



PROTECH MACHINERY LTD ("PROTECH"), based at Woolridge Farm, Gloucester Road, Hartpury, Gloucestershire, GL19 3BG and registered NO. 4958012, Manufacturer of agricultural and forestry machinery other than tractors.

Commercial Terms & Conditions

Application:

1. These are the terms on which PROTECH supplies goods and services (the "Products") to customers. By placing an order for Products, you agree that these terms apply to your order. No variation to these terms, nor any other terms and conditions provided by you, shall be of any effect unless such variation or terms are expressly accepted in writing, signed on behalf of Protech. If you have a distribution agreement, then the terms of such agreement may prevail over these terms and you should consult its text.

Pre-Contractual Negotiations:

2. Any prices quoted by Protech remain for thirty days and do not include VAT or any other applicable costs.

3. You are responsible for ensuring the accuracy of all orders placed and the suitability of the products for your needs and/or the needs of your customers. In agreeing to purchase you acknowledge that you have not relied upon any advice or representation made by or on behalf of Protech other than any that are confirmed in writing.

4. Protech shall not be obliged to supply any particular Products and there shall be no contract between you and Protech, unless and until Protech have issued a written acknowledgement of order, and you have confirmed that order by the method as set out in the acknowledgment of order (or are deemed to have confirmed that order). The Products to be supplied shall be those specified in the written acknowledgment of order.

Contract Price:

5. Whole Goods and Stock Orders for Parts- All prices given will include packaging and delivery to the agreed delivery address. Other Parts Orders- All prices exclude packaging and delivery.

6. Protech reserve the right to vary the contract price if there is, between quotation and supply, any material increases in the cost to Protech of complying with the contract. Details of the reasons for such increase will be supplied at request.

7. The Protech price list and the discounts comprised in the Trade Terms are indicative only and may be varied from time to time. Notice of such variations will be given as soon as practicable. Such variations shall not, unless made pursuant to clause 6, affect orders acknowledged at the time of notification.

Contract Specifications:

8. Protech reserve the right at any time to alter Product specifications, either if such alterations do not materially affect your requirements or in any event if such alteration is necessary to comply with regulations or legal requirements.

Time of Delivery:

9.

(a) Where any time or period has been agreed for delivery or performance of the Products such time is an indication only. Unless otherwise accepted by Protech in writing, time shall not be of the essence. You must make your arrangements accordingly and Protech shall not be liable for any loss arising from a failure to meet such dates. If Protech fails to deliver the goods or perform the services, its liability shall be limited to the costs and expenses incurred by you in obtaining replacement Products of similar description and quality in the cheapest market available, less the price of the Products.

(b) In the case of goods, delivery shall be deemed to take place when:

(i) where you are arranging delivery, at the time the goods are placed into the possession of your nominated courier; and

(ii) where Protech is arranging delivery, when the goods are unloaded at the address for delivery.

(c) if you fail to take delivery of the goods within 3 days of Protech notifying you that the goods are ready then:

(i) delivery of the goods shall be deemed to have taken place at 9am on the 4th day after Protech gave you notice that the goods were ready; and

(ii) Protech (or an agent or subcontractor on its behalf) may store the goods under delivery takes place and charge you for all related costs and expenses (including insurance).

Force Majeure:

10. Protech shall not be liable for any failure to comply with any part of the contract if such failure is due to circumstances beyond their reasonable control. Protech shall notify you of the existence of such circumstances. Where these are likely to result in a delay for a period of one month beyond the indicated delivery date you may terminate the contract. If Protech ability to perform any part of the contract is dependent upon the existence of a license or contract from another the termination of such license or contract shall be deemed a circumstance beyond their reasonable control.

Quality of Products:

11.

(a) Subject to the remaining provisions of this clause 11, Protech warrants that under normal use and service, to be free from defects in material and workmanship for a period of 12 months from the date of delivery to you (Warranty Period).

(b) All warranties, conditions or other terms implied by statute or common law in respect of the Products (including the terms implied by sections 13 to 15 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law. The only remedies in respect of defective Products shall be the rights set out in this clause 11.

(c) If you:

(i) give notice in writing to Protech during the Warranty Period, and within a reasonable time of discovery, that the Product supplied does not comply with the warranty given above;

(ii) give Protech a reasonable opportunity of examining the machine or the damaged or defective parts; and

(iii) if requested by Protech, return damaged or defective parts within 30 days of notification of a defect,

then Protech shall, at its option, repair or replace the defective Product, or refund the price of the defective Product in full.

(d) Protech will not be liable for the machine's failure to comply with this warranty in any of the following circumstances:

(i) any repairs or modifications are carried out without Protech's prior consent to the work being done;

(ii) where damage or depreciation caused by normal wear and tear;

(iii) where any non-genuine Protech parts have been fitted or used within the Product;

(iv) wilful or accidental damage, damage caused by foreign objects (e.g. stones, metals and any materials other than those suitable for the Product's intended use);

(v) where damage or depreciation is caused by neglect or failure to carry out proper maintenance as recommended in the Protech Operators Manual;

(vi) where damage or depreciation caused by abnormal or in-proper use in accordance with Protech recommendations and/or as per the Operating Instructions;

(vii) where you or any third party continues to use the Product after notifying a defect to Protech, or after becoming aware of such a defect.

(e) This warranty shall not apply in respect of:

(i) ropes, bearings & gripper plates or any other items which are considered to be a normal wearing or consumable item; and

(ii) items not manufactured by Protech such as trade accessories e.g. tracks, hydraulic pumps, belts, hydraulic motors, hydraulic valves, hydraulic cylinders, hydraulic hoses, diesel engines, remote control system, auto-levelling system

(f) Protech shall have no liability to you under the warranty given in this clause to the extent Protech is liable to the end user of the Product under any warranty given to the end user.

(g) Protech warrants that any part or components supplied by Protech in accordance with the warranty in this clause 11 are free from defects in material or workmanship from the date of sale to the for 6 months. Protech will at its option, either repair or replace the defective part free of charge. You shall be responsible for labour and all freight charges to and from the place where the warranty work is performed.

(h) Additional fixtures may have extended warranty beyond 12 months, granted by third party companies, like engines or hydraulic motors and pumps. Extended warranty is to be supported by those companies.

12.

(a) Subject to clause 12(c), Protech shall under no circumstances whatsoever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

(i) loss of profit;

(ii) loss of or damage to goodwill;

(iii) loss of contract, business or business opportunity;

(iv) indirect or consequential loss.

(b) Subject to clause 12(c), the total liability of Protech to you in respect of all losses arising under or in connection with the supply of the Products, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Products paid by you.

(c) Nothing in these terms shall limit or exclude Protech's liability for death or personal injury caused by its negligence or the negligence of its employees agents or subcontractors, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979, or any other matter in respect of which it would be unlawful for Protech to exclude or restrict liability.

Payment Terms:

13. Protech may raise their invoice, in the case where goods are to be collected from Protech's premises, on your being notified that the goods are available for collection and, in any other case on delivery of the goods or performance of the services. All invoices are payable in accordance with the payment terms specified by Protech in the order acknowledgment, and payments must be made in full and clear funds without setoff or deduction. These payment terms may be varied in accordance with Clause 7. In the event that payment is not made on the agreed payment date Protech may, in addition to all other remedies;

(a) Require you to pay interest under the Late Payment of Commercial Debts (Interest) Act 1998 at the prevailing rate from time-to-time (which is currently 8% above the Bank of England base rate), and require you to pay any debt recovery costs as outlined under that act;

(b) Suspend any deliveries of goods or performance of services under any contract with you; and/or

(c) terminate the contract with you without further liability

14. In the event that you make a voluntary arrangement with your creditors, become subject to an administration order, go into liquidation, become bankrupt or a receiver is appointed of any of your property or assets or you cease, or threaten to cease, to carry on business, or if Protech reasonably suspects that any of the foregoing may be about to happen then in any such case;

(a) Protech shall be entitled but not obliged to cancel the contract without further liability.

(b) If the Products are delivered or performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement to the contrary.

Retention of Title and Risk:

15. Risk in the goods shall pass on payment of the goods or on completion of delivery of the goods to the agreed delivery address, whichever is earlier.

16. The legal and beneficial title to the goods supplied by Protech shall not pass to you until the earlier of:

(a) when Protech receives payment in full (in cash or cleared funds) for the goods, in which case title to the goods shall pass at the time of payment; and

(b) you resell the goods, in which case title to the goods shall pass to you at the time specified in clause 18.

17. Until title to the goods has passed to you, you shall:

(a) store the goods separately from all other goods held by you so that they remain readily identifiable as Protech's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the goods;

(c) maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify Protech immediately if you become subject to any of the events listed in clause 14; and

(e) give Protech such information relating to the goods as Protech may require from time to time.

18. Subject to clause 19, you may resell or use the goods in the ordinary course of your business (but not otherwise) before Protech receives payment for the goods. However, if you resell the Goods before that time, title to the goods shall pass from Protech to you immediately before the time at which resale occurs.

19. If before title to the goods passes to you, you become subject to any of the events listed in clause 14, then, without limiting any other right or remedy Protech may have:

(a) your right to resell the goods or use them in the ordinary course of its business ceases immediately; and

(b) Protech may at any time:

(i) require you to deliver up all goods in your possession that have not been resold, or irrevocably incorporated into another product; and

(ii) if you fail to do so promptly, enter any of your premises or those of any third party where the goods are stored in order to recover them.

General:

20. If any provision of these conditions is held to be invalid or unenforceable in whole or in part, the validity of the other provisions and the remainder of the provision in question shall not be affected.

21. Each contract to supply Products is a separate contract governed by these terms and a breach of one contract shall not entitle you to any remedy in respect of another.

22. These terms, and any other agreements or documents referred to within them, constitute the entire agreement between you and Protech, and supersede and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between you and Protech, whether written or oral, relating to its subject matter. You agree that you shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms or any other agreements or documents referred to within them,

23. These terms and the contract to provide the Products, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

24. You and Protech each irrevocably agree, for the benefit of Protech, that the “product” or the associated information (drawings, specifications, marketing information) is subject to legal protection according to *the Directive 98/71/EC on the legal protection of designs* and *Registered Designs Act 1949* in the UK. Accordingly, the client shall ensure that “product” and associated information are used for the clients’ benefit and may not be copied, reproduced, rebroadcasted or commercially exploited in all or any part without written consent from Protech.

25. You and Protech each irrevocably agree, for the sole benefit of Protech that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these terms and the contract to provide the Products, or their subject matter or formation. Nothing in this clause shall limit the right of Protech to take proceedings against you in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.