

Direct Supply Conditions with a connected Finance Agreement

1. DEFINITIONS & INTERPRETATION

In these Conditions, the following definitions and rules of interpretation shall apply:

- 1.1. "**Conditions**" means the terms and conditions set out in this document.
- 1.2. "**Customer**" shall mean the sole trader, firm or company as identified in the Order which wishes to acquire the Equipment through the Website using a Finance Agreement;
- 1.3. "**Delivery Date**" shall mean the estimated date for delivery of the Equipment as confirmed to the Customer by JCB in writing;
- 1.4. "**Delivery Location**" shall mean the place at which the Equipment is to be delivered to the Customer at the Customer's nominated premises in any mainland United Kingdom location as notified to JCB in writing by the Customer;
- 1.5. "**Deposit**" shall mean the sum of £100 GBP payable as a deposit for each item of Equipment which is Ordered by the Customer;
- 1.6. "**Excusable Delay**" means delay in delivering the Equipment resulting from any cause or reason whatever beyond JCB's reasonable control including act of God, war, riot, fire, flood, adverse weather conditions, pandemic, epidemic, explosion, natural disaster, strike, labour troubles, failure of JCB's suppliers, accidental damage or loss of the Equipment, the action or inaction of any government or other competent authority or the refusal of any licence, certificate or permission;
- 1.7. "**Equipment**" shall mean the JCB machine specified in the Order;
- 1.8. "**Finance Agreement**" shall mean the relevant finance agreement relating to the Equipment made between JCB Finance and the Customer;
- 1.9. "**JCB**" shall mean JCB Sales Limited (company number 0792807) whose registered offices is at Lakeside Works, Rocester, Staffordshire ST14 5JP;
- 1.10. "**JCB Finance**" shall mean JCB Finance Limited (company number 00972265) whose registered office is at The Mill, High Street, Rocester, Uttoxeter ST14 5JW;
- 1.11. "**Manufacturer's Warranty**" shall have the meaning set out in Clause 6.3;
- 1.12. "**Order**" shall mean the Customer's order for the Equipment which is placed through the Website and the term "**Ordered**" shall be construed accordingly;
- 1.13. "**Party**" or "**Parties**" shall mean a party or the parties to the Conditions being JCB and the Customer, including each of their successors and permitted assigns;
- 1.14. "**Warranty Period**" shall mean the period of two (2) years from the date of delivery of the Equipment to the Customer or the expiry of 2000 machine clock hours on the Equipment as measured from zero clock hours, whichever occurs sooner; and in relation to the HTD-5 product shall mean the period of one (1) year from the date of delivery of the Equipment to the Customer;
- 1.15. "**Website**" shall mean JCB's direct supply website at <https://direct.jcb.com>;
- 1.16. the words and phrases "other", "including", "includes" or "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible; and

1.17. clause headings shall not affect the interpretation of the Conditions.

2. BASIS OF CONTRACT

2.1. These Conditions are the only basis on which JCB accepts Orders and shall apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and the Customer waives any right which it might otherwise have to rely on such terms and conditions.

2.2. The Order constitutes an offer by the Customer to acquire the Equipment using financing provided by JCB Finance.

2.3. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.4. In consideration of the Customer paying the Deposit to JCB the Order shall be sent to JCB Finance for progression of the Customer's finance application relating to the Equipment.

2.5. No contract for the supply of the Equipment shall come into effect until the Finance Agreement is in effect at which point the Order shall be confirmed and supplied by JCB in accordance with the Conditions. Any supply of Equipment is entirely conditional on the Customer entering into a Finance Agreement and JCB will not supply the Equipment on any other basis through the Website.

2.6. The supply of Equipment through the Website is only available to business users based in mainland United Kingdom.

2.7. No variation of the Conditions shall be effective unless it is made in writing, refers specifically to these Conditions and is signed by both of the Parties.

3. DEPOSIT

3.1. The Deposit is payable by the Customer to JCB to confirm its interest in the Equipment.

3.2. The Deposit is refundable should the Customer not be offered financing by JCB Finance in respect of the Equipment. Furthermore the Customer is entitled to cancel the Order at any time prior to the Finance Agreement becoming effective and in which case the Deposit will be refunded by JCB to the Customer.

3.3. Once the Finance Agreement becomes effective the Deposit shall be applied by JCB against the selling price of the Equipment from JCB to JCB Finance.

4. SUPPLY & FINANCE

4.1. Once the Finance Agreement becomes effective the Order is confirmed and shall be supplied by JCB pursuant to these Conditions and provided to the Customer by JCB Finance to the Customer under the terms of the Finance Agreement.

5. DELIVERY & EXCUSABLE DELAY

5.1. JCB will deliver the Equipment to the Delivery Location.

5.2. JCB will provide the required Pre-Delivery Inspection (PDI) for the Equipment and the relevant installation of this with the Customer at the Delivery Location either by itself or through an authorised JCB dealer.

5.3. The Parties acknowledge and agree that any Delivery Date or other times quoted for delivery are approximate only and the time for delivery of Equipment shall not be of the essence of this

contract for the supply of Equipment. While JCB will endeavour to observe these times, JCB will not be liable for any loss, penalty, injury, damage or expense arising from any delay or failure to deliver within the time quoted or any extension thereof nor shall such failure entitle the Customer to refuse to accept any delivery or to repudiate the contract.

- 5.4. Without prejudice to the generality of Clause 5.3, if delivery does not take place on the Delivery Date as a result of any Excusable Delay, JCB shall not be liable or deemed to be in default but JCB shall promptly notify the Customer of any expected delay in delivery and its cause and estimated duration, whereupon the Delivery Date shall be suspended for a period equal to the period of the Excusable Delay.

6. MANUFACTURER'S WARRANTY

- 6.1. JCB reserves the right to make any alteration in the design or specification of the Equipment without notice and to deliver Equipment conforming to the altered design or specification in fulfilment of any Order.
- 6.2. Acceptance of the Equipment by the Customer shall be in accordance with the Finance Agreement. The Customer's sole remedy against JCB for any defects in the Equipment shall be in accordance with the Manufacturer's Warranty (as defined in Clause 6.3 below).
- 6.3. Subject to Clause 6.4, JCB warrants to the Customer, as its sole commitment in relation to the quality of the Equipment, that JCB will, free of charge to the Customer, make good or cause to be made good by repair or replacement (at JCB's option, either itself or through an authorised JCB dealer) any defects in the Equipment arising, in JCB's opinion, from faulty materials or workmanship which shall become apparent within the Warranty Period (the "**Manufacturer's Warranty**").
- 6.4. The Manufacturer's Warranty is subject to the following conditions:
- 6.4.1. the Warranty applies only when the Equipment has been properly maintained and operated under normal use and service, according to JCB specification and recommendations from time to time;
- 6.4.2. the Warranty does not extend to failures, defects or damage subsequently attributable to wear and tear, improper adjustment, neglect, misuse, abnormal working conditions or operation beyond rated or recommended capacity, alteration of specifications, accident, abuse, accidental damage, collision, fire, frost, the use of oils or lubricants not specified by JCB, or the use of parts or products other than those specified by JCB for required maintenance, service or repair;
- 6.4.3. the Warranty only applies to JCB parts and it does not extend to any parts or other components or attachments not manufactured by JCB (or any JCB group company) but JCB will as far as possible pass on the benefits of any guarantee or warranty given by the manufacturer thereof in respect of such parts or other components or attachments;
- 6.4.4. the Customer must promptly notify JCB of any claim under the Manufacturer's Warranty specifying full particulars of the alleged defect, machine number, the hours worked, the date the machine was delivered to the Customer and the date that the alleged defect became apparent. If JCB shall so request, the Customer shall return all defective parts to JCB or the JCB dealer;
- 6.4.5. in the event JCB declines any claim under the Manufacturer's Warranty then the part or parts returned to JCB or the JCB dealer (as the case may be) will be disposed of unless specific instructions to return to the Customer were given in writing when the part or parts were returned to JCB or the JCB dealer (as the case may be). The return of any such part or parts shall be at the Customer's expense;

6.4.6. the Warranty shall cease to have effect and JCB's liability shall cease with respect to the Equipment if:

6.4.7. any name or number plates or other identification marks in the Equipment shall have been removed, defaced altered or tampered with; and

6.4.8. the Warranty is limited in application to new and unused Equipment, but once the Warranty has commenced, it shall continue without interruption to its expiry date.

7. LIABILITY

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION

7.1. The liability of JCB under or in connection with the supply of the Equipment whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be governed by this Clause 7 (Liability) and Clause 8 (Entire Agreement).

7.2. Nothing in the Conditions shall limit or exclude the liability of either Party for:

7.2.1. death or personal injury resulting from negligence; or

7.2.2. fraud or fraudulent misrepresentation; or

7.2.3. any other act or omission, liability for which may not be limited or excluded under applicable law.

7.3. Save as expressly provided in the Conditions or to the extent as cannot be excluded at law, JCB makes no warranty, representation or condition of any kind concerning the Equipment and, in particular, JCB makes no warranty, representation or condition as to the conformity of the Equipment to any particular description, as to the quality or fitness for any particular purpose, as to the value, condition, design, operation or performance of the Equipment and all warranties, representations, conditions, obligations and liability of any kind whatever, whether in contract or tort (including negligence) or restitution, implied by law in respect of the Equipment are expressly excluded.

7.4. Subject to Clause 7.2, JCB (or any JCB group company) shall not be liable to the Customer for:

7.4.1. direct or indirect loss or damage constituting wasted time or expenditure, any loss of actual or anticipated profit, use, business revenues, anticipated savings, business, damage to goodwill;

7.4.2. any liability by way of indemnity;

7.4.3. direct or indirect loss of or damage to other equipment or property;

7.4.4. any liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or

7.4.5. any indirect or consequential loss or damage;

even if JCB is advised in advance of the possibility of any such losses or damages and the Customer acknowledges and agrees that JCB does not assume any liability under or in connection with the Conditions for such loss or damage.

7.5. Subject to Clause 7.2 and 7.4, JCB's total liability arising under or in connection with the supply of the Equipment, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the total amount received by JCB for such Equipment.

8. ENTIRE AGREEMENT

8.1. The Conditions constitutes the whole agreement relating to the supply of the Equipment by JCB. The provision of the Equipment to the Customer by JCB Finance pursuant to the Finance Agreement is a matter between the Customer and JCB Finance and is addressed in the Finance Agreement. JCB shall have no responsibility or liability under the Finance Agreement and JCB Finance shall have no responsibility or liability under the Conditions.

8.2. Each Party acknowledges that, in entering into this Contract, it does not rely on any statement, representation, promise, assurance or warranty ("**Representation**") of any person other than as expressly set out in the Conditions. Each Party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract.

8.3. Any performance figures relating to the Equipment contained in JCB's catalogues, the Website, advertising materials or quotations are based upon experience, trials and testing but JCB does not accept any liability if such performance figures are not achieved by the Equipment. They shall not form part of the contract for the supply of the Equipment or have any contractual force.

8.4. Nothing in this Clause 8 shall limit or exclude any liability for fraud.

9. NOTICES

9.1. Any notice given by either Party to the other under these conditions shall be in writing addressed to that other Party at its registered office or principal place of business.

10. GOVERNING LAW & JURISDICTION

10.1. The Conditions and the contract formed pursuant to the Conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales in relation to disputes hereunder.