

Boston Crop Sprayers Limited Standard Terms and Conditions for Supply of Goods and Services (supply of machinery, spares, servicing, testing and In-Field Breakdown Service)

1. Definitions

1.1 When the following words with capital letters are used in these Terms, this is what they will mean:

Authorised Signatory: means a person authorised by Us to sign on Our behalf

Contract: means the contract for the purchase and sale of the Goods and/or Services in accordance with these Terms.

Equipment: machinery offered by You and accepted by Us in part exchange on the purchase of Goods

Events Outside Our Control: means an event beyond Our reasonable control including but not limited to strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications or electricity networks.

Goods: means the goods to be supplied by Us which We supply in accordance with these Terms

In-Field Breakdown Service: Our Service providing mechanical or other assistance to You while You have a valid trading account with Us to assist with failure of Your machinery whilst in use

Order: Your order for the supply of Goods and/or Services as set out in Our order form or Our delivery note as the case may be.

Services: Services agreed by Us to be supplied to You; including by way of example only the servicing and testing of agricultural machinery and In-Field Breakdown Service but **not** including the application of agrochemicals.

Terms: the terms and conditions set out in this document as amended from time to time as set out in clause 14.

We/Our/Us/the Company: Boston Crop Sprayers Limited a company incorporated and registered in England and Wales with Company Number 03187863 whose registered address is Little Field, Fen Road, Frampton West, Boston, Lincolnshire PE20 1RZ

You/Yours: the customers whose offer to purchase Our Goods and or Services has been accepted by Us.

1.2 When We use the words "writing" or "written" in these Terms, this will include e-mail unless We say otherwise.

2 Our Contract with You

2.1 The Order constitutes an offer by You to purchase Goods and/or Services in accordance with these Terms.

2.2 The Contract constitutes the entire agreement between You and Us. You acknowledge that You have not relied on any statement, promise, representation, assurance or warranty made or given by Us or on Our behalf which is not set out in the Contract.

2.3 These Terms apply to the Contract to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 All descriptions and illustrations of Goods and Services contained in any of Our websites, advertising matter or other literature are intended merely to present a general idea of the Goods and/or Services shown and none shall form part of any Contract.

2.5 No quotations given by Us shall constitute an offer and all quotations are subject to withdrawal without notice. Quotations may be given orally and in writing.

2.6 Subject to the above all Quotations shall lapse 7 days after the date of quotations unless otherwise stated in writing.

2.7 All of these Terms shall apply to the supply of both Goods and Services except where application to one or the other is specified

3 Goods

3.1 If We prepare Goods in accordance with Your specifications or instructions, You must ensure that the specifications or instructions are in writing and are accurate. You must ensure that goods which are prepared in accordance with those specifications or instructions will be fit for the purpose for which You intend to use them.

3.2 We reserve the right to make changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirement or which do not affect the nature or the quality of the Goods.

3.3 We give no warranty as to fitness for purpose for any Goods which have been prepared or adapted in accordance with Your specifications or instructions.

4 Prices and Charges

4.1 The price for Goods shall be the price set out in the Order, or if no price is quoted, the price set out in Our price list.

- 4.2 Any prices quoted are net of VAT and any government duty, levy or tax applicable, which will be charged at the appropriate rate ruling at the date of Our invoice. The price for the Goods is exclusive of all costs and charges of packaging, insurance and transport of the Goods which shall be paid by You when You pay for the Goods.
- 4.3 Payment for Goods must be made in full to Us prior to delivery of the Goods, unless other wise agreed in writing by an Authorised Signatory. We reserve the right to withhold delivery or collection of Goods until full payment has been received by Us.
- 4.4 The time for payment shall be of the essence and no payment shall be deemed to have been received until We have received cleared funds.
- 4.5 You shall make payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 4.6 If You fail to pay any sum due to Us under the Contract by the due date for payment, You will be liable to pay interest to Us on such sum from the due date for payment at the annual rate of 4% above the base lending rate of Barclays Bank Plc, accruing on a daily basis until payment is actually made of the overdue amount together with interest.

5. Part Exchange

- 5.1 Where You provide Equipment as a part of the sale, You warrant that You have full title to the Equipment and that there is no charge, lien or other encumbrance over the Equipment.
- 5.2 Any agreement by Us to take Equipment in part exchange is conditional upon:
 - a) the Equipment's delivery on the due date and time; and
 - b) the Equipment being in the same condition as it was when examined by Us
- 5.3 We reserve the right to make a revised offer for the Equipment if the conditions in clause 5.2 are not met.

6. Servicing Work and In-Field Break Down Service

- 6.1 Any servicing work and In-Field Breakdown Service carried out by Us shall be carried out to the standard of a competent firm in the industry. It will be charged by Us to You at the standard hourly rate applied by Us at the time of providing such services, the cost of travel time, the cost of any parts provided by Us and any VAT.
- 6.2 You will pay for any work that We do to, or Goods We supply in respect of Your agricultural machine ordered by the operator of the agricultural machine or any person We reasonably believe has Your authority to place such an order.
- 6.3 All times and dates given by Us for the delivery or completion of Services are given as a best estimate. Time for delivery of Our Services cannot be made the essence of the Contract by notice. If no dates or times are specified, delivery will be within a reasonable time.
- 6.4 When requesting Our Services You shall provide Us (including Our employees, agents, subcontractors and consultants) with:
 - a) all accurate and complete information reasonably required to supply the Services ; and
 - b) passable access to the location agreed for the delivery of services; and
 - c) any permissions that are necessary for the access to or collection of machinery from all the relevant third parties; and
 - d) Your full cooperation with Us in all matters relating to the Service
- 6.5 If Our performance of any of Our obligations in respect of the Services is prevented or delayed by any act or omission by You or failure by You to comply with clause 6.4 above (**Customer Default**):
 - a) We shall without limiting Our other rights or remedies have the right to suspend performance of the Services until You remedy the Customer Default, and to rely on the Customer Default to relieve Us from the performance of any of Our obligations to the extent the Customer Default prevents or delays Our performance of any of Our obligations;
 - b) We shall not be liable for any costs or losses sustained or incurred by You arising directly or indirectly from Our failure or delay to perform any of Our obligations as set out in this clause 6; and
 - c) You shall reimburse Us on written demand for any costs or losses sustained or incurred by Us arising directly or indirectly from the Customer Default.

7 Delivery of Goods

- 7.1 Unless otherwise confirmed in writing by an Authorised Signatory delivery of the Goods will be deemed to have been effected when the Goods leave Our premises whether the Goods have been collected by You or on Your behalf or the Goods have been delivered to You by Us on Our behalf. We may deliver to the location set out in the Order or such other location as is agreed by You and Us (**Delivery Location**) at any time after We have notified You that the Goods are ready.
- 7.2 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by Events Outside Our Control or Your failure to provide Us with adequate delivery instructions, passable access to the Delivery Location or any other instructions or permissions that are relevant to the supply and delivery of the Goods.

- 7.3 If We fail to deliver the Goods, Our liability shall be limited to the costs and expenses incurred by You in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by Events Outside Our Control, Your failure to provide Us with adequate delivery instructions, passable access to the Delivery Location for the Goods or any relevant instruction related to the supply of the Goods.
- 7.4 We may decline to deliver the Goods if We or Our carriers believe that it would be unsafe, unlawful or unreasonably difficult to do so; or if the premises (or the access to them) are unsuitable for Our vehicle. We will notify You in those circumstances and We will either agree upon You collecting the Goods from Our premises or agree upon a suitable alternative delivery location.
- 7.5 If for any reason You fail to accept or take delivery of the Goods within 7 days of Us notifying You that the Goods are ready for delivery, then except where such failure is caused by Events Outside Our Control or by Our failure to comply with Our obligations under the Contract in respect of the Goods:
- a) Delivery of the Goods shall be deemed to have been completed at 9.00 am 7 days following the day on which We notified You that the Goods were ready; and
 - b) We shall store the Goods until delivery takes place, and charge You for all related costs and expenses (including insurance).
- 7.6 If 14 days after We notified You that the Goods were ready for delivery You have not taken or accepted delivery of them, We may resell or otherwise dispose of part or all of the Goods, and after deducting reasonable storage and selling costs, account to You for any excess over the price of the Goods or charge You for any shortfall below the price of the Goods.

8 Risk and Title

- 8.1 The Goods shall be at Your risk on completion of delivery pursuant to clause 7
- 8.2 Title to the Goods shall not pass to You until We receive full payment (in cash or cleared funds) for the Goods.
- 8.3 Until title to the Goods has passed to You, You shall:
- a) Hold the Goods in a fiduciary capacity as Our Bailee
 - b) Store the goods separately from all other goods held by You so that they remain readily identifiable as Our property;
 - c) Not remove, deface or obscure any identifying mark or packaging relating to the Goods;
 - d) Maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Our behalf from the date of delivery;
 - e) Notify Us immediately if You become subject to any events listed in clause 12.1b) to clause 12.1m) and
 - f) Give Us such information relating to the Goods as We may require from time to time.
- 8.4 If before title to the Goods passes to You You become subject to any of the events listed in clause 12.1b) to clause 12.1m) then without limiting any other right or remedy We may at any time:
- a) require You to deliver up all Goods in Your possession which have not been resold, or irrevocably incorporated into another product; and
 - b) if You fail to do so promptly, We may enter any of Your premises or of any third party where the Goods are stored in order to recover them.

9 Manufacturers and Suppliers Warranties

You shall be entitled to the benefit of any such guarantee or warranty as is given by the manufacturer or suppliers of the Goods to Us to the extent that We are able to assign such warranty or guarantee to You.

10 Quality of Goods

- 10.1 You are advised to undertake a careful inspection of the Goods on delivery.
- 10.2 You must notify Us in writing of any claims in respect of the Goods within 7 days of delivery and We must be given a chance to inspect or test any machinery or part forming part of Your Claim.
- 10.3 Claims outside this period cannot be considered.

11 Limitation of Liability

- 11.1 Nothing in these Terms shall limit or exclude Our liability for
- a) death or personal injury caused by Our negligence, or the negligence of Our employees, agents or subcontractors;
 - b) fraud or fraudulent misrepresentation;
 - c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or;
 - e) defective products under the Consumer Protection Act 1987.

- 11.2 Subject to the above We shall under no circumstances whatever be liable to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss, loss of profit or loss of use or production arising under or in connection with the Contract even if We are negligent.
- 11.3 Our total liability to You in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £ 5,000,000.
- 11.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.5 We shall not be liable for any for any defect, damages or loss arising out of;
- a) Your failure to follow Our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good industry practice;
 - b) any defect arising as a result of Us following any drawing, design or Goods Specification supplied by You;
 - c) Your altering or repairing such Goods without Our written consent;
 - d) fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - e) the Goods differing from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standard
- 11.6 In the event that We are threatened with or involved in any legal action, whether civil or criminal (“the action”) concerning Goods or Services supplied to You under the contract:
- a) You will on receipt of a written demand from Us make any of the equipment available to Us for inspection at such times as We may reasonably request and deliver to Us copies of all documents in Your custody or possession or control relating to the Goods and Services concerned which are relevant to the action; and
 - b) You will assist Us in avoiding or defending the action or minimising the damage resulting from the action
- 11.7 You shall be solely responsible for and shall keep Us indemnified against any loss, liability or expense arising directly from the use of the Goods other than in accordance with the operating manuals of the Goods.
- 11.8 This clause 11 shall survive termination of the Contract.

12 Cancellation/Termination Rights

- 12.1 Without limiting other rights or remedies, both You or We may terminate the Contract with immediate effect by giving written notice to the other if:
- a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 5 days after receipt of notice in writing to do so;
 - b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay his debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
 - e) the other party (being an individual) is the subject of a bankruptcy petition or order;
 - f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(b) to clause 12.1(i) (inclusive);
 - k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

- l) Your financial position deteriorates to such an extent that in Our opinion Your capability to adequately fulfil Your obligations under the Contract have been placed in jeopardy; or
 - m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 12.2 Without limiting Our other rights or remedies, We may terminate the Contract with immediate effect by giving written notice to You if You fail to pay any amount due under this Contract on the due date for payment.
- 12.3 Without limiting Our rights or remedies, We may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between Us and You if You fail to pay any amount due under this Contract on the due date for payment, You becomes subject to any of the events listed in clause 12.1b) to clause 12.1m), or We reasonably believe that You are about to become subject to any of them.

13 Consequences of Termination

On termination of the Contract for any reason:

- a) You shall immediately pay to Us all of the outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, We shall submit an invoice, which shall be payable by You immediately on receipt; and
- b) You shall return all of Our Goods which have not been fully paid for. If You fail to do so, then We may enter Your premises and take possession of them. Until they have been returned, the You shall be solely responsible for their safekeeping and will not use them for any purpose not connected with this Contract;
- c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. Variation

Except as set out in these Terms, no variation of the Contract including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Us.

15. Other Important terms

- 15.1 We may transfer Our rights and obligations under these Terms to another organisation, and We will always notify You in writing if this happens, but this will not affect Your rights or Our obligations under these Terms.
- 15.2 You may only transfer Your rights or Your obligations under these Terms to another person if We agree in writing.
- 15.3 This Contract is between You and Us. No other person shall have any rights to enforce any of its terms.
- 15.4 Any notice given to a party under the Contract shall be in writing and addressed to that party at its registered office or principal place of business (if not a company) and shall be delivered and addressed as follows:
- a) by hand or commercial courier when left at the address ;
 - b) by prepaid first class post or registered post at 9.00am on the second working day after posting
- 15.5 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 15.6 If We fail to insist that You perform any of Your obligations under these Terms, or if We do not enforce Our rights against You, or if We delay in doing so, that will not mean that We have waived Our rights against You and will not mean that You do not have to comply with those obligations. If We do waive a default by You, We will only do so in writing, and that will not mean that We will automatically waive any later default by You.
- 15.7 These Terms are governed by English law. You and We both agree to submit to the non-exclusive jurisdiction of the English courts.

16. Contact Details:

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