

**HOLT JCB LIMITED**

**TERMS AND CONDITIONS OF SALE**

**1. INTERPRETATION**

- 1.1 **Definitions.** In these Conditions, the following definitions apply:  
**Business Day:** Monday to Friday excluding public holidays in England.  
**Conditions:** the terms and conditions set out in this document.  
**Contract:** the contract between Holt and the Customer for the sale and purchase of the Goods in accordance with these Conditions.  
**Customer:** the person or firm who purchases the Goods from Holt.  
**Event:** if any distress or execution is levied on the Customer's property or if the Customer has a receiver, administrator, administrative receiver or manager appointed over the whole or any part of its assets, becomes insolvent, compounds or makes any arrangement with its creditors, is the subject of a bankruptcy petition or order, or 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 the Customer or the Customer goes into liquidation.  
**Force Majeure Event:** an event beyond a party's reasonable control including, but not limited to, strikes, lock-outs, acts of God, floods, war, terrorism, riot, collapse of building structures, earthquakes, default of suppliers or subcontractors and any other similar event.  
**Goods:** the goods (or any part of them) set out in the Order.  
**Holt:** Holt JCB Limited (registered in England and Wales with company number 02199217).  
**Order:** the Customer's order for the Goods, as set out in the Holt Order Confirmation.

**2. BASIS OF CONTRACT**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Holt issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Holt which is not set out in the Contract and any descriptive matter or illustrations provided or produced by Holt are for the sole purpose of giving an approximate idea of the Goods only.
- 2.5 A quotation for the Goods given by Holt shall not constitute an offer.

**3. DELIVERY**

- 3.1 Holt shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Holt receives payment, in full, for the Goods, unless the Customer notifies Holt that it will collect the Goods from Holt's premises. The cost of delivery shall be borne by the Customer.
- 3.2 Delivery of the Goods shall be completed on the Goods arrival at the Delivery Location or, where the Customer collects the Goods, on the completion of loading of the Goods at Holt's premises.
- 3.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Holt shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Holt with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.4 Subject to clause 3.3, if Holt fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 3.5 If the Customer fails to take or accept delivery of the Goods within three Business Days of Holt notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Holt's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after

the day on which Holt notified the Customer that the Goods were ready; and

- (b) Holt shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

- 3.6 If 10 Business Days after the day on which Holt notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, Holt may resell or otherwise dispose of part or all of the Goods.

**4. QUALITY**

- 4.1 The Customer shall have the benefit of the manufacturer's warranty, terms of which can be provided on request.
- 4.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 4.3 Specification is subject to the manufacturer's ability to supply and we reserve the right to supply a specification as currently produced by the manufacturer.

**5. TITLE AND RISK**

- 5.1 Risk shall pass to the customer on delivery and title to the Goods shall pass to the Customer on receipt by Holt of payment in full (in cash or cleared funds) for the Goods.

**6. PRICE AND PAYMENT**

- 6.1 The price of the Goods shall be the price set out in the Holt Order Confirmation.
- 6.2 Holt may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond Holt's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give Holt adequate or accurate information or instructions.
- 6.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 6.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**) which will be added to the invoice.
- 6.5 Holt may invoice the Customer for the Goods at any time after the Order is received.
- 6.6 The Customer shall pay the invoice, in full, immediately on receipt. Time of payment is of the essence.
- 6.7 If the Customer fails to make any payment due to Holt under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base lending rate from time to time at Holts discretion. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

**7. CUSTOMER'S INSOLVENCY OR INCAPACITY**

- 7.1 If the Customer becomes subject to any Event, or Holt reasonably believes that the Customer is about to become subject to any Event and notifies the Customer accordingly, then, without limiting any other right or remedy available to Holt, Holt may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Holt without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

- 7.2 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

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**8. LIVE LINK**

8.1 All JCB machines may be installed with an active LiveLink Telematics system which collects and records data from the machine. The system is operated by Microlise Limited and data collected by the system may be viewed and used by the Customer at its discretion ("Service") through the website [www.jcbl.com](http://www.jcbl.com). More information on the Service can be found at <http://www.jcb.com/customersupport/livelink.aspx>. By using the Service through the website you agree to be bound by the terms & conditions of use of the website and the privacy policy regarding use of the data collected through the Service and the website, copies of which can be found on the website.

8.2 In the event that the Customer does not use the Service through the website, the system continues to be active and it will continue to collect data (including, but not limited to, machine location and use) which will be collected by Microlise Limited on behalf of JCB and which may be used by JCB and its dealers in accordance with the section entitled 'Uses made of the information' in the privacy policy. If the Customer does not want the system to continue to be active and such data used in this way please contact [livelinkteam@jcb.com](mailto:livelinkteam@jcb.com).

**9. LIMITATION OF LIABILITY**

9.1 Nothing in these Conditions shall limit or exclude Holt's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987.

9.2 Subject to clause 9.1:

- (a) Holt shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from Holt's deliberate personal repudiatory breach of the Contract); and
- (b) Holt's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by Holt's deliberate personal repudiatory breach shall not exceed the price of the Goods.

**10. INDEMNITY**

10.1 The Customer acknowledges and agrees that the Goods are sold to it on the basis that they are for end user use only (including rental) and not for resale within the first twelve months following purchase.

10.2 In the event that the Customer resells the Goods within the first twelve months following purchase and Holt suffers, or incurs, any liabilities, costs, expenses, damages and/or losses (including direct, indirect or consequential losses, loss of profit and all interest, penalties and legal and other professional costs and expenses and any loss, deduction or withdrawal of trading support from its suppliers) arising out of the resale of the Goods by the Customer, the Customer agrees to fully indemnify Holt against such losses.

**11. CANCELLATION**

11.1 In the event that the Goods are resold by the Customer within the first 12 months following purchase then, without limiting any other right or remedy available to Holt, the Customer acknowledges and agrees that Holt may cancel or suspend all further orders with the Customer and any other contract between the Customer and Holt, without incurring any liability to the Customer, and all outstanding sums due by the Customer to Holt, shall become immediately payable.

**12. PART EXCHANGE MACHINES & EQUIPMENT**

12.1 Where Holt agree to allow part of the total price of the Goods to be satisfied by the Customer delivering a Part Exchange Machine to Holt, such allowance is agreed to be given and received and such Part Exchange Machine is hereby agreed to be delivered and accepted as part of the sale and purchase of Goods upon the following conditions:

- (a) Such Part Exchange Machine to be delivered to Holt in the same conditions as existed at the time of examination by Holt. If it is not, a deduction shall be made from the allowance;
- (b) If such Part Exchange Machine is not delivered within 30 days of the date of acceptance thereof by Holt or if the rate of VAT is varied before delivery of such Part Exchange Machine, an adjustment may be made to the allowance;
- (c) If such Part Exchange Machine is the subject of any Hire Purchase Agreement or other encumbrance whatsoever, this must be notified to Holt and any allowance shall be reduced by the amount paid or to be paid in settlement of such agreement or encumbrance and the Customer hereby authorises Holt to pay off any such amount; and
- (d) The Part Exchange machine shall be delivered to Holt on or before delivery of the Goods to the Customer and title to the Part Exchange Machine will thereupon pass to Holt absolutely.

**13. FORCE MAJEURE**

Holt shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.

**14. GENERAL**

14.1 Assignment and subcontracting.

- (a) Holt may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Holt.

14.2 **Severance.** If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

14.3 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

14.4 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.5 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms & conditions, shall only be binding when agreed in writing and signed by Holt.

14.6 **Governing law and jurisdiction.** 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.