

## DENNISON COMMERCIALS LTD – TERMS AND CONDITIONS

### INTERPRETATION

The definitions and rules of interpretation in this condition apply in these conditions.

**Customer:** the person(s), firm or company which has contracted to receive any Product or Services.

**Company:** means Dennison Commercials Limited incorporated and registered in Northern Ireland with company number NI022095 whose registered office is at 37 Hillhead Road, Ballyclare, Co Antrim BT39 9DS

**Contract:** any contract between the Company and the Customer for the sale and purchase of the Products or supply of the Services formed in accordance with Condition 2.

**Courtesy Vehicle:** a Vehicle provided by the Company to the Customer for any reason.

**Delivery:** delivery of Products as defined in Conditions 6.1 to 6.2.

**Manufacturer:** Volvo, JCB, Hiab, Multilift or any other original equipment manufacturer whose Products the Company sells from time to time

**Parts:** any new or reconditioned part, component, lubricant, assembled unit, accessory, tool, or Service Exchange Part marketed by the Company or received by the Company from the Customer for the purposes of Performing Services for use with or incorporation in a Vehicle.

**Products:** any Vehicles and/or Parts

**Sale:** the sale, re-sale, lease, hire or similar transaction regarding a Product or Service.

**Service Exchange Parts:** any parts subject to a surcharge where the original unit has not been returned to the Company for refurbishment.

**Services:** any services which the Company provides to the Customer under a

**Contract,** including but not limited to the adjustment, maintenance, overhaul, repair of Products under the terms of the Warranty or otherwise as required by the Company's quality standards and including but not limited to the supply of Parts during the course of provision of any Services.

**Terms and Conditions:** the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Customer and the Company

**Vehicle:** any item of plant, truck, bus or truck or bus chassis, or public service vehicle or public service vehicle chassis sold to the Customer by the Company; or any item of plant or motor vehicle received by the Company from the Customer for the purposes of performing Services.

**Warranty:** any warranty granted to the Customer by the Company or a Manufacturer in writing.

- 1.1. 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.
- 1.2. Words in the singular include the plural and in the plural include the singular.

- 1.3. A reference to one gender includes a reference to the other gender.
- 1.4. Condition headings do not affect the interpretation of these conditions.

### 2. FORMATION AND INCORPORATION

- 2.1. Subject to any variation under Condition 14.1 the Contract shall be on these Terms and Conditions to the exclusion of all other terms and conditions and all previous oral and written representations including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document whether or not such document is referred to in the Contract.
- 2.2. No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3. These conditions apply to all the Company's Products and Services and any variation to these conditions and any representations about the Products or Services shall have no effect unless expressly agreed in writing and signed by a director 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.
- 2.4. Each order or acceptance of a quotation for Products or Services by the Customer from the Company shall be deemed to be an offer by the Customer to buy Products or Services subject to these conditions. A quotation is for information purposes only and acceptance thereof will not in any circumstances constitute a contract. In the case of Vehicles the Contract is formed when the order is accepted by the Company by way of written acknowledgement of order and no contract will come into existence until an order is accepted in writing. In the case of Services a quotation should only be considered as an estimate of the Company's charges, and is dependent upon the costs of dismantling and re-assembly and the condition of the relevant component parts.
- 2.5. The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.6. The Company reserves the right to require payment of a deposit as a condition of acceptance of an order
- 2.7. Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Unless otherwise specified in writing by the Company any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it. The Company is not obliged to give any quotation before commencing any Service, unless previously requested by the Customer in writing to do so.
- 2.8. Subject to Condition 5.4 the Customer may not cancel the Contract unless a director of the Company agrees to such a cancellation in writing. The Company reserves the right to make such agreement conditional upon payment of a sum equal to all loss and/or damage suffered by the Company and to retain any deposit paid by the Customer. The Company may cancel the Contract at any time prior to Delivery or performance.

### 3. DESCRIPTION

- 3.1. The quantity and description of the Products or Services shall be as set out in the Company's acknowledgement of order.
- 3.2. All samples, drawings, descriptive matter, specifications and advertising issued by the Company or Manufacturer

and any descriptions or illustrations contained in the Company's or a Manufacturer's catalogues or brochures or described in the Company's or Manufacturer's website are issued or published for the sole purpose of giving an approximate idea of the Products or Services described in them. Such materials will not form part of the Contract and this is not a sale by sample.

- 3.3. The Customer acknowledges that Manufacturers have policies of continuous improvement of design, production and specification and that they reserve the right to change the design or specification of any Product at any time without notice, and to fulfil existing orders for Vehicles or Parts (including orders which have been partially completed) with a Product of the changed design or specification, provided that the Product so changed meets the requirement of the original order. In the event that the changed design or specification does not meet the requirements of the original order then the Customer shall have the right to cancel the order within 7 working days without any rights to compensation.

#### **4. SERVICES**

- 4.1. The Company will carry out Services only on components for which instructions have been given by the Customer, but reserves the right to carry out any Service to the other components the necessity of which only becomes apparent after dismantling parts of the Vehicle, and which would affect the safe operation of the Vehicle if not carried out. The Company will give the Customer an estimate of the likely cost of such additional Services but such estimates are not to be regarded as binding and the Company reserves the right to perform the Services in the manner it thinks most suitable. The Customer agrees to pay for such additional Services irrespective of whether the additional Services were mentioned in the order or quotation.
- 4.2. The Customer acknowledges that the Company's policy is to replace any defective Part whenever the cost of repair of such defective Part would be seventy five percent or more of the cost and fitting of a replacement Part.
- 4.3. If the Company supplies Service Exchange Parts to the Customer, the Customer must return the equivalent number and specification of failed parts to the Company within such period as may be agreed in writing by the parties or otherwise within a maximum period of 30 days of the date of delivery of the Service Exchange Parts failing which the Company shall be entitled to charge that Customer for such nonsupply.
- 4.4. It shall be the responsibility of the Customer when leaving any Product at the Company's premises or handing over the Product to any third party acting on behalf of the Company including but not limited to any vehicle recovery organisations for the purpose of recovering services to hand over the Product in a clean condition: in the case of a Vehicle to remove all personal belongings, loose equipment, catering provisions, musical and video tapes and any other goods which do not form part of the vehicle, and to advise the Company of any payload or other factor which may affect the Servicing of the Vehicle. The Company shall not be liable for any claim for loss or damage if the Customer fails to comply with such responsibilities.
- 4.5. Where in order to carry out the Services the Company reasonably requires further instructions and/or information from the Customer, including but not limited to information about the construction, use and history of the Vehicle or Part being serviced and where the Customer does not provide such instructions and/or information as soon as reasonably practicable, then the agreed Delivery date shall be deemed delayed by a period equal to that which elapsed between the Company requesting the further instructions and/or information and the Company receiving such instructions and/or information.
- 4.6. If any Product received by the Company for Service is not removed from the Company's premises by or on behalf of the Customer within 7 days of the Company notifying the Customer that the Product is ready for dispatch or where further instructions or authorisations are requested to carry out the Service and such instructions or authorisations are not given by the Customer within 7 days of the Company requesting such instructions or authorisations, the Company shall have the right to charge the Customer for storage at the Company's standard rate.
- 4.7. Where the Customer is in delay as described in Condition 4.6 above for 60 days or more, the Company shall give the Customer notice of such fact and shall have the right to dispose of the Product in such manner as it thinks fit. The Company may deduct from the proceeds of such disposal all sums due to the Company from the Customer whether in respect of the Service or otherwise including the costs of storage and the costs incurred in making such disposal. Any remaining balance will be paid to the Customer.
- 4.8. When a Customer's Vehicle is received at the Company's premises for Service, then any of its payload or contents are received, driven, towed, transported or stored by the Company's employees or on behalf of the Company at the risk of the Customer. All Products in the possession of the Company for Service or otherwise are held by the Company at the Customer's risk as regards loss or damage howsoever arising. The Customer's attention is drawn to the importance of ensuring that its own insurance arrangements provide the necessary cover.
- 4.9. Unless alternative written instructions are given to the Company prior to the Company agreeing to undertake the Service all materials or parts permanently removed from any Product will become the Property of the Company

#### **5. DELIVERY**

- 5.1. Unless otherwise agreed in writing by the Company, delivery of Vehicles, Parts and Performance of the Service shall take place at the Company's premises.
- 5.2. Delivery may also be affected by releasing any Vehicle to a collection service appointed by the Customer.
- 5.3. Delivery of Products shall be at a time and date agreed between the parties. If the Customer fails to take delivery or fails to provide any necessary documents, the Products will be deemed to have been delivered and the Company, without prejudice to the other rights, may at its option store and arrange for storage of the Products until actual Delivery or sale to a third party, and charge the Customer for all related costs and expenditures (including without limitation, storage and insurance): and/or following written notice to the Customer, sell any of the Products at the best price reasonably obtainable in the circumstances and charge the Customer for any shortfall below the price under the Contract.
- 5.4. The Company will use reasonable endeavours to deliver or perform as the case may be each of the Customer's orders for the Products and/or Services within the time agreed when the Customer places an order and if no time is agreed, then within a reasonable time, but the time of the delivery or the performance will not be of the essence. If despite their endeavours, the Company is unable for any reason to fulfil any delivery or performance on the specified date, the Company will be deemed not to be in breach of the Contract, nor (for the avoidance of doubt) will the Company have any liability to the Customer for direct, indirect or consequential loss (all three of which terms includes, without limitations, pure economic loss, loss, loss of profits, loss of business, depletion of goodwill

howsoever caused including as a result of negligence) caused by any delay or failure in delivery or performance except as set out in this Condition. Any delay in delivery or performance will not entitle the Customer to cancel the order unless and until the Customer has given 14 days written notice to the Company requiring the Delivery or performance and fulfilled the Delivery or performance within that period

## **6. RISK/TITLE**

- 6.1. The Products are at the risk of the Customer from the time of delivery.
- 6.2. Ownership of the Products shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
  - 6.2.1. the Products; and
  - 6.2.2. all other sums which are or which become due to the Company from the Customer on any account.
- 6.3. Until ownership of the Products has passed to the Customer, the Customer shall:
  - 6.3.1. hold the Products on a fiduciary basis as the Company's bailee;
  - 6.3.2. store the Products (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
  - 6.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
  - 6.3.4. maintain the Products 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.
- 6.4. The Customer's right to possession will terminate immediately upon the occurrence of an event which would allow the Company to terminate the Contract or where a sum payable under the Contract has not been paid when due.
- 6.5. The Company shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Company.
- 6.6. The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them, and agrees to procure access to any third party premises where such Products may be held.
- 6.7. If the Company provides a Courtesy Vehicle to the Customer then the Customer will insure such vehicle for the benefit of the Company for its full market value (including gap insurance) against all risks in a comprehensive policy without restriction or excess, and the Customer shall indemnify, keep indemnified and hold harmless the Company for all costs, expenses, liabilities including negligence (other than death or personal injury arising out of the negligence of the Company), injuries, losses, damages proceedings or legal costs (on a full indemnity basis) and judgements which the Company incurs or suffers and which arises in connection with or out of the use of such courtesy vehicle (including any accidents involving such vehicle).

## **7. PRICE**

- 7.1. The price for Vehicles will be the price set out on the Company's written acknowledgement of order and the price for Parts and/or Services will be agreed between the parties. Any dispute concerning the dispatch or invoicing of any Product must be submitted to the Company within 7 days of receipt of the advice note or invoice. The

Company may refuse to recognise a claim not made within such period.

- 7.2. The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods.
- 7.3. Any packaging provided by the Company which is returnable but not returned to the Company shall be chargeable together with any charges for collection and delivery.

## **8. PAYMENT**

- 8.1. Unless otherwise agreed between the parties, payment for Vehicles is due before Delivery. Payment for Parts and/or Services are due in accordance with the credit terms agreed between the parties in writing.
- 8.2. Time for payment shall be of the essence.
- 8.3. All payments payable to the Company under the Contract will be made in full in cash, cleared funds or by means of a valid credit card accepted by the Company at the sole discretion, without any set off, restriction or condition and without any deduction for or on account of any counterclaim.
- 8.4. The Company may appropriate any payment made to the Company by the Customer to such of the invoices for the Products or Services as the Company thinks fit, despite any purported appropriation by the Customer.
- 8.5. If any sum payable under the Contract is not paid when due then, without prejudice to the Company's other rights under the Contract, the Company will be entitled to charge the Customer interest on that sum from the due date until payment is made in full, both before and after any judgement the rate specified from time to time by the Late Payment of Commercial Debts (Interest) Act 1998 as amended.

## **9. WARRANTIES**

- 9.1. Any new Product is sold by the Company subject to any warranty in force at the time of delivery given by the Manufacturer of the Product. Any used Product is sold by the Company subject to the warranty terms, if any, specified.
- 9.2. For the purposes of circumstances where Manufacturer warranty is applicable, the Customer is advised that the Manufacturer's warranty is printed in the warranty certificate contained within the warranty and service booklet issued with each Vehicle and that the Manufacturer's warranty is valid at each and every workshop authorised by that Manufacturer irrespective of location of the vehicle in the United Kingdom or overseas.
- 9.3. Except to the extent that the Company is prevented by law from excluding such liability the Company will not be liable to the Customer for any injury, loss, damages, costs or expenses of any kind whatsoever arising out of or in connection with this Contract between the Company and the Customer or arising out of or in connection with any Product or its use and whether or not such injury loss damages costs or expense be occasioned by the negligence of or other tortious act or breach of statutory duty by the Company or any person for whom the Company would otherwise be liable.
- 9.4. By accepting these conditions the Customer acknowledges that no representation has been made to him concerning any Product other than as may be set out in these conditions and any warranty referred to in Condition 9.1 and all other warranties, conditions and representations whether implied by statute, common law

or otherwise are so far as permitted by law hereby excluded.

#### **10. INDEMNITY**

- 10.1. The Customer shall indemnify the Company against all costs, claims, damages, demands or loss whatsoever caused wholly or partly by:
- 10.1.1. Any breach of the Customer's obligations under this Contract or under the warranty referred to in Condition 9.1;
- 10.1.2. Any modification or alteration to any Product carried out by or on behalf of the Customer or by any third party whether or not with the consent approval or knowledge of the Company including without prejudice to the generality of the foregoing, the fitment by or on behalf of the Customer or by any third party of any equipment, accessories or replacement parts unless the said modification alteration or fitment is carried out at the request of the Company and in strict conformity with any instruction (including drawings) provided by the Company; or
- 10.1.3. Any fitting by the Customer to any Vehicle of any equipment, accessories or any replacement parts which do not comply fully with all relevant technical specifications and/or standards of quality of the Manufacturer.
- 10.2. If the Company shall suffer any loss, damage or expense as a result of any claim made or threatened against it by any third party whether resulting in litigation or not, in respect of injury, loss or damage, wholly or partly caused by or arising out of or in connection with a defect or defects in any Product supplied by the Company to the Customer or work carried out by the Company on a Product, then if the said defect or defects or any of them was or were caused either wholly or partly by any act or omission of the Customer (whether negligent or blameworthy or not), then the Customer shall indemnify the Company against all costs claims damages demands or loss whatsoever arising therefrom or in connections therewith.

#### **11. LIMITATION OF LIABILITY**

- 11.1. Subject to condition 5, the following provisions set out the entire financial 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:
  - 11.1.1. any breach of these conditions, including any deliberate breach of these conditions by a party, or its employees, agents or subcontractors;
  - 11.1.2. any use made or resale by the Customer of any of the Products, or of any product incorporating any of the Products; and
  - 11.1.3. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Sale of Goods legislation) are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3. Nothing in these conditions excludes or limits the liability of the Company:
  - 11.3.1. for death or personal injury caused by the Company's negligence; or
  - 11.3.2. under section 2(3), Consumer Protection Act 1987; or
  - 11.3.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - 11.3.4. for fraud or fraudulent misrepresentation.
- 11.4. Subject to condition 11.2 and condition 11.3:
  - 11.4.1. the Company's total liability in contract, tort (including negligence or breach of statutory duty),

misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and

- 11.4.2. 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

#### **12. ASSIGNMENT AND SUB-CONTRACTING**

- 12.1. The Company may assign or sub-contract the Contract or any part of it to any person, firm or company.
- 12.2. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

#### **13. INTELLECTUAL PROPERTY**

- 13.1. No Contract made on these terms and conditions shall constitute or effect any transfer sale or other disposal to the Customer or any third party of any intellectual property rights of a Manufacturer or the Company (if different) or any third party in any Product.

#### **14. VARIATION**

- 14.1. These conditions may not be varied unless in writing and signed by an authorised officer of each of the parties.

#### **15. SEVERENCE**

- 15.1. If any term or provision or any part thereof contained in these conditions other than those relating to payment shall be held to be illegal or unenforceable under any enactment or rule of law such term or provision or part thereof shall to that extent be deemed not to form part of these Conditions and the enforceability of the remainder of these conditions shall not thereby be affected.

#### **16. CONFIDENTIALITY**

- 16.1. If either party becomes aware of information notified as or likely to be confidential information relating to the other party the recipient will use it only to the extent that and for the purpose for which it is required hereunder and shall not disclose the same to any third party at any time. Provided always that no such obligation shall exist in relation to information which:
  - 16.1.1. Is or hereafter comes into the public domain without fault on the part of the party in possession of the same;
  - 16.1.2. Is or comes into the possession of a party otherwise than by reason of an unauthorised disclosure.

The provisions of this clause shall survive the performance of any Contract to which these conditions apply.

#### **17. FORCE MAJEURE**

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Products 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 beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, 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, provided that, if the

event in question continues for a continuous period in excess of 21 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

## **18. GENERAL**

- 18.1. 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.
- 18.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 18.3. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 18.4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 18.5. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 18.6. This Contract 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 Northern Irish law, and the parties submit to the exclusive jurisdiction of the Northern Irish courts.

## **19. COMMUNICATIONS**

- 19.1. All communications between the parties about the Contract shall be in writing and delivered by email, by hand or sent by pre-paid first class post:
  - 19.1.1. (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
  - 19.1.2. (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 19.2. Communications shall be deemed to have been received:
  - 19.3. if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
  - 19.4. if delivered by hand, on the day of delivery; or
  - 19.5. if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 19.6. Communications addressed to the Company shall be marked for the attention of the directors.

## **20. PRIVACY**

- 20.1. We collect information about you when you request information from us, when you place an order with us, when you apply for a credit account with us. We collect information to fulfil your requests, to process your order and to identify other products or services that may be of interest to you.

- 20.2. We want to make sure that the information we hold about you is accurate and up to date. You may request a copy of the information we hold about you, and you may ask us to correct or remove information that is inaccurate.
- 20.3. We would like, if you agree, to send you information about products and services of ours which may be of interest to you. If you have consented to receive marketing you may opt out at a later date.
- 20.4. Where you have ordered or purchased a Vehicle, we share your data with Manufacturers to ensure the correct specification of the Vehicle and for registration of warranties. We share your data with government agencies to enable registration of your Vehicle. We may share data with credit reference agencies