

# **STANDARD TERMS AND CONDITIONS OF SALE FOR GOODS AND SERVICES & HIRE OF PLANT & EQUIPMENT**

## **Company status**

N&J Tree Services Ltd is the trading name of N & J Tree Services Ltd whose registered office is Ford Green business Park, Ford Green road, Stoke on Trent, ST6 1NG.

Company Reg No: 5319607

Director: Mr. Nigel Owen

Secretary: Mrs. Jane Owen

## **1 Definitions**

- 1.1 In these definitions N & J Tree Services Ltd and includes successors, assigns personal representatives. The buyer means the person, firm or company purchasing goods or services from N & J Tree Services Ltd. The goods or services mean the goods or services which N & J Tree Services Ltd is to supply to the buyer in accordance with these conditions.

## **2 Basis of sale**

- 2.1 N & J Tree Services Ltd contracts on these conditions only, and acceptance by N & J Tree Services Ltd of any order from a buyer shall be upon these conditions and, subject to clause 2.2 below, shall override any other terms and conditions stipulated or incorporated by the buyer in its order or in any negotiation. Variations or representations will only be binding on N & J Tree Services Ltd if confirmed in writing by the Managing Director of N & J Tree Services Ltd.
- 2.2 Where these conditions shall be varied by or come into conflict with any conditions imposed by a letter of appointment for a dealer, agent or hire company the conditions of the letter of appointment shall prevail.

## **3 The Goods**

- 3.1 All Descriptions and illustrations contained in any catalogue, price list and advertisement provided by N & J Tree Services Ltd or otherwise communicated to the buyer are intended to present merely a general idea of the goods described and shall not form part of the contract.
- 3.2 N & J Tree Services Ltd operate a policy of continuous improvement and hence reserves the right to make substitutions and modifications to the specifications of the goods, provide that this does not materially affect their overall performance.

## **4 Price and Quotations**

- 4.1 N & J Tree Services Ltd operate a policy of continuous improvement and hence reserves the right to make substitutions and Subject to 4.2 below, prices payable for goods are those listed in N & J Tree Services Ltd price list at the time N & J Tree Services Ltd accepts the buyers order or those quoted where N & J Tree Services Ltd accept an order which has been placed in response to a valid quotation.
- 4.2 If the buyer required deliveries more than thirty days after the date of order, the price in effect at the date of delivery shall be payable save where N & J Tree Services Ltd have accepted an order based on a valid quotation.
- 4.3 Any quotation issued by N & J Tree Services Ltd shall be valid for ninety days, there after N & J Tree Services Ltd reserves the right to vary or can cancel its position.
- 4.4 The price list may change from time to time and N & J Tree Services Ltd shall use reasonable endeavors to notify a buyer of the change.
- 4.5 Quotations for contracting services are for completing the job described overleaf. The price quoted is based on N & J Tree Services Ltd evaluation and does not include material price increases or additional labour and materials which may require should unforeseen problems or adverse weather conditions arise after the work has started.
- 4.6 All prices quoted are exclusive of value added tax at the appropriate delivery charge unless stated otherwise.

## **5 Cancellation**

- 5.1 Without prejudice to the right of cancellation contained in 4.3 the buyer may not cancel the contract without written consent of N & J Tree Services Ltd. If such consent is given, it is made on the express condition that the buyer shall indemnify N & J Tree Services Ltd against all loss, damage, claims or actions arising out of such cancellations unless otherwise agreed in writing.

## **6 Payment**

- 6.1 Payment is due on or prior to delivery or dispatch of the goods or services unless N & J Tree Services Ltd agrees to alternative arrangements.
- 6.2 In the case of overdue payment, without prejudice to any of N & J Tree Services Ltd other rights, N & J Tree Services Ltd may a) charge interest to the buyer on the amount overdue calculated on a daily basis at the rate of 3% above base rate of TSB Bank Plc from to time in force. b) Suspend further delivery of goods to the buyer. c) suspend the buyers account (if any) for further trading. When the buyers account has been cleared in full any future trading with N & J Tree Services Ltd will be done on an item by item basis until N & J Tree Services Ltd is satisfied that the buyer is willing and able to comply with these conditions. D) Charge to the buyer all costs

and expenses incurred by N & J Tree Services Ltd in attempting to obtain payment from the buyer.

- 6.3 Payment on or before the due date is the essence of the contract and is a condition precedent for any future deliveries to the buyer or to its order.
- 6.4 Where N & J Tree Services Ltd has agreed that the goods may be paid for by installments any failure by the buyer to pay an installment when due shall entitle N & J Tree Services Ltd to treat such failure as the buyers repudiation of the whole contract without prejudice to its other rights to recover damages for that breach.
- 6.5 All payments due from the buyer under these conditions shall be made without any set-off, deduction or deferment of any nature.
- 6.6 Notwithstanding the provisions of the clause 6.1 upon the occurrence of any event under clause 13.1 any period of credit allowed for the buyer on any contract with N & J Tree Services Ltd, whenever made, shall cease to apply and payment for all goods shall be deemed to have become due forthwith on delivery.

## **7 Delivery**

- 7.1 Any time or date specified for delivery is given in good faith as an estimate only and N & J Tree Services Ltd shall not be liable for any direct or indirect loss, damage expense however arising from any delay in delivery.
- 7.2 N & J Tree Services Ltd may deliver by installments and may treat each delivery as a separate contract.
- 7.3 The buyer shall accept delivery of goods at the address stated on the purchase order when offered and shall be liable for any additional costs suffered by N & J Tree Services Ltd in the event of wrongful refusal or delay in accepting delivery, in failing to provide premises, services or information for N & J Tree Services Ltd to effect safe delivery, or in the event of future deliveries being withheld through the buyers' non-payment. Where N & J Tree Services Ltd delivers the goods to the buyers premises the buyer shall provide sufficient labour to unload the goods.
- 7.4 The buyer shall examine the goods immediately after delivery and within three days there of the buyer shall notify N & J Tree Services Ltd in writing of any defects in the goods. The buyer shall permit inspection of all such defective of goods by N & J Tree Services Ltd does not receive notice in accordance with this clause it shall be discharged from all responsibility and liability in respect of all the defects which have occurred during transportation.

## **8 Retention of Title**

- 8.1 Property in the goods shall not pass to the buyer has paid N & J Tree Services Ltd all sums owed (under this or any other contract) by the buyer to N & J Tree Services Ltd. The goods shall be at risk of the buyer on delivery.

- 8.2 The buyer will indemnify N & J Tree Services Ltd against any loss or deterioration in the goods while they remain the property of N & J Tree Services Ltd and will keep the goods properly insured for not less than their contract value.
- 8.3 Without prejudice to any other rights N & J Tree Services Ltd may have, N & J Tree Services Ltd may recover the goods and the buyer agrees that N & J Tree Services Ltd, its agents or employees may enter on the buyers premises and remove the goods at any time, if any of the events in clause 13.1 (a) – (f) occur and property in the goods has not passed the buyer.
- 8.4 Until property in the goods has passed to the buyer, the buyer;) shall not pledge the goods or documents of title thereon or allow any lien to arise thereon. B) Shall store the goods on its premises separately from its own goods and for those of other person and in a manner which makes which makes it readily identifiable as goods of N & J Tree Services Ltd) Shall not deal with or dispose of the goods or documents of title thereto or any interest therein (other than by sale to an independent purchaser buying entirely in the ordinary course of buyers business) d) Hold itself out as N & J Tree Services Ltd agent in respect of the goods.
- 8.5 If payment of any sum is overdue N & J Tree Services Ltd shall have the right to commence proceedings against the buyer for the price, not withstanding the property in the goods has not yet passed the buyer.

## **9 Warranties**

- 9.1 N & J Tree Services Ltd hereby warrants that the goods are free from any material defect in workmanship and materials and correspond with any agreed written specification but N & J Tree Services Ltd liabilities under this warranty shall be limited to making available free of charge the labour and materials required to make good any such defects or (at N&J Tree Services Ltd option) replacing defective goods. N & J Tree Services Ltd liability under this warranty is also conditional upon: a) Written notice of the defect being given to N & J Tree Services Ltd with in fourteen days after its discovery of the same and in any event within twelve months after either the date of delivery or the date on which the buyer was informed that the goods are ready for delivery whichever first occurs: and b) The goods have been properly stored and used by the buyer prior to the defect occurring, and: c) The goods have not been subjected to any abnormal or improper use or modification: and, d) The goods having been returned at N & J Tree Services Ltd request.
- 9.2 The buyer of ex demonstration or second-hand machines will be offered limited warranty to be agreed at the time of purchase and will be subject to all clauses contained within the these terms and conditions.
- 9.3 The warranty contained in 9.1 above is given neither a consumer nor deals as a consumer within the meaning of the unfair Contract Terms Act 1977 and that the buyer has satisfied itself as to the suitability of the

goods for use of resale in accordance with its own specialized knowledge and skill.

## **10 Limitation of Liability and Buyers Obligation.**

- 10.1 Save as provided under the Unfair contract Terms Act 1977 N & J Tree Services Ltd liability for any loss, injury or damage of any nature what so ever, whether indirect or consequential, arising out of or in connection with any goods supplied by N & J Tree Services Ltd or resulting from the use thereof and whether arising out of breach of implied or express term warranty or condition shall not exceed the cost to the buyer or replacing the goods provided that N & J Tree Services Ltd is afforded a reasonable opportunity of replacing or repairing the goods.
- 10.2 N & J Tree Services Ltd shall not be responsible for any loss, injury or damage of any nature what so ever caused by: a) The buyers failure to demonstrate the goods properly to any end user: b) The buyers failure to use the goods in accordance with safety requirements: c) Any other negligent conduct on the part of the buyer.
- 10.3 N & J Tree Services Ltd will accept no liability for damage to underground services i.e. electrical, water, telephone cables, etc during the process of stump grinding or tree surgery works, or any works carried out by N & J Tree Services Ltd. The client is responsible for sourcing and identifying service pipelines and cables prior to the commencement of any works carried out by N & J Tree Services Ltd, as N & J Tree Services Ltd cannot be held liable for subsequent damage caused and its repair.

## **11 Indemnity**

- 11.1 The buyer agrees to indemnify N & J Tree Services Ltd against all claims relating to the goods sold to the buyer in respect of any injury, loss or expense sustained by any third party save only in respect of death or personal injury caused by the negligence of N & J Tree Services Ltd or any of its agents.

## **12 Force Majeure**

- 12.1 N & J Tree Services Ltd shall bear no liability for loss, damage or delay however arising caused in circumstances outside its control including ( but not limited to ) Acts of god, War, Strike, Civil Commotion, Work to rule or go slow, Overtime bans, Lock outs, Fire, flood, Draught or inability to produce materials or articles accept at increased prices due to any of the foregoing causes ( and in the circumstances may suspend or cancel the whole or any part of delivery). N & J Tree Services Ltd shall endeavour to notify the buyer as quickly as reasonably possible if a force Majeure occurs.

## **13 Default**

- 13.1 Without prejudice to any other rights it may have and without prejudice to the provisions of clause 8 above N & J Tree Services Ltd may, by notice to the buyer, terminate any contract between the buyer and the supplier forthwith and/or immediately recover from the buyer all sums due from the buyer under any contract with N & J Tree Services Ltd (not with standing any period of credit which may have been allowed) together with any accrued interest and other legitimate charges and any loss caused to N & J Tree Services Ltd as a result of termination if: a) Any payment due to the buyer to N & J Tree Services Ltd is overdue in whole or part: b) The buyer shall commit any breach of any of the terms of any of the contract with N & J Tree Services Ltd provided that if the breach is remediable N & J Tree Services Ltd has given to the buyer notice of such breach which has not been remedied within seven days thereafter: c) A resolution is passed or a court order is made resolving or ordering the buyer to be placed in to liquidation or ordering that an administrator to be appointed over all or any of the assets of the buyer: or, d) A receiver or administrative receiver is appointed over all or any of the assets of the buyer: or, e) The buyer ( being an individual) has petition in bankruptcy entered against him/her: or, f) The buyer ceases or threatens to cease trading.
- 13.2 Where the buyer is situated outside of the United Kingdom N & J Tree Services Ltd shall be entitled to terminate the contract and/or recover all sums due to the pursuant to clause 13.1 if any event occurs which is analogous to the events described in 13.1 © to 13.1 (e) inclusive.

## **14 Disputed Property Rights**

- 14.1 If at any time any question, dispute or difference whatsoever shall arise between N & J Tree Services Ltd and the buyer in relating to or in connection with the contract, either of them shall give to the other notice in writing that it requires such question, dispute or difference to be referred to the arbitration of a person to be agreed upon or failing agreement within fourteen days after the date of such notice of some person to be appointed on the application of either party by the president for the time being of the law society pursuant to the arbitration Acts 1950 to 1966.
- 14.2 In any dispute between N & J Tree Services Ltd and the buyer in relation to sums due by the buyer to N & J Tree Services Ltd, a certificate from N & J Tree Services Ltd that specified sum is due from the buyer shall be conclusive evidence ( and in Scotland sufficient evidence) of that fact.

## **15 Intellectual Property rights**

- 15.1 The goods are sold and/or supplied subject to the rights of any person whether in respect of any patent, trade mark, registered design, copyright, confidential closer or otherwise howsoever to prevent or restrict the ale or use of the goods in any part of the world: the buyer will in his respect accept title to the goods as N & J Tree Services Ltd may have.
- 15.2 Where the goods have been manufactured according to designs or configurations all processes specified or supplied by the buyer the buyer represents and warrants to N & J Tree Services Ltd that the goods are so designed or configured and processes so used do not infringe the rights of any person whether in respect of any patent, trademark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the goods or materials or the use of such processes in any part of the world. The buyer shall indemnify N & J Tree Services Ltd against all actions suits claim demands and losses charges costs and expenses which N & J Tree Services Ltd may suffer or incur in connection with any claim by third party alleging facts which, if established, would indicate a breach of the representations and warranties contained in 15.2

## **16 Waiver**

- 16.1 No waiver by N & J Tree Services Ltd of any breach of contract by the buyer shall be considered as a waiver of any subsequent breach of the same or any other provision of the contract.

## **17 Invalidity of Contractual Term**

- 17.1 The parties agree to be bound by the conditions which they consider to be reasonable. If any clause of the conditions is held by any court or competent authority as invalid or unforeseeable in whole or in part the validity of the remainder of these conditions and of the remainder of the provision in question shall not be affected thereby.

## **18 Assignment**

- 18.1 The buyer shall not assign or transfer any contract to which these conditions apply nor benefit thereof to any person whatsoever.

## **19 Lien**

- 19.1 Without prejudice to any other remedies N & J Tree Services Ltd shall in the event of default by the buyer or any of its situations set out in clause 13.1 arising have general lien on all gods and property in its possession (whether worked on or not) and belonging to the buyer in respect of any

sums due from the buyer and shall be entitled after giving 14 days written notice to the buyer to dispose of such goods or property as it thinks fit.

## **20 Proper Law of the contract**

- 20.1 The construction, validity and performance of any contract shall be governed in all aspects by the law of England and the buyer shall at all times provide N & J Tree Services Ltd with an address in England or Wales where it will accept service of proceedings.

## **21 Notices**

- 21.1 Any notice required to be given under these conditions may be sent by prepaid first class post or facsimile to the principal place of business or registered office of the party to whom the notice is being sent. If sent by post, it shall be deemed to have been served (until the contrary is proved) on the second working day after the date of posting.