

# FRESH FORKLIFT SERVICES LIMITED

## STANDARD TERMS & CONDITIONS OF BUSINESS V10310

### 1. Interpretation

- (a) In these terms and conditions ("conditions")
- (b) "the company" means Fresh Forklift Services Limited, 8 Centurion Way, Hatch Warren, Basingstoke, Hants RG22 4TL and includes our employees, agents and sub-contractors and "we" and "us" and "our" will be interpreted accordingly.
- (c) "the buyer" means the company, firm or individual who has bought or agreed to buy the goods or services and "you" and "your" will be interpreted accordingly.
- (d) "the goods" means all goods, services, equipment or spare parts therefor supplied by the company to the buyer.
- (e) The headings in these conditions are for convenience only and do not affect their interpretation.

### 2. General

- (a) Unless otherwise agreed in writing and signed by a Director of the company all goods supplied by the company are supplied as per the conditions to the exclusion of any terms and conditions stipulated by the buyer.
- (b) No indulgence or forbearance extended to the buyer shall limit or prejudice any right or claim available to the company.
- (c) Variations to these conditions and representations about the goods we are to provide to you will be ineffective unless expressly agreed in writing by a director of the company.
- (d) Any failure by us to enforce or partially enforce any provision of these conditions will not amount to a waiver of our rights.
- (e) These conditions are personal to you and you may not assign, license or sub-contract any or all of your rights or obligations under them without our prior written consent.
- (f) Any provision of these conditions which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or part) will, to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of these conditions and the remainder of such provision shall not be affected.
- (g) These conditions contain all the terms which we have agreed in relation to the subject matter of these conditions. Neither party has been induced to enter into these conditions by a statement or promise which they do not contain. The condition 2(g) will not exclude any liability which one party would otherwise have to the other in respect of any fraudulent statements.
- (h) The parties to these conditions 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 or party to it.

### 3. Price and Payment

- (a) The company reserve the right to amend the contract price at any time up to delivery to take account of any variations in the prices charged by the company's suppliers or changes in the value of any relevant currency, new or increased taxes, duties or other imposts or variations in costs arising from new legislation or regulations.
- (b) The company reserves the right to impose a 10% non refundable deposit with order, which will be offset against any Cancellation Charge that may be levied in the event of Cancellation of order outlined in Clause 13, unless otherwise agreed in writing from the company and such penalty will also apply to the deposit of any signed Finance Contract in force outlining its own Contractual Obligations.
- (c) Balance of payment is due on, or prior to delivery, unless otherwise agreed in writing with the company who reserves the right to charge interest on any monies not so paid at 8% per annum over the minimum lending rate applicable from time to time.
- (d) Failure by the buyer to effect punctual payment in the manner agreed shall entitle the company to refuse to make any further delivery under and/ or to cancel the contract concerned and all or any other contracts with the buyer without prejudice to the companys' rights to claim for goods supplied and work done at the date of cancellation and for loss or injury occasioned thereby.

### 4. Delivery

- (a) Where at the time of the contract the company is not in possession of the equipment agreed to be sold or does not at that time own that equipment the company shall not be liable for any loss where delivery of the equipment is delayed, postponed or the contract is cancelled for any reason whatsoever.
- (b) Time shall not be of the essence for delivery.

### 5. Passing of Property and Risk

- (a) Title to the property in the equipment shall pass to the buyer when, and shall not pass to the buyer until, the company shall have been paid therefor in full.
- (b) In the event of the buyer becoming insolvent, having a Receiver appointed of the whole or any part of its property, compounding with his creditors or going into liquidation or in the event of payment for any goods being overdue, then and in any such event it shall be lawful for the company, its servants, officers or representatives to enter upon the premises of the buyer and recover possession of any equipment of the company for which the company shall not have been paid for and take away any such goods.
- (c) In the event of any goods being sold or otherwise disposed of by the buyer before the company shall have been paid for them in full, then the proceeds of the sale thereof shall to the extent required to pay the company in full for such equipment be trust monies held by the buyer on behalf of the company.
- (d) In the event of certain goods having been paid for by the buyer and other equipment not having been so paid for, the onus of proof shall be on the buyer to show that any goods remaining in its possession is equipment for which it has paid.
- (e) The risk in the goods shall pass to the buyer at the earliest point of time, of any of the following events: (i) the physical delivery of the goods to the buyer at their specified address. (ii) the physical delivery of the goods to the buyers carrier or to any carrier they nominate for the purpose of delivering to the buyer or his nominee or (iii) the physical delivery of the goods to the buyers place of business by the company.

### 6. Force Majeure

The company shall not be liable for any failure to observe, or breach of any of the terms hereof by reason of Acts of God, war, riots, civil commotion's, strikes, lock-outs, trade disputes, fires, breakdowns, interruptions of transport, Government action, prohibition of import or export, delay in delivery by the company supplied or any other cause whatsoever beyond its control impending or interfering with the manufacture, use, delivery or carriage of the equipment.

### 7. Liability

Any equipment which is of defective manufacture or which fails to attain any expressly guaranteed performance figures (subject to any specified tolerances) will be replaced or rectified by the company at the option of the company and free of charge provided that: -

- (a) Such defect or failure is notified to the company in writing within 3 months after delivery, in case of new goods.
- (b) In respect of goods not of the companys' manufacture the companys' responsibility shall be limited to any benefits they may receive under any guarantee given by the supplier of such goods.
- (c) In respect of goods described as "second hand" or "reconditioned" the company has in writing otherwise than by these Conditions agreed to grant a guarantee in the terms of this clause.

8. Any goods in respect of which no notification is given to the company under proviso (a) above shall be deemed to be in all respects in accordance with the contract and the buyer shall be bound to accept any pay for the same accordingly.

9. The Sellers' liability in terms of Clause 8 hereof is in lieu and to the exclusion of all other warranties, conditions, or obligations imposed or implied by statute or otherwise in relation to the quality or description of the equipment or its fitness for any particular purpose, and all liabilities for any indirect or consequential loss (howsoever arising) is hereby expressly excluded, and the buyer agreed that, in view of the warranty contained in Clause 8 hereof, such exclusion is fair and reasonable.

10. The buyer acknowledges that no reliance has been placed upon any representation made but not embodied in these conditions of sale save only such representations (if any) as are notified in writing to the company on or before any order is placed or quotation given.

### 11. Health and Safety at Work Act 1974

(a) For the purposes of s.6 (8) of the Health and Safety at Work etc, Act 1974 the buyer hereby undertakes to ensure that goods will be safe and without risks to health when properly used and in particular to examine the goods to establish whether it is safe to use in the conditions in which it is delivered and (without prejudice to the generality of the foregoing) the buyer undertakes not to use the goods without first satisfying his public liability and/ or employer's liability insurers or some other person (not being the buyer or an employee of the buyer) qualified and competent in such matters that the Load Chains, Brakes, Steering Systems, Tyres, Forks, and Hydraulics are safe and without risk to health when properly used and that the equipment satisfies all statutory requirements for the time being in force.

(b) Where the goods sold by the company is described as "second hand" or "reconditioned" the company gives no warranty or undertaking that the goods comply with any statutory requirements for the time being in force and the buyer undertakes to ensure that it so complies and hereby undertakes to indemnify and save harmless the company against all or any claims of any nature whatsoever in respect of loss or injury arising from the sale of such goods howsoever caused.

(c) The buyer acknowledges that he has placed no reliance on any description, statement or representation made by the company, their servants or agents.

### 12. Claims for Damage or Loss in Transit

No claims for damage in transit, shortage of delivery or loss of goods will be entertained unless, in the case of damage in transit or shortage of delivery, a separate notice in writing is given to the carrier concerned and to the company within Seven days of the receipt of goods, and in the case of loss of goods, notice in writing is given to the carrier concerned and to the company within Seven days of the date of the invoice.

### 13. Cancellation

The buyer shall not be entitled to cancel any order either written or verbal and in such case the buyer shall indemnify the Sellers for any loss suffered by the company and it is agreed that without prejudice to the foregoing loss shall be equal to at least 20% of the price payable by the buyer, such sum being agreed by way of liquidated and ascertained damages.

### 14. Sub-Contracting

We may employ any person as our agent, sub-contractor or otherwise in the performance of any of our obligations under these conditions. We enter into these conditions on behalf of such persons who will be entitled to the benefit of them and will have no greater liability to you than we do.

### 15. Data Protection Act

You consent to and understand that, for all account applications, a credit search will take place using a credit reference agency.

### 16. Proper Law

This contract shall be deemed to be made in England and shall be construed in all respects in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.