

**WALLER CONSTRUCTION EQUIPMENT LIMITED  
CONDITIONS OF SALE**

**1 Contract**

1.1 These Conditions shall govern all sales of Equipment and equipment ("the Equipment") by Waller Construction Equipment Limited ("Waller") to any purchaser / Buyer / buyer ("the Buyer").

1.2 These Conditions, together with any accompanying Waller documentation, and any other documentation listed therein shall form the contract ("the Contract") between the parties (together, "the Contract Documents"). Any terms or conditions of the Buyer shall be excluded unless expressly agreed by Waller in writing and appended to these Conditions. Purchase orders from the Buyer shall constitute offers to buy and no contract shall exist until the order has been accepted by Waller, and such contract shall be subject to these conditions. The conditions of the Buyer shall not form part of the Contract unless expressly agreed by Waller in writing and appended to these Conditions. Telephone, email, text or verbal orders accepted by Waller are only given under these Conditions, and to the exclusion of any other terms and conditions.

1.3 These Conditions take precedence over all and any other Contract Documents.

1.4 No variation of these Conditions shall be effective unless in writing and signed by or on behalf of both parties. Notwithstanding any variation, these Conditions shall continue to apply except insofar as they are specifically excluded in writing by Waller. The Buyer acknowledges that there are no representations outside what is recorded in the Contract Documents which have induced it to enter into the Contract.

1.5 A waiver of any provision must be in writing by Waller to be effective. Any failure or delay to exercise any right or power hereunder by Waller shall not constitute a waiver of any relevant right or power.

1.6 The provisions of this Contract are severable and if any one or more such provisions are judicially determined to be unenforceable in whole or in part the remaining provisions shall nevertheless remain binding and enforceable.

1.7 The Contract Documents and primarily these Conditions constitute the entire agreement between the parties and supersede all prior agreements or understandings between them.

1.8 Nothing in this Contract shall confer or purport to confer on any third party any rights, benefits or obligations.

1.9 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.10 The Buyer shall not without the prior written consent of Waller assign, transfer, or sub-let any obligations under the Contract or any part thereof. Where such consent is given, it shall not relieve the Buyer of any of its obligations under the Contract.

1.11 Waller reserves the right to sub-let its obligations under the Contract in part or as a whole.

**2 Payment**

2.1 The price of the Equipment shall be Waller's quoted price.

2.2 The Buyer agrees that any changes to its original requirements and specifications used in the preparation of Waller's quoted price may invalidate the original quoted price or cause it to be changed. Waller at its sole discretion may choose to accept the changes and vary the price accordingly.

2.3 A quotation given by Waller will constitute an offer to treat only. Any order from the Buyer based on the quotation shall constitute an offer to buy, and no contract shall exist until accepted by Waller as herein provided.

2.4 The time for payment by the Buyer to Waller shall be of the essence of the Contract.

2.5 The Buyer shall pay invoices in full with no deduction or set off in respect of monies or liabilities which the Buyer may claim to be payable.

2.6 Waller shall be entitled to invoice the Buyer for the price of the Equipment:

2.6.1 in advance where the Equipment involve pre-purchase by Waller and / or an element of preparatory works;

2.6.2 on account as work progresses or orders are placed in relation to the Equipment;

2.6.3 on or at any time after commencement and / or delivery of the Equipment.

2.7 Payment of the full amount of each invoice shall be due on the date of each respective invoice. The final date for payment of each invoice will be 7 days after the date of each respective invoice. In any event, no delivery or Equipment shall be provided until payment is received in full.

2.8 Any payment on account will be allocated against the Buyer's longest outstanding invoices first, as determined solely by Waller.

2.9 Without prejudice to any other right or remedy available to Waller, Waller shall be entitled to interest on any amounts unpaid at 8% over Bank of England base rate from time to time, calculated on a daily basis, from the date of the invoice, until payment is received in full. Further, Waller shall be entitled to Late Payment charges of £75 per overdue invoice per month or part-month outstanding.

2.10 The price is exclusive of any VAT, or other taxes, fees or charges which shall be paid by the Buyer. Unless otherwise indicated, the Price is exclusive of any applicable VAT which shall be paid by the Buyer.

**3 Variations or changes**

3.1 The Buyer may vary, add to, omit from, change or alter the performance of

the Contract only by way of an express instruction agreed in writing in advance by Waller. No such instruction shall vitiate this Contract. Alternatively, where Waller is delayed by the Buyer and / or a third party in the performance of the Contract, the Buyer shall recompense Waller as provided for in this clause, as if it were instructed by the Buyer.

3.2 The Buyer shall be liable for all additional costs, expense, and delays arising from or in connection with any instruction, direction or variation. Waller shall not be liable for any loss of the Buyer arising from or connected to any change in or addition to or omission from the Equipment.

3.3 The Buyer shall pay Waller the price of any change, variation, direction, instruction, addition or omission, as invoiced by Waller.

**4 Delivery**

4.1 The Buyer hereby accepts the general conditions of any carrier employed by Waller.

4.2 Neither Waller nor any carrier engaged by it shall be liable for damage or loss of Equipment in transit or for shortage on delivery unless notice in writing is given to the carrier concerned and Waller within 3 days of the date of delivery, or in the case of non-delivery or loss of Equipment within 14 days from the date of dispatch, and such other steps are taken by the Buyer (including, if necessary, shorter notice to the carrier concerned) as may be necessary to pursue the claim against the carrier.

4.3 Delivery will be made to the Buyer at a site as agreed. Any date of delivery or period for delivery given is an estimate only and Waller will not be liable for any delay in delivery of the Equipment caused by any delay in delivery by any manufacturer or supplier to Waller or for any other cause outside the control of Waller.

4.4 Waller shall be entitled to use any method of transportation it may select for despatch of the Equipment.

4.5 Waller shall provide the Buyer with any documents or certificates necessary to enable the Buyer to accept delivery. The Buyer shall be responsible for unloading and storage of the Equipment upon delivery of the specified site. If through the Buyer's default, delivery cannot be effected, without prejudice to any other right or remedy available to Waller, the Buyer shall pay any costs incurred as advised in writing by Waller.

4.6 The cost of carriage, transportation, insurance and any other costs for services connected with the delivery of the Equipment, shall be the responsibility of the Buyer.

**5 Storage**

Where Waller has notified the Buyer that the Equipment are ready for delivery, the Buyer shall take delivery or arrange for storage. If the Buyer does not so take delivery or arrange for storage within 7 days of notification Waller shall be entitled to invoice and be paid for the Equipment as though the Equipment had been duly delivered in accordance with these instructions and Waller may arrange storage either at Waller's own premises or elsewhere on the Buyer's behalf and all charges for storage, insurance and demurrage shall be payable by the Buyer, and all risk shall pass to the Buyer on notification by Waller.

**6 Performance**

6.1 Waller shall endeavour to provide the Equipment in reasonable time. Where Waller has been delayed by any act or omission for which the Buyer is responsible to any degree, any loss, expense, additional costs or the like incurred by Waller shall be recoverable from the Buyer as a debt.

6.2 Where the Equipment include any element of preparatory works, Waller undertakes to fulfil its liability on the basis only of the information provided by the Buyer in good time in advance of the Equipment being provided on site, and included in this Contract. Where information is not physically provided by the Buyer, or not physically provided in good time by the Buyer, or not included in the Contract, Waller shall not be liable in any way for any shortcomings in or subsequent to its input.

6.3 Where Waller has undertaken preparatory works, Waller does not accept liability for the performance or otherwise of the Equipment, if they are not used and maintained reasonably or as specified by Waller. Waller undertakes that its Equipment will perform as Waller has stated in writing to the Buyer, subject to reasonable tolerances. It cannot and does not take liability for how the Equipment is used, stored or maintained by the Buyer or others, nor how the Equipment may act or re-act in any given conditions of use.

6.4 The Buyer shall maintain all work and installation areas where Waller is required to provide the Equipment or anything in connection therewith in a reasonably clear and safe condition and free from all rubbish and materials.

6.5 Where unexpected hazards or materials are found, Waller reserves its rights to entirely re-price the Equipment, and shall not be responsible for any delay incurred.

6.6 The Buyer shall allow Waller full and unhindered access to all areas required for the Equipment to be provided.

6.7 The Buyer shall ensure that all relevant authorities, planning, permissions, approvals, local and statutory rights have been satisfied prior to allowing Waller to deliver, and the Buyer shall be liable for all costs and fees related thereto.

6.8 The Buyer shall be liable for any damage, loss, shortage, charges, costs, expense, defect, flaw, failing or deficiency in the performance of the Contract as advised to the Buyer by Waller. Any such amounts shall be invoiced by Waller as provided for in these Conditions and be recoverable from the Buyer as a debt.

6.9 Where the Equipment are to be provided by Waller in connection with or on a site where the Buyer is working, the Buyer shall be responsible for the safe execution of work in connection with the Equipment and shall comply with all relevant legislation and reasonable requests of Waller, for securing the health and safety of all persons employed on the project, and such other persons who may be affected by the work or operations of the Buyer and Waller.

6.10 The Buyer shall be responsible for providing Waller with all reasonable health, safety and welfare facilities, including but not limited to, access, lighting, running hot and cold water, drinking water on tap, suitably reasonable toilets and washing facilities, dry and heated accommodation suitable to eat in, safe and dry storage, and access to a phone line and mains electricity. Should the Buyer not provide any of the foregoing, Waller reserves the right to provide the same and all additional expense so incurred shall be recoverable from the Buyer as a debt, and in addition to the price for the Equipment.

6.11 The Buyer indemnifies, and shall save harmless Waller for any breach of the Contract. If, as a consequence of any action and / or inaction of the Buyer, any person suffers personal injury or death, or any damage or interference is caused to any property or works, then the Buyer shall be liable for and shall indemnify Waller against any expense, loss, cost, claim, liability, damages and proceedings whatsoever arising.

6.12 If Waller notifies the Buyer of any failure in connection with the performance of the Contract or breach of this Contract, the Buyer will rectify immediately at its own expense and risk.

6.13 Should the Buyer fail in any way to comply with its obligations under the Contract, the Buyer shall immediately be liable to Waller for any loss, expense and/or damage which Waller may incur. The Buyer shall also be liable to Waller for any consequential loss arising out of or in connection with any default by the Buyer. There shall be no limit on the total liability of the Buyer for any loss of Waller arising under or in connection with this Contract.

## **7 Insurance**

7.1 The Buyer shall maintain such insurances as required by Waller, including but not limited to employer's liability, public liability, all risk and professional indemnity, and as necessary to cover the liability of the Buyer and Waller in respect of personal injuries or deaths arising out of or in the course of, or caused by the carrying out of the Contract, and damage to property. The Buyer shall indemnify Waller for any action and / or inaction of the Buyer which shall cause Waller to suffer loss or expense or become liable in damages. All insurance is to be to the reasonable satisfaction of Waller.

7.2 Waller may require written evidence of these insurances as a condition precedent to any Equipment being provided. In the event that the Buyer fails to provide the same, Waller may provide such insurance and add any costs incurred plus 10%, which shall be recoverable from the Buyer as a debt.

7.3 Waller and / or its agents shall be under no liability in respect of any loss, theft or damage of or to plant, tools, materials, equipment, or facilities of the Buyer, whether they be unfixed or fixed on site.

## **8 Title and Risk**

The Buyer acknowledges and confirms that risk in the Equipment shall be deemed to have transferred to the Buyer upon or at the time the Equipment are shipped from Waller or its supplier. Title shall pass to the Buyer upon receipt by Waller of payment in full for all Equipment. Until that time, the Buyer shall store the Equipment separately away from other Equipment and clearly marked as being the property of Waller, or in the case of resale of the Equipment to a third party, the Buyer shall keep such funds in a separate account and marked as Waller funds. The Buyer hereby agrees that Waller may enter premises to recover the Equipment, whether fixed or not, at any time until Waller has been paid in full for the Equipment, and Waller shall not be liable for any loss or damage caused in it recovering the Equipment from the premises.

## **9 Defective Equipment**

9.1 Waller will not be liable hereunder in any way if, when the Equipment which the Buyer alleges are defective are tested or examined by Waller, the alleged defect appears to have been caused by the Buyer's or a third party's misuse, neglect, improper installation, any cause beyond the range of intended use of the product, or by accident, fire or other hazard.

9.2 Unless the Buyer gives Waller clear written notice giving Waller clear and reasonable opportunity to correct any default, to be received by Waller seven working days prior to any costs being incurred, the Buyer shall not recover from Waller any cost, loss or expense which it claims or attributes to be Waller's liability.

9.3 Except as otherwise stated in this Clause, Waller shall have no liability to the Buyer for any consequential loss of the Buyer arising out of or in connection with the provision of any Equipment pursuant to this Contract and the total liability of Waller for any other loss of the Buyer so arising under the terms of this Contract shall not exceed the price paid by the Buyer for the Equipment under this Contract.

9.4 There are no warranties, conditions, guarantees or representations whether express or implied by statute or otherwise, orally in writing, except as provided herein.

## **10 Force majeure**

Waller shall not be liable for non-performance or delay in performance or for any

loss or damage to the Equipment due to act of God, war, riot, embargo, labour dispute, civil commotion, fire, theft, shortage of labour or materials, confiscation, delays in delivery or services of manufacturers, suppliers and sub-contractors, prohibition of import or export or any other unforeseen event (whether or not similar in nature to those specified) outside its reasonable control.

## **11 Default of the Buyer**

11.1 Without prejudice to any other rights or remedies which Waller might possess, Waller shall be entitled to immediately terminate the Contract in the event that:

11.1.1 the Buyer fails to properly perform, carry out and/or complete its obligations arising under and / or in connection with the terms of the Contract in any way; or

11.1.2 the Buyer takes any action, or fails to take any action, which would lead Waller to reasonably believe that there was a risk of the Buyer being or becoming insolvent; or

11.1.3 if in the opinion of Waller, the Buyer is guilty of gross misconduct or fails to comply with the provisions of this Contract in any way.

11.2 In the event of termination, Waller shall without prejudice to any claim or right or remedy available to Waller, render an invoice for the full balance of the Equipment and any associated costs, and the Buyer shall be liable for all costs and losses arising to Waller foreseeable or not.

11.3 In the event of termination, any amounts owed by the Buyer to Waller shall become due for payment immediately. The final date for those payments to be paid is seven days after the due date.

## **12 Dispute Resolution**

The governing law of the Contract shall be the law of England, and subject to the adjudication and arbitration provisions below, the parties hereby submit to the exclusive jurisdiction of the English courts.

12.1 **Adjudication.** If any dispute or difference arises between Waller and the Buyer either party may refer the dispute to adjudication in accordance with this Clause and pursuant to the provisions contained in the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended.