Tractor Sales Limited may (without prejudice to its other rights and remedies);

4.5.1 store the Goods (on its own premises) and charge the Customer for its reasonable costs (including without limitation VAT costs of storage, carriage and insurance); and/or

4.5.2 sell the Goods at any time and after deducting all costs and expenses account to the Customer for any excess over the price already paid under the Contract or charge the Customer for any shortfall between the Contract price and such costs and expenses.

4.6 Any defect or safety issue with the Goods following delivery shall be notified by the Customer immediately to MD Plant & Tractor Sales Limited in writing.

4.7 The Customer MUST read and consider the operator's manual for the Goods prior to use.

5. Cancellation

5.1 Save as provided in Clause 5.2 in respect of Services, and subject to the notice under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 attached; following acceptance by MD Plant & Tractor Sales Limited of the Customer's order, no cancellation and/or suspension, either in whole or in part, may be made by the Customer other than with the prior written consent of a director of MD Plant & Tractor Sales Limited and upon terms that the Customer shall indemnify MD Plant & Tractor Sales Limited in full against all loss (including without limitation loss of profit) damages, costs expenses and other liabilities awarded against or incurred by MD Plant & Tractor Sales Limited as a result of or in connection with the cancellation

6. Terms of Payment

6.1 MD Plant & Tractor Sales Limited shall invoice the Customer for Goods and/or Services. The prevailing price shall be the price set out in MD Plant & Tractor Sales invoice. The invoice shall be paid prior to delivery.

6.2 Service and repair Invoices shall be payable in sterling 7 days after the invoice date. Without prejudice to any rights of MD Plant & Tractor Sales Limited may have it may charge interest on a daily basis (both before and after judgement) on the amount unpaid at the rate of 6% per annum above the base rate of LLOYDS Bank plc from the Due Date until the invoice is paid in full.

6.3 Unless otherwise expressly stated in writing all prices are exclusive of VAT which shall be charged to the Customer where appropriate at the rate prevailing at the relevant tax point.

6.5 No payment shall be deemed to have been received until MD Plant & Tractor Sales Limited has received cleared funds.

6.7 So long as any payment due from the Customer to MD Plant & Tractor Sales Limited is outstanding, whether under the same or any other Contract or transaction between MD Plant & Tractor Sales Limited and the Customer, MD Plant & Tractor Sales Limited shall have a lien on any Goods or property of the Customer in its possession and shall be entitled to suspend work on any Contract.

6.8 The Customer shall not be entitled to withhold payment of any amount due to MD Plant & Tractor Sales Limited by reason of any disputed claim by the Customer in connection with the Contract, nor shall the Customer be entitled to set-off against any amount payable under the Contract to MD Plant & Tractor Sales Limited any amount which is not then due and payable by MD Plant & Tractor Sales Limited or for which MD Plant & Tractor Sales Limited disputes liability.

6.9 If the Client fails to pay any monies outstanding to MD Plant & Tractor Sales Limited on the due date for payment, MD Plant & Tractor Sales Limited reserves the right to:

6.10.1 Suspend or cease the provision of Products or Services and/or;

6.10.2 Obtain reimbursement from the client for any legal costs (including all costs between solicitor and client), and debt collection fees and any other costs incurred in the recovery of an overdue debt; and/or:

6.10.3 Revoke, without notice, any previously agreed entitlement to any discount; and/or;

6.10.4 Refuse to supply any further Goods or Services to the Customer.

7. Risk and title

7.1 Risk in the Goods shall pass to the Customer immediately on delivery and at such time the Customer shall be responsible for insuring such Goods.

7.2 Notwithstanding delivery and the passing of risk, property in and title to the Goods shall remain in MD Plant & Tractor Sales Limited until MD Plant & Tractor Sales Limited has received payment of the full price of (a) all Goods and/or Services the subject of the Contract and (b) all other Goods and/or Services supplied by MD Plant & Tractor Sales Limited to the Customer under any other contract whatsoever.

7.3 Until property in and title to the Goods passes to the Customer;

7.3.1 the Customer shall keep the Goods properly stored and protected; and separate and identifiable from his own goods

7.3.2 MD Plant & Tractor Sales Limited shall be entitled at any time forthwith to revoke the Customer's power to deal with the Goods; and it shall automatically cease if the Customer shall commit or be subject to any Insolvency Event; and;

7.3.3 the Customer shall not make any modification to the Goods or its packaging or open the packaging or alter, remove or tamper with any marks, numbers or other means of identification used on or in relation to the Goods.

7.3.4 the Customer must read and consider the operator's manual prior to using the Goods and use them strictly in accordance therewith

7.4 Upon termination of the Customer's power to deal with the Goods, the Customer shall place the Goods at the disposal of MD Plant & Tractor Sales Limited and MD Plant & Tractor Sales Limited and its servants and agents are hereby irrevocably authorised without the need for consent of any third party to enter upon any premises of the Customer for the purpose of removing the Goods.

7.5 If any of the foregoing provisions of this Condition shall be invalid or unenforceable such invalidity or unenforceability shall not affect the remaining provisions.

8. Termination and suspension

Without prejudice to any rights and remedies available to it, MD Plant & Tractor Sales Limited shall be entitled, forthwith on written notice to the Customer either to terminate the Contract wholly or in part and/or any other contract with the Customer or to withhold performance of all or any of its obligations under the Contract and/or any other contract with the Customer (and on the giving of such notice all monies outstanding from the Customer to MD Plant & Tractor Sales Limited shall become immediately due and payable) if:-

8.1 any sum owing to MD Plant & Tractor Sales Limited from the Customer on any account whatsoever shall be unpaid after the due date for payment (in which event MD Plant & Tractor Sales Limited shall have a general lien for any such sum on all and any property of the Customer in its possession);

8.2 the Customer shall commit or be subject to any Insolvency Event;

8.3 the Customer shall commit any breach of any contract with MD Plant & Tractor Sales Limited.

8.4 In the event of a suspension of performance MD Plant & Tractor Sales Limited shall be entitled, as a condition of resuming performance, to require pre-payment, or such security as it may require.

9. Limitation of Liability

9.1 MD Plant & Tractor Sales Limited shall use reasonable endeavours to ensure the safekeeping of all of the Customer's Goods in its possession.

9.2 MD Plant & Tractor Sales Ltd shall be under no liability in respect of:

9.2.1 any defects in Goods arising from the acts of the Customer or its agents including without limitation wilful damage, negligence, lack of proper care of storage, failure to follow MD Plant & Tractor Sales Limited's instructions (whether oral or in writing), misuse of Goods without MD Plant & Tractor Sales Limited's approval;

9.2.3 All warranties, conditions and other terms implied by statute of common law are to the fullest extent permitted by law, excluded from the Contract, provided that nothing in this Condition

shall operate so as to exclude MD Plant & Tractor Sales Limited's liability in respect of death or personal injury caused by the negligence of MD Plant & Tractor Sales Limited its servants or agents and to exclude liability for fraudulent misrepresentation.

9.2.4 any damage or loss caused by the Customer's unauthorised use of the Goods or use otherwise than in accordance with the operator's manual

10. Export terms

10.1 Any term or expression which is defined in the provisions of Incoterms 2000 (or on the Customer and MD Plant & Tractor Sales Limited and any subsequent revision thereof) shall import the respective obligations of buyer and seller into this Contract, but in the event of conflict this Contract and any subsequent revision thereof shall prevail.

10.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 12 shall (subject to any special terms agreed in writing between MD Plant & Tractor Sales Limited and the Customer) apply notwithstanding any other provision of this Contract.

11.3 Unless otherwise agreed in writing between MD Plant & Tractor Sales Limited and the Customer, the Goods shall be delivered Ex Works from MD Plant & Tractor Sales Limited's premises.

11.4 The Customer shall be responsible for arranging for inspection of the Goods at MD Plant & Tractor Sales Limited's premises before shipment. MD Plant & Tractor Sales Limited shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

11.5 Payment of all amounts due to MD Plant & Tractor Sales Limited shall be made by irrevocable letter of credit opened by the Customer in favour of MD Plant & Tractor Sales Limited and confirmed by a bank in England acceptable to MD Plant & Tractor Sales Limited or, if MD Plant & Tractor Sales Limited has agreed in writing on or before acceptance of the Customer's order to waive this requirement, by acceptance by the Customer and delivery to MD Plant & Tractor Sales Limited of a bill of exchange drawn on the Customer payable prior to departure of the Goods from MD Plant & Tractor Sales Limited's premises.

12. Contracts for Services

If the Contract is for or to include Services to be performed by MD Plant & Tractor Sales Limited the following provisions shall apply:-

12.1 MD Plant & Tractor Sales Limited shall only be obliged to carry out Services during normal working hours (8.30 – 17.00hrs) on a Business Day and shall be entitled to charge for any overtime worked upon request by the Customer.

12.2 Where Services are performed at the premises of the Customer, the Customer shall provide free of charge:-

12.2.1 Proper and safe storage and protection of all Goods, tools, plant, equipment and materials on site;

12.2.2 Free and safe access to the site and place where the Services are to be performed;

12.2.3 All facilities and services necessary to enable such Services to be performed safely and expeditiously;

12.3 The Customer shall pay MD Plant & Tractor Sales Limited any expenses incurred by MD Plant & Tractor Sales Limited by reason of a breach by the Customer of any of its obligations in this Condition without prejudice to MD Plant & Tractor Sales Ltd Limited's right to recover any loss thereby occasioned.

12.4 Goods and Services supplied on the site of the Customer are at all times at the sole risk of the Customer and if any part is lost or destroyed for any reason whatsoever MD Plant & Tractor Sales Limited shall be entitled to charge for such Goods and/or Services. The Customer shall for the benefit of itself and MD Plant & Tractor Sales Limited insure and keep insured with reputable insurers the full value of Goods and Services against every kind of loss, damage or destruction. The Customer shall produce the policy to MD Plant & Tractor Sales Limited upon request together with the latest premium receipts and in default of effecting the same MD Plant & Tractor Sales Limited shall be entitled to do so and add the cost of such insurance to the Contract price.

12.5 Any defects or safety issues with the Goods shall be reported by the Customer to MD Plant & Tractor Sales Limited immediately

13. General

13.1 It shall be the responsibility of the Customer to ensure that all requirements applicable to the Contract, whether statutory, regulatory, municipal and/or otherwise howsoever, are duly complied with. It shall be a condition precedent to the performance by MD Plant & Tractor Sales Ltd Limited of its obligations under the Contract that all necessary licences, permits and consents shall have been obtained by the Customer.

13.2 Neither party shall have any liability for any failure to perform or for any delay in the performance (other than as to payment) of any of its obligations under the Contract caused by any factor beyond its reasonable control.

13.3 The rights and remedies of the Customer in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by MD Plant & Tractor Sales Ltd Limited to the Customer nor by any failure of or delay by MD Plant & Tractor Sales Limited in ascertaining or exercising any such rights or remedies. Any release, waiver or compromise or any other arrangement of any kind (a release) by MD Plant & Tractor Sales Limited shall not affect its rights and remedies as regards any other party nor its rights and remedies against the Customer in whose favour it is granted or made except to the extent of the express terms of the release and no such release shall have effect unless granted or made in writing. The rights and remedies in this Contract are cumulative and not exclusive of any rights and/or remedies provided by law.

13.4 The Contract is personal to the Customer. The Customer shall not assign, transfer or charge its rights and responsibilities under this Contract or any of them without the prior written consent of MD Plant & Tractor Sales Ltd Limited.

13.5 The provisions of the Contract are severable and distinct from one another, and, if at any time any of the provisions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions shall not in any way be affected or impaired.

13.6 The headings in this Contract are for convenience only and do not affect the interpretation of the Contract.

13.7 The Contract shall not constitute and shall not be deemed to constitute a partnership between MD Plant & Tractor Sales Ltd Limited and the Customer and the Customer shall not act nor purport to act as agent for MD Plant & Tractor Sales Ltd Limited but solely as an independent contractor.

13.8 All notices under this Contract shall be in writing and may be served by post or MD Plant & Tractor Sales Ltd transmission addressed to the other party at the address given in this Contract or at such other address as a party shall from time to time by notice in writing give to the other party for the purpose of service of notices under this Contract and every such notice shall be deemed to have been served by post at the expiration of 2 days after despatch of the same or if sent by facsimile transmission at ten hours local time on the next normal Business Day of the recipient following despatch and in proving service it shall be sufficient to show in the case of a letter that the same was duly addressed prepaid and posted in the manner provided and in the case of a facsimile transmission a transmission report that it was transmitted to the correct telephone number. Saturdays, Sundays and Bank Holidays shall not in any event be treated as days on which service is effected, and service shall be deemed to take place on the next normal Business Day of the recipient.

13.9 The Conditions shall be construed and take effect in all respects in accordance with the laws of England and Wales, so that any dispute or difference between the parties as to the interpretation of the Conditions or in respect of any matter arising under, out of or in connection with the Conditions shall be governed in all respects by English and Welsh law

13.10 Each of the parties irrevocably agrees for the exclusive benefit of the other party that the courts of England and Wales shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any disputes, which may arise out of or in connection with the Conditions and for such purposes hereby irrevocably and unconditionally submits to the jurisdiction of such courts.

14. Entire Agreement

This agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter;

15 Third Party Rights

For the avoidance of doubt nothing in these Conditions shall confer on any third party any benefit or the right to enforce any provision of these Conditions or by virtue of the Contracts (Rights of Third Parties) Act 1999.

16 Confidentiality

16.1 Each party shall keep and procure to be kept secret and confidential Confidential Information belonging to the other party disclosed as a result of the relationship of the parties under this Agreement and shall not use nor disclose the same save as envisaged in this Agreement. Where disclosure is made to any employee, consultant or agent, it shall be done subject to obligations equivalent to those set out in this clause 16 and each party shall be responsible to the other in

respect of any disclosure or use of such secret or confidential information by a person to whom disclosure is made.

16.2 The obligations of confidentiality in this clause 16 shall not extend to any matter which is in or becomes part of the public domain otherwise than by reason of a breach of the obligations of confidentiality in this Agreement or which either party can show was in its written records prior to the date of disclosure or the same by the other party under this Agreement or which it receives from a third party independently entitled to disclose it or which it is required by law or regulatory authority to disclose.

17 Force Majeure

17.1 If either party is affected by Force Majeure it shall forthwith inform the other party in writing of the matters constituting the Force Majeure and shall keep the other party fully informed of the continuance and of any change of circumstances whilst such Force Majeure continues. If the Force Majeure is in effect for 20 Business Days *** Limited has the right to terminate this contract on written notice

18 Data Protection

18.1 *** Limited shall comply with the Data Protection Act 1998

19 Health and Safety at Work Act 1974

19.1 The attention of the Customer is drawn to the provisions of Section 6 of the Health and Safety Act 1974. *** Limited will make available upon request information on the design, construction, installation and use of its products to ensure that as far as is reasonably practicable they are safe and without risk to health when properly used. It is the responsibility of the Customer to take such steps as are necessary to ensure that such information relevant to the Goods which is appropriate is made available to its servants, agents or any person to whom the Customer supplies them and to any other person to whom the Customer considers (or reasonably should consider) any such information should be given.

21 The customer shall not assign, encumber, dispose of, declare itself trustee of, or otherwise transfer or divest himself in any way of the Customer's rights under the Contract or the Condition.

I /We confirm that I / We have read and understood and I /We accept these terms and conditions of the business.

You may accept instructions from either one / any of us on behalf of us both / all of us in connection with all matters relating to our purchase / sale and to any related transaction.

I /We agree to our details being retained on a computer database.

I /We have read the above, I am / We are happy to give you the authorities requested and to instruct you to act for me / us on the terms set out.

Signed:

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Name:

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Date:

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