

Excavator World International Ltd
("The company")
Schedule A- Terms & Conditions of Trade

Please read the terms and conditions of trade as they are important in setting out our obligations to you and yours to us.

Thank you for purchasing a product or service from us. We appreciate your business and hope you are completely satisfied and that in future we will be able to conduct further business.

1. Agreement

These terms and conditions apply to all goods sold by the company to the purchaser of those goods ("the Buyer"). No variation to these terms and conditions will be binding unless it has been agreed in writing by the Company and the Buyer.

2. Delivery

- 2.1 The Company will make every effort to complete delivery or installation on the date agreed but the Company shall not be liable for late delivery or consequential damages of any kind arising out of late delivery nor will the Company accept cancellation of any order because of late delivery.
- 2.2 Delivery of the goods will be deemed to occur when the goods arrive at the location specified by the Buyer or when the Buyer or any employee or agent of the buyer takes physical possession of the goods, whichever is the first to occur.

3. Prices and Variation

- 3.1 Unless otherwise all prices are net and do not include Goods and Services Tax.
- 3.2 Any Increase in the cost to the Company which may occur between the date of quotation and the date of delivery shall be payable by the Buyer and any such increase shall include a pro rata increase in the Company's profit margin.
- 3.3 Any variation in the quantity of goods supplied to the Buyer after the date of the quotation shall be at the Buyer's expense. The goods shall be priced at either the price applicable to the original quantity under the quotation or such other price as the Company may determine in its absolute discretion.

4. Payment

- 4.1 The time of payment is the essence of these terms and conditions,
- 4.2 Subject to clause 4.3, all goods must be paid for in full before delivery.
- 4.3 If the Buyer has applied for and at the Company's sole discretion, has been accepted for credit by the Company, payment shall be made by the 20th of the month following delivery of the goods.
- 4.4 If payment is not made on the due date, the Company may charge interest at the rate of 1.5% per month on any overdue amount on the compounding basis. The charging of interest is without prejudice to the Company's right and remedies in respect to the Buyer's failure to make payment.
- 4.5 The Buyer shall pay at the same time for payment under clauses 4.2 and 4.3 all Goods and Services tax payable by the Company as a result of supply of the goods including such tax chargeable on the goods supplied.

5. Title and Risk

- 5.1 risk in the goods passes to the Buyer upon delivery.
- 5.2 Ownership in the goods shall not pass to the Buyer until all money owing by the buyer to the Company (whether under this agreement or otherwise) has been paid in full, notwithstanding the affixing of the whole or any part of the goods to reality.
- 5.3 If any part of the goods shall become incorporated into any other machinery, plant or equipment so as to lose its separate identity then the title of that proportion of the machinery so integrated equal in value to the contract price owed to the Company shall be reserved and vested in the Company until all money the Buyer owes to the Company (whether under this Agreement or otherwise) has been paid in full.
- 5.4 Until the Company received payment in full:
 - 5.4.1 the relationship of the Buyer to the Company shall be fiduciary in respect of the goods which shall be held by the Buyer as bailee;
 - 5.4.2 the buyer shall not sell or otherwise dispose of or deal with the goods or do any act that may defeat the Company's title to the goods provided that the buyer may with the Company's prior consent, as fiduciary, deal or otherwise dispose of the goods in the normal course of business. The proceeds of any such disposition shall at all times be the property of the Company and shall be held by the Buyer on trust for and on behalf of the Company in a separate account;
 - 5.4.3 the goods shall be stored such that they are easily identifiable as belonging to the Company; and
 - 5.4.4 the Buyer authorizes the Company to approach the Buyer's existing or subsequent mortgagee(s) where appropriate to obtain the consent of the mortgagee to the reservation of title in the goods to the company and confirmation that the Company shall have priority with regard to any goods in which title is reserved to Company under this condition.
- 5.5 In the event of default under this agreement the Buyer shall at the Company's request;
 - 5.5.1 return the goods to the Company or do anything reasonably necessary to allow the Company to retake possession of them;
 - 5.5.2 instruct any third parties who owe money in respect of goods to pay that money direct to the Company; and
 - 5.5.3 make any records available which may assist the Company to take the proceeds of the goods.

6. Warranty

- 6.1 Subject to clause 7, no warranty or condition express or implied shall be implied herein against the Company by Statute, Common Law or otherwise howsoever and no representation or express condition or warranty shall be binding on the Company unless it be in writing and signed for or on behalf of the Company.

7. Consumer Guarantees Act 1993

- 7.1 Subject to clause 7.2, the Consumer Guarantees Act 1993 shall apply to this Agreement
- 7.2 Where the Buyer acquires or holds himself or herself out as acquiring the goods for the purposes of a business within the meaning of the Consumer Guarantees Act 1993, the provisions of the Consumer Guarantees Act 1993 will not apply to this Agreement.
- 7.3 Where the Buyer, after acquiring the goods from the Company, subsequently supplies the goods to a person acquiring them for the purposes of a business it shall be a term or the Buyer's contract with the buyer of the goods that the act will not apply in respect of the goods.

8. Extent of Liability

- 8.1 Where installation of any goods is agreed to by the Company as part of or in addition to any agreement such work will be carried out in a proper and business like manner.
- 8.2 If the Buyer has any claim in respect of faulty installation, ineffective operation on the goods or short supply of any parts of the goods the claim must be made to the Company in writing within 28 days of date of delivery or service. The fact that no such claim has been made shall be conclusive evidence in any proceedings between the Company and the Buyer that the goods at the time of delivery and/or installation were in good working order and condition.
- 8.3 Subject to the provisions of the Consumer Guarantees Act 1993 to the extent they apply to this agreement, the liability of the Company to the Buyer shall not in any case exceed the purchase price of the goods in respect to which the liability arises whether such liability arises in contract or is in tort or otherwise.
- 8.4 In any case of liability on the part of the Company arising from breach of contract the Company shall be under no liability for damage or consequential loss to the Buyer or any other party arising from such breach.

9. Return of Goods for Credit

- 9.1 No goods will be accepted for return and credit without the prior written authority of the Company and then only on such terms and conditions as the Company may agree,
- 9.2 All goods accepted by the Company for credit must be delivered at the Buyer's expense in original condition and packaging and are subject to the Company's inspection upon receipt.
- 9.3 Credit will not be given for damaged or used goods.

10. Default

- 10.1 In the event that the Buyer fails to make payment on any invoice when due or becomes insolvent, commits an act of bankruptcy, is adjudicated bankrupt or makes any composition or arrangement with creditors or being a Company goes into liquidation whether compulsory or voluntary other than for the purpose of and followed by amalgamation or reconstruction, or has a receiver appointed of any part of its business or assets then the Company reserves the right:
 - 10.1.1 to treat all sums due or to become due from the Buyer whatsoever as immediately due and payable
 - 10.1.2 to cancel any contract made with the Buyer or to cancel or suspend delivery of goods and materials and execution of work
 - 10.1.3 by its officers servants or agents to enter into and upon the land of the Buyer or building thereon (without the necessity of giving notice) where the goods may be installed or stored and to search for and remove and take possession of the goods without being in anyway liable to the Buyer or anyone claiming under him for so doing.
 - 10.1.4 To withhold the further supply of goods and services on credit.
- 10.2 The Buyer will be liable for all expenses (including solicitor – own client legal costs) incurred by the Company as a result of any default under this Agreement.

11. Information and Privacy Act

- 11.1 For the purposes of facilitating the administration of the Company's business, the Buyer authorizes the Company:-
 - 11.1.1 to collect all information it may require about the Buyer from any third parties and authorizes those third parties to release that information to the Company; and
 - 11.1.2 to hold all information given by the Buyer or any third party to the Company; and
 - 11.1.3 to use that information including giving the information to any other person to facilitate collection of debts from the Buyer.
- 11.2 The information will be collected, held and used on the condition that:-
 - 11.2.1 it will be held securely at the Company's office and
 - 11.2.2 it will be accessible to any of the Company's employees and agents who need to access it for the administration of the Company's business; and
 - 11.2.3 the buyer may request access to and correct of it at any time.