

Concord Lifting Equipment Ltd Conditions of Hire and Sale - Updated 21st March 2018

1. Definitions and Interpretation

- 1.1 In these conditions "Charges" means CLE's current equipment hire charges and/or any charges for the sale of Goods as the case may be.
 "CLE" means Concord Lifting Equipment Ltd.
 "Contract" means a contract made between CLE and the Customer for the hire of equipment and accessories ("Equipment") or for the sale of goods/products ("Goods") detailed in the contract and which incorporates these conditions.
 "Customer" means the person, firm, company or other organisation hiring the Equipment and/or purchasing the Goods
 "Deposit" means any advance payment required by CLE in relation to hires and/or sales by a Customer, which is to be held as security by CLE.
 "Hire Period" means the period beginning on the day the Customer holds the Equipment on hire (including Saturdays, Sundays and Bank Holidays) and ending when the Customer returns the Equipment to CLE or when CLE collects or repossesses the Equipment.
 "Billing Period" means the period when CLE will bill the Customer for the hire of equipment, which is Monday – Friday.
 "Off Hire" referring to Equipment means Equipment in respect of which Charges have been suspended while such Equipment remains in the Customer's possession.
- 1.2 Words importing one gender include all genders and words importing the singular include the plural and vice versa.
- 1.3 These conditions are the sole conditions governing the hire of Equipment and sale of Goods by CLE and supersede and replace prior terms; all other terms, conditions and representations are excluded from contracts between CLE and the Customer.
- 1.4 Any condition, which may be held to be invalid by a competent authority, will not affect other conditions.

2. General

- 2.1 These conditions do not affect any of the Customer's statutory rights where the Customer is a person dealing as a consumer.
- 2.2 Unless explicitly agreed in writing prior to hire commencement - the minimum Hire Period is one week.
- 2.2.1 Additional days beyond completed weeks will be charged at 1/5 of the weekly rate.
- 2.3 Hires to individuals or partnerships of individuals shall not be for a Hire Period in excess of three months; such Customers must return the Equipment before the last day of the three month Hire Period.
- 2.4 The Customer is liable for the acts and/or omissions of his employees, agents and/or sub-contractors as if they were his own acts or omissions under the Contract.
- 2.5 CLE's employees are not authorised to make any representations concerning any Equipment or Goods unless confirmed in writing and any advice given by CLE regarding storage or use of Equipment and/or Goods which is not confirmed in writing is acted upon solely at the Customer's own risk.
- 2.6 The Customer must obtain and comply with all permissions, consents and licences required for the Equipment under any statute or other regulation

3. Deposits and Charges

- 3.1 The customer must provide a valid form of government issued identity and proof of address to CLE to take a copy of prior to Equipment being hired. Acceptable forms of identification are UK driving licences and passports.
- 3.2 CLE will continue to charge the credit/debit card on a weekly basis the full amount outlined in the contract until the products are returned/off hired. Should this form of payment be declined CLE require an alternative credit/debit card to be provided immediately or the product to be returned to CLE.
- 3.3 Deposits are set by CLE at amounts reasonably required and will be offset against any payment due for Charges. Any Deposit balance remaining after payment of all Charges will be returned to the Customer within 7 business days of the Equipment being returned to CLE in good clean and serviceable condition. Balances of deposits paid by cheque or BACS transmission will be refunded by cheque or BACS. Deposits refunded to a credit card account may be subject to a handling fee.
- 3.4 Delivery and collection of Equipment (including attempted calls) will be charged at CLE's standard delivery cost from time to time.
- 3.5 If the Equipment is returned in damaged unclean and/or defective state the Customer shall be liable to pay CLE for the cost of any repair and/or cleaning required to return the Equipment to a condition fit for rehire.
- 3.6 The Customer shall pay any costs which CLE may incur in tracking or recovering any lost or stolen Equipment and shall pay the replacement cost of any Equipment (on a new for old basis) which is lost, stolen or damaged beyond reasonable economic repair during the Hire Period, less the amount paid to CLE under any policy of insurance which may have been taken out by the Customer.
- 3.7 The Customer shall pay the Charges for the Equipment up to and including the date on which CLE is notified that the Equipment has been lost, stolen or damaged beyond economic repair. From that date until CLE has replaced at the Customer's expense or retrieved such Equipment the Customer shall pay, as a genuine pre-estimate of lost Charges, a sum as liquidated damages being equal to two thirds of the Charges that would have applied to such Equipment for that period. CLE will use its reasonable commercial endeavours to procure replacement Equipment as soon as practicable.

4. Payment

- 4.1 The customer must provide a valid form of government issued identity and proof of address to CLE to take a copy of prior to equipment being hired. Acceptable forms of identification are UK driving licences and passports.
- 4.2 All charges are unless otherwise stated exclusive of any applicable VAT.
- 4.3 Prompt payment of Charges shall be of the essence. Payment will not be deemed to have been made until CLE has received cash or cleared funds in respect of the total amount outstanding.
- 4.6 The Customer shall pay all sums due under the Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 4.7 The Customer must notify CLE in writing of any queries concerning invoices within 14 days of the invoice date. CLE will not grant an extension to credit account payment for unresolved invoice queries that have been notified after 14 days have elapsed from the invoice date.
- 4.8 Without prejudice to any of CLE's other rights, if the Customer fails to make payment in full on the due date CLE may charge the Customer interest (both before and after judgment) on the amount unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debt Regulations 2002 and may suspend further services to the Customer.

5. Risk, Ownership and Insurance

- 5.1 Risk in the Equipment and/or Goods passes to the Customer immediately when the Equipment or Goods leave CLE's physical possession or control. Risk in the Equipment will not pass back to CLE from the Customer until the Equipment is returned to CLE's physical possession.
- 5.2 Ownership of the Equipment remains with CLE at all times. The Customer has no right, title or interest in the Equipment save that it is hired to him.
- 5.3 Ownership of any Goods remains with CLE until all monies payable by the Customer under the Contract or any other contract between CLE and the Customer have been paid in full and cleared funds.
- 5.4 The Customer shall not deal with the ownership or any interest in the Equipment. This includes but is not limited to selling, assigning, mortgaging, charging, pledging, securing hiring, withholding, exerting any rights to withhold, disposing of and/or lending.
- 5.5 The Customer shall insure the Equipment on a full replacement basis against the risks of loss, theft and damage beyond economic repair and undertakes to pay to CLE any insurance claim proceeds in respect of Equipment.

6. Sale of Goods

- 6.1 All prices are ex-works and exclude VAT. Prices and specifications are subject to change without notice.
- 6.2 The delivery time quoted or agreed by CLE is confirmed from the date of CLE's acknowledgment or order confirmation, but CLE shall not be held liable for any loss incurred by the Customer or any other person as a result of any delay in the delivery of Goods or any part of the Goods for whatever reason.
- 6.3 CLE's obligation to deliver the Goods ordered will be cancelled in the event of circumstances beyond CLE's reasonable control, such as strikes, floods, fire, machine breakdown and any other conditions of Force Majeure.
- 6.4 Specifications, technical description and data serve as a guide only and are subject to alteration by CLE without notice.
- 6.5 The Customer shall be responsible for ensuring that the Goods are sufficient and suitable for his purpose.
- 6.6 Unless otherwise stated in writing by CLE all new Goods sold by CLE have a one (1) year warranty against manufacturers defects appearing in normal conditions of use excluding normal wear and tear.

7. Customer's Responsibilities

- 7.1 The Customer shall sign to acknowledge receipt of Equipment and/or Goods at delivery. Shortages must be agreed and noted on the delivery document. Equipment defects should be reported immediately to CLE.
- 7.2 The Customer shall provide adequate access for delivery and collection and shall be responsible for unloading and loading at delivery and collection. Equipment transported in the Customer's own vehicle is at the Customer's risk.
- 7.3 Safe Use of Equipment
- 7.3.1 The Customer shall be responsible for the safe and correct operation of Equipment by competent persons not under the influence of alcohol or drugs and for its constant supervision within the range of children.

- 7.3.2 The Customer must notify CLE immediately of any Equipment breakdown or shortcoming without attempting a repair.
- 7.3.3 The Customer shall take steps to keep himself acquainted with the state and condition of Equipment and if it continues to be used in an unsafe state the Customer shall be solely responsible for all and any damage, loss or accidents.
- 7.3.4 The Customer shall ensure that any non-CLE equipment or accessories used in conjunction with or attached to the Equipment conforms to any applicable safety requirements.
- 7.3.5 The Customer is responsible for checking the calibration of the Equipment on each occasion before use. Final determination of the suitability of Equipment for the Customer's specific use is the Customer's responsibility and the Customer must assume all risk and liability in this regard.
- 7.4 The Customer shall arrange for the return or collection of Equipment with any CLE outlet during normal business hours and when the Equipment has been returned or collected CLE will issue a return note. The Customer remains responsible and liable for the Equipment and in particular its safety and security from damage or theft until return to or collection by CLE.

8. CLE's Responsibilities

- 8.1 All prices are ex-works and exclude VAT. Prices and specifications are subject to change without notice.
- 8.2 CLE will provide appropriate written and/or practical instruction in the safe and correct operation of Equipment.
- 8.3 All electrical Equipment and Goods will be tested by CLE before their Hire Period/sale.
- 8.4 CLE will use reasonable endeavours to deliver or collect Equipment at the Customer's request during the next business day wherever possible.

9. Limitation of Liability

- 9.1 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.
- 9.2 If CLE is found to be liable in respect of any loss or damage to the Customer's property, the extent of CLE's liability will be limited to the retail cost of replacement of the damaged property.
- 9.3 Any defective Equipment and/or Goods must be returned to CLE at the Customer's expense for inspection before CLE has any liability for defective Equipment/Goods.
- 9.4 CLE will have no liability to the Customer if any Charges or monies due in respect of Equipment and/or Goods have not been paid in full and cleared funds by the due date for payment.
- 9.5 CLE will have no liability resulting from the Customer's continued use of defective Equipment and/or Goods after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.
- 9.6 CLE will have no liability to the Customer to the extent that he is covered by any policy of insurance and the Customer shall ensure that his insurers waive all and any rights of subrogation they may have against CLE.
- 9.7 CLE will have no liability to the Customer for:
- 9.7.1 any losses, whether arising from breach of contract, tort (included but not limited to negligence), or otherwise and whether flowing naturally and directly from such breach, negligence or other cause, or not, in respect of: Loss of revenue/Loss of Profit/Loss of anticipated savings/Loss of Goodwill or reputation any economic and/or similar losses
- 9.7.2 any Specific damages, indirect losses and/or consequential losses; and
- 9.7.3 any business interruption, loss of business, contracts or opportunity.
- 9.7.4
- 9.8 CLE's maximum total liability to the Customer under or in relation to any Contract shall not exceed 5 times the amount of the Charges under that Contract or £1000, whichever is the higher, provided that if such liability to the Customer would be met by CLE's insurance CLE's total maximum liability shall be increased to the extent that it is so met.
- 9.9 Each of the limitations and/or exclusions in the Contract (except for condition 9.8 which shall apply only once) shall be deemed to be repeated and apply as a separate provision for each of liability for breach of contract; liability in tort (including negligence); and liability for breach of statutory duty and/or common law.
- 9.10 Nothing in these conditions and the Contract shall exclude or limit CLE's liability for death or personal injury due to CLE's negligence or limit any other liability which it is not permitted to exclude as a matter of law

10. Termination

- 10.1 If the Hire Period has a fixed term, subject to condition 9.3 neither party shall be entitled to terminate the Contract before expiry of that fixed term except by agreement.
- 10.2 If the Hire Period does not have a fixed term either party may terminate the Contract upon giving any agreed period of notice.
- 10.3 In circumstances where the Customer:
- 10.3.1 Fails to make any payments to CLE when due; or
- 10.3.2 Persistently breaches the terms of the Contract; or
- 10.3.3 Provides incomplete, materially inaccurate or misleading facts and/or information in relation to the Contract; or
- 10.3.4 Attempts to pledge, charge or create any form of security over and Equipment; or
- 10.3.5 Ceases or threatens to cease to carry business; or
- 10.3.6 Being an individual or partnership, has a bankruptcy petition presented against him/it or compounds with his/its creditors, or enters into an individual voluntary arrangement, or suffers any similar action in any jurisdiction; or
- 10.3.7 Being a company, enters into voluntary or compulsory liquidation, has an administrator or receiver appointed over any of its assets, or compounds with its creditors or enters into a company voluntary arrangement, or has any attachment order made against it, any distress, execution or other legal process is levied against any of its property, or suffers any similar action in any jurisdiction; or
- 10.3.8 Where CLE reasonably believes that any of the events referred to in 10.3.1 to 10.3.7 above is about to occur and gives notice to the Customer of such belief; or
- 10.3.9 Where it appears reasonably to CLE that the Customer's credit rating is financially inadequate to meet his obligations under the Contract or that the Customer is about to suffer any of the above events, then CLE shall have the right without prejudice to any other remedies to exercise any or all of the rights set out in 10.4 below.
- 10.4 If any of the events set out in 10.3 above occur in relation to the Customer, then:
- 10.4.1 CLE may enter any of the Customer's premises without prior notice (or premises of third parties with their consent) where the Equipment and/or Goods may be and repossess any Equipment and/or Goods;
- 10.4.2 CLE may immediately cancel, terminate and/or suspend without liability to the Customer the Contract and/or any contract between the Customer (or any associates) and CLE;
- 10.4.3 Any credit period in relation to payment of Charges shall be cancelled and all sums owed by the Customer under the Contract or any other contract between the Customer and CLE shall immediately become due and payable.
- 10.5 Any repossession of Equipment and/or Goods shall not affect CLE's right to recover from the Customer any monies due under the Contract or any other contract between the Customer and CLE and/or any damages in respect of any breach, which occurred prior to repossession of the Equipment and/or Goods.
- 10.6 Upon termination of the Contract the Customer shall immediately at his expense return the Equipment to CLE or make it available for collection by CLE and pay to CLE, in full and cleared funds, all outstanding Charges and/or any other sums payable under the Contract or any other contract between the Customer and CLE.

11. Miscellaneous

- 11.1 Upon termination of the Contract the provisions of conditions 3.4, 3.5, 4.5, 4.7 and 7.4 shall continue in full force and effect.
- 11.2 The Customer agrees to indemnify and keep indemnified CLE against any liability suffered by CLE and arising from due to the Customer's breach of contract, tort (including negligence) and/or any breach of statutory duty and/or any claim from a third party for injury to person or property arising from the Customer's use or storage of Equipment.
- 11.3 No waiver by CLE of any breach of the Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- 11.4 CLE shall have no liability to the Customer for any delay and/or non-performance of a Contract to the extent that such delay is due to Force Majeure
- 11.5 CLE has the right to vary the Contract by giving the Customer seven (7) days written notice of such variation.
- 11.6 All third party rights are excluded and no third parties shall have any rights to enforce the Contract.
- 11.7 Any Contract made under these conditions is governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts in relation to any matter or dispute arising out of or in connection with it.
- 11.8 These conditions of hire and sale supersede all previous terms and conditions of hire and sale which we hereby exclude.