



**MOUNT  
MACHINERY  
GROUP**  
Part of CID Group

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## Terms and Conditions of Sale of Goods and Services and Hire of Goods

### 1. Definitions

The terms or expressions below shall have the following meanings:

**Bespoke:** means non-stock items.

**We/Us/Our/s:** means Mount Machinery Limited company registration number 15319927, registered office Unit 10, Peckfield Business Park, Phoenix Avenue, Leeds LS25 4DY.

**Conditions:** means these Terms and Conditions of Sale of Goods and Services and Hire of Goods and (unless the context otherwise requires) includes any special terms and conditions that We agree in writing with You.

**Consumer:** as defined by section 2(3) of the Consumer Rights Act 2015 as may be amended or updated from time to time.

**Contract:** means the Contract between Us and You incorporating these Conditions.

**Customer/You/Your/s:** means the person, firm, organisation, company or other organisation hiring Hire Goods or purchasing Goods or Services from Us.

**Damage Waiver:** means additional insurance cover in relation to the Hire Goods.

**Data Protection Legislation:** means any applicable laws and regulations in any relevant jurisdiction relating to the use or processing of personal data including: (i) EU Regulation 2016/679 as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the "UK GDPR"); (ii) the Data Protection Act 2018 ("DPA"); and (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003; in each case, as updated, amended or replaced from time to time; and the terms "Data Subject", "Personal Data", "processing", "processor" and "controller" shall have the meanings set out in the UK GDPR.

**Delivery:** means when the Goods are provided to or supplied to You as set out in clause 12.

**Delivery Charge:** means the charge for carriage or delivery of Goods to You to be paid in addition to the Price as stated the Quotation;

**Deposit:** means any prepayment that We may ask You to make before We deliver the Goods to You.

**Goods:** means any machine, article, tool and/or device together with any accessories, as stated in the Quotation, which are hired or sold to You.

**Hire Goods:** means the Goods, machinery, components or other items which We hire to You in accordance with these Conditions.

**Hire Period:** means the time when the Hire Goods leave Our premises (or the location where the Hire Goods were last employed) and will continue until We receive the Hire Goods back.

**Hire Charges:** means the charges for the hire of the Hire Goods during the Hire Period.

**Price:** means the price to be paid for the Sale Goods or any Services as set out in the Quotation.

**Quotation:** means the written quotation that We give to You detailing the Price, the Hire Charges, the Goods, Services or Hire Goods, the Hire Period and other relevant information.

**Repair and Cleaning:** means any work that is required to be carried out to the Hire Goods to ensure that they are suitable for re-hire

**Repair and Cleaning Costs:** means that are incurred for Repair and Cleaning.

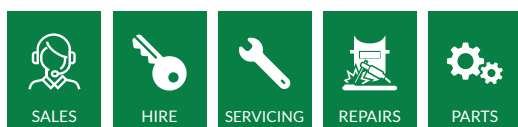
**Sale Goods:** means the Goods We sell to You under the Contract.

**Services:** means the services and/or work (if applicable) that We perform for You including repair of Goods and servicing of Goods and delivery and/or collection of the Goods.

**Writing:** includes email.

### 2. General

2.1. The Contract is between Us and You.



SALES

HIRE

SERVICING

REPAIRS

PARTS

Specialist in excavator attachment  
solutions for over 25 years.

Company Number: 15319927  
VAT Number: 463744081

2.2. Any reference in these conditions to any provision of a statute will include any provision that has been amended re-enacted or extended at the relevant time.

2.3. The headings in these Conditions are for convenience only and will not affect their interpretation.

### **3. The Basis of the Contract**

3.1. These Conditions apply to all Contracts where We sell Goods or Services and/or hire Goods to You. Any other terms and conditions including any terms and conditions which the You may purport to apply under any purchase order, confirmation of order or similar document will not apply unless We agree to them in writing.

3.2. Any changes to these Conditions must be agreed in writing.

3.3. All Quotations will be valid for a period of 7 days unless it states differently on the Quotation.

3.4. All orders will be deemed to be an offer by the You to buy or hire the Goods or the Services subject to these Conditions.

3.5. Our employees or agents are not authorised to make any representations concerning the Goods or Services they are confirmed in writing by one of Our directors. In entering into the Contract the You acknowledge that You are not relying on and You waive any claim for breach of, any representations which are not confirmed in writing.

3.6. Your acceptance of Delivery of the Goods will be deemed conclusive evidence of Your acceptance of these Conditions.

3.7 Goods are hired or sold subject to availability. We cannot guarantee that all Goods will be available, unless We have confirmed this in writing, and We will not be liable for any loss that You incur in the event that the Goods are unavailable.

3.8 Nothing in these Conditions exclude or limit any of Your statutory rights which may not be excluded or limited where You are a Consumer.

### **4. Hire of Goods**

4.1 Where We agree to hire Goods ("Hire Goods") to You, this clause 4 will apply.

4.2 You agree to keep the Hire Goods clean and free from damage. If the Hire Goods are not kept clean and free from damage, You will agree to pay Us any Repair and Cleaning Costs required to return the Hire Goods to a condition that is fit for re-hire and You agree to pay Hire Charges until the Repair and Cleaning has been completed.

4.3 You are responsible for ensuring that Hire Goods are returned to Us at the end of any period of hire. Where the Hire Goods are not returned at the appropriate time You agree to pay the applicable Hire Charges until the Hire Goods are returned.

4.4 You will ensure that You know where the Hire Goods are located at all times and will give Us location details immediately when We ask You to.

4.5 Where We are unable to retrieve Hire Goods from You at the end of the Hire Period (other than as a result of Our own acts or omissions), You will be liable to the replacement costs for the Hire Goods.

4.6 Risk in the Hire Goods will pass to You immediately when they leave Our possession or control or that of any third party acting on Our behalf. Risk in the Hire Goods will not pass back to Us until they have been accepted back by Us.

4.7 Ownership of the Hire Goods remains at all times with Us. You have no right, title or interest in the Hire Goods and You must not deal with the ownership or any interest in the Hire Goods including but not limited to selling, assigning, mortgaging, charging, hiring or disposing of the Hire Goods.

4.8 You undertake and agree at all times during the Hire Period to:

4.8.1 insure the Hire Goods for the full Hire Period, at Your own expense, with a reputable insurer to the Hire Good's full replacement value, against all risks and provide Us with evidence of this if We ask You to;

4.8.2 not to modify or repair the Hire Goods unless We agree in writing;

4.8.3 strictly follow all instructions for use and storage of the Hire Goods or where none are given, good practice; and

4.8.4 ensure that only fully trained operatives are permitted to use the Hire Goods.

4.9 We may require You to purchase (for an additional charge) Damage Waiver for certain Hire Goods. Separate terms and conditions will apply to such Damage Waiver.

4.10 Where Hire Goods which are lost, stolen or damaged beyond economic repair during the Hire Period, You agree to:

4.10.1 pay the full replacement cost of any Hire Goods;

- 4.10.2 reimburse Us for any loss or costs suffered or incurred;
- 4.10.3 pay the Hire Charges up to the date that the You tell Us that the Hire Goods have been lost, stolen or damaged beyond economic repair: and
- 4.10.4 pay, as a genuine pre-estimate of lost Hire Charges, a sum equal to two thirds of the Hire Charges that would have applied for such Hire Goods during the lost hire period. We will use reasonable commercial endeavours to replace such Hire Goods as quickly as possible once We have received payment from You under clause 4.10.

4.11 During the Hire Period You shall:

- 4.11.1 not remove any labels from or interfere with the Hire Goods;
- 4.11.2 take reasonable care of the Hire Goods and use them only for their proper purpose in a safe and correct manner in accordance with operation and safety instructions provided to You, or where none are provided, in accordance with best practice;
- 4.11.2 notify Us immediately after any loss, theft, breakdown or damage to the Hire Goods;
- 4.11.3 take all reasonable steps to protect against theft, damage or other risks;
- 4.11.4 allow Us at all reasonable times, upon notice, to inspect the Hire Goods;
- 4.11.5 keep the Hire Goods at all times in Your possession;
- 4.11.6 be responsible for the conduct and cost of any testing, examinations and checks required under any legislation, operating instructions or best practice; and
- 4.11.7 not use the Hire Goods in any marketing or promotional materials or on social media without Our written permission.

## 5. Specifications and fitness for Purpose

- 5.1. The quality and description of the Goods will be those set out in Our brochures or in the manufacturers published specifications. No further warranty or description is applied or given by Us.
- 5.2. Where We have allowed You to try any of the Goods before You buy or hire them, We do not guarantee that the Goods that You buy or Hire will be identical to the ones that You have tried but We will ensure that they are of the same quality.
- 5.3. We give no warranty as to fitness of the Goods for any particular purpose. Before You enter into the Contract with Us, You must satisfy Yourself that the Goods are fit and suitable for Your purpose and the Goods will not, when used in the manner You intend, cause explosion, fire, spillage or danger to any operative.
- 5.4. We accept no liability for failure to attain any performance figures and speed ratings or similar unless We have specifically guaranteed them in writing. Any specifications, speed ratings formulations or statements as to contents, suitability, form or otherwise issued and descriptions and samples given by Us are offered in good faith but are intended to be approximate and will not form part of the Contract.
- 5.5. Any advice or recommendation given by Us, Our employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by Us, is followed or acted upon entirely at Your own risk and We do not accept liability for this.
- 5.6. We reserve the right to make any change in specification of the Goods which may be required to comply with any applicable safety or other statutory, regulatory or legal requirement.
- 5.7. Where Goods are created, assembled or manufactured in accordance with Your specifications or directions You shall indemnify Us against all loss damages costs and expenses ordered against or incurred by Us in connection with or paid or agreed by Us in settlement of any claim for infringement of any patent copyright design trademark or other industrial or intellectual property rights of any other person which results from Our use of Your specifications or directions. It is Your responsibility to ensure that the Goods meet your specifications or directions and We will have no liability in respect of this.
- 5.8. Except where expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

## 6. Price - Sale Goods and Services

- 6.1. Where We have not quoted a Price for Sale Goods or Services, the Price will be Our published price at the date of Delivery or supply.
- 6.2. Where We have provided a Price on the Quotation We may increase the Price to take account of any of the following:
  - 6.2.1 an increase in the price of the item to Us;
  - 6.2.2 an increase in the costs of labour or raw materials used in the Sale Goods and Services;

- 6.2.3 an increase in the costs of transport;
- 6.2.4 fluctuations in foreign exchange rates, taxes or duties; or
- 6.2.5 any other unforeseen costs or expenses.

6.3. In addition to the Price the Customer will pay the Delivery Charge.

6.4. All Prices quoted shall be subject to VAT at the rate at the date of the VAT invoice.

6.5 Where You have asked Us to provide any repair Services to any of Your equipment, You agree that We may disassemble Your equipment in order that We may investigate any fault and provide You with a summary of any repair work that is required and a Quotation for that work. If You decide that You do not wish Us to proceed with the work, We will charge You a fee for the reassembling of Your equipment. Whilst We have Your equipment in Our possession risk in Your equipment remains with You and You must ensure that it is insured.

## **7. Price – Hired Goods**

7.1. The Hire Charges will be as stated on Our Quotation.

## **8. Payment Terms**

8.1. Unless You have an approved credit account with Us all Sale Goods must be paid for on or before Delivery.

We may give credit entirely at Our discretion and may refuse or withdraw credit at any time, without specifying any reason.

8.2. Unless otherwise agreed in writing, We shall be entitled to invoice You for Sale Goods on or at any time after Delivery and for the Services on or after completion and You shall pay the invoice without deduction by way of set off or otherwise within 30 days from the date of the invoice. The time for payment shall be of the essence.

8.3 You will be invoiced for Hire Charges on the frequency that We state in Our Quotation. Where none has been stated We will invoice You each week.

8.4. If You fail to make payment on the due date, then without prejudice to any of the rights or remedies available to Us:

8.4.1. We shall be entitled to:

- i) cancel the contract or suspend any further deliveries to You;
- ii) appropriate any payment made by You to such of the Sale Goods or Services (or the Sale Goods specified under any other contract between Us and You) as We think fit;
- iii) charge You interest on the amount unpaid at a rate of 4% per annum above the Bank of England base rate from time to time or the rate specified by the Late Payment of Commercial Debts (Interest Act) 1998 whichever shall be the higher; and
- iv) claim reasonable compensation for debt recovery costs as specified in the Late Payment of Commercial Debts Regulations 2013.

8.4.2. You will be liable for any costs and expenses incurred in enforcing any clause of the Contract

8.4.3. You will be liable to pay for all Sale Goods delivered by Us and any credit terms will be withdrawn.

## **9. Warranty – Sale Goods and Services**

9.1. You must inspect the Goods on Delivery and must within three working days of Delivery tell Us in writing of any alleged defect, shortage in quantity or damage. If You have not done so You will be deemed to have accepted the Goods.

9.2. You must notify Us in writing of any non-delivery within 3 working days of the date of dispatch as stated on the invoice. A signature on a carrier's delivery advice sheet will be deemed to signify a receipt of the quantity of Goods indicated.

9.3. For the period specified in the Quotation ("**warranty period**") We warrant that the Goods and Services will be free from material defects ("**warranty**").

9.4. You are not entitled to make a warranty claim where:

- 9.4.1 the Goods have not been used in a proper manner and strictly in accordance with the manufacturer's or Our handbook, instructions or guidelines or where none have been provided, best practice;
- 9.4.2 You make further use of the Goods after becoming aware of an issue;
- 9.4.2 You have modified or repaired the Goods without Our written permission;
- 9.4.3 the Goods have not been adequately maintained;



9.4.4 the Goods have been subjected to accidental damage or vandalism; or

9.4.5 the defect is due to fair wear and tear.

9.5. Where You wish to make a warranty claim, You will give Us reasonable time and opportunity to inspect and test the Goods.

9.6 We will, at our discretion, repair or replace the defective Goods or refund the Price of the defective Goods or re-perform the Services or refund the Price of the Services.

## **10. Retention of Title**

10.1. Goods supplied by Us shall be held at Your risk immediately on Delivery to You or into custody on the Your and You should insure the Goods.

10.2. Title in the Sale Goods will pass to You when all sums due to Us under this and any other contract have been paid in full.

10.3. Until We have received all sums due to Us, You shall hold the Sale Goods in a fiduciary capacity for Us in a manner which enables them to be identified as Our Goods and You will immediately return the Sale Goods to Us should We request.

10.4. Your right to possession of the Sale Goods shall cease if You do anything or fail to do anything which would entitle an administrator or administrative receiver to take to take possession of any assets or would entitle any person to present a petition for winding-up.

10.5 You grant Us an irrevocable licence to enter at any time any vehicles or premises owned or occupied by You or in Your possession for the purpose of repossession and removing any those Sale Goods as set out in clause

10.6. We shall not be responsible for, and You will indemnify Us against liability in respect of damage caused to any vehicles or premises during re-possession and removal that was not reasonably practicable to avoid.

10.7 You must ensure that if Goods are or become affixed to any land or building, they shall be capable of being removed without damage to the land or building and to take all the necessary steps to prevent title to the Goods from passing to the landlord or owner of such land or building. You agree to report and make good any damage caused by the affixation of the Goods to or their removal from any land or building and to indemnify Us against all loss damage or liability it may incur or sustain as a result of such affixation or removal.

## **11. Instalments**

11.1. We shall be entitled to deliver the Sale Goods by instalments and where Sale Goods are delivered by instalments each instalment shall be treated as a separate contract.

11.2. Each instalment shall be paid for in accordance with clause 8. Where You do not meet the payment dates We may decline to make any further deliveries.

11.3. Where Sale Goods are delivered by instalment any defects in any one instalment shall not be sufficient grounds for You to refuse to accept delivery of any remaining instalments.

## **12. Delivery**

12.1. Delivery shall be at the destination agreed by Us.

12.2. The mode of Delivery shall be at Our discretion.

12.3. Any dates for Delivery of any Sale Goods are approximate only and We shall not be liable for any delay in delivery of the Sale Goods howsoever caused. Time for Delivery shall not be of the essence unless previously agreed by Us in writing. The Goods may be delivered by Us in advance of the quoted Delivery date upon giving You reasonable notice.

12.4. If You refuses to accept Delivery, then We will advise in writing that the Goods were delivered but Delivery was refused and Delivery will be deemed to have taken place for the purposes of the Contract.

## **13. Terms of Limitation and Liability (Business Customers)**

13.1 The following provisions set out Our entire liability to You in respect of any breach of Our contractual obligations, or any representation statement or tortious act or omission including negligence arising under or in connection with the Contract

13.2 We do not limit or exclude liability for:

13.2.1 death or personal injury caused by our negligence;

13.2.2 fraud or fraudulent misrepresentation; or

13.2.3 any matter where liability may not be limited or capped under applicable law.

13.2 We shall in no circumstances whatever be liable to You, whether in contract, tort, breach or statutory duty or otherwise for:

13.2.1 any loss of profit, revenue, business, goodwill or anticipated savings:

13.2.2 any loss that is an indirect or consequential loss of any nature.

13.3 Subject to clause 13.2, Our liability to You in respect of all other loss or damage arising under or in connection within the Contract Year, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price of the Goods the subject of the Contract under which You are making a claim or where Goods have been hired or Services supplied to You, the value of the sums paid by You to Us under the Contract in the 12 months preceding any liability occurrence.

13.4. Subject to clause 13.2, We shall have no liability to You in respect of any claim unless You have served notice of the claim upon Us within twelve months of the date You became aware of the circumstances giving rise to claim or the date when You ought reasonably to have become aware.

13.5. Nothing in this clause shall confer any right or remedy upon You to which You would not otherwise be legally entitled.

#### **14. Force Majeure**

14.1. Neither party shall be liable to the other for any failure to perform its obligations under this contract because of a matter beyond that party's reasonable control, including but not limited to exceptionally severe weather, fire, war, civil disorder, pandemic or epidemic, industrial disputes (whether or not involving that party's employees) or acts of local or central government or other competent authorities or even events beyond the reasonable control of that party's suppliers ("an Event of Force Majeure").

14.2. Each of the parties hereto agrees to give notice to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

14.3. If an Event of Force Majeure continues for more than 28 days then a party not in default shall be entitled to terminate the Contract. Neither party shall have any liability to the other in respect of the termination of the Contract as a result of an Event of Force Majeure.

#### **15. Termination**

15.1. If You:

15.1.1 fail to perform any of Your contractual obligations;

15.1.1 breach any term of the Contract and where the breach is capable of remedy, fail to remedy the breach within 14 days of receiving notice requiring the breach to be remedied;

15.1.2 fail to make payment on a due date for payment;

15.1.3 commit an act of bankruptcy or a receiver is appointed over Your business undertaking or assets or have entered into liquidation whether compulsory or voluntary (save for the purpose of amalgamation or reconstruction of a solvent limited company);

15.1.4 cease to trade or threaten to cease to trade;

15.1.5 have exceeded Your credit limit with Us; or

15.1.6 We have any reason to have doubt Your insolvency

then We shall be entitled, without notice and without prejudice to Our other remedies under these Conditions, to suspend or cancel the further performance of this Contract and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### **16. General**

16.1 Any waiver of a part of the Contract is binding only if it is made (or recorded by Us) in writing and expressly states an intention to waive a part of these Conditions. Such a waiver shall not be deemed to be a waiver of any subsequent breach or default.

16.2 No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16.3 Any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by Us.

16.4 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

16.5 We and You agree to comply with our respective obligations under the Data Protection Legislation in

respect of any personal data, which we supply or receive under, or in connection with, this Contract in our respective roles as either data controller or data processor (as defined under Data Protection Legislation). 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 performing its contractual obligations. We and You both warrant that we shall both 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.

16.6 If any provision of this Contract (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 Contract, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

16.7 Any notice given in respect of this Contract 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 such other address as may be notified by either party from time to time 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.

16.8 Except as expressly provided for in this clause 16.9 a Person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. Our assignees shall have the right to enforce the provisions of this Contract.

16.9 We may at any time assign, transfer, charge, subcontractor deal in any other manner with all or any of Our rights under the Contract and may subcontract or delegate in any manner any or all of Our obligations under the Contract to any third party.

16.10 You shall not, without Our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of Your rights or obligations under the Contract.

16.11 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**Sales:**  
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