

**(STANDARD TERMS AND CONDITIONS OF SALE)**

**1. DEFINITIONS.**

"The Company" shall be a reference to Greenshields JCB Limited; "Terms of Trading" shall be a reference to the terms and conditions specified herein or varied from time to time pursuant to clause 2(b); "Working Day" shall be a reference to any day that The Company is open for normal business practice; "The Customer" shall be a reference to the purchaser of any product from The Company. "Product" shall be a reference to any item(s) or services supplied to The Customer by The Company; "Site" shall be a reference to delivery point of Product supplied by The Company to The Customer. "JCB" shall mean the company in the JCB group of companies which has manufactured the Product.

**2. APPLICATION OF TERMS OF TRADING .**

(a) The Terms of Trading shall (subject to clause (b)) apply to all tenders, offers, quotations, acceptances, orders, agreements and deliveries relating to the sale of Product by The Company to The Customer shall be deemed to assent thereto.

(b) In the event of The Customer's order containing special provisions, such provisions shall only be binding to the extent that they are expressly agreed to in writing by a Director of The Company. No purported suspension, variation or waiver of these Terms of Trading shall be of any effect unless in writing and signed by a Director of The Company and also by an authorized representative of The Customer.

(c) Save as provided in sub-clause (b) above the Terms of Trading shall apply to the exclusion of any other terms and conditions subject to which The Customer purports to accept a quotation by The Company, or place an order or to enter into a contract with The Company. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by The Company which is not set out in the contract. These Terms of Trading, which are incorporated into the contract pursuant to clause 3 below, apply to the exclusion of any other terms and conditions that the Customer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing unless other terms have been agreed pursuant to sub-clause (b).

**3. FORMATION OF CONTRACT.**

(a) No contract shall come into existence until The Customer's order has been confirmed in writing by The Company or until Product has been dispatched to The Customer, whichever event shall occur sooner. Further to clause 2(a), acceptance of The Customer's order by The Company on this basis set out in this sub-clause incorporates these Terms of Trading into the contract made with The Customer.

(b) An order must be accompanied by sufficient information to enable The Company to proceed with the order forthwith and thereafter any modification must be agreed in writing. All verbal orders and amendments to orders must be confirmed in writing. When ordering Product the quotation reference must be stated on all communications relating to the order and specify the number and date of order, a description of the Product and reference number.

**4. QUOTATIONS.**

The Company will endeavor to hold the terms of any quotation given by it for a period of 30 Working Days, or for such other period as is specified in writing, but without obligation or liability. Any quotation given by The Company shall not constitute an offer and is only valid for the said 30 Working Days.

**5. PRICES.**

(a) All prices are subject to alteration without notice; the contract price shall be that specified by The Company. VAT is not included in the price quoted and shall be charged, where applicable, at the then prevailing rate. Prices shall be the prices stated in writing by The Company or, if no price is so stated, the price set out in The Company's published price list in force as at the date of delivery.

(b) The Company may, by giving notice to The Customer at any time up to 30 Working Days before delivery or collection, increase the price of Product to reflect any increase in the cost of Product that is due to (i) any factor beyond The Company's control (including but not limited to foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs) (ii) any request by The Customer to change any delivery or collection date, or (iii) any delay caused by any instructions of The Customer of failure of The Customer to give The Company adequate or accurate information or instructions.

**6. PAYMENT.**

(a) Unless otherwise agreed in writing by The Company, payment will be on the following basis:-

(a.i) Provided that The Customer has been given written notification from The Company of a credit facility, payment in full for all replacement parts, spares and service support shall be made in full on the 20th of the month following date of invoice.

(a.ii) In all other cases, payment in full shall be made immediately following notification that the Product is ready for collection, delivery or available from stock; Time of payment shall be the essence.

(b) In the event of The Customer's failure to effect full payment by the due date The Company shall be entitled without prejudice to any other rights:-

(b.i) To withhold delivery of Product until such outstanding funds are received by The Company; and

(b.ii) To charge and be paid interest on any outstanding balance at an annual rate of 2% above Barclays Bank PLC base lending rate from time to time in force, such interest to accrue daily;

(b.iii) To discontinue forthwith the provision of any further Product or service whether forming part of the same or any other contract (b.iv) To repossess Product, and for the purpose thereof The Company shall be entitled to enter upon any premises or Site without notice where it is reasonably thought to be stored.

**7. DISPATCH / DELIVERY.**

(a) Any time or date given by The Company in respect of dispatch or delivery shall not be of the essence of any contract. It shall be deemed as an estimate only and The Company shall not be liable for any consequences arising from any such delay, except where caused by wilful neglect.

(b) Unless otherwise agreed in writing delivery shall take place at The Company's premises specified by The Company and The Company shall be entitled to charge and be paid for an additional sum for delivery elsewhere to include the cost of cases and packaging which shall be non-returnable.

(c) No responsibility will be accepted by The Company for any discrepancy in the quantity of Product supplied or damaged caused thereto in transit unless notified to The Company by The Customer in writing within 7 Working Days of the date of delivery to The Customer or delivery address specified by The Customer. The quantities specified in The Company's delivery documentation

shall be conclusive unless otherwise indicated on the same at the time of delivery.

(d) Where The Company agrees to arrange delivery, if The Customer fails to take delivery of Product, or fails to give adequate delivery instructions then, without prejudice to any other right or remedy available to The Company, The Company may:-

(d.i) Store Product and charge The Customer for the reasonable costs (including insurance) of storage and any failed delivery; and (d.ii) Sell Product at the best price readily obtainable and (after deducting reasonable storage and re-selling expenses) account to The Customer for the excess over the price under the contract between The Company and The Customer, or charge The Customer for any shortfall below the price under such contract. The Customer shall indemnify The Company in full against all other losses, damages, charges and expenses incurred by The Company as a result of The Customer's said failure to take delivery or give adequate instructions to do so.

**8. RETENTION OF TITLE AND PASSING OF RISK.**

(a) Unless otherwise specified by The Company, risk of damage to or loss of Product shall pass:-

(a.i) In the case of Product to be collected at The Company's premises, at the time when Product is collected; or

(a.ii) In the case of Product to be delivered at The Company's premises or elsewhere, at that time of delivery or, if The Customer wrongfully fails to take delivery of Product, the time when The Company has tendered delivery of Product. Delivery to a carrier or any other person, firm or company on The Customer's actual or purported behalf shall constitute delivery being made to The Customer.

(a.iii) Where Product is sent by post it shall be at the risk of The Customer after it is posted.

(b) Product shall remain the sole and absolute property of The Company as legal and equitable owner until the full contract price has been received by The Company in cleared funds or in cash subject to prevailing limits notified from time to time.

(c) The Customer acknowledges that he is in possession of Product solely as bailee for The Company until such time as the full contract price has been paid and from the time when risk passes under Clause 8(a) The Customer shall be responsible for and shall indemnify The Company against all loss of or damage to Product from whatever cause.

(d) The Customer shall be licensed by The Company to process Product in such fashion as he may wish and/or incorporate it in or with any other goods provided that such action does not affect title to Product.

(e) The Customer shall be at liberty to agree to sell-on any product produced from or with Products on the express condition that the entire proceeds of sale are held in trust for The Company and that such funds are kept separate from other monies. Where The Company has not received the aforesaid proceeds of sale within 2 Working Days of such disposal by The Customer he will, if required by The Company, within 7 Working Days assign to The Company all rights against the party to whom he has supplied any product made from or with Product.

(f) Until such a time as the property in Product passes to The Customer The Company shall be entitled at any time to require The Customer to deliver up Product to The Company and, if The Customer fails to do so, forthwith without notice to enter upon any premises of The Customer or any third party where Product is stored and repossess such Product.

(g) The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness of Product, which remain the property of The Company.

**9. LIVELINK.**

Any Product may be installed with an active LiveLink Telematics system ("the System") which collects and records data from the relevant machine. The System is operated by Microlise Limited and data collected by the System may be viewed and used by The Customer at The Customer's discretion ("the Service") through the web-site JCBLL.com ("the Site"). More information on the Service can be found at [www.jcb.com/livelink](http://www.jcb.com/livelink). By using the Service through the Site The Customer and its representatives agree to be bound by the terms and conditions of use of the Site and the privacy policy regarding use of data collected through the Service and Site, copies of which can be found at the Site.

**10. SPECIFICATION.**

(a) Product is sold "as seen" and "as is" unless otherwise agreed in writing by The Company. The Customer is therefore under a duty to carry out whatever tests and inspections it deems necessary in order to ascertain whether Product is in a condition satisfactory to The Customer prior to making any order.

(b) The Company gives no undertaking that Product is suitable for any particular need, use or purpose of The Customer and The Customer is therefore under a duty to ascertain before ordering any Product that such Product will meet its particular needs, use or purpose. The Customer must take particular care when intending to use Product for a purpose for which it was not originally intended that such Product is safe and feasible to use.

(c) The Company shall not be liable for any advice or recommendation given by The Company or its employees or agents as to the storage, application or use of Product which is not implemented or followed by The Customer. The Company shall not be liable for any defective advice or recommendation which is not confirmed in writing.

(d) All descriptions, specifications, drawings, weights, prices, capacities, dimensions, performance ratings and any other data quoted, or submitted by The Company or included in any literature, documentation or information issued by The Company are deemed approximate only (except where stated in writing to be exact or expressly made of the essence) and subject thereto none of such items or any part thereof shall form part of the contract between The Company and The Customer (other than as approximations) and The Customer shall place no reliance on them. In any event, such figures for performance of Product vary according to the nature of the Site upon which Product is being used, and the circumstances of its use.

(e) Any typographical, clerical or other error in any sales literature, quotation, price list, acknowledgement of order, invoice or other information issued by The Company shall be subject to correction without any liability on The Company.

(f) The Company reserves the right to make any changes in the specification of Product which are required to conform with any applicable safety or other legal requirements or which do not materially affect their quality or the performance of such Product.

**11. LIABILITY AND WARRANTY.**

(a) In the event of any new Product being supplied which, within 12 months of the date of delivery (or other period as specifically agreed to in writing by a Director of The Company) is shown, to the reasonable satisfaction of The Company, to be defective, The Company shall (as it may in its sole discretion determine) either repair or replace the defective Product without charge.

(b) The warranty in sub-clause (a) above does not extend to parts, materials or equipment not manufactured by The Company or JCB save that The Company shall extend to The Customer the benefits of any warranty issued by the manufacturer of that defective part but shall not otherwise be liable.

(c) Where used Product is supplied by The Company on the basis of a separate written warranty, expressly stated by The Company, on its confirmation of order or invoice, The Company's obligations will be as expressly set out in that warranty. All other used Product is sold without warranty, the sales being on the basis of their condition at the time of sale. The Customer should carry out inspection of all used Product and rely upon his own assessment of their condition, quality, fitness for any purpose and compliance with statutory requirements. Except as specified above, and in sub-clause (i) below The Company shall be under no liability in respect of any defect of any used Product supplied by it.

(d) The Company's obligations to repair or replace Product referred to in sub-clause (a)-(c) above shall apply solely when;

(i) Product is defective by reason of faulty workmanship or the use of defective materials, (ii) The Customer gives The Company immediate written notification on discovery of the alleged defect and full details thereof, such notification to be received by The Company within the appropriate warranty period specified above,

(iii) The Customer returns the defective Product or part thereof to The Company's premises from which it was purchased if so required by The Company, such returned Product shall be adequately packed for carriage and to be clearly marked for identification with the full name and address of The Customer,

(iv) The Customer collects the said Product at the above premises within six days of notification that the repaired or replaced Product is ready for collection. (v) Product identification numbers and marks have not been altered or removed and that no alteration has been made to the Product by anyone other than The Company, and (vi) The Customer has properly maintained and operated Product and complied with all service requirements and recommendations of The Company or manufacturer.

(e) For the avoidance of doubt, The Company shall not be liable in respect of any damage or defect arising out of or in connection with misuse, neglect, lack of adequate daily operating maintenance, abnormal working conditions, repair of Product other than by or on behalf of The Company, willful or accidental damage or normal wear and tear, as determined by the company in its sole discretion.

(f) Where legislation permits, all consumable items, included but not limited to oils, greases, fuels and filters, will be provided by The Customer or purchased from The Company at the respective selling price(s) but in the event that any consumable items are used that are not approved by The Company for use with the Product, The Company accepts no liability.

(g) The Company accepts responsibility for all technical advice given by its officers or servants for which a specific charge is made. Any advice made available to The Customer without charge is given with all reasonable care but without liability in contract, tort or misrepresentation on the part of The Company. It is The Customer's responsibility to ensure that the nature, capacity and performance of the Product ordered by him are sufficient and suitable for his purpose.

(h) The Company's liability in respect of defective Product shall be limited in the terms of this clause 11 and any statutory or other warranty, condition, description or representation, expressed or implied, as to the state, quality, merchantability or fitness of Product for any purpose is hereby expressly excluded to the fullest extent permitted by law.

(i) The Company shall under no circumstances be liable for any damages of any kind whether indirect or consequential losses (including but not limited to loss of profits, business, business opportunities, revenue, turnover, reputation, goodwill or , expenditure incurred or delay in the execution of any works being carried out by or for The Customer) arising out of or in connection with Product or work done in connection therewith, (and whether caused by breach of contract or negligence of The Company, its employees or agents or otherwise) except that nothing in this clause shall limit The Company's liability for death or personal injury arising out of its negligence or the negligence of its employees or agents, fraud or fraudulent misrepresentation, breach of terms implied by section 12 of the Sale of Goods Act 1979, defective products under the Consumer Protection Act 1987 or any matter in which it would be unlawful for The Company to exclude or restrict its liability. .

(j) The Company's total liability to The Customer in respect of all other losses arising under or in connection with any contract made subject to these Terms of Trading, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed the price of such Product to which the liability relates.

**12. HEALTH AND SAFETY.**

(a) Where The Customer purchases Product without a warranty being given by The Company, The Customer undertakes that prior to use of the Product, he will carry out or arrange for the carrying out of such testing, examination and investigation as may be necessary to ensure, so far as is reasonably practicable, that Product will be safe and without risk to health when properly used. In particular, he will carry out as applicable testing of the brakes, steering, hydraulic system, mast assembly, fixed and removable attachments and warning sirens.

(b) If The Customer does not possess an operating manual for JCB Product, or requires information on JCB Products maximum capabilities, the conditions in which it can be safely operated or any other material relating to its safe operation, The Customer should contact The Company in order that this documentation and/or information can be made available to him, in accordance with clause 10 (a)-(d).

**13. FORCE MAJEURE.**

The Company shall not be liable for any failure to supply Product where such failure arises by reason of riot, civil commotion, war whether declared or not, hostilities, terrorist incidents, accident, shortened hours of labour, strikes, lock-outs, Government action (whether in the UK or elsewhere), mechanical breakdown of facilities, transport or machinery, failures of third parties to supply raw materials or goods, storm, volcanic or seismic activity, flooding, fire or any other circumstances, whether of the kind above mentioned or not, beyond the reasonable control of The Company. The Company shall not be required to obtain elsewhere in the market goods with which to replace or permit it to produce Product, delivery of which has been postponed or cancelled as a result of any of the said events. The Company

shall not, however, be relieved from supplying Product nor The Customer from accepting such Product when the above causes interfering with delivery shall have ceased. If the said causes or events continue for more than 8 weeks, the party not affected may terminate the relevant contract by giving at least 10 days written notice to the affected party.

#### **14. WAIVER AND ASSIGNMENT.**

(a) The rights of either party shall not be prejudiced or restricted by any indulgence or forbearance extended to the other party, and no waiver of rights in respect of any breach or default by the other party shall operate as a waiver in respect of any other breach or default (inclusive of any subsequent breach or default).

(b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other way with any or all of his rights or obligations under any contract governed by these Terms of Trading, or any part thereof, to any third party without prior written consent of a Director of The Company.

#### **15. TERMINATION.**

If The Customer shall commit a breach of any term of a contract for the supply of Product or if any distress or execution shall be levied upon his property or assets, or if he shall make or offer to make any arrangement or composition with his creditors, or commit any act of bankruptcy, or if The Customer is a limited company and any resolution or petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if any receiver of such company's undertaking, property or assets or any part thereof shall be appointed, or if The Customer shall commit any act or omission entitling any part to take any of the above steps The Company shall have the right forthwith to suspend work or withhold delivery under or determine any contract for supply of Product upon written notice without prejudice to any claim or right The Company may otherwise make or exercise and if Product has been delivered but not paid for the price shall become immediately due and payable. In addition, The Customer's rights to possession of any Product, the title of which has not yet passed, shall cease and The Company shall be entitled to repossess Product.

#### **16. ENTIRE AGREEMENT.**

The contract made on these Terms of Trading constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the contract. Each party shall have no claim for innocent or negligent misrepresentation based on any statement in any contract.

#### **17. NO PARTNERSHIP.**

Nothing in these Terms of Trading or any contract is intended to, or shall be deemed to constitute a partnership or joint venture of any kind between the parties, nor constitute any party to be the agent of the other party or of any entity for any purpose. No party shall have the authority to act as agent for or bind the other party in any way outside the terms of any contract between them.

#### **18. SALES INCENTIVES.**

(a) For the purposes of this clause 18, "JCBF" shall mean JCB Finance Limited, one such company in the said group of companies. "JCBF Incentive" shall be a Commission payment or treated as Commission. "Commission" shall mean any payment, fee or other remuneration payable to a Broker by JCBF or any lender in relation to (i) a Regulated Consumer Hire Agreement, (ii) a Regulated Credit Agreement, or (iii) an agreement that would be a Regulated Credit Agreement or a Regulated Consumer Hire Agreement but for the fact that it benefits from an exemption under the Regulated Activities Order 2001. "Broker" shall mean a salesperson of The Company where the sale of Product is subject to finance provided by JCBF. "FCA" shall mean the Financial Conduct Authority.

(b) The Company is required by the FCA to disclose to The Customer (if The Customer has a Regulated Agreement) the amount of any relevant JCBF Incentive paid to any Broker. The Company shall disclose this information to The Customer or procure that JCBF does so.

(c) JCBF shall pay to the Broker the JCBF Incentive in the amount specified by JCBF to the Broker from time to time.

(d) The JCBF Incentive shall be deemed earned (i) on the understanding that the Broker has agreed to provide JCBF with first refusal to provide finance on Product supplied by The Company through the Broker, and (ii) on execution of an appropriate funding agreement between JCBF and The Customer.

(e) It shall be the obligation of The Company to ensure that all JCBF Incentives are reported to the FCA as a component of the Broker's FCA regular reporting obligations.

#### **19. DATA PROTECTION.**

In this clause 19, "Data Protection Legislation" means the Data Protection Act 1998 or after 24 May 2018 the General Data Protection Regulation and all other relevant data protection laws, regulations, standards and guidance made under such legislation or under any legislation which replaces them, or any equivalent data protection legislation in the country where the Customer is situated. The Customer acknowledges that under the Data Protection Legislation, it is entitled to disclose to the Company the personal contact details of employees, agents or sub-contractors of the Customer who deal with the Company and that, for the purposes of advising the Customer on any Product, it is entitled to permit the Company to disclose such personal contact details to JCB to use solely for this purpose and warrants that it has the consent from the relevant persons to do so.

#### **20. THIRD PARTY RIGHTS.**

No one other than a party to any contract made under these Terms of Trading shall have any right to enforce any terms of such contract.

#### **21. NOTICES.**

Any notice given hereunder must be in writing and may be effected by personal delivery, facsimile, email or by registered mail postage (subject in each case, to proof that such notice was properly addressed and despatched). If effected by personal delivery or facsimile, such shall be deemed to be received on the day of sending and if effected by post shall be deemed to be received 48 hours after that date of posting. If

the notice is sent by email, it shall be deemed effected at the time of sending (provided no notification of failed delivery is received by the sender). This clause 16 shall not apply to the service of any proceedings or other documents in any legal action.

#### **22. INVALIDITY.**

If any provision(s) of the Terms of Trading is held by any competent authority to be invalid or unenforceable in whole or in part, it shall be deemed modified to the minimum extent necessary to make it valid and enforceable. If such provision may not be so modified, it shall be deemed deleted. Any such modification or deletion shall not affect the validity of the other provisions of such contract.

#### **23. LAW AND JURISDICTION.**

Any contract for the supply of Product under the Terms of Trading shall be construed according to English law. Each party agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of any such contract or these Terms of Trading. Headings are for convenience only and should not be used in construing the meaning of the Clauses.

These Terms of Trading relate to business effected by GREENSHIELDS JCB LIMITED, (registered in England and Wales with company number 03235098 with a registered office and Head Office at;  
GRAVEL HILL  
ROAD ALICE  
HOLT FARNHAM  
SURREY  
GU10  
4LG  
ENGLA  
ND)