

## **LISTER SHEARING EQUIPMENT LIMITED**

**Units 3 & 4 Brunel Way, Stroudwater Business Park, Stonehouse, Gloucestershire, UK GL10 3SX**

### **General Terms and Conditions of Sale and Supply for Export Business**

#### **I. General points, area of validity**

- (1) All offers, deliveries, and other services supplied by Lister Shearing Equipment Ltd, including any that may arise in the future, under contractual arrangements with the partners resident outside the UK designated in Paragraph 2 below, shall be subject to these General Terms and Conditions of Sale and Supply for Export Business. Any counter-confirmation by the contractual partner making reference to his terms and conditions of business or purchasing is hereby rejected. Terms of business used by the contractual partner different from those used in, or not appearing in, our General Terms and Conditions of Sale and Supply for Export Business, shall form no part of any contract unless expressly accepted in writing by Lister Shearing Equipment Ltd.
- (2) Our export items of sale and supply shall apply only to contracting partners resident outside the UK who are exercising their professional or trading activities at the time the contract is concluded. Our "General Terms and Conditions of Supply" shall apply to contractual partners resident within the UK.

#### **II. Substance and conclusion of contract**

- (1) The data and information given in product catalogues and price lists shall not be construed as a legally binding component part of the contract unless it expressly makes reference to them.
- (2) Orders shall become legally binding through our written confirmation of them, and the contents of the order confirmation shall solely determine the scope of the goods and services to be supplied with legally binding effect. No subordinate agreements or oral declarations by our staff or representatives, not any amendments to confirmed orders (including changes to the objects to be delivered) shall be legally valid unless likewise confirmed in writing by us.

#### **III. Prices**

In the absence of any specific agreement to the contrary, prices shall be defined as exworks prices including packaging but not including dispatch or insurance, nor any taxes or other charges connected with the delivery. Payment shall be made in the currency in which our offer and/or our confirmation of order is denominated.

#### **IV. Payment**

- (1) The Company may determine individual payment and delivery terms with the Distributor. These individual payment and delivery terms will be documented on the relevant confirmation of order and invoice, and shall be binding. Regardless of the mode of payment, it shall only be deemed to have been made when the full invoice amount is credited without reservation to our account in such a way that we can make free use of it ("receipt of payment"). All additional costs incurred through the choice of the mode of payment shall be borne by the contractual partner.
- (2) If the contract partner fails to pay the purchase price within the period allowed, as defined in Paragraph 1 above, we shall be entitled, without prejudice to any other legal recourse we may have, to charge interest at a rate 8 percentage points above the principal refinancing interest rate of the Bank of England. We shall retain the right to demonstrate that we have actually suffered a greater loss.
- (3) There shall be no right of off-set or retention except with regard to those of the contracting partner's legal claims that we accept

or do not dispute or have been found or are ready to be found by a court to be final and absolute.

#### **V. Delivery period, provision of material, dubious creditworthiness, final inspection and acceptance**

- (1) If a delivery period has been agreed, it shall start on the date of our order confirmation. but subject to the provision that all documentation to be provided by the contractual partner is supplied on time, that all technical questions which he has to clarify have been answered, and that all details have been received regarding the version(s) of the product(s) that he requires.
- (2) The delivery period shall be deemed to have been met if the circumstances defined in Clause VI paragraph 2 as effecting the transfer of risk have taken effect.
- (3) The delivery period shall be prolonged by an appropriate length of time if we are unable to meet our delivery obligation, or unable to meet it punctually, on account of reasons which lie outside our control and which could not reasonably have been foreseen at the time the contract was concluded. Hindrances lying outside our control shall in particular include any failure on the part of any of our suppliers to deliver the right goods at the right time. We shall inform our contractual partner as soon as possible if such a hindrance arises, and state its expected duration. If it lasts for more than three months, or it is clear that it is likely to last for longer than three months, both we and the contractual partner shall have the right to cancel the contract.
- (4) If the contractual partner is to supply material, he shall do so at his own expense and risk, and shall supply a suitable additional quantity as well (at least a 5 percent reserve), in good time and in faultless condition. Any failure to observe this provision shall result in an appropriately long extension of the delivery period. If the contractual partner is responsible for the delay in the provision of material, he shall bear any additional costs thus incurred.
- (5) If circumstances become known to us after the contract has been concluded which justify reasonable doubts as to the contractual partner's solvency or creditworthiness, and which could endanger our claim to payment under the contract, we shall be authorized to withhold our services until remuneration has been received under the contract, or collateral has been provided to secure it, and the contractual partner has settled all outstanding accounts under the business connection which indicate any commercial link with the contract.
- (6) In the absence of any agreement to the contrary, the contractual partner shall be under an obligation to collect the goods from our premises within ten days of receiving notification from us that they are ready for collection. If this period of time is exceeded by more than three days, this shall be construed as a major breach of contract and shall entitle us, without prejudice to any other legal remedies, to ship the goods to the contractual partner and to attend to any related formalities, all at the contractual partner's expense. Any failure to collect, inspect and accept the goods punctually shall have no impact on the contractual partner's obligation to pay the purchase price.
- (7) If we supply any greater quantity than agreed, the contractual partner can accept the excess quantity or refuse to accept it. If the contractual partner accepts part or all of the excess, he shall be under an obligation to pay for it at the contractual price. If the quantity-difference of the delivered goods represents maximum 5% of the agreed quantity, the purchaser is, despite Sentence 1, obligated to accept and pay for the goods.

#### **VI. Delivery, dispatch, and transfer of risk**

- (1) The place of delivery shall be determined by the delivery provisions agreed between us and the contractual partner, which shall be interpreted in accordance with Incoterms 2000. Unless any delivery provisions have been agreed to the contrary, delivery shall always be ex-works at the seller's premises. If the goods are to be transported to the contractual partner, he shall bear the cost and risk.
- (2) Unless anything to the contrary has been agreed, risk shall be transferred to the contractual partner at the point in time at which the goods are made available to him. If the goods are forwarded to the contractual partner, risk shall be transferred to him no later than when the first forwarding agent takes over responsibility for them. If transportation is delayed for reasons beyond our control, risk shall be transferred to the contractual partner on the date on which the goods are ready for collection.
- (3) If the contracting partner so requests, all consignments shall be insured at his expense from the moment onwards at which risk is transferred to him. In the event of loss or damage, we shall assign to the contractual partner our insurance claims in counter-performance for the contractual partner's fulfillment of his contractual obligations including reimbursement of the insurance premiums.

#### **VII. Contractual violation by goods or documents, guarantee**

- (1) In the event of the goods or the documents giving rise to a violation of the contract, we shall be authorized to rectify and effect, following an extension of the delivery period if necessary, by rework or a replacement delivery. Unless anything to the contrary emerges from the contract or the circumstances under which it was concluded - or in particular from the negotiations conducted in connection with it — no violation of contract shall be deemed to exist for the mere reason that the goods do not meet the technical or other standards currently in force in their country of destination (defined as the country of residence of the contractual partner) or that they are not suitable for their intended purpose. Furthermore, no violation of contract shall be deemed to exist on the grounds that, if a large number of similar articles have been delivered, the alleged violation of contract relates to no more than 3 percent of the total number of units and if the 3 percent limit has been taken into account in calculating the price, particularly if this has been done by agreeing on a "guarantee deduction".
- (2) If the factor causing the goods to be in violation of contract has not been rectified within a reasonable period of time through rework of a replacement delivery, the contractual partner shall be entitled to require a reduction of the purchase price commensurate with the reduced value of the goods.
- (3) In the event of the goods or the documents giving rise to a violation of the contract, this shall not be construed as endowing the contractual partner with the right to cancel the contract instead of requiring a reduction in the purchase price, unless the violation of the contract represents a major breach of contract. No major breach of contract shall be deemed to exist if we have rectified the factor-giving rise to it within a reasonable period of time as set by the contractual partner and which shall not be less than six weeks.
- (4) When taking receipt of the goods, the contractual partner shall inform us in writing of any visible signs that they or the documents are in violation of the contract without delay, and in no case after more than one week of receipt, stating exactly the factor giving rise to the violation of contract. If no such factor is perceptible at the time of receipt, the contractual partner shall inspect the goods without delay, and in no case after more than one week of receipt, and if any factor giving rise to the violation of contract comes to light in the goods and/or the documents he shall inform us in writing within one week of its discovery, stating the exact nature of the factor. The written notification of the defect shall be sent off within the one week period after

receipt of goods or discovery of the factor giving rise to the violation of contract, and it shall also be necessary for the notification of the defect, having been sent off within the set period of time, does actually reach us.

- (5) Should the notification of the defect fail to meet the requirements laid down in Paragraph 4 above, the contractual partner's right to invoke the alleged violation of the contract by the goods and/or the documentation shall be forfeit, and this shall apply regardless of the grounds which the contract partner submits for this failure to meet these requirements.
- (6) The contractual partner's right to raise guarantee claims shall fall null and void within six months of his dispatching the properly raised notification of defect, but at the latest one year counting from the date on which he took receipt of the goods.

#### **VIII. Legal liability, compensation for loss or damage**

- (1) On liability to pay compensation for loss or damage, meaning in particular cases of loss or capital resulting from delayed delivery or the goods or documents giving rise to a violation of the contract, shall be excluded unless it is based on our having acted with intent or at least with gross negligence.
- (2) The foregoing shall have no impact on our legal liability under applicable product liability legislation, which cannot be modified by contract.

#### **IX. Retention of title**

- (1) The goods that have been delivered shall remain our property until the purchase price has been paid in full as defined in Clause V, paragraph 1 provided that such retention of title is legally valid under the applicable law.
- (2) The contracting partner shall be under an obligation to take all necessary measures to ensure that this right of retention is sustained, or any recognized and functionally equivalent security right in force in the country of destination (defined as the country of residence of the contractual partner). Should the contractual partner violate this obligation, he shall be deemed to be in serious violation of contract.
- (3) The agreement on retention of title shall be without impact on the provisions on transfer or risk included in Clause VI, paragraph 2.

#### **X. Place of jurisdiction and applicable law**

- (1) The place of jurisdiction for any disputes arising out of the contract shall be England and Wales. However, we shall also be entitled to sue the contractual partner before the courts with jurisdiction over his place of residence.
- (2) The contract shall be governed by the United Nations Convention of 11<sup>th</sup> April 1980 on the international sale of goods (CISG). Legal questions not covered by this Convention, or which cannot be settled on the basis of its principles, shall be subject to England and Wales civil law.

#### **XI. Concluding provisions**

- (1) Should any individual provisions of these present General Terms and Conditions of Sale and Supply, or of any agreement based on them, prove to be invalid or unworkable, this shall be without impact on the validity of the other provisions or agreements. In any such event, the contractual parties shall use their best endeavors to replace the provisions with valid and workable provisions and agreements which come as close as is permissible to the commercial purpose of the invalid ones.
- (2) Both contractual partners are mutually obligated to take all reasonable steps necessary to achieve the contract's purpose, and to desist from everything, which endangers the achievement and maintenance of the contract's purpose.