

Terms of Trade -JLG New Zealand Access Equipment & Services

1. Return of Merchandise

- a. JLG will accept merchandise returned to it at its warehouse at the cost of the Purchaser within ten (10) days of supply provided that JLG determines they have not been used and are in new condition.
- b. Such merchandise will only be accepted for return by JLG subject to a restocking fee (currently 10%) being charged to the Purchaser, to the extent that is permitted by law.

2. Warranty Claims

- a. Requests for possible warranty parts or services are to be accompanied by an official customer order number to cover the value of the parts or service should the fault not be found to be a valid warranty claim.
- b. Where a part is supplied as a replacement for a faulty part which is under warranty, if the faulty part is not returned for warranty claim assessment within ten (10) days after the supply of the replacement then, an invoice will be raised for the value of the part and become payable within a period of thirty (30) days from the date of supply.
- c. The said legislation may imply warranties or conditions or impose obligations upon JLG which cannot be excluded, restricted or modified or except to a limited extent. These terms and conditions must be read subject to those statutory provisions. If those statutory provisions apply, to the extent to which JLG is entitled to do so, its liability will be limited and its option to:
 - i. in the case of merchandise, the replacement or re-supply, repair or the payment of the cost of replacing the merchandise or acquiring equivalent merchandise; or the payment of the costs of having the merchandise repaired; and,
 - ii. in the case of services, the supply of the services again; or the payment of the costs of having the services supplied again.

3. Interpretation of Warranty

- a. The standard manufacturer's warranty shall apply to merchandise hereby sold and the conditions relating to that warranty are deemed to form part of this agreement. A copy of the applicable warranty will be forwarded on request.
- b. The JLG Warranty Parts and Service Policy and the current Service and Parts policy manual are available for inspection at 2B Fisher Crescent, Mt Wellington, Auckland 1060 New Zealand.

4. Acceptance

- a. These Terms of Trade may be accepted by a representative of the Purchaser signing the attached JLG Warranty I Credit Application or by JLG's acceptance of a JLG Confirmation Order of a JLG Sales Quotation.
- b. All merchandise must be finally inspected by the Purchaser within ten (10) days after arrival of merchandise at point of delivery and the Purchaser shall, within that period give notice to JLG of any matter or thing by which the Purchaser alleges that the merchandise is not in accordance with the Purchaser's order. Failing such notice and, to the extent permitted by law, the merchandise shall be deemed to have been delivered and accepted by the purchaser.
- c. PURCHASER'S FAILURE TO SO INSPECT AND PROMPTLY SUBMIT A CLAIM SHALL SPECIFICALLY WAIVE THE PURCHASER'S RIGHT TO MAKE ALL CLAIMS FOR DAMAGES OF OTHER RELIEF AGAINST JLG, OTHER THAN UNDER THE TERMS OF MANUFACTURER'S WARRANTY.
- d. Any subsequent oral or written agreement between the Purchaser and JLG will incorporate these Terms of Trade unless stated otherwise.
- e. Any indulgence or extension of time which JLG may grant to the Purchaser in relation to these terms of sale or any other matter will not prejudice or interfere with JLG's rights under these Terms of Trade and will not constitute a waiver of rights of JLG.
- f. If any provision of the Terms of Trade is held invalid, unenforceable or illegal for any reason, these Terms of Trade will remain otherwise in full force apart from such provision which will be deemed otherwise deleted.
- g. JLG will not be bound by any conditions attached to the Purchaser's order and unless those conditions are expressly agreed by JLG in writing, the purchaser acknowledges that those conditions are expressly excluded.

5. Shipment, Risk of Loss and Title

- a. Until payment in full has been received by JLG for the merchandise or any other goods supplied by JLG and despite any credit arrangement between JLG and the Purchaser:
 - i. title / property in the merchandise (both legal and beneficial ownership) shall remain in JLG;
 - ii. the Purchaser shall not attempt to sell, hire out, charge or otherwise deal with the merchandise, or part with possession thereof, nor permit or suffer any execution or distress to be levied to used against the merchandise or permit or suffer the merchandise to be seized or affected by any distress, execution or other legal process and the Purchaser shall inform JLG immediately if any third party attempts to take possession of the merchandise or any other goods;
 - iii. where the purchaser is a retailer / reseller, the Purchaser may only sell the merchandise in its ordinary course of business by a bonafide sale at full market value, in its own name, and not as the agent of JLG;
 - iv. the Purchaser shall be responsible at all times for the merchandise while it is in Purchaser's custody, and be liable to JLG for any loss or damage to the merchandise (except in so far as it can be shown that any such loss or damage is attributable to the negligent act or omission of JLG) and shall notify JLG immediately of any such loss or damage, or any other noticeable defects in the merchandise;
 - v. the Purchaser must effect and maintain suitable insurance in respect of all relevant risks relating to the merchandise to cover any potential liability and otherwise in terms approved by JLG, and shall also ensure that JLG's name is endorsed on the relevant policy or policies as an insured party and provide a certificate of currency to JLG upon request;
 - vi. the Purchaser shall not add to, modify, interfere with or cause any attachments to be fitted to the merchandise except as authorized in writing by JLG;
 - vii. the Purchaser shall not permit the merchandise to become an Accession (as that term is defined under the Personal Property Securities Act 1999 ("PPSA")) except as authorized in writing by JLG;
 - viii. the Purchaser shall keep the merchandise marked as the property of JLG;
 - ix. the Purchaser shall permit JLG or its authorized representative(s) to inspect the merchandise at all reasonable times;
- b. Without prejudice to the terms of this Clause, JLG shall be entitled to maintain an action for the price of the merchandise at any time after payment becomes due.
- c. This Clause shall survive termination of these Terms of Trade for any reason.

6. Delivery and Risk

- a. All merchandise are at the Purchaser's risk immediately upon delivery to the Purchaser.
- b. Delivery of the merchandise will occur when the merchandise are placed at the disposal of the Purchaser (including its nominees or agents) at JLG's premises.
- c. Any delivery dates agreed to by JLG are only approximate and are subject to reasonable variation.
- d. Late delivery of the merchandise will not constitute a breach of the contract by JLG and the Purchaser will not be entitled to cancel the contract or any order.
- e. In any event, JLG shall not be liable for any loss caused by its delays or failures in performance of an order, or default in delivery arising out of or resulting from causes beyond its control and without its fault or negligence, including a force majeure.
- f. Merchandise may be delivered in instalments and each such delivery will be construed as a separate contract.

7. Price

- a. Unless otherwise stated, the purchase price excludes packaging, freight and insurance. These additional costs are to be paid by the purchaser.
- b. All prices quoted by the Seller do not include GST unless specifically stated to include GST.
- c. Prices quoted are indicative only and JLG reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of purchase, or the costs of the provision of the Services to reflect any increase in the cost to JLG which is due to any factor beyond the control of JLG.
- d. Unless otherwise agreed in writing by JLG, the price payable for the merchandise shall be the price specified in JLG's invoice relating to the delivery.

8. Taxes and Other Government Levies

The Purchaser must pay to JLG on demand any tax (other than income tax) payable on this contract, any matter or thing done under this contract or any payment, receipt or other transaction contemplated by this contract, including without limitation any goods and services or value added tax, customs duty, sales

tax, excise duties, stamp duty, other duty, government charge, fee levy or impost (together with any fine, penalty or interest payable because of a default of the purchaser). The Purchaser must pay any amount it is required to pay under this clause in full despite any right of set off that it has. The Purchaser must pay to JLG an amount that leaves in the hands of JLG following payment of any relevant tax or other amount the same amount whether the tax or other amount is payable or not.

9. Payment

- a. Payment must be made and cleared prior to delivery unless otherwise agreed in writing.
- b. The purchaser agrees that all monies outstanding after thirty (30) days of delivery shall carry an interest charge at the rate of two points above the prime rate quoted by the Westpac Banking Corporation for overdraft accounts in excess of NZ\$100,000 on the 31st day after delivery and on the first day of each succeeding month so long as the purchase price is not paid in full.
- c. The purchaser agrees, in addition, to pay any other amount whether legal costs or expenses or other fees, that JLG may incur in collection of any amount due. JLG may, without notice, apply money received from the Purchaser to any amount owing by the Purchaser in such order as JLG thinks fit.

10. Changes by Manufacturer

- a. It is acknowledged by the Purchaser that the manufacturers of the merchandise reserve the right to make changes in design of additions to or improvements in their merchandise without liability and to install such change, addition or improvements in any merchandise previously manufactured.

11. Intellectual Property

- a. Unless otherwise set out in these Terms of Trade, JLG hereby grants Purchaser a non-exclusive, non-transferable license to use the Software (as defined below) solely in conjunction with the purpose for which it is provided and without the right to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the Software. Purchaser may transfer the foregoing license to another party which purchases the goods provided the other party accepts and agrees in writing to be bound by these Terms of Trade. Purchaser shall notify JLG of such transfer and such notice must occur within thirty (30) days of the sale.
- b. SOFTWARE AND ANY ASSOCIATED DOCUMENTATION IS AND SHALL REMAIN THE EXCLUSIVE PROPERTY OF JLG AND/OR ITS LICENSORS, AND NO TITLE TO, OWNERSHIP OF, OR OTHER INTEREST IN THE SOFTWARE OR DOCUMENTATION IS HEREBY TRANSFERRED TO CUSTOMER.
- c. For purposes of these Terms of Trade, “**Software**” shall mean software, including any updates to that Software, provided to Purchaser in standalone form or embedded in goods sold by JLG, including, but not limited to, application project files for control programming, design, configuration, and visualization in source code and/or scripting code created by JLG and/or its service providers and licensors.
- d. If Purchaser is in default of any of these Terms of Trade, Purchaser’s license to use the Software and documentation will automatically terminate.
- e. No license under any patent, patent application, copyright, trade secret, trademark, trade name, service mark, or other intellectual property right is granted or implied by either party.

12. Embedded Software

- a. To the extent that the Software and/or documentation is embedded in goods sold by JLG, the sale of such goods shall not constitute the transfer of ownership rights or title in such Software and/or documentation, and all references to “sale” or “sold” of any Software or documentation shall be deemed to mean a license.
- b. In connection with Software and documentation: (i) JLG, and/or its service providers and licensors, reserve all right, title and interest, together with all intellectual property rights thereto, in all Software and documentation provided or made available to Purchaser, and (ii) no other express or implied license, right or interest in or to any patent, patent application, copyright, trade secret, trademark, trade name, service mark or other intellectual property right is granted under these Terms of Trade.
- c. JLG, and/or its service providers and licensors, reserve the right to, in its sole discretion, access, update, and modify the Software at any time, including modifications that prevent the goods or Software from connecting to cellular or Internet services.
- d. To the extent goods sold by JLG contains Software, Purchaser agrees that JLG may access the Software. Purchaser agrees that JLG may collect data regarding such goods itself and the operation of the goods, including, but not limited to, its location, fault codes, status number of cycles, hours of use, and driving speed (“**Asset Data**”).
- e. Purchaser agrees that Asset Data or any other data of Purchaser and/or any data of any third-party may be transmitted through or across the good sold by JLG hereunder.
- f. Purchaser further agrees that Asset Data or any other data of Purchaser may be transmitted

through or across third-party-owned goods. JLG will take reasonable steps to protect Asset Data or any other data of Purchaser that is transmitted through or across third-party-owned goods from unauthorised access by any third parties.

- g. Purchaser grants JLG a perpetual, irrevocable, worldwide, right and license to use Asset Data for JLG's business purposes, including to conduct research to develop and improve JLG's products and services, and to provide connected products related services.

13. Default and Termination

- a. Without prejudice to any rights that JLG may have under these Terms of Trade, and subject to clause 11(b), JLG may terminate its agreement with the Purchaser, upon seven (7) days notice, if the Purchaser is in breach of any terms of these Terms of Trade.
- b. If the Purchaser fails to make payment in full by the due date, dies (in the case of an individual), commits an act of bankruptcy, becomes insolvent, makes any arrangement with its creditors, suffers a statutory manager or receiver to be appointed, is subject to any form of insolvency administration, or if the merchandise is, in the opinion of JLG, "at risk" within the meaning of the PPSA, or if any reason in JLG's reasonable opinion, the Purchaser is unlikely to be able to make payment for the merchandise on the due date, JLG may immediately, at its election, and without prejudice to its other legal rights and remedies;
 - i. terminate any purchase order of the Purchaser;
 - ii. suspend further deliveries of merchandise;
 - iii. require payment in advance for all or any further deliveries of merchandise to the purchaser;
 - iv. repossess and sell the merchandise (subject to these Terms and the PPSA) held by the Purchaser and enter onto any premises on which the merchandise are stored, without notice, for this purpose.

14. Governing Law

- a. These terms and conditions and any contract including them shall be governed by and are to be construed in accordance with the law of New Zealand and the parties to these terms submit to the non-exclusive jurisdiction of the courts of New Zealand.

15. Liability of JLG

- a. To the extent permitted by law, JLG will under no circumstances be liable to the Purchaser for any loss, damage, injury or debt sustained or incurred by the Purchaser or any other party including any loss of profits resulting directly or indirectly out of any negligence of JLG, the supply, performance or use of any merchandise or services of JLG or out of any breach of JLG under any contract incorporating these Terms of Trade.
- b. The Purchaser shall indemnify and keep indemnified JLG from and against any liability, damage, loss, claim or expense resulting from any claim or action by a third party in relation to the merchandise.

16. Trade Ins

- a. Any trade-in machines will only be accepted on terms agreed to by JLG and the Purchaser will be responsible to ensure that full unencumbered title in the trade-in passes to JLG at the time of delivery of the trade in to JLG.
- b. Should JLG suffer any loss or damage as a result of the Purchaser's oversight (whether intentional or unintentional) to disclose any encumbrances, charge and/or lien, the Purchaser and/or the officers of the purchasing company will fully indemnify JLG of such loss or damage including any legal fees and expenses incurred.

17. Financing of Purchases

- a. If the Purchaser chooses to purchase merchandise from JLG through external funding whether by lease, hire purchase, rental or otherwise, the Purchaser must notify the financier of these Terms of Trade and in particular of the fact that title in merchandise sold by JLG remains with it, until it is fully paid through the receipt of cleared funds.

18. PPSA

- a. The Purchaser agrees that:
 - i. It grants a Security Interest (as that term is defined under the PPSA) in all present and after-acquired merchandise as security for all the Purchaser's obligation to JLG;
 - ii. It will do all things and execute or arrange for execution of all such documents as in JLG's opinion are necessary or desirable to ensure that JLG has a perfected first ranking Security Interest in the merchandise;
 - iii. It waives its right to receive a copy of the verification statement under the PPSA;
 - iv. It will have none of the rights under sections 114(i)(a), 116, 117(l)(c), 119, 120(2), 121, 125, 129, 131, 132, 133, and 134 of the PPSA.

- v. Where JLG has rights in addition to Part 9 of the PPSA, those rights shall continue to apply and, in particularly, will not be limited by section 109 of the PPSA;
- vi. It will reimburse the Seller for any cost it incurs in registering, maintaining, discharging and/or enforcing the Security Interest created by these Terms of Trade; and
- vii. It will immediately notify JLG of any change in the Purchaser's name.

19. Supply

JLG is under no obligation to supply or continue to supply merchandise to the Purchaser and JLG may refuse to supply or discontinue supplying merchandise for any reason at JLG's sole discretion.

20. Joint and Several Liability

Where the Purchaser comprises more than one party then each reference contained in these Terms of Trade to Purchaser shall be a reference to each such party jointly and severally, and the obligations and agreements on the part of the Purchaser contained or implied in these Terms of Trade shall bind each of them jointly and severally.

21. Costs

The Purchaser agrees to pay on demand all costs and expenses incurred by JLG in connection with the enforcement or attempted enforcement of these Terms of Trade (including JLG's Security Interest), including, without limitation, losses, costs and expenses sustained as a result of a default by the Purchaser in the performance of any of its obligations under these Terms of Trade.

22. Privacy Act 1993

- a. The Purchaser agrees that JLG may obtain information about the Purchaser from the Purchaser or any other person (including any credit or debt collection agencies) in the course of its business, and the Purchaser consents to any person providing to JLG with such information.
- b. The Purchaser agrees that JLG may give any information it has about the Purchaser relating to the Purchaser's credit-worthiness to any other person, including any credit or debt collection agency, for credit assessment and debt collection purposes.