

Conditions of Sale

1. INTERPRETATION

In these Conditions,

(i) "the Company" means Conquip Industrial (company registration number 4791365) or any subsidiary company or agent authorised by them, (ii) "the Purchaser" means the person, firm or company purchasing Goods from or doing business with the Company, and (iii) "The Goods" means all products supplied by the Company to the Purchaser whether by means of sale, hire, rental or otherwise, including but not limited to Goods supplied under the brand names Conquip, Inquip and Farmquip, and whether the property of the Company or distributed by the company as the agent for another.

2. GENERAL

- (a) These Conditions of Sale are in addition to any Special Conditions included in the Company's quotations, hire agreements, or terms that are explicitly notified to the Purchaser by the Company as forming part of these Conditions of Sale.
- (b) Any order by the Purchaser constitutes an offer by the Purchaser to purchase or hire (as applicable) the Goods in accordance with these Conditions. The Company reserves the right to accept or refuse any order given on the basis of its quotation. The Purchaser's order shall only be deemed to be accepted when the Company confirms acceptance of the Order, whether verbally or in writing, at which time the contract between the Purchaser and the Company shall come into existence ("Contract").
- (c) Apart from the terms and conditions referred to in paragraph 2(a), these Conditions set out the entire agreement between the parties regarding the Contract, and the Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in these Conditions.
- (d) The Purchaser is responsible for ensuring that the terms of its order and any applicable specifications are complete and accurate. In purchasing the Goods from the Company, the Purchaser acknowledges that they do not rely upon skill or judgement of the Company or its employees or agents as to matters connected with the Goods. When hiring Goods from the Company, the Purchaser is responsible for inspecting the Goods to ensure the Goods are of acceptable quality, are suitable and fit for the purpose to which the Purchaser requires, and the Company accepts no responsibility or liability for any subsequent alleged failure of the Goods to meet such requirements.
- (e) The Purchaser shall be responsible for providing any guard or protection necessary to comply with any statutory requirements in connection with the operation of machinery.
- (f) The Company warrants that on delivery, the Goods shall (I) conform in all material respects with their description, and (II) be free from material defects in design, material and workmanship.
- (g) If the Goods supplied to the Purchaser do not comply with the warranty given in paragraph 2(f) above, the Purchaser must provide written notice to the Company of such non-compliance within three days of delivery. Subject to point 2(h), if the Company agrees that the Goods do not so comply the company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods. Credit will only be given for Goods returned if Delivery Note number is quoted and the Company has issued a Collection Note for the Goods.
- (h) The Company shall not be liable for Goods' failure to comply with the warranty set out in paragraph 2(f) if (I) the Purchaser makes any use of such Goods after providing notice as above, (II) the defect arises because the Purchaser failed to follow the Company's oral or written instructions regarding the Goods; (III) the Purchaser alters or repairs such Goods without the written consent of the Company; or (IV) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- (i) Except as provided in this paragraph 2, the Company shall have no liability to the Purchaser in respect of the Goods' failure to comply with the warranty set out in paragraph 2(f), and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract and these Conditions.
- (j) When Goods are returned to the Company's stock for credit, the Company reserves the right to deduct 25% from the original cost of the Goods, except where Goods are returned and exchanged at the same point in time for alternative Goods, then 20% of the original cost will be deducted.
- (k) The Purchaser acknowledges and agrees that any ancillary services provided by the Company in relation to the Goods at the request of the Purchaser, including but not limited to installation, fitting or configuration services, are undertaken at the risk of the Purchaser and the Purchaser hereby disclaims, releases and holds harmless the Company from any loss or damage suffered by the Purchaser arising out of such services.
- (l) All samples will be charged at the current rate and are non-returnable.
- (m) The Company reserves the right to make a delivery charge according to the circumstances of each order.
- (n) The Company's policy is one of continuous growth and improvement in service and products.
We reserve the right to alter specifications and prices without prior notice.
- ## 3. PAYMENT
- (a) The price of the Goods shall be the price set out in the order as agreed between the Company and the Purchaser, or, if no price is agreed, the price set out in the Company's published price list in force as at the date of delivery.
- (b) Unless alternate terms are agreed in writing, all sums become due and payable under these Conditions not later than 1 month from the end of the invoice month.
- (c) Payment shall not be deemed to have been received until any cheque or transfer of funds has been cleared.
- (d) Time for payment shall be of the essence.
- (e) The Company reserves the right to charge interest at the rate of 3% above the base rate from time to time of Lloyds TSB Bank plc on all overdue accounts, such interest being deemed to accrue on a day to day basis from the due date of the payment under paragraph (b) of this Condition.
- (f) The Purchaser shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law, and the Purchaser shall have no right assert any credit, set off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.
- (g) If the Purchaser (being a company) has a petition presented for its winding-up or passes a resolution for voluntary winding-up otherwise than for the purpose of a bona fide amalgamation or reconstruction or compounds with its creditors or has a receiver appointed of all or part of its assets or (being an individual) becomes bankrupt or insolvent or enters into any arrangement with its creditors or commits a material or serious breach of the Agreement (and in the case of such a breach being remediable fails to remedy it within 7 days of receiving notice to do so), the Company may cancel or suspend all further deliveries under the Contract or under any other contract between the Purchaser and the Company without incurring any liability to the Purchaser, and all outstanding sums in respect of Goods delivered to the Purchaser shall become immediately due.
- (h) The Company reserves the right at any time at its discretion to demand security or payment before continuing with or delivering any order.
- (i) Unless otherwise agreed between the parties in writing, the Purchaser may charge hire fees and charges for bank or public holidays.

4. RISK AND THE PASSING OF PROPERTY

- (a) Risk in the Goods shall pass to the Purchaser when the Goods are delivered or collected by the Purchaser or its agent.
- (b) Subject to paragraph 4(d) of these Conditions, title in the Goods shall not pass to the Purchaser until payment is received in full by the Company for the Goods and no other amounts then being outstanding from the Purchaser to the Company in respect of other Goods supplied by the Company.
- (c) Until title to the Goods passes:
(i) The Purchaser will hold the Goods on a fiduciary basis as bailee for the Company; (ii) The Goods shall (subject to paragraph (c)(iii) of these Conditions) be kept separate and distinct from all other property of the Purchaser and of third parties and in good and substantial repair and condition, keep them insured against all risks and be stored in such a way as to be clearly identifiable as belonging to the Company; and (iii) The Purchaser may resell or use the Goods in the ordinary course of its business, subject to the Company being entitled to revoke such power of sale and use by notice to the Purchaser.
- (d) Goods that are hired by the Purchaser shall at all times remain the property of the Company, and the Purchaser shall have no right, title or interest in or to such Goods (save the right to possession and use of such Goods subject to these Conditions and any hire agreement between the parties).
- (e) Before title to the Goods passes to the Purchaser, if the Purchaser suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or has a petition presented for its winding-up or passes a resolution for voluntary winding-up otherwise than for the purpose of a bona fide amalgamation or reconstruction, or compounds with its creditors, or has a receiver appointed of all or any part of its assets, or becomes bankrupt or insolvent, or enters into any arrangements with creditors, or the Company reasonably believes that any such event is about to happen, then, provided that the Goods have not been resold or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Purchaser to deliver up the Goods and, if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.
- (f) The Purchaser is liable for any hazardous material carried by their own transport and also upon receipt of any delivery by the Company.

5. DELIVERY

- (a) Delivery will be deemed to have been effected after the Goods leave the premises of the Company or as the case may be the premises of the suppliers to the Company in circumstances where the Goods are delivered direct from such suppliers.
- (b) Any dates quoted for delivery are approximate only, and time of delivery is not of the essence.
- (c) The Company shall not be liable for any loss arising from its non-delivery, or by the failure to make Goods ready for collection on the due date, that is caused by (I) the Purchaser's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, or (II) any event beyond the Company's reasonable control including strikes, lock-outs or other industrial disputes, failure of energy sources or transport network, traffic incidents or breakdowns, acts of God, war, terrorism, riot, civil commotion, breakdown of plant or machinery, natural disasters or default of the Company's subcontractors.
- (d) The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.
- (e) Deviations in quantity of the Goods delivered (representing not more than 10 per cent by value) from that stated in these Conditions shall not give the Purchaser any right to reject the Goods or to claim damages, and the Purchaser shall be obliged to accept and pay at the Contract rate for the quantity of the Goods delivered.

6. LIABILITY & GENERAL

- (a) Nothing in these Conditions shall limit or exclude the Company's liability for (I) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); (II) fraud or fraudulent misrepresentation; or (III) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- (b) The Company's total liability to the Purchaser in respect of all other losses arising under or in connection with the Contract or these Conditions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.
- (c) The Company shall not be liable to the Purchaser for any indirect or consequential loss, loss of profits or revenue, cost of management time, loss of business or business benefit whether such losses or damages arise in contract or tort.
- (d) The Purchaser acknowledges that the Purchaser shall be responsible for any loss of or damage to hired Goods arising out of or in connection with any negligence, misuse, mishandling of the hired Goods, or that is otherwise caused by the Purchaser or its officers, employees, agents and contractors, and the Purchaser undertakes to indemnify the Company on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with the Purchaser's use of any hired Goods.
- (e) The Contract 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.

