

# JOST UK LTD CONDITIONS OF SALE

## General Basis of Sale

1.(a) Definitions Jost UK: Jost UK Ltd: Buyer the party named in this quotation, acknowledgement of order or invoice. Goods: all bodywork, hydraulic gears and hydraulic machinery or parts thereof including replacement parts supplied by Jost UK and all other items manufactured, serviced, repaired, treated or supplied by Jost UK.

Price: charges for work done or the price of Goods, excluding VAT

(b) These Conditions apply to all Contracts for sale of Goods or services by Jost UK

2.(a) The Buyer acknowledges that all advice, instructions or recommendations of Jost UK rely, and are dependent, upon all the information and technical background given to Jost UK by the Buyer.

(b) Where the Buyer does not specify a particular process; Jost UK will not be liable for any defect or failure of the process or entitle the Buyer to withhold payment if Jost UK have dispensed with inspection at the request of the Buyer for whatever reason.

(c) These conditions were first issued on the 1st July 2011 and supersede any previous conditions issued by Jost UK. No alteration to these Conditions may be made unless agreed by Jost UK in writing. All guarantees, warranties, stipulations express or implied by statute or common law are hereby excluded.

(d) All orders placed are subject to these terms and conditions.

## Orders And Specifications

3. Quotations are open for acceptance for only 30 days from the date thereof.

4. Unless otherwise agreed, the prices quoted are ex-works and do not include the cost delivery, packing or insurance.

5. Contracts and orders are accepted subject to Jost UK receiving any necessary licence to obtain or use the required materials. The Buyer shall have no right to damages arising from or connected with any delay or cancellation in the event that Jost UK is delayed in or unable to procure any necessary licence or materials.

6. Jost UK shall be entitled without giving notice and without affecting the validity of the contract in respect of the Goods to make such changes and/or improvements in materials, dimensions and designs as it considers reasonable or desirable.

7. Illustrations, descriptions and weights are to be taken as a general guide only and shall not be in any way binding upon Jost UK or be a term of the contract in respect of the Goods.

8. The Buyer shall indemnify Jost UK against all liabilities, losses, claims, awards of damages, costs and expenses which Jost UK suffer as a result of the Goods being to the Buyer's specification which involves the infringement of any letters patent, registered design, copyright or other intellectual property.

9. Jost UK reserves the right to make any changes in the Specification of the Goods which are required to conform with any statutory or other regulatory requirements applicable to the Goods.

10. No Order which has been accepted by Jost UK may be cancelled by the Buyer except with the agreement in writing of Jost UK and on terms that the Buyer shall indemnify Jost UK in full against all loss, costs, damages, charges and expenses incurred by Jost UK as a result of cancellation.

11. No order which has been accepted by Jost UK may be changed or altered by the Buyer except with the agreement in writing of Jost UK and at Jost UK's discretion payment by the Buyer of a 10% surcharge (calculated as 10% of the Price) to Jost UK

## Delivery / Shipment Terms

12.(a) The Buyer shall take delivery within 21 days of notification that the goods are available, unless otherwise agreed in writing with Jost UK

(b) Any date given by Jost UK for delivery is an estimate only and Jost UK shall not be liable for any loss or damage however the same may arise caused by or connected with any delay in delivery or non-delivery of the Goods.

13.(a) The risk in the Goods shall pass to the Buyer upon delivery which shall or shall be deemed to take place when the Goods leave Jost UK's works.

(b) The property of the Goods shall remain vested in Jost UK until: The Buyer shall have paid the Price plus VAT and any other sums

(c) If the Buyer fails to take delivery of the Goods or fails to give Jost UK adequate delivery instructions at the time stated for delivery (otherwise than by reason of any Force Majeure or by reason of Jost UK's fault) then, without prejudice to any other right or remedy available to Jost UK, Jost UK may:

(c.1) Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

(c.2) Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price under the Contract.

(d) Any charges quoted for delivery of the Goods including transport, packaging and insurance are approximate only and Jost UK shall not be liable for any changes to the charges quoted however caused.

(e) All exports use INCO terms which are updated annually.

14. Shipment ex works is at Buyer's risk. This does also apply if transport is realised in full or in part with our means of transportation. Packing and shipping instructions of the Buyer will be adhered to only when agreed upon in writing.

## Retention Of Title

15.(a) At any time when the Price or part thereof remains unpaid the Buyer shall be in breach of the contract in respect of the Goods, Jost UK shall be entitled to claim retention of title upon the Buyer, to return the Goods and upon notice:

(a.1) The buyer shall permit the Servants or agents of Jost UK to enter upon the Buyer's premises including the right to open lock fast places, and take possession of the Goods.

(b) The Buyer shall not be entitled to make any claim against Jost UK arising out of or connected with any such entry or taking of possession.

(c) This right of Jost UK shall be available at all times and in particular if the Buyer is unable to pay its debts within the meaning of S518 of the Companies Act 1985 or if the Buyer shall commit an act of bankruptcy or if any resolution is passed or petition presented to wind up the Buyer or if the Buyer has a receiver manager or administrator appointed.

## Price Of The Goods

16.(a) The price may be varied by additions in accordance with market conditions at the date of delivery and the Buyer shall pay such additions in addition to the Price. Without prejudice to the generality of the foregoing market conditions shall include any increase in the cost of labour or materials.

(b) The Price shall be Jost UK's quoted price. The Price quoted is valid for 30 days only, after which time they may be altered by Jost UK's without giving notice to the Buyer.

## Terms Of Payment

17.(a) Subject to any special terms agreed in writing between the Buyer and Jost UK, Jost UK shall be entitled to invoice the Buyer for the Price on or at any time after delivery of the Goods or the Buyer wrongfully fails to take delivery of the Goods, in which event Jost UK shall be entitled to invoice the Buyer for the Price at any time after Jost UK has notified the Buyer that the Goods are ready for collection or (as the case may be) Jost UK has tendered delivery of the Goods.

(b) The Buyer shall pay the Price within 30 days from the end of the month from the date of Jost UK's invoice unless otherwise notified by Jost UK to the Buyer in writing, and Jost UK shall be entitled to recover the Price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

(c) If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Jost UK, Jost UK shall be entitled to:

(c.1) Cancel the Contract or suspend any further deliveries to the Buyer;

(c.2) Appropriate any payment made by the Buyer to such of the Goods (or goods and/or services supplied under any other contract between the Buyer and Jost UK) as Jost UK may think fit (notwithstanding any purported appropriation by the Buyer); and

(c.3) Apply for judgement at a court of Jost UK's choice and charge the Buyer all the court fees and interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above Barclays Bank Plc. base rate, until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest) before and after judgment.

## Risk & Property

18.(a) In the event of war, invasion, acts of an enemy, hostilities (whether or not war has been declared), civil war, rebellion, revolution, insurrection or military or usurped powers or consequent upon the issue by any government department council or other authority of any statute rule regulations orders or requisitions or in the event of any strikes, walkouts, breakdown of plant or any other like cause beyond Jost UK's control, then Jost UK shall be relieved of its obligations under its contract to the extent which the fulfilment of such obligations is prevented frustrated or impeded by any of the foregoing specified events.

(b) The property in the Goods shall not pass to the Buyer until Jost UK has received in cash or cleared funds payment in full of the Price and all other goods agreed to be sold by Jost UK to the Buyer for which payment is then due.

(c) Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Jost UK's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and property stored, protected and insured and identified as Jost UK's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

(d) Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), Jost UK shall be entitled at any time to require the Buyer to deliver up the Goods to Jost UK and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

## Warranties & Returns

19. Contracts for repair or servicing work are subject to the following:

(a) Estimates for repairs or servicing are based upon visual inspection without any dismantling. Supplementary estimates will be submitted in respect of defects coming to light as work progresses and upon the acceptance of such supplementary estimates the work therein described will be carried out.

(b) No allowance will be made for parts replaced by new or other parts. Such parts replaced may be examined before delivery of the Goods but will thereafter be destroyed or delivered to the Buyer with the Goods at the Buyer's expense if the Buyer shall so require.

20. In the event of a defect appearing in new Goods within a period of one year from delivery or in service units within a period of three months from delivery, Jost UK will subject to the conditions hereinafter set out exchange or repair any part or parts which are defective as a result of faulty workmanship or materials.

20.1 The provisions of clause (20) shall not apply:

(a) If the Goods cease to be owned by and in the possession or control of the first owner thereof;

(b) In the case of hydraulic tipping gears and bodywork, if a load has at any time been imposed in excess of Jost UK's or other manufacturer's recommendations;

(c) If the Goods have without prior consent in writing from Jost UK been altered or repaired other than by Jost UK;

(d) If the Goods or any part thereof have been subjected to a use which in the opinion of Jost UK was unsuitable;

(e) If any tipping gear has been fitted, other than in accordance with Jost UK's current fitting instructions and drawings,

(f) If any design is used or work done, which does not conform to Jost UK's standard practice or advice;

(g) If damage is caused by continued use after the defect was or ought reasonably to have been discovered;

(h) If the Goods are fitted with a body which in the opinion of Jost UK is unsuitable;

(i) To proprietary articles not manufactured by Jost UK but the Buyer may have the benefit of any guarantee of such articles and

(j) To defects attributable to fair wear and tear ingress of foreign material, misuse, neglect, accident or other extraneous cause.

20.2. Jost UK shall not be liable for any expense which the Buyer may incur in removing or having removed or in replacing or having replaced any part or parts for inspection or in inspecting or having inspected or in fitting or having fitted any new parts in lieu thereof save where expressly stated in Jost UK documentation.

20.3. The provisions of sub-clause (20.1) of this clause shall only apply where the Goods were supplied direct from Jost UK or from an Jost UK distributor or from a Motor Manufacturer or a bona fide motor trader or bodybuilder.

20.4 It is a condition precedent of Jost UK's obligation under sub-clause (20.1) of this clause that any part in respect of which a claim is to be made must be sent to Jost UK carriage paid by the Buyer with returns number provided by Jost UK, an advice note stating the serial number of the item from which the part was taken, the name of the Manufacturer or dealer from whom the Goods were bought, the date of purchase, a description of the alleged defect and whether a new part or repair is sought. In the event of default of such condition precedent, any parts sent to Jost UK shall be at the risk of the sender and Jost UK shall be under no liability whatsoever to replace, repair or return the parts. (Please see the full returns policy)

21. The provisions of sub-clause (20.1) save in the case of death or personal injuries caused by a defect in the Goods, constitute Jost UK's entire liability for defects in the Goods and all or any liability for loss, damage or expense arising from or connected with any defect in the Goods hereby excluded.

22. Except where the injury, loss or damage occurs as the sole direct result of negligence on the part of Jost UK or for which it is responsible, Jost UK shall not be liable for and the Buyer shall indemnify Jost UK against every claim, loss, expense award for injury, loss or damage to any person or property directly or indirectly arising from or connected with the use, operation or possession of any of the goods and from negligence or default by the Buyer (including but not limited to a breach by the Buyer of the contract for the supply of the Goods) or mis-use by the Buyer or any third party or arising from any of the circumstances set out in clause 20.1 hereof and this indemnity shall continue in force, notwithstanding that the contract for the supply of the Goods has been terminated.

## Buyers Obligations

23. The Buyer undertakes that;

(a) It is fully acquainted with the requirements of relevant governments or statutory or other authorities relating to the Goods and to the use to which the Goods are put;

(b) At all times whilst the Goods are in the Buyer's possession or control, the Buyer will comply with such requirements;

(c) It will procure that any user of the Goods will so acquaint itself with and comply with such requirements and

(d) It will indemnify Jost UK against any liability resulting from a breach of any such requirements.

## Other Terms & Law

24. The proper law of the contract for the supply of the goods shall be English Law and the courts of England and Wales shall have exclusive jurisdiction in any dispute between the parties.

25. EC Customers requiring a Declaration of Incorporation for a tipping system should email: applications@edbro.co.uk stating Our Order Ref, model number and serial no

\*\*\*\*Larger font copy is available upon request.\*\*\*\*