

General Trading Terms and Conditions

(G1) General

(a) This Agreement and appended schedules constitutes the entire agreement and understanding between the parties as to its subject matter. Supplementary terms and conditions will apply in respect of Hire Contracts, Service and Maintenance Agreements and for the sale of Used Equipment or Parts.

(b) No variation of these terms and conditions shall be binding unless made in writing specifying both which clause is to be varied and full details of such variation and signed by a Director or Principal or Authorised Officer of each party to this agreement.

(c) If for any reason any term or condition of this agreement shall be held to be invalid or unenforceable for any reason, the remaining terms or conditions shall continue to have full force and effect and be binding upon the parties.

(d) If any such change substantially affects or alters the commercial basis of the agreement, the parties shall negotiate in good faith to amend and modify the provisions and terms as necessary to give effect so far as possible to their original intent. These terms and conditions shall be governed by and construed in accordance with English Law, and the parties hereby submit to the jurisdiction of the English Courts in relation to any dispute that may arise concerning this Agreement or its implementation.

(G2) Notices

(a) Any notice given by the Customer under this Agreement shall be given in writing to the address set out in this Agreement. Any notice shall be deemed to have been served only upon written acknowledgement by Fork Truck Direct Ltd.

(b) This document is deemed received by the intended party 2 days after posting.

(G3) Time or Indulgence

(a) Any time or other indulgence granted by Fork Truck Direct Ltd shall not affect Fork Truck Direct Ltd's strict rights under these terms and conditions.

(b) A person who is not a party to this Agreement shall not have a right under the Contracts (Right of Third Parties) Act 1999 to enforce any term of this Agreement.

(G4) Confidentiality

Each party undertakes to the other to treat as confidential and not to make use of any information relating to the business of the other which comes to its knowledge as a result of this Agreement and its performance and to exercise proper commercial prudence in preserving such confidentiality.

(G5) Definitions

(a) "Fork Truck Direct UK Limited" is the party supplying equipment, services, parts, or hire and is hereinafter referred to as FTD Ltd.

(b) "The Customer" is the party to whom FTD Ltd is supplying equipment, services, parts, or hire and includes its successors.

(c) "Agreement" means the agreement between the parties the terms of which are set out herein, including the Schedule(s).

(d) "Hire Agreement" means the Agreement for the hiring of Equipment entered into between FTD Ltd and the Customer the terms of which are set out herein, including the Schedule(s).

(e) "Maintenance Agreement" means the agreement between the parties to provide and receive maintenance services the terms of which are set out herein, including the Schedule(s).

(f) "Equipment" shall include any machine or part thereof and any attachments or fittings particulars of which are set out in the relevant Schedule,

(g) "Schedule" refers to any statement of details of Equipment, Site, Fees and/or services to be provided appended to these terms and conditions.

(h) "Hired Equipment" shall include any item of Equipment or part thereof and any attachments or fittings or replacements or any other thing hired by the Customer from FTD Ltd under this Agreement, short particulars of which are set out in the relevant Schedule.

(i) "Activity Level" means the anticipated maximum annual hours of usage of the Equipment defined in the schedule(s).

(j) "Maintenance Plan" means the programme of activities involved in maintaining and servicing the Equipment.

(k) "Application" shall mean the combination of Site conditions, Activity Level and Environment in which it is intended that the Equipment will be operated and is defined for each individual item of Equipment in the Schedule.

(l) "Site" means the Customer's site/delivery address set out in the relevant Schedule.

(m) "Regulation" means any Act of Parliament Order, regulation, bye-law, EU regulation or other similar instrument whether national or local, including any amendment thereto or re-enactment or replacement thereof.

(n) "Fees" means all Hire Rates, Service Rates, and other ad hoc charges payable under this Agreement and described in the relevant schedule(s).

(o) "Initial Delivery Date" means the delivery date confirmed and agreed with the Customer in accordance with Clause G10 (b) herein.

(p) "Wrongful Cancellation" means any purported cancellation of Order by the Customer other than in accordance with Clause G13 (d) herein.

(G6) Title

Until full payment for the purchase of Equipment has been received by FTD Ltd legal and beneficial ownership of the Equipment shall

remain vested FTD Ltd. In the event of default or delay in payment for the purchase of e Equipment howsoever arising FTD Ltd may repossess it and the Customer hereby grants FTD UK Ltd the irrevocable license to enter its premises for the purpose of so doing.

(G7) Risk

The risk in the Equipment shall pass to the Customer upon delivery to the Site or where applicable from the time of collection by the Customer and FTD Ltd shall, notwithstanding that title to the Equipment is retained by FTD Ltd, have no responsibility in respect of the Equipment thereafter. The risk in Equipment supplied under Hire Agreement shall similarly pass to the Customer upon delivery to the Site and shall continue until such time as the hired Equipment is returned to the possession of FTD Ltd. Accordingly the Customer shall be responsible for insuring the Equipment for not less than its purchase price.

(G8) Force Majeure

If performance of the contract is delayed by any act of God, act or omission of government, war or similar event (excluding strikes or other industrial disputes) beyond either party's reasonable control ("Force Majeure"), then the time for performance shall be amended accordingly subject to the delayed party promptly informing the other of the event and taking reasonable steps to reduce the delay.

(G9) Limits of Liability

Except for death or injury of any person resulting directly from FTD Ltd.'s negligence or directly from the negligence of its employees or agents:

(a) The Customer will be solely responsible for (and so hold FTD Ltd fully indemnified against) any loss, damage or injury to people or property caused by the possession of or use of or breakdown or defect in the Equipment, parts or services supplied.

(b) FTD Ltd shall not be liable for any loss or damage sustained or incurred by the Customer or any third party (including without limitation, any loss of use of the Equipment or Loss) resulting from the possession of or use of or any breakdown or defect in the Equipment, parts or services supplied howsoever caused.

(c) FTD Ltd shall not be liable to the Customer for loss of profits, contracts or earnings or goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) whether arising from negligence, breach of contract or otherwise resulting from the supply of, possession of or use of or any breakdown or defect in the Equipment howsoever caused.

(G10) Payment, Late Delivery & Wrongful Cancellation

Payment

- a) There shall be no binding contract until FTD Ltd has acknowledged in writing any order placed by the Customer.
- b) Once an order has been processed and accepted FTD Ltd and acknowledged in writing to the Customer, an 'Initial Delivery Date' will be confirmed and agreed with the Customer.
- c) Unless otherwise agreed in writing, payment of the purchase price for (i) any Equipment (as defined in Clause G5(f) herein and including Parts, New Trucks, Used Trucks, Hand Pallet Trucks and Miscellaneous Items), (ii) Service or (iii) Repairs shall be due in net cash 14 days from date of invoice.
- d) Payments due under Maintenance Agreements and Hire Agreements shall be paid monthly in advance by standing order and will be payable regardless of whether an invoice has been supplied by FTD Ltd. Time shall be of the essence for payment of fees.
- e) All payments shall be made free and clear of any deductions setoffs or withholdings of any description (save as set out below) unless the same are required by law in which event the customer shall indemnify FTD Ltd against the same.
- o If the Customer wishes to dispute the whole or any part of any invoice, then provided that it notifies the disputed amount and the nature of the dispute to FTD Ltd prior to the due date for payment of the relevant invoice, it may withhold payment of the sum in dispute, but must pay the undisputed portion within the agreed payment terms. If upon investigation by FTD Ltd and the Customer, both parties believe that such disputed amount (or part thereof) is properly due the Customer shall pay such amount forthwith upon resolution.

f) In the event of late payment by the Customer of any sum due to FTD Ltd, the Customer shall forthwith (without prejudice to any other remedy FTD Ltd may have) pay to FTD Ltd any sums overdue and FTD Ltd may exercise its statutory right to claim interest and compensation for the cost of recovering the debt under the Late Payment of Commercial Debts Regulations 2015 or otherwise.

g) Late Delivery

- h) If the Customer is subsequently unable or unwilling to accept delivery on or before the 'Initial Delivery Date' (see Clause G10(b), above) the Equipment will be held by FTD Ltd free of charge for 30 days.
- i) After 30 days from the 'Initial Delivery Date' the Customer will be required to confirm (a) that the equipment is still required; or (b) that the equipment is no longer required (in which case cancellation obligations arise under the 'Wrongful Cancellation' provisions herein.
- j) Where the Customer confirms that the equipment is still

required:

- (i) the Customer must (a) within 14 days of the Initial Delivery Date passing, agree a new delivery date (to be within 45 days of the Initial Delivery Date); and (b) in any event, pay 50% of the total order value (the full purchase price of the Equipment) forthwith regardless of any other agreement as to payment due dates and regardless of whether such sum has already been invoiced or not.
- (ii) After 45 days (from the Initial Delivery Date) the Customer will become liable to pay FTD Ltd.'s reasonable storage and transport costs incurred between the 'Initial Delivery Date' and the date of actual delivery.
- (iii) After 60 days (from the Initial Delivery Date) the Customer shall (a) take delivery of the Equipment forthwith; (b) be immediately liable to pay the balance of the total order value (the full purchase price of the Equipment) regardless of any other agreement as to payment due dates and regardless of whether such sum has already been invoiced or not; and (c) pay FTD Ltd.'s reasonable storage and transport costs incurred between the 'initial delivery date' and the date of actual delivery.
- (iv) Where a Customer continues to refuse delivery at the go day (post Initial Delivery Date) stage the 'Wrongful Cancellation' provisions will apply.
- (v) Payments made in accordance with Clauses G10U(i)(b) and G10(j)(iii)(b) shall be accepted as part payments against the total order value and against any other fees or charges arising under this contract.

Wrongful Cancellation

- k) The Customer has a limited right of cancellation as set out at Clause G13 herein. In all other circumstances the provisions of this Clause (G10) shall apply.
- l) If at any time after a binding contract arises the Customer confirms that the Equipment is no longer required (and purports to cancel the Order) a cancellation charge shall become immediately payable.
- m) In cases where the Equipment cancelled is readily re-sellable to a different customer, the cancellation charge shall be calculated by FTD Ltd as reflecting a true and genuine estimate of the lost 'profit element' of the cancelled sale plus any storage, transport or administrative costs and any other losses incurred.
- n) In more complex cases where the Equipment cancelled is not readily re-sellable to a different customer (or would require extensive modification before re-sale was possible) the cancellation charge may be calculated as being 100% of the full purchase price (representing both the wasted supply costs and the lost profit element of the cancelled sale) less any residual scrap, salvage or auction value of the Equipment plus any storage, transport or administrative costs and any other losses incurred.
- o) In any event, whilst the cancellation charge is likely to vary from case to case, FTD Ltd will always endeavour to ensure that the cancellation charge levied is a true and genuine estimate of their actual losses arising from the cancellation.

(G11) Specification

(a) Equipment supplied by FTD Ltd will comply with the Manufactures published specifications and all Regulations regarding the construction and servicing of Equipment.

Unless notification to the contrary is received by FTD Ltd within 7 days of its delivery to Site, the Equipment shall be deemed to have been delivered in good working order.

(b) However FTD Ltd reserves the right to alter or amend the specification of any Equipment without notice; illustrations and advertising literature are by way of general description only and do not form part of any contract.

(G12) Warranty

New Equipment supplied by FTD Ltd is warranted to the extent that, subject to the conditions set out below, FTD Ltd will repair or replace free of charge any part or parts which are found to be defective by reason of faulty materials or workmanship within the stated periods below:

(a) Powered equipment: The period or metered hour usage offered by the manufacturer, provided the equipment is subject to an appropriate Maintenance agreement provided by FTD Ltd or an approved service provider.

(b) Manual materials handling equipment: 12 months from date of purchase.

(c) Parts: 6 months from date of purchase.

(d) Labour: 3 months from date of provision.

Any warranty will be invalidated if:

- (i) the Equipment is used for any purposes other than those for which it was supplied, or
- (ii) Unauthorised modifications are made, or
- (iii) Equipment is rendered defective through lack of maintenance in accordance with the manufacturer's recommendations. improper usage. Wilful damage or the fitting of parts other than those specified by the manufacturer.

(e) This warranty does not apply to proprietary equipment but FTD Ltd will pass on the benefit of the manufacturer's warranty (if any) insofar as it is able to do so.

(f) Save as set out above and except insofar as such exclusion is prevented by law FTD Ltd gives no conditions, warranties or guarantees in respect of any Equipment, services, or parts supplied by FTD Ltd

(G13) Representations, Acceptance and Right of Cancellation

Representations

a) FTD Ltd.'s employees or agents are not authorised to make any representations concerning the Equipment or its Hiring or Maintenance unless confirmed by FTD Ltd in writing. The Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.

b) Any advice or recommendation given by FTD Ltd or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Equipment which is not confirmed in writing by FTD Ltd is followed or acted upon entirely at the Customer's own risk and accordingly FTD Ltd shall not be liable for any such advice or recommendation which is not so confirmed.

Acceptance

c) There shall be no binding contract until FTD Ltd has acknowledged in writing any Order placed by the Customer.

Right of Cancellation

d) The Customer has an absolute right of cancellation within 7 days of receiving the Order acknowledgment. Cancellation must be notified in writing to FTD Ltd (and must be received by FTD Ltd within the 7 day period). In the event of any purported errors or omissions in the Order acknowledgement, the Customer must notify FTD Ltd in writing of such purported errors or omissions within 7 days of receiving the Order acknowledgment (such notification must be received by FTD Ltd within the 7 day period).

e) Thereafter cancellation, alteration or suspension of orders by the Customer may only be made with FTD Ltd.'s prior written agreement or in accordance with Clause G10 herein.

(G14) Prices

Unless otherwise specified, prices quoted are ex- works and carriage will be borne by the Customer.

(G15) VAT

Payments due from the Customer are calculated before VAT which will be levied according to the Taxable value of the supply.

(G16) Time for Delivery

Delivery forecasts are given in good faith but FTD Ltd will not accept any liability if for any reason delivery is delayed beyond the date given in any delivery forecast.

(G17) Breach

(a) If the Customer commits a repudiatory breach of this Agreement FTD Ltd may accept such breach as a repudiation of the Agreement and then and in any such case FTD Ltd may terminate the Agreement and seize and remove any Hired Equipment and/or spare parts for which purpose it shall be lawful for FTD Ltd to enter into or upon any premises where the Equipment may be.

(b) Without prejudice to the generality of this clause above should the Customer:-

(i) Withhold payment of Fees or other amounts due hereunder for fourteen days after the due date of payment thereof; or

(ii) fail to observe and perform any of the terms and conditions of this Agreement and in the case of any breach capable of being remedied shall fail to remedy such breach within (14) fourteen days after being required by FTD Ltd in writing so to do; or

(iii) do or cause to be done or permit or suffer anything whereby the rights of FTD Ltd in or over the Equipment are prejudiced or put into jeopardy; or

(iv) convene any meeting of creditors or make a Deed of Assignment or Arrangement for the benefit of or compound with its creditors or shall be subject to a change of ultimate parent company ownership or shall cease or threaten to cease to carry on business or shall be unable to pay its debts as they mature or shall convene a meeting to consider a resolution for winding up or present or have a petition for winding up presented against it or have a Receiver or Administrator appointed over the whole or any parts of its undertakings or assets or the ownership of the Hire changes; or

(v) suffer any distress or execution upon its property, the aforesaid shall be considered a repudiatory breach of this Agreement. In each and any case of repudiatory breach, FTD Ltd will be entitled to terminate the Agreement and recover all payments due as detailed in the Agreement.

(c) In the event of a repudiatory breach FTD Ltd will immediately cease to provide maintenance and breakdown cover and accepts no liability for any damage or loss to person or property as a result of the continued use of the Equipment. The Customer shall be fully liable to FTD Ltd for damages for breach of this Agreement.