

SERVICES MACHINERY & TRUCKS Ltd
Standard Conditions of Sale (September 2018 Edition)

1. Definitions

1.1. In these conditions:

"Cash Sales" means sales to Customers who have no agreed credit terms with the Company.

"Company" means Services Machinery & Trucks Ltd (registered in England and Wales under Company Number 10822984).

"Contract" means any contract between the Company and the Customer for the sale or supply of Goods, Parts or Services, incorporating these conditions.

"Customer" means the person, firm or company purchasing Goods, Parts or Services from the Company. "Export Sales" means sales outside mainland Great Britain.

"Goods" means any whole machinery, whether new or used, and any equipment or implements which the Company supplies to the Customer pursuant to these conditions (including any part or parts of them).

"Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as are in force at the date when the Contract is made.

Parts" means any components supplied to the Customer pursuant to these conditions, whether for repair or maintenance or in the course of providing Services.

"Services" means any repair, maintenance and/or servicing which the Company performs for the Customer at the Customer's request pursuant to these conditions including, without limitation, soft offerings and bundled services provided such as repair and maintenance agreements.

"Third Party Goods" are defined in clause 8.1.

1.2. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3. Words in the singular include the plural and in the plural include the singular.

1.4. Condition headings do not affect the interpretation of these conditions.

2. Basis of Sale

2.1. Subject to any variation under clause 2.2, the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Customer purports to apply under any purchase order, confirmation of order or any other document, or during any negotiations).

2.2. These conditions apply to all of the Company's sales and any variation to these conditions and any representations about the Goods, Parts or Services will only be binding on the Company if confirmed in writing by an authorised representative of the Company. The Customer 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 the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.3. Each order or acceptance of a quotation by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods or Services subject to these conditions. No Contract shall come into existence until the Company has issued an acknowledgement of order.

2.4. The quantity and description of the Goods or Parts and any specification for them shall be as set out in the Company's acknowledgement of order.

2.5. The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.6. If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed to be paid by the Company in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification.

2.7. The Company reserves the right to make any changes in any agreed specification for the Goods or to change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the quality or performance of the Goods or the nature of the Services.

2.8. The Company offers a range of components under its Parts offering, remanufactured from the core material of failed units. Such parts are offered at a reduced price against new on the condition that:

2.8.1. the failed unit being replaced is returned within 14 days and,

2.8.2. such failed unit is in a condition that the core assembly may be recycled economically.

All such service exchange Parts carry a warranty equal to a new unit

A surcharge will be made in respect of the failed unit at the point of sale of the service exchange Part, cancellable in full or part after satisfactory inspection following delivery to the Company. The surcharge will become payable if the core assembly is, in the sole opinion of the Company, beyond economical repair.

3. Price

3.1. Unless otherwise agreed in writing, the price of Goods, Parts and Services shall be calculated by reference to the Company's price lists and hourly rates current on the order date.

3.2. Unless a fixed price has been agreed, the Company reserves the right to increase the prices to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the costs of labour, materials or other costs of manufacture) to:

3.2.1. those ruling at the date of despatch in respect of Goods or Parts supplied otherwise than in connection with Services; and

3.2.2. those ruling at the date on which the Services were performed in respect of Services and Parts supplied in connection therewith.

3.3. Any increase under clause 3.2 shall not entitle the customer to terminate the Contract.

3.4. All hourly rates quoted in respect of Services are applicable during the hours of 7.00am to 5.30pm on weekdays only. Additional charges may be levied, where Services are provided at the Customer's request outside those hours, on Saturday or Sunday or on a public holiday.

3.5. Unless otherwise agreed in writing, where Services are provided otherwise than under a warranty the Company shall at the Customer's request give an estimate of the cost of such Services. The Customer shall, in addition pay for:

3.5.1. any Parts supplied in the course of the provision of Services at the prices prevailing as at the date of completion of the Services;

3.5.2. the disposal of any waste products, Goods, Parts or other equipment required to be disposed of as part of the Services; and

3.5.3. any travel time incurred by the Company, its employees, agents or sub-contractors in the delivery of the Services at such rate as has been notified to the Customer by the Company.

3.6. All prices and hourly rates quoted to the Customer shall be exclusive of VAT for which the Company shall be additionally liable for at the appropriate rate.

4. Payment

4.1. Unless otherwise agreed in writing by the Company:

4.1.1. Irrevocable payment for Goods shall be made on or before delivery;

4.1.2. Payment for Parts and Services shall be due within 20 days of the end of the month during which the invoice was raised by the Company; and

4.1.3. Irrevocable payment for Cash Sales or Export Sales shall be made at or prior to despatch.

4.2. The Company's preferred method of payment is by electronic transfer to a bank account nominated in writing by the Company.

4.3. No payment shall be deemed to have been received until the Company has received cleared funds.

4.4. The Company shall be entitled to require payment by the Customer of a non-refundable deposit for any Third Party Goods before such Third Party Goods are ordered or despatched.

4.5. The Customer shall not have an automatic right to a credit account. A credit account must be authorised by the Company and the Company shall be entitled to request from the Customer any information which it reasonably requires to determine whether such an account will be granted.

4.6. Time for payment shall be of the essence.

- 4.7. All payments due from the Customer under the Contract shall be made in full without any deduction, whether by way of set-off, counterclaim, discount or otherwise unless agreed in writing.
- 4.8. If the Customer fails to pay the Company any sum due under the Contract:
- 4.8.1. the Company may suspend any further deliveries to the Customer;
- 4.8.2. the Customer shall be liable to pay interest to the Company on the amount overdue, calculated at the rate of 3% per month until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

5. Delivery and Performance

- 5.1. Subject to clause 5.2 and 5.3 and unless otherwise agreed in writing (or orally in the case of Parts), the Company shall deliver the Goods or Parts to the Customer's address shown on the order form.
- 5.2. The Company shall only deliver the Goods or Parts to an address in mainland Great Britain. Delivery:
- 5.2.1. to addresses outside mainland Great Britain; and
- 5.2.2. of pre-used Goods or Parts;
- shall be on an ex works basis and where the Company agrees to deliver such Goods or Parts otherwise than at the Company's premises, the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.
- 5.3. If the Parts weigh in excess of 30 kilograms or the Company agrees to deliver the Parts within a specified timescale, the Company shall be entitled to levy an additional charge for delivery.
- 5.4. The Company may deliver by instalments and may treat each delivery as a separate Contract. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. No cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 5.5. If the Customer fails to accept delivery of the Goods or Parts when they are ready for delivery or, if future deliveries are withheld through the Customer's non-payment;
- 5.5.1. risk in the Goods or Parts shall pass to the Customer (including for loss or damage caused by the Company's negligence);
- 5.5.2. the Goods or Parts shall be deemed to have been delivered; and
- 5.5.3. the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 5.6. Where the Company agrees to arrange transport of the Goods or Parts any damage incurred during transit must be notified to the carrier and the Company within 48 hours of delivery. The Company's liability for damage in transit shall be limited to replacement or (at the Company's absolute discretion) repair of the damaged Goods or Parts.
- 5.7. Where the Customer collects Goods or Parts from the Company's premises, the Company will, where requested, provide labour and suitable equipment to load the Goods or Parts onto the Customer's transport, provided that the Company is satisfied that the transport vehicle is suitable for the carriage of such Goods or Parts. Once loading has commenced, the Goods or Parts shall be at the risk of the Customer and the Company shall not be liable for damage caused to the Goods or Parts or the transport vehicle during the course of such loading or as a result of a failure to properly secure the Goods or Parts to the transport vehicle.
- 5.8. Services will be performed in situ or at the Customer's premises. If the Company determines that the Services must be carried out at the Company's premises, the Customer shall be responsible for the delivery and collection to and from the Company's premises of the items upon which the Services are performed and the items shall remain at the Customer's risk. If the Services are to be performed in situ or at the Customer's premises, the Customer shall be obliged to stop the equipment to be serviced for such time and at such hours as the Company may reasonably require in order to perform the Services.
- 5.9. Any time or date specified by the Company for delivery is intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. Subject to the other provisions of these conditions, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or Parts (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 5.10. The quantity of any consignment of Goods or Parts as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence to the contrary.
- 5.11. The Company shall not be liable for any non-delivery of Goods or Parts (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 7 working days of the date that the Goods or Parts would in the ordinary course of events have been received.
- 5.12. Any liability of the Company for non-delivery of the Goods or Parts shall be limited to replacing the Goods or Parts within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods or Parts.

6. Risk and Ownership

- 6.1. The Goods and Parts shall be at the risk of the Customer from the time of delivery.
- 6.2. Ownership of the Goods and Parts shall not pass to the Customer until the Customer has paid to the Company (in cash or cleared funds) all sums owed by the Customer to the Company in respect of:
- 6.2.1. the Goods and Parts; and
- 6.2.2. all other sums which are or which become due to the Company from the Customer under any other contract between the Company and the Customer.
- 6.3. Until ownership of the Goods and Parts has passed to the Customer, the Customer shall:
- 6.3.1. hold the Goods and Parts on a fiduciary basis as the Company's bailee;
- 6.3.2. store the Goods and Parts (at no cost to the Company) on its premises separately from all other goods of the Customer or any third party and in a manner which makes them readily identifiable as the Goods or Parts of the Company;
- 6.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.4. not attach or incorporate any Goods onto or into any property of the Customer in such manner as to render them unidentifiable and inseverable without first obtaining the Company's prior written consent;
- 6.3.5. pay all licences, fees, duties, taxes and registration charges payable in respect of the Goods or Parts;
- 6.3.6. maintain the Goods and Parts in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and
- 6.3.7. keep the Company indemnified against any loss or damage to the Goods or Parts howsoever arising and further to indemnify and keep indemnified the Company from and against all proceedings, actions, costs, charges, claims, demands and liabilities which may arise out of the use of the Goods or Parts by the Customer or which may otherwise arise in respect of the Goods or Parts.
- 6.4. The Customer may resell the Goods or Parts before ownership has passed to it solely on the following conditions:
- 6.4.1. any sale shall be effected in the ordinary course of the Customer's business as approved agent of the Company at full market value; and
- 6.4.2. any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale
- 6.5. The Company shall be entitled to recover payment for the Goods and Parts notwithstanding that ownership of any of the Goods or Parts has not passed from the Company.
- 6.6. The Company may at any time before the passing of ownership of the Goods or Parts:
- 6.6.1. require the Customer to return the Goods or Parts forthwith to the Company free from damage or defect at its own expense; or
- 6.6.2. recover possession of the Goods or Parts (or any of them) and for that purpose the Customer hereby grants to the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods or Parts are or may be stored in order to inspect them and, where the Customer's right to possession has terminated, to recover the Goods or Parts (such right to include the removal, severing or detaching of the Goods or Parts from any other property of the Customer where necessary).
- 6.7. The Company's costs and expenses incurred in the exercise of the right in clause 6.6.2 shall be met by the Customer. In addition, the Company shall be entitled to charge a sum equal to 2% of the list price of the Goods or Parts supplied for each week or part thereof the Goods or Parts have been in possession of the Customer by way of compensation, provided that the Company shall only exercise such right where the monies owed by the Customer to the Company have become due and payable. The Company's costs incurred in arranging and effecting an alternative sale of the Goods or Parts shall be met by the Customer.

6.8. If the Customer returns the Goods or Parts pursuant to the provision of 6.6.1 above, the Company shall repay to the Customer any sum paid to the Company on account of the Goods or Parts sold, subject to deduction of any sums due by the Customer under the Contract or any other contract.

7. Warranty

7.1. Unless otherwise agreed in writing by an authorised representative of the Company and subject to the other provisions of these conditions, new Goods are sold with the benefit of the Volvo CE Factory Warranty, from the date of delivery in accordance with the terms and conditions as laid out in Appendix 1. (the "Factory Warranty").

7.2. In addition to the provisions of the Factory Warranty, the following dealer enhancements ("Enhanced Warranty") apply to the first End-User in respect of Goods sold by Services Machinery & Trucks Ltd. The following costs arising from a Factory Warranty repair or replacement are covered by the Enhanced Warranty:

7.2.1. Travel & mileage costs incurred whilst travelling to & from the Goods / site;

7.2.2. The transportation of any material or associated equipment required to effect the Factory Warranty work;

7.2.3. The cost of any haulage in the event that the Goods have to be recovered to a workshop for the Factory Warranty work;

7.2.4. The cost associated to any external charges such as crane hire or tyre removal associated to the Factory Warranty work;

7.2.5. Environmental charges for the safe disposal of oils and other fluids changed or recovered as part of the Factory Warranty work;

7.2.6. Charges for any consumable items used in the Factory Warranty work.

7.3. Unless otherwise agreed in writing by an authorised representative of the Company pre-used Goods are warranted against failure of major driveline components for a period of 30 days from delivery and limited to the repair of the failed components or provision of replacement Parts only, at the sole discretion of the Company

7.4. All genuine Volvo CE Parts, factory remanufactured components and accessories, purchased by Customers, are subject to a twelve (12) months or 2,500 operating hours (whichever ends first) warranty from the date of installation by an authorised Volvo CE workshop, or from the date of purchase if the installation is performed elsewhere. If a Part has been replaced either free of charge under the Factory Warranty period or Part warranty period, the warranty for the replacement Part is applicable only until the end of the remaining applicable warranty period for the original Goods or Part.

The Parts warranty covers both material and labour costs when the installation concerned is carried out by an authorised Volvo CE workshop. If the Part, for some reason, is installed by a non-authorised Volvo CE workshop, the warranty covers only the material (Parts) cost.

7.5. The Company warrants that any Services shall be provided with reasonable skill and care. The Company's liability under this Services warranty shall be limited to providing free of charge the labour and materials required to make good the defective Services

7.6. The warranties in clauses 7.1 to 7.5 are given by the Company subject to the following conditions:

7.6.1. the Customer shall give written notice of the defect to the Company within 7 days of discovery of the defect;

7.6.2. the Customer shall not make any further use of the Goods or Parts or item on which the Services have been performed after giving notice under clause 7.7.1 unless authorised by the Company;

7.6.3. where the warranty is claimed in respect of Goods or Services, the Goods or the item on which the Services have been carried out shall be made available for inspection and repair during normal working hours, at a suitable site to enable the repair to be carried out or (if requested by the Company) returned to the Company properly packed and carriage paid;

7.6.4. where the warranty is claimed in respect of Parts, the Parts shall be returned to the Company properly packed and carriage paid;

7.6.5. the Goods or Parts or item on which the Services have been performed shall have been properly stored by the Customer prior to the defect occurring;

7.6.6. the Goods or Parts or item on which the Services have been performed shall not have been subjected to any abnormal or improper use or modification and be maintained, serviced and repaired in accordance with manufacturers' recommendations and using only Parts supplied or approved by the Company (provided that such Parts shall be available within 10 working days of an order being placed with the Company);

7.6.7. the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;

7.6.8. the Company shall have no liability under the warranties in clauses 7.1 to clause 7.6 if the total price for the defective Goods, Parts or Services has not been paid in full by the due date.

7.7. Attendance for the purpose of any warranty work at a customer's request outside normal working hours, on public holidays or at a site outside Great Britain will result in a premium being charged for worked hours, travel time and other excess costs incurred. Defined working hours and charge out premiums are subject to regular review, current definitions and rates are available on request from time to time.

7.8. The judgement of the Company as to whether the Goods, Parts or Services in question is or are defective and as to the cause of any defect shall in all cases be final and conclusive.

7.9. Where the Company supplies replacement Goods or Parts to the Customer in place of any defective Goods or Parts, the defective Goods or Parts shall become the property of the Company.

7.10. The Company shall be entitled to notify the Customer to cease using the Goods on grounds of potential collateral damage, safety or any other reasonable grounds. If the Customer receives such notification it shall immediately cease using the Goods and procure that its employees, agents and sub-contractors do the same and the Company shall have no liability to the Customer (whether under the warranties in clause 7 or otherwise) if the Customer, its employees, agents or sub-contractors use such Goods against the instructions of the Company.

8. Goods and Parts Supplied by Third Parties

8.1. If the Customer requires the Company to supply Goods or Parts incorporating equipment, implements or parts manufactured or supplied by third parties ("the Third Party Goods") which in the opinion of the Company (whose decision shall be final):

8.1.1. cannot be incorporated or attached to the Goods or Parts supplied by the Company without affecting the safety or quality of the Goods or Parts; or

8.1.2. do not meet an adequate standard of quality or safety;

then the Company shall be at liberty to refuse to incorporate such Third Party Goods.

8.2. Where the Company agrees to incorporate Third Party Goods into Goods or Parts the warranties in clause 7 above shall not extend to the Third Party Goods or the Goods or Parts into which the Third Party Goods are incorporated and the Company shall incur no liability whatsoever for any loss, damage, claims or costs arising as a result of the incorporation of such Third Party Goods into the Goods or the Parts or otherwise in connection with the Third Party Goods.

8.3. Any representations made by the supplier of Third Party Goods in connection with such Third Party Goods shall be representations of the supplier of the Third Party Goods, and the Company shall, under no circumstances be liable for any such representations made, or for any warranties given in respect of the Third Party Goods.

9. Limitation of Liability

9.1. Subject to clause 5, clause 7, clause 8 and clause 10, the following provisions set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

9.1.1. any breach of these conditions;

9.1.2. any use made of the Goods, Parts or Services supplied or installed by the Company or of any product incorporating any of the Goods or Parts;

9.1.3. any resale by the Customer of any of the Goods or Parts or of any product incorporating any of the Goods or Parts; and

9.1.4. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

9.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. Nothing in these conditions excludes or limits the liability of the Company:

9.2.1. for death or personal injury caused by the Company's negligence; or

9.2.2. under section 2(3) of the Consumer Protection Act 1987; or

9.2.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

9.2.4. for fraud or fraudulent misrepresentation.

9.3. Subject to condition 9.2:

9.3.1. the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and

9.3.2. the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10. Force Majeure

10.1. The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of Goods or Parts ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances outside the reasonable control of the Company including (but not limited to) acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, drought, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials. The Company shall promptly give notice of such force majeure event to the Customer and, if the event in question continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to terminate the Contract.

11. Cancellation or Return by the Customer

11.1. No order for Goods or Services may be cancelled without the prior written agreement of an authorised representative of the Company. If the Company agrees to such cancellation, the Company shall have the right to levy a handling charge upon the Customer for the costs related to the disposal of non standard inventory purchased for the order, bespoke modifications and any additional work incurred by the Company as a result of such cancellation.

11.2. Subject to clause 11.3, no order for Parts may be cancelled without prior written or oral agreement of an authorised representative of the Company. If the Company agrees to such cancellation the Company shall have the right to levy a handling charge on the Customer for any additional work incurred by the Company as a result of such cancellation or otherwise in accordance with published schedules.

11.3. Parts may be returned by the Customer in whole or in part and the Customer shall be entitled to a refund of the purchase price subject to the following conditions:

11.3.1. where the Parts are returned within 28 days of despatch, a handling charge of 10% of the value of the Parts returned shall be levied by the Company;

11.3.2. where the Parts are returned between 28 days and 6 months from the date of despatch, a handling charge of 50% of the value of the Parts shall be levied by the Company;

11.3.3. where the Parts are returned after 6 months from the date of despatch, the Parts will only be accepted by the Company on such terms as may be agreed at such time with the Customer; and

11.3.4. in all cases, the Parts must be returned to the Company free of damage, carriage paid, and together with any packaging and/or manuals, instructions or promotional material with which they were despatched to the Customer.

12. Termination by the Company

12.1. The Company may, by notice in writing to the Customer, terminate the Contract immediately without any liability to the Customer if:

12.1.1. any payment due by the Customer to the Company is overdue in whole or in part, or any credit limit extended to the Customer has been exceeded and the Customer fails to settle the overdue amount or (where the Customer has a credit limit) to reduce the indebtedness to within the credit limit within 14 days of the date of a notice from the Company requiring him to do so;

12.1.2. the Customer commits any breach of any terms of the Contract or any other contract between the Company and the Customer and (if such breach is remediable) the Customer fails to remedy the breach within 7 days of receiving written notice from the Company to remedy such breach;

12.1.3. the Customer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

12.1.4. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

12.1.5. the Customer ceases or threatens to cease to carry on trading.

12.2. On termination of the Contract for any reason:

12.2.1. the Customer shall immediately pay to the Company (notwithstanding that any period of credit extended to the Customer may not have expired) all sums due to the Company under the Contract (including any accrued interest and other legitimate charges due thereunder);

12.2.2. the Customer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of opportunity to deploy resources elsewhere) arising directly or indirectly as a result of such termination, subject to the Company confirming such costs, charges and losses to the Customer in writing; and

12.2.3. the Company's (but not the Customer's) rights under the Contract shall remain in effect.

13. Privacy and Telematics System

13.1. The Customer approves – and warrants towards the Company that the concerned physical persons gave their consent, or that there is another justification for lawful personal data processing – that the Company has the right to process the personal data of the Customer (or its representatives, employees, ...) that has been given in the commercial relationship. The Company is especially susceptible to process identification data (e.g. names, addresses, e-mails, telephone numbers), your financial particularities (e.g. account numbers), your personal particularities, etc.

13.2. The processing of the personal data is based, according to the circumstances, on the performance of contractual obligations, on your consent, on the compliance of the Company with its legal obligations, or on the pursuit of legitimate interests (i.e. the normal activities of the Company), and is done for reasons of client management (such as order management, the follow-up of deliveries, invoicing, solvability, marketing and personal advertising) and/or legal (security) purposes. In case the processing is based on your consent, you have the possibility to withdraw consent at any time and for free by sending an e-mail to marketing.vcegb@volvo.com or by writing to us at the following address: SMT GB Duxford, Cambridge, CB22 4QX, UK.

13.3. Insofar it is strictly necessary to realize the foretold purposes, the Company may use processors (such as IT infrastructures, servers based in foreign countries, debt recovery collectors) which may process the data on instruction of the Company and on the Company's behalf. The Company will take all measures necessary in order to assure the confidentiality and integrity of the data and, when the processors are based outside the EEA, to assure an adequate level of data protection. If it is foreseen by law and/or justified in the circumstances, the Company is also susceptible to communicate your data to the authorities (e.g. for the compliance with the privacy regulation and other laws).

13.4. In every case, you have the right to request access to your data and rectification of the data if the data is incorrect or incomplete, the right to request erasure or restriction of the data, or – when provided by law – the right to object to the processing. Moreover, you have the right to receive your data in a structured format that enables the transfer to another company (right of data portability). To exercise these rights, you can send a free e-mail to SMTHRDept@volvo.com. You have the right to lodge a complaint with the Information Commissioner's Office (<https://ico.org.uk/global/contact-us/>).

13.5. The data will be stored by the authorized persons within the Company during the term necessary for the execution of the contractual obligations and until the end of the applicable limitation period, except if a longer conservation is required to be compliant with legal obligations (such as accountability).

13.6. The Goods are fitted with a telematic remote machine management system providing diagnostic, management, and other statistical information about the Goods for the purposes of usage efficiencies, error detection, collection of billing data and product development (Telematics System). Some of the collected data may be considered as personal data. All the terms and conditions applicable to the Telematics System are accessible by clicking here [[HYPERLINK](#)]. The Customer acknowledges to have read them and to fully agree with them. The Telematics System will be activated for use by the Company on the completion of the sale of the Goods. The data is made available to the Customer through a web managed and accessed subscription service following, after registration. Access information will be supplied at point of sale.

14. Notices

14.1. Any notice required to be given under these conditions may be sent by hand, prepaid first class post, or fax to the principal place of business or registered office of the party to whom the notice is being sent or to such other address as may at the relevant time have been notified to the party giving the notice. Notices shall be deemed to have been received:

14.1.1. if delivered by hand, on the day of delivery;

14.1.2. if sent by prepaid first class post, on the second working day after the date of posting (exclusive of the day of posting).

14.1.3. if sent by fax on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.

15. General

15.1. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.2. The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by

any person not a party to it.

- 15.3. The Company may assign the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 15.4. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these conditions, but if there is any conflict between the provisions of Incoterms and these conditions, the latter shall prevail.
- 15.5. No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision of the Contract.
- 15.6. If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

The Contract shall be governed by the laws of England, and the Customer agrees to submit to the non-exclusive jurisdiction of the English court.

APPENDIX 1

VOLVO CE FACTORY WARRANTY TERMS AND CONDITIONS

The Volvo CE factory warranty applies to sales of all new Volvo CE Machines.

The Volvo CE factory warranty is valid for a period of twelve (12) months or 2,500 operating hours from the date of delivery of new Volvo CE Machines to the first End-User by Volvo CE Dealer, whichever ends first.

The Volvo CE factory warranty covers only such parts/components that become unfit for use during the warranty period due to defects in material or workmanship existing at the time of delivery from factory. If it is evident at the examination that the nature of the defect is such that this factory warranty should apply, the Volvo CE Dealer shall, at the sole discretion of Volvo CE through the Volvo CE Dealer, repair or replace such defective parts/components.

The Volvo CE factory warranty is valid only provided that:

- The Volvo CE Machine has been correctly operated and maintained in accordance with Volvo CE's instructions and recommendations and has overall been used in a manner which is normal.
- The Volvo CE Machine has not been involved in an accident, subject to misuse, or in any other way subject to external strain.
- The prescribed service and inspections have been carried out as prescribed by Volvo CE and at correct times/operating hours intervals.
- No seals have been broken by any unauthorised persons.
- No superstructures or alteration of the basic Volvo CE Machine's specification have been made (equipment such as extra counterweights, hydro inflated tyres etc. must be authorised and approved by Volvo CE).
- The damages for which the warranty is claimed did not result from or arise out of service or repair work by a workshop other than an Authorised Workshop.
- The damages for which the warranty is claimed did not result from or arise out of the use of parts other than Genuine Volvo Parts/Components.
- The damages for which the warranty is claimed did not result from or arise out of a defect/fault having become aggravated due to the failure by the driver to take immediate and appropriate action at the time the defect/fault became known or should have become known to the driver or after activation of the vehicle's warning indicator system.
- The damages for which the warranty is claimed did not result from or arise out of the use of oils, greases or coolants other than those stipulated by Volvo CE.

The Volvo CE factory warranty does not cover any type of;

- (i) ordinary service and maintenance,
- (ii) normal use of consumables parts and
- (iii) normal wear and tear.

Examples of consumables parts and normal wearing aging parts are:

- Bulbs, except lifetime bulbs
- Lights, except sealed beams
- Coolant
- Glass
- Grease
- Fittings
- Wiper blades
- Filters
- Fuses
- Linings, except friction and separator plates if broken
- Lubricants
- V-Belts, except defect caused by defected part covered by this factory warranty
- Ground engaging parts, tools and edges
- Asphalt engaging parts, tools and edges
- Tyres
- Circle guide and mouldboard slide wear materials
- Wear materials related to the Mouldboard slide castings

Oil and filter losses in connection with repairs under the Volvo CE factory warranty shall also be covered by the factory warranty provided that the oil and filter losses are replaced with genuine Volvo oil and filters. Refilling of gas when performing repairs of the air conditioning unit shall be covered by the Volvo CE factory warranty, provided such air condition units is covered by the factory warranty.

This Volvo CE factory warranty does not cover tyres or other parts, which are warranted by the manufacturer of such parts or its representative. Nor does the warranty cover equipment/parts, superstructure or other installation work not assembled/installed by Volvo CE.

The Volvo CE factory warranty does not cover additional costs due to equipment/parts, superstructure or other installation work being assembled/installed by someone else than Volvo CE, which renders the warranty work more difficult or prevents the warranty from being performed.

The Volvo CE factory warranty does not cover any of the following costs in connection with factory warranty work: travel expenses (e.g. mileage costs, travel time), transport costs, overtime labour, extra freight and extra packing.

The Volvo CE factory warranty applies on the condition that Volvo CE and Volvo CE Dealer/Authorised Workshop are given full access to all electronic data stored in any applicable electronic control modules.

Volvo CE makes no representations or warranties other than those expressly set forth above and Volvo CE disclaims any implied warranties of any kind, including without limitation quality, performance, merchantability or fitness for a particular purpose. Except for the remedies provided in this factory warranty outlined above, Volvo CE including any holding, subsidiary, associated or affiliated company or distributor disclaims any liability for direct and indirect losses including but not limited to loss of revenue or profit, loss of use, lost goodwill, damage and increased expenses or costs that may result from defects in material or faulty workmanship or otherwise.

