

L J & C A CANNINGS

CONDITIONS FOR HIRING GOODS AND CONDITIONS OF SALE (Revised 2023)

TERMS AND CONDITIONS OF HIRE

These Terms and Conditions are the only Terms and Conditions under which L J & C A CANNINGS hires out plant and conduct all other trading and these shall apply under all circumstances to all Hirers/customers including both account and non-account holding customers.

1 INTERPRETATION

1.1 In these conditions the following words have the following meanings:

"**Consumer**" an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession;

"**Contract**" means a contract which incorporates these conditions and made between the Customer and the Supplier for the hire or sale of Goods;

"**Customer**" means the person, firm, company or other organisation hiring Hire Goods or purchasing of Sale Goods;

"**Deposit**" means any advance payment required by the Supplier in relation to the Hire Goods which is to be held as security by the Supplier;

"**Digital Content**" means data which is produced and supplied in digital form;

"**Force Majeure**" means any event outside a party's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, sub-contractors, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions and any other similar events;

"**Goods**" means any machine, article, tool, and/or device together with any accessories specified in a Contract which are hired or sold to the Customer;

"**Hire Goods**" means any Goods which are hired to the Customer;

"**Hire Period**" means the period commencing when the Customer holds the Hire Goods on hire (including Saturdays Sundays and Bank Holidays) and ending upon the happening of any of the following events:

(i) the physical return of the Hire Goods by the Customer into the Supplier's possession; or (ii) the physical repossession or collection of Hire Goods by the Supplier; "**Liability**" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities; "**Rental**" means the Supplier's charging rate for the hire of the Hire Goods which is current from time to time during the Hire Period; "**Sale Goods**" means any Goods which are sold to the Customer; "**Supplier**" means L J & C A CANNINGS, CHALLOW HOUSE FARM, MAIN STREET EAST CHALLOW, WANTAGE OX12 9SR and will include its employees, servants, agents and/or duly authorised representatives; "**Services**" means the services and/or work (if any) to be performed by the Supplier for the Customer in conjunction with the hire or sale of Goods including any delivery and/or collection service in respect of the Goods.

2 BASIS OF CONTRACT

2.1 Goods are hired or sold subject to them being available for hire or sale to the Customer at the time required by the Customer. The Supplier will not be liable for any loss suffered by the Customer as a result of the Goods being unavailable for hire or sale where the Goods are unavailable due to circumstances beyond the Supplier's control.

2.2 Where hire of the Hire Goods is to a Customer who is an individual, unincorporated entity or a two (2) or three (3) partner business, and the hire would be covered by the Consumer Credit Act 1974, the duration of the Hire Period shall not exceed 3 months, after which time the Contract shall be deemed to have automatically terminated. Accordingly the hire of any Hire Goods is not covered by the Consumer Credit Act 1974. In such circumstances, the Customer shall return the Hire Goods to the Supplier on the final day of the 3-month Hire Period. If the Customer fails to do this then it shall be liable for any financial loss which this causes the Supplier.

2.3 Nothing in this Contract shall exclude or limit any statutory rights of the Customer which may not be excluded or limited due to the Customer acting as a Consumer. Where the Customer is acting as a Consumer any provision which is marked with an asterisk (*) may, subject to determination by the Courts or any applicable legislation, have no force or effect and if any provision is under the applicable law of the Contract unenforceable in whole or in part or shall have no force or effect the Contract shall be deemed not to include such provisions but this shall not affect the enforceability of the remainder of the Contract. For further information about your statutory rights contact your local authority Trading Standards Department or Citizens Advice Bureau or if based in the Republic of Ireland your local office of the Director of Consumer Affairs or Citizens Information Centre.

3 PAYMENT

3.1 PAYMENT TERMS

Unless a credit account has been agreed with us in writing all goods must be paid for in full when collected, or the goods are delivered. Cash hire contracts invoices must be paid on return within 5 working days of being collected

3.2 Credit accounts

All accounts shall be paid within 30 days of invoice date or earlier if agreed by both parties.

3.3 Where customers bank, or where a Debit / Credit Card payment has been rescinded, interest shall be charged and be payable upon the unpaid amount(s) of any accounts or invoices immediately. Also, interest shall be charged and be payable upon the amount(s) of any accounts or beyond 30 days or cash invoices remaining unpaid, such interest to be calculated at (supplier option) either at the rate of 2.5% per month or at the rate of interest prescribed from time to time under the Late Payment of Commercial Debts (Interest) Act 1998, such interest to be calculated on a daily basis on the balance outstanding and compounded monthly.

3.4 If any account remains outstanding after a period of 60 days from invoice date, is over its credit limit or if credit facilities have been withdrawn, the matter may be referred for debt collection action and supplier reserve the right to pass the cost (both internal and external) of any such service, including that of Solicitors (both before and after the issue of court proceedings) or other action under The Insolvency Act 1986 (if any), on to the customer's account which amount will be due and payable within 14 days. Internal costs include, but are not limited to, i) £15 for each telephone call made to request payment of an outstanding account as described above, ii) £25 per calendar month Arrears

Management Fee, iii) £100 for each visit by supplier manager or external field agent. The internal costs that are added to the account reflect the cost of the additional administrative work carried out.

3.5 Supplier reserve the right to close an account or reduce a credit limit as it deems fit if an account is unpaid. Should an account be closed for this reason all outstanding monies become due for immediate payment.

4 Placement of an Order/Acceptance of Plant on Site

When the Hirer orders or the site representative accepts a piece of plant, unless otherwise agreed in writing by the supplier, the Hirer is deemed to accept the plant on hire subject to the supplier Term and Conditions.

5 DELIVERY, COLLECTION AND SERVICES

5.1 You will be invoiced for any charges for delivering or collection of hire equipment and other goods

5.2 You will also be charged for any additional expenses incurred if loading or unloading is delayed for reasons in the customers control.

5.3 It is the responsibility of the Customer to collect the Goods from the Supplier, and, in the case of Hire Goods, return them to the Supplier at the end of the Hire Period. If the Supplier agrees to deliver Goods to and/or collect the Hire Goods from the Customer it will do so at its standard delivery cost and such delivery and/or collection will form part of the Services. If the Supplier agrees to collect the Hire Goods from the Customer at the end of the Hire Period the Customer must give the Supplier reasonable notice which shall include at least three (3) working days' notice from the end of the Hire Period. The Customer shall remain responsible and liable for any loss, damage or theft to the Hire Goods until the Hire Goods are collected by the Supplier unless the Supplier fails to collect the Hire Goods within 5 working days of the Customer notifying the Supplier that the Hire Goods are ready for collection whereupon the Supplier shall be liable for any loss, damage or theft thereafter.

5.4 The Supplier shall not be responsible for any damage to any plant, equipment, surface or property whatsoever during the loading or unloading of the equipment upon delivery or collection whether by the Supplier employees, the hirer or any other third party.

6 SAFETY INSTRUCTIONS WHEN HIRING GOODS

It is your responsibility that everyone who uses the hire equipment has received the proper instructions on how to use them safely and correctly. The Supplier takes no responsibility in respect of all claims by any person for injury to persons or damage to property caused by or in connection with or arising out of the use of the plant and indemnify the Supplier against any charges or costs under statute or common law.

7 YOUR RESPONSIBILITIES

The Customer shall:

7.1 Not remove any labels from and/or interfere with the Hire Goods, their working mechanisms or any other parts of them and shall take reasonable care of the Hire Goods and only use them for their proper purpose in a safe and correct manner in accordance with any operating and/or safety instructions provided or supplied to the Customer;

7.2 Notify the Supplier immediately after any breakdown, loss and/or damage to the Hire Goods;

7.3 Take adequate and proper measures to protect the Hire Goods from theft, damage and/or other risks;

7.4 Notify the Supplier of any change of its address and upon the Supplier's request provide details of the location of the Hire Goods;

7.5 Permit the Supplier at all reasonable times and upon reasonable notice to inspect the Hire Goods including procuring access to any property where the Hire Goods are situated;

7.6 Keep the Hire Goods at all times in its possession and control and not to remove the Hire Goods from the country where the Customer is located and/or the country where the Supplier is located without the prior written consent of the Supplier;

7.7 Be responsible for the conduct and cost of any testing, examinations and/or checks in relation to the Hire Goods required by any legislation, best practice and/or operating instructions except to the extent that the Supplier has agreed to provide them as part of any Services;

7.8 Not do or omit to do anything which the Customer has been notified will or may be deemed to invalidate any policy of insurance related to the Hire Goods;

7.9 Not continue to use Hire Goods where they have been damaged and will notify the Supplier immediately if the Hire Goods are involved in an accident resulting in damage to the Hire Goods, other property and/or injury to any person; and where the Hire Goods require fuel, oil and/or electricity ensure that the proper type and/or voltage is used and that, where appropriate, the Hire Goods are properly installed by a qualified and competent person.

7.10 Ensure that any employees, agents or contractors that operate the Hire Goods are if applicable adequately and sufficiently qualified and trained to operate the Hire Goods in accordance with all current and applicable legislation.

7.11 The Hire Goods must be returned by the Customer in good working order and condition (fair wear and tear expected) and in a clean condition, we reserve the right to implement a charge if the equipment is returned in an unacceptable dirty condition, together with all insurances policies, licences, registration and other documents relating to the Hire Goods. You will also be responsible for any death, injury, loss or damage caused by the equipment being misused while they are on hire to you.

8 ELECTRICAL EQUIPMENT

Any electrical equipment must be used with the original plugs and sockets. No modifications or changes should be attempted under any circumstances. You must keep to all Health & Safety regulations including the Electricity at Work Regulations 1989, while you are responsible for the hire equipment.

9 BREAKDOWN AND ACCIDENT PROCEDURE

9.1 Allowance may be made in relation to the Rental to the Customer for any non-use of the Hire Goods due to breakdown caused by the development of an inherent fault and/or fair wear and tear on condition that the Customer informs the Supplier as soon as practicable of the breakdown and the Supplier is unable to repair or replace the Hire Goods within a reasonable time.

9.2 The Customer shall be responsible for all expenses, loss (including loss of Rental) and/or damage suffered by the Supplier arising from any breakdown of the Hire Goods due to the Customer's negligence, misdirection and/or misuse of the Hire Goods.

9.3 The Supplier will at its own cost carry out all routine maintenance and repairs to the Hire Goods during the Hire Period and all repairs which are required due to fair wear and tear and/or an inherent fault in the Hire Goods.

9.4 The Customer will be responsible for the cost of all repairs necessary to Hire Goods during the Hire Period which arise otherwise than as a result of fair wear and tear, an inherent fault and/or the negligence of the Supplier while carrying out routine maintenance and/or repairs.

9.5 The Customer must not repair or attempt to repair the Hire Goods unless authorised to do so in writing by the Supplier.

10 LIMITS OF OUR LIABILITY

10.1 *All warranties, representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.

- 10.2 *If the Supplier is found to be liable in respect of any loss or damage to the Customer's property the extent of the Supplier's Liability will be limited to the retail cost of replacement of the damaged property.
- 10.3 Any defective Goods must be returned to the Supplier for inspection if requested by the Supplier before the Supplier will have any Liability for defective Goods.
- 10.4 *The Supplier shall have no Liability to the Customer if, without just cause, any monies due in respect of the Goods and/or the Services have not been paid in full by the due date for payment.
- 10.5 The Supplier shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Goods and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.
- 10.6 The Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Supplier shall have no Liability to the Customer.
- 10.7 *The Supplier shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Contract and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Supplier.
- 10.8 The Supplier shall have no Liability to the Customer for any of the following losses (whether direct or indirect):-
- 10.8.1 *consequential losses (including loss of profits and/or damage to goodwill);
 - 10.8.2 economic and/or other similar losses;
 - 10.8.3 special damages and indirect losses; and/or
 - 10.8.4 business interruption, loss of business, contracts and/or opportunity.
- 10.9 *The Supplier's total Liability to the Customer under and/or arising in relation to any Contract shall not exceed 5 times the amount of the Rental or monies payable for Sale Goods, in addition to charges for Services (if any) under that Contract or the sum of £1,000 (or Euro equivalent) whichever is the higher. To the extent that any Liability of the Supplier to the Customer would be met by any insurance of the Supplier then the Liability of the Supplier shall be extended to the extent that such Liability is met by such insurance.
- 10.10 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:-
- 10.10.1 Liability for breach of contract;
 - 10.10.2 *Liability in tort/delict (including negligence); and
 - 10.10.3 *Liability for breach of statutory and/or common law duty; except clause 10.9 above which shall apply once only in respect of all the said types of Liability.
- 10.11 Nothing in this Contract shall exclude or limit the Liability of the Supplier of fraud, death or personal injury due to the Suppliers negligence, nor exclude or limit any other type of Liability which it is not permitted to exclude or limit as a matter of law.

11 INSURANCE

- 11.1 Risk in the Goods will pass immediately to the Customer when they leave the physical possession or control of the Supplier.
- 11.2 Risk in the Hire Goods will not pass back to the Supplier from the Customer until the Hire Goods are back in the physical possession of the Supplier. This shall apply even if the Supplier has agreed to cease charging the Rental.
- 11.3 Ownership of the Hire Goods remains at all times with the Supplier. The Customer has no right, title or interest in the Hire Goods except that they are hired to the Customer. Ownership of any Sale Goods remains with the Supplier until all monies payable to the Supplier by the Customer for the Sale Goods have been paid in full.
- 11.4 Until ownership in the Sale Goods passes to the Customer, the Customer shall:-
- 11.4.1 hold the Sale Goods on a fiduciary basis as the Supplier's bailee;
 - 11.4.2 maintain the Sale Goods in satisfactory condition; and
 - 11.4.3 keep the Sale Goods insured against all risks for their full price from the time they leave the physical possession or control of the Supplier.
- 11.5 The Customer must not deal with the ownership or any interest in the Hire Goods. This includes but is not limited to selling, assigning, mortgaging, pledging, charging, securing, hiring, withholding, exerting any right to withhold, disposing of and/or lending. However the Customer may re-hire the Hire Goods to a third party with the prior written consent of the Supplier.
- 11.6 The Supplier will provide Loss or Damage Waiver in respect of the Hire Goods at an additional cost of 15% to the Rental unless customer proves own insurance cover. Alternatively the Supplier may require the Customer to insure the Hire Goods for such reasonable risks as the Supplier may specify and any proceeds of any such insurance shall be paid to the Supplier on demand. The customer must not compromise any claim in respect of the Hire Goods/or any associated insurance without the suppliers written consent.

12 TERMINATION OF CONTRACT

We will end this contract under any circumstances that we feel necessary. It will end immediately and will not affect our right to repossess any or all the equipment or to recover any money you owe us under this contract.

13 OUR RIGHTS OF ACCESS

We may enter any land or premises where we believe the goods to be at any reasonable time and after giving reasonable notice. In order to have access to inspect, repair, test, service, replace or repossess the goods.

14 OWNERSHIP OF GOODS YOU BUY

Any equipment you may buy from us will become your responsibility for loss or damage and abide by all manufacturer's warranty conditions upon receiving them and thereafter. All goods remain our property until we have received full payment. We may enter any land or premises where we believe the equipment to be stored to repossess our property.

15 SALE GOODS RETURNED FOR CREDIT

Any goods returned must be accompanied by the invoice or advice note number they were originally supplied on. Any goods returned must be in as new condition (except where goods are found to be faulty). Goods supplied correctly by us may incur a surcharge to cover the handling and stocking costs incurred by us. The specific surcharges are 15% of the value of the goods if they are returned within 30 days of the issue date and 25% of the value of the goods if they are returned after 30 days of the issue date. Goods supplied incorrectly by us will not incur a surcharge if returned within 7 days of the issue date, but will incur a surcharge of 15% of the goods value if returned after 7 days of the issue date.

16 REPAIR AND MAINTENANCE

Verbal quotations or estimates are not to be considered binding by us in any way. We may charge for costs in examining the customer's equipment where a quotation or estimate is given either verbally or in writing at our own discretion.

17 Default

If the Customer:-

- 17.1.1 fails to make any payment to the Supplier when due without just cause;
 - 17.1.2 breaches the terms of the Contract and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
 - 17.1.3 persistently breaches the terms of the Contract;
 - 17.1.4 provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;
 - 17.1.5 pledges, charges or creates any form of security over any Hire Goods or proposes to compound with its creditors, creates a trust deed for its creditors, applies for an interim moratorium in respect of claims and/or proceedings, any distress/diligence, execution or other legal process is levied on any property of the Customer, has a bankruptcy petition/petition for sequestration presented against it or the Customer takes or suffers any similar action in any jurisdiction;
 - 17.1.6 being a company, ceases or threatens to cease to carry on business, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver or in the Republic of Ireland an examiner appointed over all or any of its assets, any attachment order/arrestment is made against the Customer, any distress/diligence, execution or other legal process is levied on any property of the Customer or the Customer takes or suffers any similar action in any jurisdiction;
 - 17.1.7 appears to the Supplier (acting reasonably) due to the Customer's credit rating to be financially incapable of meeting its obligations under the Contract; and/or
 - 17.1.8 appears to the Supplier (acting reasonably) to be about to suffer any of the above events;
- then the Supplier shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 17.2 below.
- 17.2 If any of the events set out in clause 17.1 above occurs in relation to the Customer then:-
- 17.2.1 except where the Customer is acting as a Consumer the Supplier may enter, without prior notice, any premises of the Customer (or premises of third parties with their consent) where Goods owned by the Supplier may be and repossess any Goods;
 - 17.2.2 the Supplier may withhold the performance of any Services and cease any Services in progress under this and/or any other Contract with the Customer;
 - 17.2.3 the Supplier may immediately cancel, terminate and/or suspend without Liability to the Customer the Contract and/or any other contract with the Customer; and/or
 - 17.2.4 *all monies owed by the Customer to the Supplier shall immediately become due and payable.
- 17.3 Any repossession of the Goods shall not affect the Supplier's right to recover from the Customer any monies due under the Contract and/or any damages in respect of any breach which occurred prior to repossession of the Goods.
- 17.4 Upon termination of the Contract the Customer shall immediately:-
- 17.4.1 return the Goods to the Supplier or, as requested by the Supplier, make the Goods available for collection by the Supplier or its authorised representatives (the Customer granting or procuring for the Supplier or its authorised representative the right to enter the site without trespass); and
 - 17.4.2 pay to the Supplier all arrears for Rentals, Charges for any Services, monies for any Sale Goods and/or any other sums payable under the Contract including, but not limited to, the cost of returning the Goods.