



**MOUNT
MACHINERY
GROUP**
Part of CID Group

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Mount Machinery Ltd
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MOUNT MACHINERY LTD TERMS AND CONDITIONS OF PURCHASE

These terms and conditions ("Terms") are the Terms that apply to the purchase of Goods and provision of Services to Mount Machinery Limited, company number 15319927, registered office Unit 10, Peckfield Business Park, Phoenix Avenue, Leeds, LS25 4DY ("Mount Machinery/We/Us/Our/s").

1. Agreement

These terms and conditions apply to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any terms referenced in any application for credit that We have completed will not apply unless We agree in writing.

2. Definitions and Interpretation

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Confidential Information: any information and data of a confidential or proprietary nature in whatever form and on whatever media including commercial, financial, business, customer, supplier, marketing, third party, technical or other information; any information that is identified as being of a confidential or proprietary nature; any information which at the time of disclosure is or should be regarded as confidential or proprietary including any of Our Customers' confidential information.

Customer: means Mount Machinery

Data Protection Legislation: the UK General Data Protection Regulation (UKGDPR) as amended or updated from time to time, and any successor legislation to the UK GDPR or the Data Protection Act 2018 and all other statutes, directives, or regulations relating to data privacy as may be applicable to the Agreement.

Deliverables: any documents, products and materials created or developed by or on Your behalf as part of or in connection with the provision of the Services.

Delivery Date: the date set out in the Order.

Delivery Location: the address or addresses for delivery set out in the Order or any other address that We ask You to deliver to.

Effective Date: the date that You accept the Order either expressly or by conduct.

Force Majeure Event: any act, event or omission beyond the reasonable control of a Party including, without limitation, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction or any overriding emergency procedures, epidemic or pandemic, accident, fire, flood, storm, and strikes or any industrial action by employees of any Party other than the Party relying on the Force Majeure Event.

Goods: the goods and related accessories, spare parts and documentation and other physical material set out in the Order or understood by the Parties to be included in the goods and to be supplied by You to Us;

Goods Specification: any specification for the Goods, including related plans and drawings, agreed in writing by Us and You.

Intellectual Property Rights: patents, copyright, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, rights to use, and protect the confidentiality of, know-how and trade secrets and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted,



SALES



HIRE



SERVICING



REPAIRS



PARTS

Specialist in excavator attachment
solutions for over 25 years.

Company Number: 15319927
VAT Number: 463744081

renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Key Performance Indicators: the performance and quality standards and measurements We require from You when You perform Your obligations under this Agreement.

Mandatory Policies: Our policies and codes of conduct including those relating to anti-bribery, modern slavery, ethics, corporate and social responsibility that We notify You about from time to time.

Order: means Our purchase order.

Our Materials: all documents, information, items and materials in any form (whether owned by Us or a third party), which We provide to You in connection with the Agreement.

Our Customers: those organisations, businesses or individuals to whom We supply or intend to supply Goods or Services.

Party/Parties: the Supplier and/or the Customer as the context dictates.

Payment Terms: the payment terms agreed by the Parties and if no terms are agreed, We will pay any invoice correctly and properly submitted to Us within 60 days from the end of the month of receipt.

Price: the price specified in the Order.

Services: the services, including any Deliverables, set out in the Order or understood by the Parties to be included in the services to be supplied by You to Us.

Services Commencement Date: the date set out in the Order.

Supplier/You/Yours: the person, company, business or organisation that will be supplying Goods or Services to Us.

Supplier Materials: all documents, information, items and materials in any form (whether owned by You or a third party), which are used by You in connection with the provision of the Goods and/or Services.

Term: has the meaning set out in the Order or where none has been specified means when each Party has fulfilled its obligations under this Agreement

- 2.1 Clause headings shall not affect the interpretation of this Agreement.
- 2.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural, shall include the singular.
- 2.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

3. Commencement and Duration

- 3.1 This Agreement will come into effect on the Effective Date and will continue until the Parties' obligations under this Agreement have been completed in full or for the Term if applicable, unless terminated earlier by either Party as set out in this Agreement.
- 3.2 You shall confirm acceptance of Our Order within 48 hours of receipt. If Our Order has not been confirmed within 48 hours, You agree that it has been accepted.

4. Supply of Goods

- 4.1 You shall ensure that the Goods shall:
 - 4.1.1 correspond with their description and any applicable Goods Specification;
 - 4.1.2 be of satisfactory quality (within the meaning of any applicable legislation relating to the supply of goods) and fit for any purpose held out by You or made known to You by Us expressly or by implication, and in this respect We rely on Your skill and judgement;
 - 4.1.3 be free from defects in design, materials and workmanship and remain so for 24 months after the Delivery Date;
 - 4.1.4 comply with all applicable UK laws, regulations, regulatory policies, guidelines or requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods including all relevant quality standards;
 - 4.1.5 match any proof or sample provided to Us; and
 - 4.1.6 be supplied with, at no additional cost to Us, instructions for the use and maintenance of the Goods.
- 4.2 You shall ensure that at all times You have all the licences, permissions, authorisations,

- consents and permits that You need to carry out Your obligations under this Agreement.
- 4.3 We may inspect and test the Goods at any time before delivery. You shall remain fully responsible for the Goods despite any inspection or testing and any inspection or testing shall not reduce or otherwise affect Your obligations under this Agreement.
- 4.4 If following inspection or testing We consider that the Goods do not comply or are unlikely to comply with Your undertakings at clause 4.1, We shall inform You and You shall immediately take any remedial action to ensure compliance.
- 4.5 We may, at Your expense, conduct further inspections and tests after You have carried out Your remedial actions.

5. Delivery of Goods

- 5.1 You shall ensure that:
- 5.1.1 the Goods are properly packed and secured in a manner as to enable them to reach their destination in good condition;
- 5.1.2 the Goods, and any packaging that the Goods are in, are delivered to Us undamaged;
- 5.1.3 each delivery of the Goods is accompanied by a delivery note which (unless We advise otherwise) shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), the weight of the Goods, any special handling or storage instructions and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
- 5.1.4 it states clearly on the delivery note any requirement for Us to return any packaging material for the Goods to You. Any packaging material will be returned to You at Your cost.
- 5.1.5 No packaging shall display or feature Your logo, contact details or similar that identifies You to Our Customers or third parties.
- 5.2 Unless otherwise notified by Us in writing, You shall deliver the Goods:
- 5.2.1 on the Delivery Date;
- 5.2.2 to the Delivery Location; and
- 5.2.3 during Our normal hours of business.
- 5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 5.4 Where Goods are delivered in instalments, failure by You to deliver any one instalment on time or at all or any defect in an instalment shall entitle Us to the remedies set out in clause 7.
- 5.5 Title and risk in the Goods shall pass to Us on payment for the Goods or delivery of the Goods (whether in full or in part if delivery is made by instalments) at the Delivery Location whichever is the sooner.
- 5.6 Time shall be of the essence in respect of delivery.
- 5.7 We will not be deemed to have accepted the Goods until We have had a reasonable time to inspect them or within a reasonable time after discovery of any latent defect.

6. Supply of Services

- 6.1 You shall from the Service Commencement Date and for the duration of this Agreement supply the Services to Us in accordance with the terms of this Agreement.
- 6.2 You shall meet any performance dates for the Services and time is of the essence in relation to any of those performance dates.
- 6.3 In providing the Services, You shall:
- 6.3.1 co-operate with Us in all matters relating to the Services, and comply with Our instructions;
- 6.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in Your industry, profession or trade;
- 6.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that Your obligations are fulfilled in accordance with this Agreement;
- 6.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications and that the Deliverables shall be fit for any purpose that We expressly or

- impliedly makes known to You;
- 6.3.5 provide all equipment, tools and vehicles and other items as are required to provide the Services;
 - 6.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Us, will be free from defects in workmanship, installation and design;
 - 6.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
 - 6.3.8 comply with all Key Performance Indicators, applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services including all relevant quality standards and the Mandatory Policies;
 - 6.3.9 observe all health and safety rules and regulations and any other security requirements that apply at any of Our premises;
 - 6.3.10 hold Our Materials in safe custody at Your own risk, maintain Our Materials in good condition until returned to Us, and not dispose or use Our Materials other than in accordance with Our written instructions or authorisation; and
 - 6.3.11 not do or omit to do anything which may cause Us to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and You acknowledge that We may rely or act on the Services.

7. Our Remedies

- 7.1 If You fail to deliver the Goods and/or perform the Services by the applicable date, We shall, without limiting or affecting other rights or remedies available to Us, have one or more of the following rights:
 - 7.1.1 to terminate this Agreement with immediate effect by giving written notice to You;
 - 7.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which You attempt to make;
 - 7.1.3 to recover from You any costs incurred by Us in obtaining substitute goods and/or services from a third party;
 - 7.1.4 to require a refund from You of sums paid in advance for Services that You have not provided and/or Goods that You have not delivered; and
 - 7.1.5 to claim damages for any additional costs, loss or expenses incurred by Us which are in any way attributable to Your failure to meet delivery or performance dates.
- 7.2 If You have delivered Goods or performed Services that do not comply with the undertakings set out in clauses 4 and 6, then, without limiting or affecting other rights or remedies available to Us, We shall have one or more of the following rights, whether or not We have accepted the Goods or Services:
 - 7.2.1 to terminate this Agreement with immediate effect by giving written notice to You;
 - 7.2.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to You at Your risk and expense;
 - 7.2.3 to require You to repair or replace the rejected Goods or reperform the Services, or to provide a full refund of the price of the defective Goods or Services;
 - 7.2.4 to refuse to accept any subsequent delivery of the Goods which You attempt to make;
 - 7.2.5 to recover from You any expenditure incurred by Us in obtaining substitute goods or services from a third party; and
 - 7.2.6 to claim damages for any additional costs, loss or expenses incurred by Us arising from the Your failure to supply Goods or Services in accordance with Your obligations.
- 7.3 This Agreement shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by You.
- 7.4 Our rights under this Agreement are in addition to any rights and remedies implied by statute and common law.

8. Our Obligations

- 8.1 We shall:
 - 8.1.1 provide any necessary information for the provision of the Goods and/or Services as You

- may reasonably request; and
- 8.1.2 provide access to Our premises or facilities as You may reasonably request and as agreed with You in writing in advance, for the purposes of this Agreement.

9. Pricing and Payment Terms

- 9.1 In consideration of the provision of the Goods and/or Services by You, We agree to pay the Price in accordance with the Payment Terms.
- 9.2 The Price shall be inclusive of the costs of packaging, insurance and carriage of the Goods and all Your costs and expenses incurred in connection with the performance of the Services.
- 9.3 Unless otherwise agreed by the Parties in writing, You shall invoice Us after completion of delivery of the Goods and/or on completion of the Services (as applicable). All invoices shall be sent to Us at the address indicated on the Order.
- 9.4 We shall pay each invoice in accordance with the Payment Terms, or on any other date We agree in writing, to a bank account nominated by You.
- 9.5 We may at any time, without notice to You set off any liability of You to Us against any liability We have to You, whether the liability is present or future, liquidated or unliquidated, and whether or not the liability arises under this Agreement. Any exercise by Us of Our rights under this clause shall not limit or affect any other rights or remedies available to Us under this Agreement or otherwise.
- 9.6 You shall maintain complete and accurate records of the time spent and materials used by You in providing the Services, and You shall allow Us to inspect Your records at all reasonable times on request.

10. Intellectual Property

- 10.1 We will own any Intellectual Property Rights existing in Our Materials and any Deliverables. We grant You a personal, non-exclusive, non-transferable licence to use Our Materials for the purposes of this Agreement.
- 10.2 You will own any Intellectual Property Rights existing in the Supplier Materials. You grant Us a personal, non-exclusive, non-transferable licence to use the Supplier Materials for the purposes of this Agreement.

11. Limitation on Liability

- 11.1 Nothing in this Agreement limits or excludes Our liability for:
- 11.1.1 death or personal injury caused by Our negligence, or the negligence of Our personnel, agents or sub-contractors;
- 11.1.2 fraud or fraudulent misrepresentation; or
- 11.1.3 any other liability which cannot be limited or excluded by applicable law.
- 11.2 Subject to clause 11.1, We shall not have any liability to You whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profits, goodwill, business opportunities or anticipated savings or benefits, or for any loss of corruption of data or for any indirect or consequential loss arising under or in connection with this Agreement.
- 11.3 Our total aggregate liability to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising in connection with this Agreement shall be limited to the Price We paid under this Agreement in the 12 months before the date the liability arose or £50,000 whichever is the lower sum.

12. Representations and Warranties and Undertakings

- 12.1 Each Party represents, warrants and undertakes to the other that:
- 12.1.1 it has full capacity and authority to enter into and to perform this Agreement;
- 12.1.2 this Agreement is executed by an authorised representative of that Party;
- 12.1.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that Party's knowledge, threatened against or affecting that Party before any court or administrative body that might affect the ability of that Party to meet and carry out

- its obligations under this Agreement;
- 12.1.4 it conducts its business in a manner that is fully compliant with the Mandatory Policies; and
- 12.1.5 once executed this Agreement will constitute its legal, valid and binding obligations.

13. Indemnity

- 13.1 You shall indemnify Us against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Us arising out of or in connection with:
 - 13.1.1 any claim made against Us for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding Our Materials);
 - 13.1.2 any claim made against Us by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables;
 - 13.1.3 any claim made against Us by a third party arising out of or in connection with the supply of the Goods or the Services;
 - 13.1.4 any breach of the Mandatory Policies.

14. Confidential Information

- 14.1 You undertake at any time during this Agreement, and for a period of 5 years after termination, not to disclose, copy or use any of Our Confidential Information except as permitted by clause 14.2.
- 14.2 You may disclose Our Confidential Information to Your employees, officers, representatives or advisers who need to know the information for the purposes of exercising Your rights or carrying out Your obligations under this Agreement or as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 You shall not use any of Our logos or trademarks or Goods in any of Your social media, advertising materials or methods either verbally, physically or in any form of digital or electronic communication or disclose that We are one of Your customers without Our express consent in writing.

15. Data Protection

- 15.1 Both Parties agree to comply with their obligations under the Data Protection Legislation in respect of any Personal Data, which it supplies or receives under, or in connection with, this Agreement in its role as either Data Controller or Data Processor. Where a Party is Data Controller it will ensure that it has obtained from all relevant Employees all consents which may be necessary in order for it, or the Data Processor, to lawfully process Personal Data about those Employees for the purposes of delivering the Services and Products.
- 15.2 Both Parties warrant that they will take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and the accidental loss or destruction of, or damage to, Personal Data.

16. Reporting

- 16.1 You shall:
 - 16.1.1 maintain a complete set of records to trace the supply chain of all Goods and Services provided to Us in connection with this Agreement;
 - 16.1.2 permit Us and Our representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of the Mandatory Policies, to have access to and take copies of Your records and any other information and to meet with Your personnel to audit Your compliance with Your obligations (including the Key Performance Indicators) and with the Mandatory Policies.

17. Termination

- 17.1 Without affecting any other right or remedy available to Us, We may terminate this

- Agreement:
- 17.1.1 with immediate effect by giving written notice to You if:
 - 17.1.1.1 there is a change of control of Your business; or
 - 17.1.1.2 Your financial position deteriorates to such an extent that in Our opinion Your capability to adequately fulfil Your obligations under this Agreement has been placed in jeopardy; or
 - 17.1.1.3 You commit a breach of clause 14, clause 15, the Key Performance Indicators or the Mandatory Policies,
 - 17.1.2 for convenience by giving You 30 days' written notice.
 - 17.2 Without affecting any other right or remedy available to it, either Party may terminate this Agreement immediately on written notice to the other if:
 - 17.2.1 the other Party commits a material breach of this Agreement and (if the breach is remediable) fails to remedy that breach within a period of 14 days of being notified in writing to do so;
 - 17.2.2 the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 17.2.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party;
 - 17.2.4 an application is made to the court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other Party; or
 - 17.2.5 the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
 - 17.3 On termination of this Agreement, You shall immediately deliver to Us all Deliverables whether or not then complete and return all of Our Materials. If You fail to do so, then We may enter Your premises and take possession of them. Until they have been returned or delivered, You shall be responsible for their safe keeping and will not use them for any purpose not connected with this Agreement.
 - 17.4 The expiry or termination of this Agreement shall not affect the accrued rights, remedies, obligations or liabilities of the Parties under it existing at expiry or termination and the following clauses shall continue in force: clauses 10,11,13,14,15,17,18,19,20 and any other provision of this Agreement which expressly or by implication is intended to continue.

18. Force Majeure

- 18.1 Neither Party will be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if the delay or failure results from a Force Majeure Event. In those circumstances the affected Party will be entitled to a reasonable extension of the time for performing its obligations. If the period of delay or non-performance continues for 10 Business Days or more, the Party not affected may terminate this Agreement by giving 5 Business Days' written notice to the other Party.

19. Insurance

- 19.1 During the Term and for 6 years thereafter, You shall, at Your expense, maintain in force with a reputable insurance company, adequate insurance covering the supply of the Goods and/or Services and Your liabilities under this Agreement including as a minimum employer's liability insurance for no less than £15,000,000, public liability insurance for no less than £10,000,000 and product liability insurance for no less than £10,000,000 in each case per event increasing annually in accordance with the UK retail prices index. You shall, on Our request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

20. General

- 20.1 You shall not make any public announcement regarding the existence or subject matter of this Agreement without Our prior written consent.
- 20.2 Any notice given in respect of this Agreement shall be deemed to have been given if delivered personally (including by courier) to either Party at their respective addresses indicated on the Order (or at any other address as may be notified by either Party in writing), at the time of delivery or if sent by prepaid, recorded delivery, or first class post in the UK, 2 Business Days after posting or if outside the UK 7 Business Days after posting.
- 20.3 You shall not assign this Agreement to any third party, unless We agree in advance. We may assign the Agreement by giving You notice of Our intention to do so.
- 20.4 You may only sub-contract Your rights or obligations under this Agreement with Our prior written consent.
- 20.5 If any provision of this Agreement (or part of any provision) is held by any competent authority to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 20.6 No amendment or variation of this Agreement shall be effective unless it is in writing and signed by an authorised representative of the Parties.
- 20.7 This Agreement constitutes the whole Agreement between the Parties and super sedes all previous Agreements between the Parties relating to its subject matter.
- 20.8 A failure or delay by either Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- 20.9 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties or authorise either Party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise bind the other in any way.
- 20.10 Except as expressly provided for in this clause 20.10 a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to. Our assignees shall have the right to enforce the provisions of this Agreement.
- 20.11 This Agreement and any non-contractual rights or obligations arising out of or in relation to it, shall be governed by and construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the English courts for any dispute arising in connection with this Agreement.

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sales@mountmachinery.com

Accounts:
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