

PEARSON Engineering Ltd



CONDITIONS OF SALE PEARSON ENGINEERING LIMITED

1. General

Pearson Engineering Limited will contract on these terms only:

- (a) Receipt of an order from a purchaser will constitute acceptance by the purchaser of these terms notwithstanding anything to the contrary in any previous enquiry by the purchaser or on the purchaser's order unless expressly agreed to in writing by Pearson Engineering Ltd.
- (b) Any condition or provision in the purchaser's order which is inconsistent with or a qualification of or contrary to these terms and conditions shall be of no effect unless the term or condition is expressly agreed to in writing by Pearson Engineering Ltd.

2. Terms of Payment

- (a) The price quoted is based on rates and charges in effect on the date of quotation. Any difference between these rates and charges and those actually in effect at the time of delivery will be to the purchaser's account provided that no such variation shall occur for a period of one month from the date of such quote.
- (b) In addition to the price aforesaid the purchaser shall pay such taxes, duties, fees, transport costs, postage and packaging costs and all other costs which Pearson Engineering Ltd determines are payable in respect of the goods.
- (c) If the goods are exported from New Zealand the price payable by the purchaser shall be paid to Pearson Engineering Ltd in New Zealand currency or such other currency as the parties shall agree upon in writing.
- (d) The terms of payment for the goods are net cash on the 20th of the month following delivery. The company may charge interest on any monies due from that date until payment at the rate of 2% per month.
- (e) In the event that any part of the invoice or goods supplied is disputed by the purchaser the amount contained in the invoice which is undisputed shall remain payable on the terms agreed and the disputed amount in the invoice shall be referred to Pearson Engineering Ltd in writing with full particulars within 10 ten days of the date of the invoice.

3. Delivery

- (a) Pearson Engineering Ltd shall deliver the goods to the purchaser as soon as is reasonably practicable after acceptance of the purchaser's order.
- (b) Pearson Engineering Ltd shall not be responsible or liable to the purchaser for any delays or defaults in delivery of the goods or any part thereof nor for any direct or consequential loss or damage arising therefrom whether caused by negligence or otherwise. Delivery shall be deemed to have occurred when Pearson Engineering Ltd dispatches the goods to the purchaser or the purchaser's agent or any other personal carrier to whom Pearson Engineering Ltd has been authorised by the purchaser whether expressly or impliedly to deliver such goods from Pearson Engineering Ltd's place of business.
- (c) Unless the parties otherwise agree in writing then Pearson Engineering Ltd may effect delivery in any manner and by any means determined.

4. Risk

The risk in the goods supplied by Pearson Engineering Ltd to the purchaser shall pass immediately upon delivery of such goods to the purchaser or the purchaser's agent or to any other person or carrier to whom Pearson Engineering Ltd has been authorised by the purchaser either expressly or impliedly to deliver such goods.

5. Return of Good

The purchaser may not return goods supplied by Pearson Engineering Ltd in accordance with the purchaser's order unless Pearson Engineering Ltd expressly agrees in writing to a request from the purchaser for the return of such goods. If Pearson Engineering Ltd so agrees to a return of the goods the purchaser shall:

- (a) deliver the goods at the purchaser's expense and in their original condition to the place from which the goods were supplied or such other place as Pearson Engineering Ltd may nominate;
- (b) meet all costs in relation thereto;
- (c) comply with all conditions imposed by Pearson Engineering Ltd on agreeing to such request. It is expressly declared that one of such conditions will be the quotation of the original invoice number and the payment of a handling charge of 10% of the invoice value together with any expense required to restore the goods to their original condition.

6. Ownership of Goods

(a) Pearson Engineering Ltd shall retain title to the goods delivered as legal or equitable owner until the purchaser has paid for the goods supplied in full.

(b) Should the goods become constituents of or be converted into other products, or be incorporated in or used as materials for other goods, while subject to Pearson Engineering Ltd ownership pursuant to this clause Pearson Engineering Ltd shall have and retain title and property in and to such other products or such other goods as if they were the goods delivered by Pearson Engineering Ltd to the purchaser pursuant to this agreement, and the provisions of this clause shall thereupon apply to such other goods or such other products.

(c) The purchaser agrees that the retention of title in the goods created by this clause is a security interest, as defined in the Personal Property Securities Act 1999, over all goods supplied by Pearson Engineering Ltd to the purchaser and all inventory supplied by Pearson Engineering Ltd to the purchaser.

(d) Pearson Engineering Ltd is entitled at any time to register this security interest over any goods being supplied by Pearson Engineering Ltd to the purchaser. For the purposes of registration the description of the goods shall be the type of products and supplies being supplied to the purchaser at the date of registration. Should at any time the nature or description of goods supplied by Pearson Engineering Ltd to the purchaser change, Pearson Engineering Ltd shall be entitled to register subsequent security interests to ensure the security interest includes any such new types of goods supplied.

(e) Should Pearson Engineering Ltd elect to register their security interest, the purchaser agrees:

i. to provide all necessary information requested by Pearson Engineering Ltd to assist in the registration of the security interest, and

ii. that the purchaser will not create any further security interests over the goods, and

iii. that the purchaser will notify Pearson Engineering Ltd within 5 days of any intended change of their name, and

iv. that the purchaser waive the requirement that the purchaser be provided with verification statements recording registration.

7. Liability and Maintenance Guarantee

(a) Pearson Engineering Ltd shall ensure that goods supplied are reasonably fit for the purpose for which they are supplied.

(b) Despite any other provisions in the document, where Pearson Engineering Ltd is not the manufacturer of the goods Pearson Engineering Ltd shall not be liable to the purchaser for any defect in or failure of the goods and the purchaser shall have the same claims against the manufacturer which Pearson Engineering Ltd may have against the manufacturer.

(c) Pearson Engineering Ltd shall repair or replace any goods delivered to the buyer where fundamental defects in the goods have emerged through the normal and proper use of the goods by the purchaser or have arisen from faulty design, materials or workmanship and where such fundamental defects have occurred within the guarantee period as stated or otherwise within 24 months (for loaders and slurry tanks) and 12 months (for other products) of the date of delivery by Pearson Engineering Ltd provided that the defective goods are promptly returned to Pearson Engineering Ltd unless otherwise agreed. On the termination of the guarantee period Pearson's liability in respect of the goods ceases.

(d) The warranty in Clause 7 (c) does not cover damage caused by misuse, neglect, improper operation, maintenance, installation, modification, adjustment or fair wear and tear of the goods by the purchaser.

8. Design Changes

Pearson Engineering Ltd reserves the right to effect design changes as technical developments may require without prior notice and where such design changes are made to supply the purchaser with goods to the original or revised specification at the discretion of Pearson Engineering Ltd.

9. Fitting and Testing

(a) Goods sold to an authorised dealer must be fitted and tested by the dealer prior to delivery to his customer.

(b) It may be necessary to relocate, modify or otherwise alter certain items for some model tractors such as steps, battery frames, weights, lights, exhausts, air cleaners, bonnet panels, fuel filters, cab mountings, fuel tanks and they may need to be removed and refitted during the fitting of a loader. Pearson Engineering Ltd will not accept responsibility for any of the above modifications or work.

10. Extent of Liability

To the fullest extent permitted by law:

(a) The liability by Pearson Engineering Ltd for any loss, damage or injury arising directly or indirectly from any defect or non-compliance of the goods is limited as set out in the provisions above.

(b) Pearson Engineering Ltd shall not be responsible for any damage whatsoever caused either to the products supplied or as the result of the malfunction of such products in the event that such products are fitted by unqualified tradesmen or in an untradesmanlike manner and/or if such products are in any way adapted to a use for which they are

not specifically intended and/or if such products be added to or repaired by components not recommended or approved by Pearson Engineering Ltd.

(c) To the fullest extent permitted by law no warranty or condition shall be implied against Pearson Engineering Ltd by statute, common law or otherwise howsoever and no representation or express condition or warranty shall be binding by the company unless it be in writing and signed on behalf of the company.

(d) Nothing in these terms is to be deemed contracting out of the provisions of the Consumer Guarantees Act 1993 where it applies.

11. Authority to obtain information

The purchaser authorises any person or company to provide Pearson Engineering Ltd with such information as Pearson Engineering Ltd may require in response to Pearson Engineering Ltd credit enquiries. The purchaser authorises Pearson Engineering Ltd to furnish any third party details of the purchaser's application and any subsequent dealings that the purchaser may have with Pearson Engineering Ltd as a result of this application being actioned by Pearson Engineering Ltd.

12. Arbitration

In the event of any dispute arising between the parties touching or concerning the construction or interpretation of this agreement or anything to be done hereunder the same shall be referred to the arbitration of two arbitrators, one to be appointed by Pearson Engineering Ltd and one by the purchaser and shall be settled by the two arbitrators or their umpire appointed prior to the commencement of the arbitration in accordance with the provisions of the Arbitration Act 1996 and any amendment thereto.

13. The purchaser shall at all times indemnify Pearson Engineering Ltd against any loss or damage or injury to third parties or property of any nature arising out of the use by the purchaser of the goods purchased.

14. This agreement shall be construed in accordance with the laws of New Zealand and (subject to the arbitration provisions herein) the Courts of New Zealand shall have exclusive jurisdiction to deal with any dispute arising out of these conditions or any dispute between Pearson Engineering Ltd and the purchaser.