

FINNING (IRELAND) LIMITED: STANDARD CONDITIONS OF SALE & SUPPLY

Definitions

1. In these Conditions: "the Company" means Finning (Ireland) Limited;
- i) "the Conditions" means the standard terms and conditions of sale set out in this document;
- ii) "Confirmation of Order" means the written communication provided by the Company to the Customer accepting the Order;
- iii) "the Customer" means the person, firm or corporation who is entering into this contract for the sale of the goods;
- iv) "Force Majeure Event" means any circumstance beyond the reasonable control of either party, whether affecting such party or its agents, subcontractors, or suppliers, including a strike, lockout, work stoppage, labour dispute, material shortage, utility outage, delay in transportation, fire, flood, earthquake, severe weather, act of God, accident, trade sanction, embargo, act of war, condition caused by national emergency, or new or changed law;
- v) "Freight Forwarder" means a person or organisation nominated by the Customer to accept delivery of the Goods from the Company and to organise any onward shipment;
- vi) "the Goods" means the Goods and/or services specified in the Confirmation of Order document (including any instalment of the Goods and/or services or any parts for them) which the Company is to supply;
- vii) "IPR" means intellectual property rights (including without limitation any patent, copyright, design right, know how or trademark) whether or not registered or capable of registration;
- viii) "Labour" means the workmanship supplied by the Company in the course of repair and/or service work carried out by the Company;
- ix) "Notice" shall mean notice in writing;
- x) "Order" means a written order from the Customer requesting Goods from the Company;
- xi) "the Specification" means the specification for the Goods contained in the manufacturer's technical literature relating to the Goods, and/or as may be defined in the Company's Confirmation of Order document;
- xii) "Working Day" means any day other than Saturday or Sunday or a Bank or Public Holiday.

General Provisions

2. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. No Order submitted by a Customer shall be deemed accepted by the Company until the Company issues to the Customer a written Confirmation of Order accepting the Order. These Conditions 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 a course of dealing. No variation of these Conditions is to have any effect unless confirmed in writing by a Director of the Company or any other authorised signatory.
3. These Conditions shall also apply to service and/or repair contracts in so far as they are applicable to such contracts.

Health and Safety

4. The Goods are sold subject to the condition that the directions, warnings and advice given by the Company in the instruction manual supplied with the Goods or which are subsequently notified by the Company as a safety re-work notice to the Customer in writing are strictly observed and that their contents are specifically drawn to the attention of the Customer's employees and own customers.
5. The Customer shall be solely responsible for providing at its own cost all such safety equipment and for fully equipping the Goods to meet the standards for the time being imposed pursuant to the Safety Health and Welfare at Work Act 2005 (as amended) in the light of the Customer's own particular working conditions, location of equipment and requirements; and ensuring that all and any appropriate safety procedures are implemented, documented and communicated to the Customer's employees and own customers.

Warranty

6. Any warranty which is supplied by the Company in respect of the Goods shall be in writing. Any such warranty shall be invalidated if the Goods are not used for the purposes for which they were supplied, are not serviced and maintained in accordance with the maintenance schedule contained in the manual supplied, are modified in any way or are damaged by misuse or negligence. Where no written warranty is provided by the Company, the Goods are acknowledged by the Customer to be "sold as seen" and the Customer, without prejudice to its right under Clause 10 below, waives to the extent permissible by law all rights it may otherwise have against the Company in respect of the condition of, or any damage or other loss caused by such Goods.
7. In the event that the Goods are "sold as seen" the Customer will be deemed to have satisfied itself as to the condition of the Goods prior to purchase, and further is put on notice that the Goods may not necessarily comply with the Safety Health and Welfare at Work Act 2005 (as amended) or any other legislation governing their use; it is the Customer's responsibility to take such action as is necessary to ensure that any subsequent use of the Goods after purchase does not contravene such legislation.

Specification

8. Subject to Clause 8, the Company warrants that the Goods will comply with the Specification;
9. Subject to the provisions of Clause 7(i) hereof it is the Customer's responsibility to ensure that the Goods are fit for the Customer's purpose and the Company shall have no responsibility whatsoever to the Customer for any damage costs claims or expenses suffered by the Customer or any third party arising as a result of the failure of the Goods to be fit for the Customer's purpose.
10. To the extent that the Goods have incorporated in them specific works carried out by the Company or on the Company's behalf by its subcontractor, IPR in such works shall vest in the Company and the Customer shall indemnify the Company from and against any infringement thereof by the Customer.

11. The Company shall have the right to alter the specification of the Goods without prior reference to the Customer provided that any such alteration does not in the reasonable opinion of the Company materially alter the quality or performance of the Goods.

12. All drawing dimensions and weights provided by the Company are approximate only and the Company does not warrant or represent them to be correct.

13. In the case of damaged Goods or shortage of delivery or non-conformity with order, written notice must be given by the Customer to the Regional Manager, Divisional Manager or Legal Manager of the Company within seven Working Days of delivery, stating the Customer's contact number and specifying in reasonable detail the circumstances giving rise to the claim;
14. Where Goods are accepted from the carrier concerned without being checked, the delivery document must be signed "not examined";
15. In the case of loss of Goods notice in writing must be given to the carrier and to the Company within fourteen days of the date of consignment;
16. In default of compliance with the foregoing provisions of this Clause the Customer shall not be entitled to refuse to take the delivery of the Goods or any part of them.

17. Where the contract is for delivery in instalments, defects in quality in any delivery shall not be a ground for the cancellation of the remainder of the contract.

Time for Delivery

18. Where a period is named for delivery and is not extended by mutual agreement in writing, then the Company reserves the right to require the Customer to take delivery within that period.
19. The Company reserves the right to make partial deliveries.
20. Although the Company will use its reasonable endeavours to deliver the Goods at the rate and at the time quoted for delivery, it shall not be liable for any loss or damage arising from its failure to do so and time of delivery shall not be of the essence of this contract.
21. In the case of a Force Majeure Event delaying any delivery, such delivery may be wholly or partially suspended and the time of such suspension added to the original contract period.

Liability and Indemnity

22. The Company shall not be liable to the Customer and the Customer shall indemnify the Company from and against all actions, costs, claims and demands of whatever nature made against the Company for any loss and damage including consequential loss or damage caused:-
 - i) By the failure of the Customer or its employees, servants or agents to observe the directions and advice given by the Company in the instruction manual supplied with the Goods, or to comply with the terms of any safety re-work notice, or to implement any appropriate safety procedures;

23. By any defect arising out of the use of or in the quality of the Goods supplied or in the Goods not being fit for any purpose unless such use, quality or fitness for purpose was indicated in the Specification for Goods or their description;
 24. By any failure of the Goods supplied to accord with any recommendation of the Company made in good faith but not contained in the Specification;
 25. By any defect or deficiency in the Goods where the failure of the Customer to comply with the conditions for acceptance and delivery contained in Clause 10 hereof has prevented a proper verification and proof of such defect or deficiency;
 26. By the use of any Goods otherwise than within the stated capacity of the same as stated in the Specification or by the failure of the Customer to maintain the Goods in accordance with the maintenance schedule contained in the manual supplied with the Goods or the failure to provide safety equipment in accordance with Clause 5;
 27. By any defect arising from fair wear and tear, wilful damage, abnormal working conditions or alteration, adjustment adaptation or repair by a party other than the Company.
- Neither party shall have any liability whatsoever to the other under this Agreement in respect of any failure to perform obligations as a result of a Force Majeure Event. Notwithstanding the provisions of Clause 15 above, if any Force Majeure Event continues for more than 1 month either party may terminate the relevant Order or written notice without either party having any liability to the other.
28. The liability of the Company hereunder shall further be limited to the cost of repair or rectification or (at the option of the Company) the replacement of any Goods found to be defective under the warranty referred to in Condition 6. The Company shall not be liable to the customer for any indirect or consequential damages or loss, or any loss of profit, business, revenue or production arising from a defect in the Goods other than consequential loss following directly from death or personal injury arising as a result of the negligence of the Company or its employees or subcontractors.

Passing of Risk

29. Risk in the Goods shall pass to the Customer on their delivery by the Company to the Customer's nominated address, ready for unloading. In the event that the Customer is to collect the Goods risk shall pass upon collection of the Goods from the Company's premises, whether by the Customer itself or by a carrier nominated by the Customer.

Export

30. All business transacted by the parties herunder is subject to the export control regulations of, but not limited to, Ireland, European Union and the United States of America. Supply of Goods is made in accordance with information supplied by the Customer at time of despatch by the Company. Export, re-export, retransfer or use of Goods contra to these regulations is a criminal offence and is the responsibility of the Customer.

As a minimum, Goods must not be supplied to Cuba, Iran, North Korea, Sudan or Syria nor to a person or organisation appearing on a Irish government recognised "denied parties list", including for example Bank of Ireland Terrorist lists, EU Sanctions and US Denied Parties Lists.

All Orders must stipulate the delivery address and ultimate destination of the Goods, along with the agreed form of Incoterms 2010. Where Orders are received from Irish Customers who are using a Freight Forwarder, the Company must be informed in writing, prior to delivery of the Goods, of who is to be named as the exporter with the Office of the Revenue Commissioners. For the avoidance of doubt, where a Freight Forwarder is involved, under no circumstances does the Company give the Customer any approval or authority, express or implied, for the Company to be named as the exporter.

The Company reserves the right to delay despatch of Goods or terminate the sale contract entirely if it does not receive satisfactory evidence as to the identity of the exporter and the ultimate destination of the Goods.

In addition:

- (i) The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any parts supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014 (as amended from time to time).
 - (ii) The Customer shall undertake to use best efforts to ensure that the purpose of the above sub-clause 19(i) is not frustrated by any third parties elsewhere in the supply chain, including by possible resellers.
 - (iii) The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any such third parties in the supply chain, that would frustrate the purpose of sub-clause 19 (i).
- Any breach of sub-clauses (i) - (iii) above shall constitute a material breach of the contract between the Company and the Customer.

Passing of Property

31. Property in the Goods shall not pass to the Customer and the full legal and beneficial ownership of the Goods shall remain with the Company until and until the Company has received payment in full and in cleared funds for the Goods and for all other goods agreed to be sold by the Company to the Customer for which payment is then due;
32. Until property in the Goods has passed to the Customer in accordance with the preceding sub-clause and without prejudice to the Company's rights:-
 - a) the Customer shall ensure that the Goods which are on or at the Customer's premises or have been delivered elsewhere on the instructions of the Customer, are properly and fully insured to their full replacement value against all risks with a reputable insurer and shall if required to do so in writing by the Company, prove to the Company that such insurance has been effected and is subsisting;
 - b) the Customer shall not remove any nameplates, markings or signs affixed to the Goods by the manufacturer or by the Company and shall keep the Goods marked and apart from all other goods so as to distinguish and separate the Goods from other goods;
 - c) the Customer shall retain the Goods in a fiduciary capacity as bailee for the Company and shall not without the prior written consent of the Company sell the Goods or any part of them;
 - d) the Company shall be entitled to immediate re-delivery of the Goods and to re-sell the Goods at any time after the due date for payment or before such date in the case of the occurrence of any of the events referred to in Conditions 21 or 24 hereof and for the purpose of such recovery and/or re-sale of the Goods the Company shall be entitled and the Customer hereby grants to the Company its officers, servants and agents a licence (or, in Scotland, the power) to enter upon the premises or property of the Customer during normal business hours and to remove the Goods (including dismantling and/or separation from other goods to which the Goods are attached and/or severance from the realty when necessary).
33. The exercise by the Company of its rights against the Customer under this Clause shall be without prejudice to any rights of the Company to claim against the Customer for additional losses suffered by the Company as a result of the Customer's breach of contract and this Clause shall not prejudice or affect the rights of the Company to claim from the Customer the price of the Goods.

Terms of Payment

34. Unless otherwise stated on the Company's Confirmation of Order, payment shall be net cash due:-
 - a) prior to delivery in the case of Goods other than parts and services; and
 - b) 30 days from the date of invoice, in the case of parts and service, and time of payment shall be of the essence of this Contract.
35. The Customer shall only be entitled to deduct from any invoice the value of credit notes issued to it by the Company to the extent such credit notes pre date the due date of the invoice.
36. If the Customer cannot accept delivery when the Goods are completed and ready for delivery, then the time when the Goods are ready shall count as the delivery date and payment shall be made accordingly unless otherwise agreed in writing by the Company;
37. The Company shall be entitled to charge interest on overdue accounts at the rate in force at the time for payment in accordance with the EC Commercial Interest (Late Payments in Commercial Transactions) Regulations 2002 calculated daily. The right of the Company to charge interest on overdue accounts shall in no way prejudice its right to recover any monies (including accrued interest) due to it by legal proceedings at such times as the Company thinks fit and the Company shall be under no obligation to allow overdue accounts to remain outstanding on payment of interest thereon.
38. If any dispute connected with an invoice exists between the parties, the Customer may not withhold or delay payment of those elements of the invoice which are not in dispute.
39. As a condition of accepting any Order, the Company may at its discretion require the Customer to pay a deposit. Such deposit shall be non refundable, save where the Company fails to deliver the Goods in accordance with these terms and conditions.

Other than where a deposit has already been taken by the Company, the Company reserves the right to charge a fee in respect of any Order which is cancelled in whole or in part by the Customer. Unless otherwise notified to the Customer by the Company prior to the Order being placed, such fee shall be calculated at 5% of the value of the cancelled Goods and the parties acknowledge that this represents a fair and reasonable estimate of the likely costs to be incurred by the Company as a result of the cancellation, including administrative, storage and remarketing costs.

40. If before delivery is effected there arise reasonable grounds for the Company to believe that the Customer will not be able to fulfil its payment obligations, the Company shall have the right to demand from the Customer security for the payment. From the date of demand for security until the date of satisfactory provision of the same, the Company shall be under no obligation to do any act or thing to implement any part of the Contract. If security acceptable to the Company is not offered within such reasonable period as may be specified by the Company, the Company may terminate the contract without further liability on its part but the Customer shall be liable to the Company in respect of any losses (including loss of profits) incurred by the Company as a consequence of such determination.

41. The Company shall have a general lien on all goods and property of the Customer in the possession of the Company in respect in all sums due from the Customer to the Company but unpaid and the Company shall be entitled on giving fourteen days notice in writing to the Customer to dispose of such goods or property and to apply the proceeds thereof towards the reduction of such debt.

42. The Customer hereby waives any right which it may have against the Company to set off any sums which may be due to it for whatever reason and undertakes to pay the Company for the Goods in accordance with the terms of payment set out under Clause 20.

Termination of Contract

43. In the event that:-
 - i) The Customer commits any breach of these Conditions; or
 - ii) A winding up petition or bankruptcy petition is made against the Customer or execution is levied against the property or assets of the Customer; or
 - iii) The Customer ceases to do business, becomes unable to pay its debts as they fall due within the meaning of Section 214 of the Companies Act 1963, becomes or is deemed insolvent, has a receiver, manager, examiner, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction to which the Company has previously agreed in writing) or enters into liquidation (whether compulsory or voluntary);
 - iv) Anything analogous to the foregoing under the law of any jurisdiction occurs in relation to the Customer, then in any such case the Company shall have right forthwith to terminate any contract then subsisting, upon written notice of such termination being posted to the Customer's registered office or (being an individual) his last known address in the Republic of Ireland and the Contract shall be deemed to have been determined without any prejudice to claim or right the Company may otherwise make or exercise.

Price

44. All prices are subject to alteration by the Company without notice and the contract price will be that ruling at the date of delivery;
45. All prices are exclusive of V.A.T which shall be charged by the Company where applicable at the then prevailing rate.

Governing Law & Jurisdiction

46. These Conditions and any contract made in accordance with them will be subject to and constructed in accordance with the Laws of the Republic of Ireland and the Company and the Customer hereby submit to the non-exclusive jurisdiction of the Irish courts.

Severability of Provisions

47. Any provision of any clause or sub-clause of these conditions which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the remaining clauses or sub-clauses hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Entire Agreement

48. These Conditions together with the Order and Confirmation of Order contains the entire contract between the parties hereto and supercedes all previous arrangements, undertakings and agreements (if any) between such parties in respect of such matters. The Customer acknowledges that in agreeing to these Conditions it has not relied on any representation, warranty, undertaking, covenant or understanding other than those contained in these conditions.

Service Exchange and Remanufactured Units – special terms

49. Any Company service exchange parts or remanufactured units sold to the Customer will be invoiced in full at the time of sale at the price shown in the Company's service exchange parts and remanufactured units price list. If the Customer returns to the Company a similar specification part or unit ("the returned part") to the one it has purchased from the Company at the time of purchase or within fourteen days of the purchase having taken place, then a credit will be raised for the returned part, if the returned part is in an acceptable condition, based on the acceptance criteria set by the Company. For the returned part to be in an acceptable condition it must be in an assembled state and not deficient of any major component. The returned part, if accepted in exchange, will immediately become the property of the Company.
50. Unless otherwise stated, the Company warrants service exchange parts and remanufactured units sold by it to be free from defects in material and workmanship under normal use conditions for a period of six months from the date of sale. If the service exchange part or remanufactured unit has been fitted by the Company it will repair or replace the unit at its discretion and at its cost, including labour and transportation cost. If the service exchange part or remanufactured unit has been fitted by the Customer then any claim under this warranty is limited to the cost of repair or replacement of the defective part or unit at the Company's discretion at any established branch of the Company, and does not include any cost of transportation or removal and refitting by the Customer.

Data Sharing and Data Security

51. Customer understands, acknowledges and agrees that Company and Caterpillar Inc., and its and their respective groups of companies, business affiliates, business partners, third party service providers and other third parties can and will collect, use and disclose information about the Customer, including information about Customer's ownership, rental, maintenance and use of Customer's Caterpillar machines and other equipment (including equipment and machines not manufactured by Caterpillar Inc.) provided by or through, or maintained, serviced or managed by the Company. Details relating to the information that is collected, how it is collected, how it is used and disclosed, and how it is kept secure are all contained in the Company's Data Governance Statement which can be viewed at www.finning.com/en_IE/policies/data-governance-statement.html and the Caterpillar Data Governance Statement which can be viewed at www.cat.com/en_US/legal-notices/data-governance.html