



Hawk Terms and Conditions

The Hawk Group consists of -

Hawk Plant Hire Ltd
Hawk Plant Ltd
Hawk Tractors Ltd
Hawk Plant Wem Ltd

These terms and conditions refer to sales from the above and any other Hawk Group Company.

1 Interpretation

1.1 In these Terms:

"BUYER" means the person who accepts the seller's verbal or written quotation for the sale of the Goods or whose Written order for the Goods is accepted by the Seller;

"GOODS" means the goods (including any instalment of the goods or any parts for them), which the Seller is to supply in accordance with these Terms;

"SELLER" means Hawk Plant Sales or any Hawk Group Company

"CONTRACT" means the contract for the sale and purchase of the Goods;

"INCOTERMS" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;

"TERMS" means the standard terms of sale set out in (this document) and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller.

"WRITING" and any similar expression includes facsimile transmission and comparable means of communication, including electronic mail or via the World Wide Web.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

2 Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Seller's Written or verbal quotation (if accepted by the Buyer), or the Buyer's Written order (if accepted by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer and no variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.2 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless subsequently confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations, which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.3 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted on entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.



3 Orders

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing or by invoice by the Seller's authorised representative.
- 3.2 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4 Price of the goods

- 4.1 The price of the Goods ("Price") shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply (if any). All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time the Seller may alter them without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise stated in the Seller's Written quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on the basis, that, the Buyer shall be liable to arrange to collect the Goods from any location specified by the Seller whether in the United Kingdom or elsewhere
- 4.4 The price shall be quoted and payable in pounds sterling and is exclusive of any applicable value added tax or any other taxes export taxes duties or other statutory levies or payments, which the Buyer shall be additionally liable to pay to the Seller.

5 Terms of payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Buyer shall pay 10% of the Price within 2 working days of acceptance of the order by the Buyer. The balance of the Price shall be paid by the Buyer to the Seller in cleared funds prior to collection of the Goods by the Buyer in any event payment of the Price in full shall be due within 30 days of acceptance of the order by the Seller.
- 5.2 Time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only on request.
- 5.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:
 - 5.4.1 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - 5.4.2 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above HSBC Bank Plc base rate in the United Kingdom from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6 Delivery



- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises or elsewhere as the Seller may specify at any time after the Seller has notified the Buyer that the Goods are ready for collection.
- 6.2 The Goods shall not be released for delivery until the Buyer has made payment of the Price in full.

7 Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer as soon as the order for the Goods is accepted by the Seller and the Buyer shall insure the Goods at its own expense in the joint names of the Buyer and the Seller until payment of the Price received in full by the Seller

8 Warranties and liability

- 8.1 Subject as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.2 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Terms.
- 8.3 All Goods are sold "as seen" unless otherwise agreed with the Seller in writing prior to the order being accepted by the Seller.
- 8.4 The Seller shall not be liable for any faults and imperfections and errors of description.
- 8.5 Visual images and descriptions provided by the Seller are for identification only and shall not constitute representations by the Seller and the Buyer should inspect the Goods and carry out whatever tests it consider necessary before the order is accepted by the Seller.
- 8.6 The Seller gives no warranty as to the suitability of the Goods for the purpose of the Buyer and the Buyer confirms that it has satisfied itself in this regard. The Buyer must ensure that it complies with all requirements of the original manufacturer relating to the Goods, their transportation, storage, installation and use.
- 8.7 The Buyer should be aware that the Goods might have been adapted or modified from its original specification by a previous owner of the goods if they are not new and it will be for the Buyer to inspect the Goods to satisfy themselves as to the condition of the Goods. The Buyer hereby confirms that it has had such opportunity to satisfy itself.
- 8.8 Except in respect of death or personal injury caused by the Seller's negligence, or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.
- 8.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:



- 8.9.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.9.3 acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.9.4 import or export regulations or embargoes;
- 8.9.5 strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 8.9.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery
- 8.9.7 power failure or breakdown in machinery.

9 Storage

- 9.1 The Buyer shall arrange delivery of the Goods pursuant to clause 6. If the Buyer fails to do so within 2 calendar months of the order for the Goods being accepted by the Seller then the Seller shall pay the monthly storage fee of £ 250.00 plus value added tax per month (or part thereof) per machine, which sum shall be required to be paid by the Seller with the balance of the Price pursuant to clause 5 and the Seller shall not be obliged to deliver the Goods until such sum has been paid in cleared funds.
- 9.2 If the Buyer fails to take delivery of the Goods pursuant to clause 6 within 3 calendar months of the order for the Goods being accepted by the Seller then the Seller shall (without limiting any other right or remedy of the Seller) be entitled to:
 - 9.2.1 Forfeit the deposit paid pursuant to clause 5.1
 - 9.2.2 Rescind the agreement with the Buyer in respect of the Goods
 - 9.2.3 Charge to the Buyer costs of storage, insurance and transportation of the Goods
 - 9.2.4 Re-sell the Goods at the price obtainable in the market and charge the Buyer for any shortfall below the Price

10 Insolvency of buyer

- 10.1 This clause 10 applies if.
 - 10.1.1 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 10.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - 10.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
 - 10.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11 General

- 11.1 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.



- 11.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 11.4 Any dispute arising under or in connection with the Contract or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society accordance with the rules of the Arbitration Act 1996
- 11.5 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English courts.