

Stantone Mechanical Handling Limited

General Trading Terms and Conditions

(G1)

(a) This agreement and appended schedules constitutes the entire agreement and understanding between the parties as to its subject matter. Supplementary terms and conditions will apply in respect of Hire Contracts, Service and Maintenance Agreements.

(b) No variation of these terms and conditions shall be binding unless made in writing specifying both which clause is to be varied and full details of such variation and signed by a Director or Principal or Authorised Officer of each party to this agreement.

(c) If for any reason any term or condition of this agreement shall be held to be invalid or unenforceable for any reason, the remaining terms or conditions shall continue to have full force and effect and be binding upon the parties.

(d) If any such change substantially affects or alters the commercial basis of the agreement, the parties shall negotiate in good faith to amend and modify the provisions and terms as necessary to give effect so far as possible to their original intent.

These terms and conditions shall be governed by and construed in accordance with English Law, and the parties hereby submit to the jurisdiction of the English Courts in relation to any dispute that may arise concerning this Agreement or its implementation

(G2) Notices

Any notice given by the Customer under this Agreement shall be given in writing to the address set out in this Agreement. Any notice shall be deemed to have been served only upon written acknowledgement by SMH Ltd.

(G3) Time or Indulgence

(a) Any time or other indulgence granted by SMH Ltd shall not affect SMH Ltd's strict rights under these terms and conditions.

(b) A person who is not a party to this Agreement shall not have a right under the Contracts (Right of Third Parties) Act 1999 to enforce any term of this Agreement.

(G4) Confidentiality

Each party undertakes to the other to treat as confidential and not to make use of any information relating to the business of the other which comes to its knowledge as a result of this Agreement and its performance and to exercise proper commercial prudence in preserving such confidentiality.

(G5) Definitions

(a) "Stantone Mechanical Handling Ltd" is the party supplying equipments, services, parts, or hire and is hereinafter referred to as SMH Ltd.

(b) "The Customer" is the party to whom SMH Ltd is supplying equipment, services, parts or hire and includes its successors.

(c) "Agreement" means the Agreement between the parties the terms of which are set out herein, including the Schedules(s).

(d) "Hire Agreement" means the Agreement for the hiring of Equipment entered into between SMH Ltd and the Customer the terms of which are set out herein, including the Schedule(s).

(e) "Maintenance Agreement" means the agreement between the parties to provide and receive maintenance services the terms of which are set out herein, including the Schedule(s).

(f) "Equipment" shall include any machine or part thereof and any attachments or fittings particulars of which are set out in the relevant schedule.

(g) "Schedules" refers to any statement of details of Equipment, Site, Fees and/or services to be provided appended to these terms and conditions.

(h) "Hired Equipment" shall include any item of Equipment or part thereof and any attachments or fittings and replacements or any other thing hired by the Customer from SMH Ltd under this Agreement, short particulars of which are set out in the relevant Schedule.

(i) "Activity Level" means the anticipated maximum annual hours of usage of the Equipment defined in the Schedule(s).

(j) "Maintenance Plan" means the programme of activities involved in maintaining and servicing the Equipment.

(k) "Application" shall mean the combination of Site conditions, Activity Level and Environment in which it is intended that the Equipment will be operated and is defined for each individual item of Equipment in the Schedule.

(l) "Site" means the Customer's site/delivery address set out in the relevant Schedule.

(m) "Regulation" means any Act of Parliament Order, regulation, bye-law, EC regulation or other similar instrument whether national or local, including any amendment thereto or re-enactment or replacement thereof.

(n) "Fees" means all Hire Rates, Service Rates and other ad hoc charges payable under this Agreement and described in the relevant schedule(s).

(G6) Title

Until full payment for the purchase Equipment has been received by SMH Ltd legal and beneficial ownership of the Equipment shall remain vested in SMH Ltd. In the event of default or delay in paying for the purchase of Equipment howsoever arising SMH Ltd may repossess it and the Customer hereby grants SMH Ltd irrevocable license to enter its premises for the purpose of doing so.

(G7) Risk

The risk in the Equipment shall pass to the Customer upon delivery to the Site or where applicable from the time of collection by the Customer and SMH Ltd shall, notwithstanding that title to the Equipment is retained by SMH Ltd, have no responsibility in respect of the Equipment thereafter. The risk in Equipment supplied under Hire Agreement shall similarly pass to the Customer upon delivery to the Site and shall continue until such time as the hired Equipment is returned to the possession of SMH Ltd. Accordingly the Customer shall be responsible for ensuring the Equipment for not less than its purchase price.

(G8) Force Majeure

If performance of the contract is delayed by any act of God, act or omission of government, war or similar event (excluding strikes or other industrial disputes) beyond either parties reasonable control ("Force Majeure"), then the time for performance shall be amended accordingly subject to the delayed party promptly informing the other of the event and taking responsible steps to reduce the delay.

(G9) Limits of Liability

Except for death or injury of any person resulting directly from SMH Ltd's negligence or directly from the negligence of its employees or agents:

(a) The Customer will be solely responsible for (and so hold SMH Ltd fully indemnified against) any loss, damage or injury to people or property caused by the possession of or use of or breakdown or defect in the Equipment, parts or services supplied.

(b) SMH Ltd shall not be held liable for any loss or damage sustained or incurred by the Customer or any third party (including without limitation, any loss of use of the Equipment or Loss) resulting from the possession of or use of or any breakdown or defect in the Equipment, parts or services supplied howsoever caused.

(c) SMH Ltd shall not be liable to the Customer for loss of profits, contracts or earnings or goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) whether arising from negligence, breach of contract or otherwise resulting from the supply of possession of or use of or any breakdown or defect in the Equipment howsoever caused.

(G10) Payment

(a) Unless otherwise agreed in writing payment for:

Equipment service, repairs and parts shall be due in net cash 30 days from the date of invoice.

New trucks, Used trucks Hand Pallet Trucks and Miscellaneous items shall be due immediately upon purchase.

(b) Payments due under Maintenance Agreements and Hire Agreements shall be paid monthly in advance and will be payable regardless of whether an invoice has been supplied by SMH Ltd. Time shall be of the essence for payment of Fees.

(c) All payments shall be made free and clear of any deductions setoffs or withholdings of any description (save as set out below) unless the same are required by law in which event the Customer shall indemnify SMH Ltd against the same.

(d) If the Customer wishes to dispute the whole or any part of any invoice, then provided that it notifies the disputed amount and the nature of the dispute to SMH Ltd prior to the due date for payment of the relevant invoice, it may withhold payment of the sum in dispute, but must pay the undisputed portion within the agreed payment terms. If investigated by SMH Ltd and the Customer, both parties believe that such disputed amount (or part thereof) is properly due the Customer shall pay such amount within 14 days of the date of resolution.

(e) In the event of late payment by the Customer of any sum due to SMH Ltd, the Customer shall forthwith (without prejudice to any other remedy SMH Ltd may have) pay to SMH Ltd any sums overdue and SMH Ltd will exercise its statutory right to claim interest and compensation for debt recovery costs under the Late Payments Regulations.

(G11) Specification

(a) Equipment supplied and manufactured by SMH Ltd will comply with SMH Ltd's published specifications and all Regulations regarding the construction and servicing of Equipment. Unless notification to the contrary is received by SMH Ltd within 7 days of its delivery to site, the Equipment shall be deemed to have been delivered in good working order.

(b) However SMH Ltd reserves the right to alter or amend the specification of any Equipment without notice; illustrations and advertising literature are by way of general description only and do not form part of any contract.

(G12) Warranty

New Equipment manufactured by SMH Ltd is warranted to the extent that, subject to the conditions set out below, SMH Ltd will repair or replace free of charge any part or parts which are found to be defective by reason of faulty materials or workmanship within the stated periods below.

(a) Powered Equipment: 12 Months or 2000 metered hours from date of purchase, whichever is the sooner, provided the equipment is subject to an appropriate Maintenance agreement provided by SMH Ltd or an approved service provider.

(b) Manual materials handling Equipment: 12 Months from date of purchase

(c) Parts: 6 Months from date of purchase

(d) Labour: 3 months from date of provision.

Any warranty will be invalidated if:

(i) The Equipment is used for any purposes other than those for which it was supplied, or

(ii) Equipment is rendered defective through lack of maintenance in accordance with the manufacturer's recommendations, improper usage, wilful damage or the fittings of parts other than those specified by the manufacturer.

(e) This warranty does not apply to proprietary equipment but SMH Ltd will pass on the benefit of the manufacturer's warranty (if any) insofar as it is able to do.

(f) Save as set out above and except insofar as such exclusion is prevented by law SMH Ltd gives no conditions, warranties or guarantees in respect of any Equipment, services, or parts supplied by SMH Ltd.

(G13) Acceptance and Cancellation, Alteration or Suspension of Orders

(a) SMH Ltd's employees or agents are not authorised to make any representations concerning the Equipment or its hiring or maintenance unless confirmed by SMH Ltd in writing. The Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.

(b) Any advice or recommendations given by SMH Ltd or its employees or agents to the Customer or its employees or agents as to storage, application or use of the Equipment which is not confirmed in writing by SMH Ltd is followed or acted upon entirely at the Customers own risk and accordingly SMH Ltd shall not be liable for any such advice or recommendation which is not so confirmed.

(c) There shall be no binding contract until SMH Ltd has acknowledged in writing any order placed by the Customer.

(d) In the event of any purported errors or omissions in the acknowledgement of order the Customer must notify SMH Ltd in writing of such purported errors or omissions within seven days of receiving the order acknowledgement. Thereafter cancellation, alteration or suspension of orders by the Customer may only be made within SMH Ltd's prior written agreement and on terms that will indemnify SMH Ltd against the higher of actual costs and losses occurred or 15% of the total Agreement as a result of such cancellation, alteration or suspension.

(G14) Prices

Unless otherwise specified, prices quoted are ex-works and carriage and will be borne by the Customer.

(G15) VAT

Payments due from the Customer are calculated before VAT which will be levied according to the Taxable value of the supply.

(G16) Time for Delivery

Delivery forecasts are given in good faith but SMH Ltd will not accept any liability if for any reason delivery is delayed beyond the date given in the delivery forecast.

(G17) Breach

(a) If the Customer commits a repudiatory breach of this Agreement SMH Ltd may accept such breach as a repudiation of the Agreement and then in any such case SMH Ltd may terminate the Agreement and seize and remove any Hired Equipment and/or spare parts for which purpose it shall be lawful for SMH Ltd to enter into or upon any premises where the Equipment may be.

(b) Without prejudice to the generality of this clause above should the Customer:-

(i) Withhold payment of fees or other amounts due hereunder for fourteen days after the due date of payment thereof; or

(ii) Fail to observe and perform any of the terms and conditions of this Agreement and in the case of any breach capable of being remedied shall fail to remedy such breach within (14) fourteen days after being required by SMH Ltd in writing so to do; or

(iii) Do or cause to be done or permit or suffer anything whereby the rights of SMH Ltd in or over the Equipment are prejudiced or put into jeopardy; or

(iv) Convene any meeting of creditors or make a Deed of Assignment or Arrangement for the benefit of or compound with it creditors or shall be subject to a change of ultimate parent company ownership or shall cease or threaten to cease to carry on business or shall be unable to pay its debts as they mature or shall convene a meeting to consider a resolution for winding up or present or have a petition for winding up presented against it or have a Receiver or Administrator appointed over the whole or any parts of its undertakings or assets or the ownership of the Hire changes; or

(v) Suffer any distress or execution upon its property, the aforesaid shall be considered a repudiatory breach of this Agreement. In each and any case of repudiatory breach, SMH Ltd will be entitled to terminate the Agreement and recover all payments as detailed in the Agreement.

(c) In the event of a repudiatory breach SMH Ltd will immediately cease to provide maintenance and breakdown cover and accepts no liability for any damage or loss to person or property as a result of the continued use of the Equipment.

The Customer shall be fully liable to SMH Ltd for damages for breach of this Agreement.