

IMPORTANT NOTICE

For consumers (non-business customers) these conditions are slightly varied:

If you are a consumer our Consumer Terms & Conditions are available on our websites or please call +44 (0) 1453 826692

PRELIMINARY

All Tenders we submit are subject to the credit worthiness of the Purchaser being satisfactory to us and to the following terms which form part of the Tender and any resulting Contract.

DEFINITIONS

"Products" includes all goods offered by us in any Tender and any replacement or repaired goods or spare parts supplied by us whether as part of our performance of the Services or otherwise; "Tender" includes any estimate, offer or quotation made or given by us; "Purchaser" includes all prospective purchasers including those to whom any Tender may have been submitted; "Contract" means any contract between us and the Purchaser for the sale and purchase of Products and/or services formed in accordance with Condition 3 hereof; "Terms and Conditions" means these Terms and Conditions of Tender and Sale together with any special terms agreed in writing between us and the Purchaser; "Services" means any services offered by us in any Tender and/or provided to the Contract; "United Kingdom" means England, Scotland, Wales, Northern Ireland, the Isle of Man, the Channel Islands and the Scilly Isles.

FORMATION

- 3.1 In cases where we make a specific Tender such Tender shall be regarded as an invitation to the Purchaser to make an offer to purchase on the terms of such and any resulting offer of the Purchaser shall not by itself constitute a Contract until such offer has been accepted by us by an unqualified written acceptance sent by us to the Purchaser following such offer by the Purchaser.
- 3.2 In cases where we do not make a specific Tender any Order placed with us by the Purchaser shall be regarded as an offer to purchase and our written or verbal acknowledgement of such order shall be regarded as acceptance of that offer on the terms and conditions set out in or referred to in such acknowledgement and at this point the Contract is formed.
- 3.3 Subject to any variation under Clause 18.3, the Contract will be upon these Terms and Conditions, to the exclusion of all other terms and conditions including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the contract
- 3.4 Any tender is valid for a period of 30 days only from its date, provided we have not previously withdrawn it.

DESCRIPTION

- 4.0 Drawings, specifications, photographs, illustrations, advertising matter, details in instruction books, booklets, catalogues and other publications supplied by us are issued or published for the sole purpose of giving an approximate idea of the Products and/or Services represented by or described in them. They will not form part of the Contract and this is not a sale by sample nor shall we be responsible for any representations not specifically confirmed by us in writing to the individual Purchaser.

DELIVERY

- 5.1 Unless agreed otherwise by us in writing, shipping terms shall be as expressly stated in Tender. If the Tender does not specify shipping terms, shipments shall be delivered FCA (Free Carrier) our facility in accordance with the version of Incoterms in effect as of the date of the Order. Risk of loss and title to Goods shall pass upon such delivery. If we prepay shipping, insurance, or other related charges, Purchaser agrees to reimburse us promptly for such charges.
- 5.2 Delivery of the Products will be accepted by the Purchaser at any reasonable time of day. If the Purchaser fails to take delivery or provide any necessary documents for the sale or delivery, the Products will be deemed to have been delivered at the time we attempt to deliver and we, without prejudice to our other rights, may at our option:
- 5.2.1 store or arrange for storage of the Products until actual delivery or sale and charge the Purchaser for all related costs and expenses (including, without limitation, for Storage and insurance); and/or
- 5.2.2 following written notice to the Purchaser, sell any of the Products at the best price reasonably obtainable in the circumstances and charge the Purchaser for any shortfall below the price under the Contract;
- 5.3 Where in any Contract any particular time is specified within which the Products is to be delivered or the Services are to be performed, we will use reasonable endeavours to deliver within that time, and if no time is agreed, then within a reasonable time. We will not be liable in respect of any loss, direct or indirect or consequential (all three of which terms include without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), however caused which may arise from delay in delivery or performance, save and accept to the extent (if any) of such fixed amount or amounts which we may have expressly agreed to pay by way of a genuine pre-estimate of loss as stated and ascertained liquidated damages in any special term in the contracts in respect thereof.
- 5.4 The Purchaser shall be deemed to have accepted the Products and/or Services as conforming to the Contract if the Purchaser does not notify us to the contrary within 7 days of delivery or performance thereof.

RISK AND TITLE

- 6.1 All Products will remain our property until the price of such Products has been paid in full but risk in the Products will pass to the Purchaser from the date of delivery in accordance with Clause 5.1. The purchaser's right to possession will terminate immediately the occurrence of an event which would allow us to terminate the Contract under Clause 14.1.
- 6.2 Purchaser grants us, our agents and our employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them. Pending complete payment, the Purchaser shall keep such Products fully insured and shall not sell, dispose of or part with possession and shall indemnify us against any loss or injury thereto howsoever arising.
- 6.3 Where the Services include the replacement of supply of any goods or materials Or otherwise involve the transfer of any property to the Purchaser, property therein shall not in full, both before and after any judgement at the Statutory rate prevailing from time to time. Reserve the right of use to deliver to a purchaser at any time when the account of that Purchaser with us is in debt whether in connection with that particular transaction or any other transactions

EXTRA COST

- 8.0 Should we incur any cost not included in the Contract price following the Purchaser* instructions or lack of instruction, or by reason of interruptions, delays, overtime, unusual hours, mistakes or work occasioned by the act or default of the Purchaser, we reserve the right to add such extra cost to the Contract price. Any invoice for such extra cost shall be payable within 30 days of the date of our invoice.

SPECIFICATION

- 9.0 All Contracts are subject to the express condition that the prices for Products and/or Services are subject to change at our request before delivery and/or Performance to accord with Our prices prevailing at the date of delivery and/or performance. We also reserve the right at any time before delivery to amend specifications and designs or to offer Products of equivalent performance. If any of these occur we shall notify the Purchaser who subject to the provisions of Clause 10.1 may cancel the Contract if it so desires, but in no circumstances shall we be liable to the Purchaser for any loss which it may sustain as a result of such cancellation or otherwise nor shall the Purchaser render us liable nor incur any liability on Our behalf to any other party by such increase in price or amendment in specification or design.

CANCELLATION

- 10.1 Where on account of restrictors, quotas or directions imposed by any government or similar institution, the Purchaser cancels a Contract or order, it shall be liable to indemnify us against any losses which we may incur in relation to such Contract in respect of bespoke equipment which has been purchased or manufactured to the Purchaser's specific requirements and cannot be sold elsewhere Or used for another purpose and for any expenses incurred by us in connection therewith.
- 10.2 Except as provided by Clause 9 and Clause 10.1, cancellation by the Purchaser Contract shall only take place prior to dispatch or provision of the Services with our written agreement and if agreed shall be subject to a minimum cancellation charge of 10% the Contract price.

PATENT

11. In the event of any claim being made or action being brought against the Purchaser in respect of infringement of patents consequent on the manufacture or sale by us of the Products, it shall notify us immediately and shall be at liberty with its assistance if required but at our expense, to conduct all negotiations for the settlement of such claim or to conduct any litigation that may arise therefrom, Subject to such notification and provided that Products or any part thereof, shall be used for any purpose other than that for which we supply it, we will indemnify the Purchaser in respect of any such claim.

GUARANTEE AND LIABILITY

- 12.1 Subject to clauses 12.3 and 12.4 we hereby undertake to the first user of the Products for the shorter period of either: 12 months from the date of receipt of the Products by the first user of the Products (the date of such receipt to be first proved to our satisfaction); Or 18 months from despatch from our works of the Products to the first user; or within a period of 12 months from the date of completion of the Services in respect of any products which have been repaired (in respect of the repaired part only) to supply free of charge, in exchange for any parts manufactured by us which appear to us to have been defective in workmanship or material, new parts, or, at our discretion, to repair such parts provided that:
- (a) The alleged defective parts are returned by the Purchaser to our works, carriage paid, not later than 14 days after discovery of the defect notified to us clearly marked on the outside of the package with the name and address of the sender, the description of the parts and the number of the Products from which they are taken;
- (b) that on or before despatch the Purchaser informs us in writing that he claims to have the Products repaired or replaced under this guarantee giving the full particulars of the manner in which and the circumstances under which they have become defective.
- 12.2 We warrant to the Purchaser that the Services will be performed with reasonable skill and care and in accordance with the Contract.
- 12.3 The guarantee under clause 12.1 and the warranty under clause 12.2 is given on the condition that:
- (a) replaced Products or parts of Products become our property. Any repaired or replaced Products will be liable to repair or replacement under the terms specified under clause 12.1 for the unexpired portion of the applicable period stated in the clause 12.1;
- (b) under no circumstances are we to be held liable for the cost of fitting replacement parts of Products;
- (c) no condition or warranty is given by us in respect of, and the guarantee in Clause 12.1 does not apply to, components of the Products which are not of our manufacture, but any benefits actually received by us from the suppliers of such components under their guarantee will be passed on to the first user of the Products by us; the guarantee provided under Clause 12.1 is applicable to the first user of the Products only and the aforesaid guarantee shall cease to have effect on re-sale by the first user;
- (d) alterations made in the Products without our written agreement, the use of unsuitable fuel or lubricants, the operation of the Products in excess of its rated capacity or under conditions or load factors detrimental to its successful running or likely to cause excessive wear and tear, improper installation or connection, misuse or neglect or failure to follow the instructions contained in the instruction book or operator's handbook or any maintenance requirements shall invalidate the guarantee provided under clause 12.1.
- 12.4 We will be under no liability to the Purchaser whatsoever for the suitability of the Products and accessories for any particular purpose unless a Product has been published or agreed by us as being suitable for that purpose.
- 12.5 Subject to the aforesaid guarantee all other conditions and/or warranties whether expressed or implied are hereby excluded to the extent permitted by law, whether or not the guarantee in Clause 12.1 is invalidated by the act or default of the person to whom such guarantee is given or the act or default of the person to whom the guarantee is stated to be applicable.
- 12.6 In the event of any breach of our express obligations under clause 12.1, the remedies of the Purchaser will be limited to the repair or replacement of the relevant Products at our Option.
- 12.7 In the event of any breach of our express obligations under Clause 12.2, the remedies of the Purchaser will be limited to the balance of the total price payable by the Purchaser for the provision of the Services minus the value of any Products replaced under Clause 12.1.
- 12.8 Except as specifically provided under these Terms and Conditions, or for death or personal injury arising from our negligence or any matter which would be illegal for us to exclude (or attempt to exclude) liability, we are to be under no liability to the Purchaser whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
- (a) the Products and/or Services, or the manufacture or sale or supply, or failure or delay in supply of the Products and/or performance of the services;
- (b) any breach by us of the express or implied terms of the Contract;
- (c) any use made or resale by the Purchaser of the Products or of any product incorporating the Products;
- (d) any statement made or not made, or advice given or not given, by us or on our behalf; or otherwise under the Contract.
- 12.9 The Purchaser acknowledges that the provisions of this Clause 12 are reasonable and reflected in the price which would be higher without those provisions, and the Purchaser will accept such risk and/or insure accordingly.

CLAIMS

- 13 NO CLAIM UNDER CLAUSE 12.1 OR 12.2 CAN BE RECOGNISED UNLESS:
- (a) Any damage, shortage or defect is reported to us and any carrier we use within 7 days in accordance with clause 5.4.
- (b) Non-delivery is similarly reported within 10 days from the agreed delivery date.

TERMINATION

- 14.1 We may by written notice terminate the Contract immediately if the Purchaser is in material breach of the Contract or enters insolvency, bankruptcy, any arrangement with its creditors or any other arrangement or situation which has a like effect. Failure to pay any sums due in accordance with clause 7.3 is a material breach of the terms of the Contract.
- 14.2 termination of the Contract howsoever arising is without prejudice to the rights, duties and liability of either the Purchaser or us accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination.

FORCE MAJEURE

15. We will not be liable to the Purchaser for any failure or delay or for the consequences of any failure or delay in performance of the Contract, if it is due to any event beyond our reasonable control and contemplation, including, without limitation, acts of God, war, industrial disputes, protests, fire, tempest, explosion, an act of terrorism and national emergencies and we will be entitled to a reasonable extension of time for performing such obligations.

EXPORT TERMS

- 16.1 The Purchaser shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties on them unless we agree otherwise.
- 16.2 Purchaser shall be responsible for arranging for testing and inspection of the Products at our premises before Shipment. We shall have no liability for any claim in respect of any defect in the products which would be apparent on such inspection and which is made after shipment, or in respect of any damage during transit.

LAW

17. Any Tender made by us and any contract (including a Contract) entered into between us and the Purchaser shall be constructed according to English Law, and subject to the exclusive jurisdiction of the English Courts. The marginal headings shall not affect the construction of these Terms and Conditions.

MISCELLANEOUS

- 18.1 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective, without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any provisions of the Contract which will remain in full force and effect.
- 18.2 No failure or delay by us to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.
- 18.3 Save as set out in the Contract, these Terms and Conditions may only be varied or amended in writing and signed by a director or officer of Lister Shearing Equipment Ltd.
- 18.4 The Contract is personal to the Purchaser who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without our prior written consent.
- 18.5 The Contract contains all the terms which the parties have agreed in relation to the Products or Services and supersedes any prior written or oral agreement, representations or understandings between the parties relating to such Products or Services. The Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by us or on our behalf which is not set out in the Contract.
- 18.6 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 18.7 Any notice in connection with the Contract will be in writing addressed to the other party at its registered or principal place of business and will be delivered by hand, or first class or special delivery post. The notice will be deemed to have been duly served, if delivered by hand, when left at the proper address for service or if made by pre-paid, first class post or special delivery post, 48 hours after being posted.