

B.G. PAVERS LTD - Terms and Conditions of sale – Used Machines

1. Definition of Terms

In these conditions the following expressions shall have the meanings hereby assigned to them:

"the Company" means B.G.Pavers Limited; "the Purchaser" means the person, firm or company from whom the order is received or his legal assigns or successors; "the Goods" means those products, equipment services or any part thereof, specifically referred to in the Company's tender or other documents forming the Contract; "the Contract" means the agreement between the Purchaser and the Company for the supply of the Goods including therein all documents to which reference may properly be made in order to ascertain the rights and obligations of the parties under the said agreement and shall include only such goods, service and accessories as are specified therein and shall be subject to these conditions; "the Price" means the charge payable for the supply of the Goods; "the Completion of the Contract" means when all goods have been delivered.

2. Applicable Conditions

The purchaser accepts that these conditions shall govern relations between himself and the company to the exclusion of any other terms including conditions, warranties or representations, written or oral, express or implied, even if contained in any of the Purchaser's own terms shall prevail. No variation of the terms of the Contract shall be valid unless agreed in writing.

3. Duration of Tender

The Company's tender does not remain open for any fixed period unless otherwise stated and the Company reserve the right to withdraw or revise the tender at any time before issuing a written acknowledgement of an order.

4. Terms of Payment

Unless otherwise expressly provided elsewhere in the Contract the Price is strictly net payable within 30 days of the date of the Company's invoice.

If any monies are in arrear from the dates on which they are due then such monies will bear interest on a day to day basis from the original date at the rate of 4% per annum above the prevailing Base Lending Rate of Natwest Bank provided always that payment of such interest does not waive the Purchaser's responsibility to meet payment on the due date or limit or prejudice any other right or remedy which the Company may utilise, whether under the Contract in law or otherwise, in consequence of such delayed payment.

5. Drawings, Descriptions and Specifications

- (i) All drawings, photographs, plans, capacities, weights, measurements and other particulars supplied by the Company are to be taken as approximate only. Minor deviation there from shall not invalidate the Contract or be made the basis of any claim against the Company.
- (ii) Any drawings sent to the Purchaser for approval shall be deemed to have been approved by the purchaser unless they are returned to the Company with comments or queries within ten working days or as otherwise stated from date of submission.
- (iii) All plans, drawings, specification and other written technical materials forming part of the Company's tender or supplied in connection with the Contract shall remain the property of the Company and shall not be copied or disclosed to third parties without prior written consent of the Company.

6. Variation

The company may vary the design or construction of the Goods in exercise of reasonable skill in and about such design or construction at any time prior to the Completion of the Contract provided that such variation will not alter substantially the performance or specification of the Goods.

The company shall use all reasonable endeavours to comply with any reasonable requests by the Purchaser to modify the Goods but in doing so may alter the Price or the Delivery dates due to stipulate such other conditions as in its discretion the Company may consider reasonable and all extra costs arising by the reason of delay to the Completion of the Contract resulting directly or indirectly from such variations shall be payable by the Purchaser.

7. Sub-Contracting

The company shall be entitled to sub-contract or assign all or any of its obligations under the Contract.

8. Liability for Delay

Any times or dates stated in the Contract for delivery of the Goods or for commencement or Completion of the Contract or other times or dates relating to performance of the Contract by the Company are estimates only and do not form part of the Contract. The Company shall not in any event whatsoever be liable to the Purchaser for delays in the delivery of the Goods commencement, performance or the Completion of the Contract.

9. Delivery of the Goods

- i. Goods are sold ex-works Preston or ex U.K. shipping agents. Delivery to an address nominated by the Purchaser will be made if requested at the Purchaser's cost.
- ii. If for any reason beyond the Company's reasonable control delivery of the Goods is delayed for a period of more than fourteen days from the date of a notice in writing from the Company to the Purchaser that the Goods are ready for delivery the Company may make such arrangements to deliver to a warehouse or store as the Company thinks fit and all extra costs thereby incurred by the company shall be paid

by the Purchaser. The Purchaser will, if the Contract provides for any payment contingent on delivery, make such payment as if delivery had been at such times as the Company was first ready to do so.

- iii. Unless otherwise expressly provided elsewhere in the Contract the Purchaser shall be responsible for unloading the Goods. Any extra costs incurred by the Company arising from inadequate facilities for delivering or unloading or from delay in providing the same shall be paid by the Purchaser.

10. Extent of Warranty

- i. Subject to the terms of this clause the Company will replace, or at its option, repair free of charge any part of the Goods manufactured by the Company which may prove defective through faulty design, materials or workmanship, fair wear and tear excluded, within the period of warranty stated on the sales invoice, if no warranty is stated then no warranty is provided or implied. The Purchaser must give to the Company written notice of such faulty design, materials or workmanship.
- ii. The above warranty shall only apply to Goods manufactured by B.G.Pavers Ltd in respect of matters whereof the Purchaser gives written notice within 12 months from the date of delivery of the goods to the Purchaser, or within 6 months of the goods being put into operation, whichever shall be the earlier.
- iii. The above warranty contained in sub-clause (i) hereof shall only apply provided that:
 - a) Defective parts are returned to the Company's address free from extraneous equipment at the Purchaser's cost.
 - b) The purchaser shall have complied with the terms of payment and all other conditions of the Contract and the Goods shall have been operated and maintained in accordance with the instructions provided by the Company.
 - c) No replacement, repair or rectification is made or attempted by the purchaser or any third party without the Company's prior written approval.

- iv. Goods supplied but not manufactured by the Company or B.G.Pavers Ltd are sold subject to such guarantees as are offered by the Company's suppliers and in such cases the Company's liability to the Purchaser is limited to such rights and remedies as the Company may itself be able to exercise under the terms of the Company's agreements with its suppliers.
- v. Save as provided in the clause the Company shall be under no liability whatsoever in regard to the Goods and the provisions of this condition shall exclude any warranty or condition which might but for this condition be implied by statute, common law, custom or otherwise and the Company shall be under no further or other liability whatsoever in respect of loss or damage caused directly or indirectly by any failure or defect in the design, performance, quality or conditions of the Goods, even if the same frustrates further performance of the Contract. In any event of the Company's liability in respect of the Goods proving defective shall be limited to the cost of replacement, repair or rectification unless the same shall relate to personal injury or death and only then if and to the extent that the same shall arise out of the Company's negligence.

11. Performance

Any performance figures stated within the Company's brochures, catalogues, data sheets, drawings, or included in quotations, or order acknowledgements are based on the Company's experience and estimation. They cannot be guaranteed, nor shall the Company be liable for any failure to achieve such stated performance of its products, unless there is in writing, in the contract a guarantee of performance made by the Company against applicational data confirmed by the Purchaser.

12. Force Majeure

If the company is prevented or delayed from or in performing any of its obligations under the Contract by force majeure, which shall include but not be limited to strikes, lockouts or other industrial action whether or not by or involving employees of the Company, then the Company may give notice in writing to the Purchaser of the circumstances constituting force majeure and of the obligation, performance of which is thereby delayed or prevented, and shall thereupon be excused from compliance with such obligation for as long as such circumstances may continue.

If by virtue of this clause either party is excused from compliance with any obligation for a continuous period of four calendar months, then without prejudice to any other right or remedy either party may terminate the Contract by giving notice in writing to the other.

13. Risk

When the Company undertakes to transport the Goods any damage to them will be repaired or replaced free of charge provided that the Purchaser sends to the Company and the carriers written notification of such damage within three days of the date of delivery. The Company shall be under no liability in respect of non-delivery unless the Company and the carriers have been notified within seven days of the date of despatch.

Upon delivery all risks of whatsoever nature of the goods shall pass to the Purchaser but until such time as the Goods have been paid for in full the Purchaser shall not nor shall it allow any third party to acquire an interest in them or title to them and without prejudice to the generality thereof the

Purchaser shall not pledge them or part with possession of them or allow any charge, lien or other encumbrance to affect them or allow them to be installed as a fixture of any property

14. Property in the Goods and Risk

- i. The legal and equitable title to the goods supplied under the contract (in the clause referred to as "the Contract Goods" which expression includes any of them) shall remain vested in the Company until the price for the Contract Goods has been paid in full and no other sum whatsoever shall be due from the Purchaser to the Company and until such payment the Purchaser will hold the Contract Goods in a fiduciary capacity as bailee for the Company. The Purchaser shall not pledge or in any way charge by way of security for any indebtedness any of the goods which are the property of the Company. Without prejudice to the other rights of the Company if the Purchaser does so all sums whatsoever owing by the Purchaser to the Company shall forthwith become due and payable.
- ii. If, notwithstanding that the property in the Contract Goods has not passed to the Purchaser, the Purchaser shall sell the Contract Goods or any part of them in such manner as to pass to a third party a valid title the Purchaser shall hold the proceeds of such sale (or sales) on trust for the Company and such proceeds of sale shall be held separately and not paid into any bank or other account which is overdrawn but shall at all times be identifiable as the Company's money and the Purchaser shall account to the Company for the same to the extent necessary to pay the price for the Contract Goods and all other sums due from the Purchaser to the Company.
- iii. The Purchaser shall so long as the Company is entitled to the property on the Contract Goods store the same (at no cost to the Company) separately from all other goods in its possession and marked in such way that they are clearly identified as the Company's property.
- iv. Without prejudice to any of the Company's other rights (whether to damages or under the contract or otherwise howsoever) the Company may at any time after the price for the Contract Goods has become due and remains unpaid rescind the contract and/or recover the Contract Goods which are still the Company's property and is hereby authorised by the Purchaser to enter onto the Purchaser's premises or any other premises at which the Contract Goods may be stored either by himself or the Company's servants or agents for that purpose.
- v. Whether or not the price of the Contract Goods or any other sum has become due from the Purchaser under the contract such price or such sum will be deemed to be due from the Purchaser immediately on his committing any act of bankruptcy) or analogous act) or making an arrangement with his creditors or his taking the benefit of any Act for the time being in force for the relief of insolvent debtors or his suffering or allowing any execution whether legal or equitable to be levied on his property or to be obtained against him or (being a body corporate) his having had convened a meeting of creditors (whether formal or informal) or his having entered into liquidation (or analogous status) (whether voluntary or compulsory) except a voluntary liquidation for the purpose only of the reconstruction or amalgamation or his having had a Receiver or Manager (or analogous person) appointed of his undertaking or any part thereof or his having a resolution passed or a petition presented to any Court for his winding-up (or analogous status) or there being any proceedings commenced relating to his insolvency or possible insolvency including any proceedings by which the Purchaser may seek to appoint an Administrator under the Insolvency Act 1986 or any statutory successor thereto.

15. Liability for Accidents and Damage

The purchaser shall indemnify the Company in respect of any loss, injury, damage, expense or claim of whatsoever nature and howsoever arising out of the contract or the goods of their storage installation use, operation or maintenance save to the extent that the same is caused by the negligence of the Company, its servants or agents including the Company's sub-contractors.

16. The Company shall not be liable in any circumstances whatsoever to the Purchaser for;
 - (a) any loss of use or profits or of contracts suffered by the Purchaser
 - (b) any loss or damage in circumstances over which the Company has no control.

17. Law

The contract shall be governed, performed and construed according to the Laws of England.

18. Cancellation

If the Purchaser cancels, extends or delays or purports to cancel, extend or delay the contract or part thereof, or fails to take delivery of any goods at the time agreed (if any) or if no time is agreed within a reasonable time, then the Purchaser will be liable (without prejudice to any of the Company's other rights to claim damages) to indemnify the Company against any resulting loss, damage or expense incurred by the Company in connection with the supply or non-supply of the goods including (but not by way of limitation) the cost of any material, plant or tools used or intended to be used therefore and the cost of materials, labour and other overheads including a percentage in respect of profit and the costs of haulage, shipping and insurance.