

MODEL CONDITIONS OF PURCHASE – 2025

For the purchase of goods and services and also for the rehire of machinery

0 [Insert HAE Member's full trading name and address and telephone number plus email address]

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1. INTERPRETATIONS

In these Conditions of Purchase the following words shall have the following meanings: -

- 1.1 “**Authorised representative**” is an employee, agent or subcontractor authorised by the Customer to order and receive goods and services but who is not authorised to modify the Conditions of Purchase;
- 1.2 “**Customer**” means [Insert your trading name and if applicable company registration number], which for the purposes of these Conditions of Purchase also means “**Buyer**”;
- 1.3 “**Contract**” means any agreement or contract between the Customer and Supplier whether written or verbal, which automatically incorporates these Conditions of Purchase;
- 1.4 “**Director**” is a board member of the customer and/or “**business owner**” who is authorised to modify these Conditions of Purchase;
- 1.5 “**Goods**”, “**Machinery**” “**Equipment**” and “**Product**” are interchangeable words;
- 1.6 “**Hire Period**” means the period of hire, as set out in clause 4;
- 1.7 “**Hire Start Date**” means as defined in clause 4.1;
- 1.8 “**Liability**” means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses (whether direct or indirect) and/or liabilities;
- 1.9 “**Our own customer**” means a customer belonging to the Buyer;
- 1.10 “**Purchase Order**” means any written document used by the Buyer to order goods;
- 1.11 “**Product**” means any goods, machinery and/or services that the Supplier has sold or hired to the Customer and/or provided as part of a package;
- 1.12 “**Services**” means the services (if any) being supplied by the Supplier to the Customer;
- 1.13 “**Specification**” means the specification for the Goods supplied by the Supplier to the Customer in writing;
- 1.14 “**Supplier**” means the supplier of the goods, hire goods and/or services that the Customer has requested.

2. BASIS OF THE CONTRACT

- 2.1 These Conditions of Purchase shall exclusively govern the agreement between the Supplier and Customer for the purchase, lease or rental of Goods and/or Services, to the exclusion of all other terms or conditions including (without limitation) those that are implied by trade, previous dealings, custom, practice, or used by other organisations such as the CPA.
- 2.2 The Supplier is required to accept these Conditions of Purchase in their entirety, and if you process the order then the Supplier is deemed to have accepted them in full.

- 2.3 These Conditions of Purchase supersede all previous terms and conditions issued and shall replace any previous Conditions of Purchase notified to the Supplier.
- 2.4 No variation to these Conditions of Purchase shall be binding on the Customer unless contained in the purchase order or agreed in writing between you the Supplier and one of the Customer's directors (or if unincorporated by the Customer's owner).
- 2.5 Written Purchase Orders and verbal orders placed by the Customer for Goods and/or Services shall still be subject to these Conditions of Purchase whether or not this is expressly stated. The Customer's order [insert method use i.e. purchase order] shall be deemed to be accepted on the earlier of:
- 2.5.1 The Supplier issuing written acceptance of the Customer's order; or
- 2.5.2 The Supplier doing any act consistent with fulfilling the Customer's order, at which point the Contract shall come into existence.
- 2.6 The Customer's Authorised Representative is able to place orders and receive deliveries but is not authorised to make any representations or warranties concerning these Conditions of Purchase unless confirmed by a director, or if unincorporated by the owner in writing. The Supplier acknowledges that it will not rely on any representation and/or warranty that has not been made in accordance with these Conditions of Purchase.
- 2.7 If the Goods are to be utilised in connection with another contract between the Customer and a third party such as our own Customer, then the terms and conditions of any such third-party contract shall also form part of the Contract except to the extent that the terms of such third-party contract conflict with these Conditions of Purchase in which case these Conditions of Purchase shall prevail. Details of any such third-party arrangements will be given to the Supplier at the time of purchase or rental.
- 2.8 In the event of any conflict and inconsistency between these Conditions of Purchase and the description given on a purchase order, the details on the purchase order shall prevail.
- 2.9 No clauses of the Conditions of Purchase will be enforceable as a result of the Contracts (Rights of Third Parties) Act 1999, by anyone who is not already a party to this Contract, unless that individual or company is a successor or an assignee to one of the original parties which agreed the contract.
- 3. SPECIFICATIONS, QUALITY AND QUANTITY**
- 3.1 It is a condition of the Contract, that the specification, quality and quantity of the Goods and/or service is as described on that document, or as otherwise agreed by an authorised representative acting on our behalf.
- 3.2 It is a condition of the purchase, rental and/or service that the Goods are free from any and all defects in materials, workmanship and/or design and will comply with all legal requirements and regulations appertaining to the Products.
- 3.3 As a condition of the Contract, the Supplier guarantees that all Goods will, from the date of commissioning of the Finished Goods, remain free from any defects in materials, workmanship and/or design for a period of 12 months.
- 3.4 The Supplier shall comply with all applicable regulations and/or other legal requirements concerning the manufacture, labelling, packaging, packing, storage and/or delivery of the Goods and/or the performance of the Services.
- 3.5 The Supplier shall permit and/or procure that the Customer may, on request, inspect and test the Goods during manufacture, processing or storage whether at the Supplier's own premises or those of a third party. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods.
- 3.6 If as a result of inspection or testing the Customer is not satisfied that the Goods will comply in all respects with the Contract then the Customer may without liability cancel the contract.
- 3.7 The Goods shall be marked in accordance with the Customer's instructions and any applicable regulations and/or requirements of the carrier. The Goods shall be properly packed and secured so as to reach their destination in a good and undamaged condition.

- 3.8 Where Goods ordered involve digital content, the Supplier may change the Goods to update digital content, provided that the digital content always matches the description it provided the Customer at the time of ordering. The Supplier shall install any updates at its own expense.

4. ADDITIONAL TERMS APPLICABLE WHERE MACHINERY IS HIRED

- 4.1 The Hire Period shall commence on the Hire Start Date listed on the Purchase Order and shall end on the date specified on the Purchase Order.
- 4.2 At the Hire End Date, the Supplier shall: (i) physically collect the Hire Goods from the address specified in the Hire Agreement; or (ii) provide the address details for where the Customer shall return the Hire Goods.
- 4.3 For the avoidance of doubt, the Hire Period shall automatically end on the Hire End Date, and the Customer shall not be required to pay the Rental in respect of any period in which the Hire Goods are still in the Customer's possession or control outside the Hire Period.
- 4.4 If the Supplier fails to comply with its obligations in clause 4.2, then it shall be liable for any financial loss which this causes the Customer, any costs, liabilities, losses and expenses (including legal fees) incurred as a result.
- 4.5 Where products are hired from the Supplier, these may be required by the Customer for rehire. Such rehire arrangements may require the Supplier to take the goods to a third party (one of our own customers) and/or provide an operator, in accordance with Clauses 5.1 – 5.4.
- 4.6 Rehire goods must be collected from the site or the Customer's premises within a maximum of five days, no liability shall be accepted after this period by the Customer for loss, damage, fuel charges or theft.

5. PLANT DRIVERS AND OPERATORS

- 5.1 Any equipment that requires a driver or operator must be undertaken by appropriately qualified and trained personnel, with due care and diligence and to the highest quality standards. Where lifting equipment, digging machinery and/or transport is involved and the Supplier provides an operator, the operator shall be competent and insured in the management of that apparatus.
- 5.2 Such drivers or operators shall be employed by the Supplier and shall work under their overall management and direction. Personnel provided by the Supplier must be capable of taking instructions from the Customer and/or our own customer and managing the equipment in a professional and competent manner.
- 5.3 Where personnel are provided such as part of a rehire or for any other purposes such as operating machinery, the personnel shall be insured against all breakages however caused, including negligence and accidental damage, personal injury and accidental death. The Supplier will hold the Customer and its own customer harmless against any counterclaim for damages. Please see Section 12 Indemnity for further information.
- 5.4 The Customer reserves the right to unilaterally terminate any agreement without any further liability, where the Supplier does not have appropriate insurance or provides personnel that are incapable of following instructions or are a health and safety danger.

6. DELIVERY

- 6.1 The time for delivery of Goods and/or the performance of Services shall be of the essence. Goods and/or Services shall be delivered and/or performed during normal business hours, unless mutually agreed otherwise. Dates for delivery and/or performance shall be as set out in the purchase order unless otherwise agreed by the Customer in writing. Time shall also be of the essence for any extension of time for delivery and/or performance agreed by the Customer.
- 6.2 If Goods and/or Services are not delivered and/or performed by the due date and if a specific time was agreed, also at the required delivery time, the Customer may, without any liability to the Supplier, and at the Customer's sole discretion, cancel all or part of the contract.
- 6.3 Title and risk in all Goods sold to the Customer shall not pass to the Customer until they have been unloaded at our premises. The Supplier shall insure the Goods in transit and keep insured until delivery

to our premises for all risks for an amount equal to 110% of their value. The Supplier shall procure that the Customer's interest is noted on such policy of insurance and hold any proceeds of such insurance on trust for the Customer if any such Goods are damaged or destroyed in transit.

- 6.4 If the Customer is unable to take delivery of the Goods at the due time for delivery, the Supplier shall store them for the Customer until it confirms that the Goods may be delivered. The Customer will accept the Supplier's reasonable costs for such storage where the time for storage exceeds 14 days.
- 6.5 Any signature on the Customer's behalf on receipt of any Goods is only confirmation that a certain number of packages has been delivered, it is not confirmation that the Goods delivered are of the correct quantity, quality, specification, materials, design and/or workmanship.
- 6.6 A packing note quoting the number of the Customer's order must accompany each delivery or consignment of the Goods and must be displayed prominently. The Supplier shall ensure that if Goods are subject to special storage instructions this is clearly stated on the packing note.
- 6.7 If the Goods are to be delivered, or the Services are to be performed, by instalments, the contract will be treated as a single contract and not be severable.
- 6.8 The Customer shall be entitled to reject from the Supplier any goods delivered which are not in accordance with the contract. The Customer shall not be deemed to have accepted, and may still reject any Goods, until it has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 6.9 Goods purchased by the Customer may be stored for long periods before being utilised. The Customer shall notify the Supplier of any defects in Goods as soon as reasonably practicable.
- 6.10 Unless otherwise agreed, between the Customer and the Supplier, no delivery charge will be applicable.
- 6.11 Where the Supplier has provided hire equipment or other items that need collecting, it is the responsibility of the Supplier to make appropriate arrangements for the collection of those Goods, in a timely manner. No collection fees will be applicable unless the parties have mutually agreed otherwise. The Customer reserves the right to charge storage where Goods are not promptly collected.

7. PRICE AND PAYMENT

- 7.1 The price for the Goods and/or Services shall be as set out in the Customer's order and unless otherwise so stated shall be inclusive of: -
- 7.1.1 any applicable value added tax (unless agreed otherwise in which case the Customer will in addition pay VAT subject to receipt of a valid VAT invoice); and
- 7.1.2 all charges for packaging, packing, shipping, carriage, insurance and/or delivery of the Goods and any duties, imposts or levies other than value added tax.
- 7.2 No increase in the price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Customer.
- 7.3 The Customer shall be entitled to any discount for prompt payment, bulk purchase and/or volume of purchase customarily granted by the Supplier.
- 7.4 Payment by the Customer shall only be made by BACS and the Supplier must provide the Buyer with their correct bank details. The Customer shall not be liable to make payment to the Supplier unless and until they have provided this information.
- 7.5 Unless other payment terms have been agreed in writing between our authorised representative and the Supplier, the terms for payment by the Customer of any undisputed invoice shall be:
- 7.5.1 in respect of the Services, 60 days from the end of the month in which the Services are performed;
- 7.5.2 in respect of the Goods, 60 days from the end of the month in which the Goods are delivered, provided always that the Customer has been correctly invoiced by the tenth day of the month following the month of delivery and/or performance. If the Customer has not been correctly invoiced by this date and/or the Supplier has not provided the Buyer with the correct bank details, payment shall be due 60 days from the end of the month in which the Customer has been correctly invoiced and it has received notification of the relevant bank details.

7.6 The Customer may, without limiting any other legal rights or remedies, set off any monies it is owed by the Supplier against any amounts payable by the Customer to the Supplier.

8. REJECTION OF GOODS AND/OR SERVICES

8.1 Where all or any part of an order or batch of Goods fail to satisfy any of the conditions of the Contract relating to specification, quality, quantity, materials, workmanship and/or design the Customer may at its own discretion reject either all of the order or batch of Goods or part of such order or batch of Goods.

8.2 At the Customer's discretion, any Goods which are rejected shall be either replaced by the Supplier within 7 days or the Customer may cancel without liability to the Supplier the contract relating to such rejected Goods and shall be entitled to a full refund of the price relating to such rejected Goods if the Customer has already paid for such Goods and it shall also be entitled to recover any costs incurred.

8.3 Rejected Goods may, at the Customer's option, be made available for collection by the Supplier and shall be collected within 7 days of being notified of their rejection by the Customer. Where prior permission has been obtained, and rejected goods are sold by the Customer, the price attained shall be given to the Supplier by the Customer, less any processing costs. If the Supplier requires the Customer to return any packaging material, this should be clearly stated on the packing note. Any such materials shall be returned to the Supplier at the cost of packaging and shipping.

8.4 The Customer shall be entitled to reject any Services performed by the Supplier which are not in accordance with the Contract provided that any rejection is notified to the Supplier within 30 days from the date of performance. The Customer shall not be deemed to have accepted the adequacy and quality of performance of the Services until the expiry of that date.

8.5 Each of the exclusions and/or limitations in these Conditions of Purchase shall apply to liability for breach of contract, liability in tort (including negligence) and liability for breach of statutory duty.

8.6 Nothing in this Contract shall exclude or limit the Customer's liability for death or personal injury due to its negligence or any liability which is due to fraud or any other liability which it is not permitted to exclude or limit as a matter of law.

8.7 These Conditions of Purchase shall also apply to any repaired or replacement Goods and/or Services supplied by the Supplier.

9. RED DIESEL

9.1 The Supplier shall comply with all applicable legislation relating to the use of red diesel and shall not use red diesel in the Sale or Hire of Goods or Services unless a HMRC approved exemption applies (as set out in latest Excise Notice 75).

9.2 The Supplier indemnifies the Customer in full and on demand against any and all liabilities, costs, expenses, damages and losses ('liabilities') suffered or incurred by the Customer arising out of or in connection with any failure by the Supplier to comply with clause 9.1 and all relevant legislation, as updated from time to time, in relation to the use of red diesel in the sale or use of hire Goods, including but not limited to liabilities related to the following:

9.2.1 any Goods being impounded by HMRC;

9.2.2 any outstanding duty payments on the Goods;

9.2.3 any other legal costs, transportation and other expenditure appertaining to supply where the Goods whether for hire or sale have not been drained or flushed of red diesel to a traceability level accepted by HMRC.

10. LIMITATIONS OF LIABILITY

10.1 If the Customer is found to be liable in respect of any loss or damage to the Supplier's Goods, the extent of the Customer's liability shall be limited to the trade cost of replacing the damaged item/s.

10.2 The Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is liable before incurring any costs and/or expenses in remedying the matter. If the Supplier fails to resolve the issue any costs incurred will be recharged back by the Customer to the Supplier and/or deducted from its invoice.

- 10.3 The Customer shall have no liability to the Supplier for any of the following losses (whether direct or indirect): -
- 10.3.1 consequential losses;
 - 10.3.2 economic and/or other similar losses;
 - 10.3.3 business interruption, loss of business, contracts and/or opportunity including loss of profits and/or damage to goodwill; and/or special damages and indirect losses however so arising.
- 10.4 The Customer's total liability to the Supplier under and/or arising in relation to any Contract, whether in contract, tort (including negligence) and any statutory and/or common law duty shall not exceed 5 times the amount of the Rental or monies payable for purchased Goods (whichever is applicable) under that Contract or the sum of £1,000 (or Euro equivalent) whichever is the higher.
- 10.5 Nothing in the Contract shall exclude or limit the liability of either party for fraud, death or personal injury due to that party's negligence, nor exclude or limit any other type of liability which it is not permitted to exclude or limit as a matter of law.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Supplier warrants that the Goods and/or Services do not infringe any intellectual property rights of any third party.
- 11.2 The Supplier warrants that the Goods and Services comply with any and all legal and/or regulatory requirements.
- 11.3 Any specification given by the Customer to the Supplier, or specifically produced by the Supplier for the Customer, in connection with the Contract, together with all patents, copyright, design rights (whether registered or unregistered) trademarks (whether registered or unregistered) skill and/or know-how and/or any other intellectual property rights, whether existing now or in the future, wherever existing in the world, together with the right to apply for protection of the same, in the specification, shall be owned exclusively by the Customer.
- 11.4 The Supplier shall not disclose to any third party or use any such specification referred to in clause 11.3 and the Supplier shall ensure that its employees, agents or sub-contractors keep the same confidential except to the extent that it is or becomes public knowledge through no fault of the Supplier, or as required for the purpose of the Contract.
- 11.5 Furthermore, the Supplier agrees that, at its own cost, it will do all acts and execute all documents which are necessary or desirable to give effect to clause 11.3 above and/or to assist the Customer in the application, registration, renewal and/or protection of any such intellectual property rights.

12. INDEMNITY

- 12.1 The Supplier agrees to indemnify and keep the Customer indemnified against any and all damages, awards, costs (including legal costs on a full indemnity basis), expenses, claims and any other losses and/or liabilities which may be incurred directly or indirectly by the Customer relating to the Goods and/or Services and/or the Contract as a result of or in connection with:
- 12.2 any act and/or omission by the Supplier or its employees, agents, servants and/or sub-contractors which is in breach of the Contract, or in breach of any tortious duty of care and/or in breach of any statutory duty; and
 - 12.3 any claim that the Goods and/or Services infringe, or their importation, use or resale infringes the patent, copyright, design right, trademark and/or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any specification supplied by the Customer; and
 - 12.4 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods or Finished Goods, Hired Machinery or in the performance of the Services, to the extent that the defect in Goods or Finished Goods or performance of the Services is attributable to the acts or omissions of the Supplier, its employee, agents or sub-contractors.
- 12.5 Clause 12 and the subsequent sub clauses shall survive termination of the Contract.

13 TERMINATION

- 13.1 The Customer shall be entitled to cancel the Contract in respect of all or part of the Goods and/or Services by giving notice to the Supplier at any time up to 14 days before the due date for performance and/or delivery without any liability to the said Supplier.
- 13.2 Either party may immediately terminate the Contract by written notice to the other party where the other party:
- 13.2.1 is in breach of the Conditions of Purchase and where the breach is capable of remedy, but has not been rectified within 14 days of receiving notice requiring the breach to be remedied;
- 13.2.2 ceases or threatens to cease to carry on business;
- 13.2.3 proposes to compound with its creditors, applies for an interim order under Section 252 Insolvency Act 1986, has a bankruptcy petition presented against it, enters into voluntary or compulsory liquidation, has a receiver, an administrator or administrative receiver appointed over all or any of its assets or takes or suffers any similar or analogous action in any jurisdiction; and/or
- 13.2.4 appears reasonably to be about to suffer any of the above events.
- 13.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued at termination.

14 GENERAL

- 14.1 Any notice required or permitted to be given by either party to the other under the Contract shall be by email or in writing addressed to that other party at its registered office or principal place of business or to another address, that the party giving the notice, has provided.
- 14.2 No waiver by the Customer of any breach of the Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.3 If any provision of these Conditions of Purchase is held by any competent authority to be invalid or unenforceable in whole or in part that provision or part-provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of these Conditions of Purchase and the remainder of the provision in question shall not be affected.
- 14.4 All third-party rights are excluded and no third party shall have any right to enforce a Contract and/or a Contract term by virtue of the Contracts (Rights of Third Parties) Act 1999. This shall not apply to any members of the Supplier's corporate group (if applicable) who shall, subject to the Customer's consent, retain their third-party rights. Any rights of a third party to enforce a Contract and/or Contract term may be varied and/or extinguished by agreement between the parties.
- 14.5 These Conditions of Purchase constitute 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.

15 ASSIGNMENT

- 15.1 The Supplier shall not sub-contract any of its obligations under the Contract without our prior written consent.
- 15.2 In addition, the Supplier cannot assign or transfer or purport to assign or transfer to any other person or corporation any of its rights or obligations under the Contract without the Customer's prior written consent.
- 15.3 The Customer may assign the Contract or any part of it to any person, firm, or company.
- 15.4 Sections 11, 15A, 30(2A) and 35 of the Sale of Goods Act 1979 shall not apply to the Contract.

16. DISPUTES AND LEGAL JURISDICTIONS

- 16.1 The Conditions of Purchase and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them, shall be governed by and construed in accordance with the law of **[England and Wales]**.
- 16.2 Each party irrevocably 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 or in connection

with any contract or its subject matter or formation. Where both parties agree an alternative dispute resolution can be sought.

[If the HAE member is based in Scotland, Northern Ireland or the Republic of Ireland the two clauses above will need changing to reflect the relevant jurisdiction].

