

## **MASTERHITCH EUROPE LTD - TERMS & CONDITIONS OF SALE**

### **Conditions of Business**

We offer to sell goods and perform services, and accept orders for such goods and services only on the basis of the following conditions. These conditions shall therefore be deemed to be incorporated in any agreement between a customer and ourselves. We request that our customers read the conditions and draw their attention in particular to condition 16, 18 and 19 under which we disclaim certain obligations and responsibilities and exclude certain liabilities. And to conditions 6 to 14 under which we retain title to goods supplied by us and prohibit their resale until all sums due to us from the customer have been paid.

### **Manufacturers Descriptions**

We also draw our customers attention to the fact that many of the products we supply are designed to replace original parts supplied by the manufacturer of the equipment to which the parts relate. Similarly some of the processes we employ are intended as substitutes for processes employed by the original equipment manufacturer. In order to identify the appropriate replacement product or substitute process supplied by us we may therefore use both our own replacement product number or substitute process description and the original manufacturers name part numbers and/or description. Such use of the original equipment manufacturers' names part numbers and descriptions is for reference purposes only and is not intended to be, and should not be treated as a representation warranty or condition either that the replacement product in question was manufactured by on behalf of with the approval of or to the standards or specifications of the original equipment manufacturer or that the substitute process in question has been or will be carried out by or on behalf of with the approval of or to the standards or specifications of such manufacturer.

### **Definitions**

All references hereafter to "MASTERHITCH" shall refer to the trading company of MASTERHITCH Europe Limited its Holding Companies its agents Representatives or its Assignees. All references hereafter to "The Customer" shall refer to the person persons or company enquiring or placing orders with MASTERHITCH Europe Limited.

### **Acceptance of Terms & Conditions**

The placing of an order with MASTERHITCH shall be deemed acceptance by The Customer of these Terms & Conditions.

### **Headnotes**

Headnotes in these Terms & Conditions are for convenience only and shall not affect the construction of any clause.

### **1. Application of Conditions**

- (a) These conditions shall apply to all agreements for the sale or supply of goods or services by Masterhitch to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order receipt or similar document.
- (b) All orders for goods or services shall be deemed to be an offer by the Customer to purchase goods or services from Masterhitch pursuant to these conditions.
- (c) The acceptance or delivery of goods sold or supplied by Masterhitch or the delivery of goods to Masterhitch or the acceptance of work performed by Masterhitch as the case may be shall in each case be deemed to be conclusive evidence of the Customer's acceptance of these conditions.
- (d) Any purported variation of or addition to these Conditions (including any special terms or conditions agreed between Masterhitch and the Customer) shall be of no effect unless such variation or addition has been expressly agreed in writing by a Director of Masterhitch.

### **2. Prices**

- (a) Prices and charges are quoted exclusive of Value Added Tax and any other taxes, levies or duties.
- (b) Unless otherwise agreed by Masterhitch in writing all charges of whatsoever nature relating to the carriage, collection or delivery of goods, together with all taxes, levies and duties, shall be paid by the Customer in addition to the price or charge originally quoted or agreed.
- (c) If, after the date of any quotation, there is an increase in the cost to Masterhitch of labour (including National Insurance or other contributions), raw materials, fuel, electricity, transport or goods manufactured by others including any such increase caused by a fluctuation in exchange rates the Customer shall pay in addition to the price or charge originally quoted or agreed, an amount representing Masterhitch estimate of the increase cost to Masterhitch of executing the order in question at the actual date of execution.

### **3. Scrap**

- (a) Prices and charges quoted for repair or reconditioning work are so quoted on the basis that any scrap parts removed during such work are to become Masterhitch property.
- (b) If the Customer desires such scrap parts to be returned to him he must request Masterhitch in writing to do so in accordance with Condition 24 before the work in question begins. In this case Masterhitch reserve the right to increase the price quoted or agreed for the work by an amount not exceeding the value of the parts to be returned.
- (c) If the Customer makes no such request in writing before the work has begun the scrap parts removed will become Masterhitch absolute property.
- (d) If notwithstanding any such request in writing Masterhitch or any employee agent, or subcontractor shall accidentally destroy lose or misplace any such scrap parts the Customer agrees to make no claim against Masterhitch in relation to them.

#### **4. Payment by Customer**

- (a) Payment for goods sold or supplied by Masterhitch or for services performed by Masterhitch shall be made by the Customer in accordance with these Conditions and any instructions appearing on Masterhitch invoices.
- (b) Notwithstanding that pursuant to Conditions 8 to 14 Masterhitch have retained property in goods sold or supplied by Masterhitch and unless otherwise expressly agreed by in writing, the price for goods sold or supplied by Masterhitch or for services performed by Masterhitch shall become payable on dispatch by Masterhitch of such goods or on completion of such services and the time for payment shall be of the essence of the agreement between Masterhitch and the Customer.
- (c) If the Customer fails to pay any sums payable to Masterhitch by the date upon which they become due then without prejudice to any other remedies available to Masterhitch, Masterhitch shall be entitled:
  - i) To charge contractual interest on all such unpaid sums, from the date when payment becomes due until the date of payment at the rate of 2.5% per month or part month and such interest shall accrue at such rate after as well as before any judgement until paid in full and cleared and
  - ii) to withhold further performance of any obligations under any agreement between ourselves and the Customer until all such unpaid sums together with interest thereon have been paid in full.
- (d) Any reference in these Conditions to prices charges or sums being due payable or owing to Masterhitch includes:
  - i) Any such prices charges or sums which would be so due payable or owing but for Masterhitch having allowed credit to the Customer and
  - ii) Any such prices charges or sums the benefits of which have been assigned by Masterhitch to a third party.
- (e) Those signing the Credit Application Form on behalf of limited companies do so as guarantor and irrevocably undertake to guarantee the payment of all monies owing to us by the relevant limited company if we believe that the limited company cannot meet its obligations. If the limited company goes into receivership, liquidation or administration the guarantor will pay to the receiver, liquidator or administrator, as the case may be, such sum as will enable him or her to pay all monies owed to us by the limited company.

#### **5. Warranty of Solvency Etc.**

- (a) The Customer acknowledges that before entering into any agreement with Masterhitch he has made to Masterhitch the express representations set out in paragraph 2 of this Condition, and the Customer further acknowledges that by entering into an agreement with Masterhitch he warrants that such representations are true and will remain true throughout the duration of the agreement.
- (b) The representations and warranties referred to in paragraph 1 of this Condition are as follows:
  - i) That the Customer is solvent
  - ii) In the case of an individual or a firm that
    - a) during the period commencing 5 years prior to the agreement neither the Customer nor where the Customer is a firm any member of that firm has made with or proposed to any of his creditors any composition in satisfaction of his debts or scheme of arrangement of his affairs and
    - b) during the period commencing 5 years prior to the agreement neither the Customer nor where the Customer is a firm any member of that firm has applied to any court for an interim order under Para VIII of the Insolvency Act 1986 and
    - c) if the agreement is governed by English Law during the period commencing 5 years prior to the agreement neither the Customer nor where the customer is a firm any member of that firm has been subject to a bankruptcy order or has at any time been insolvent or
    - d) if the agreement is governed by Scottish Law during the period commencing 5 years prior to the agreement neither the Customer nor where the customer is a firm any member of that firm has been subject to a bankruptcy order been adjudged bankrupt committed an act of bankruptcy or become apparently insolvent.
  - iii) In the case of a company that:
    - a) during the period commencing 5 years prior to the agreement no petition has been presented to any court either for the Customer or any other company which during that period was a holding company or subsidiary of the Customer, to be wound up or for an administration order to be made in respect of the Customer or any such holding company or subsidiary and
    - b) during the period commencing 5 years prior to the agreement no resolution to wind the Customer up voluntarily has been passed and no notice of any meeting to consider any such resolution has been given and

- c) during the period commencing 5 years prior to the agreement no composition in satisfaction of the Customer's debts or scheme of arrangement of the Customer's affairs has been proposed or made and
- d) no circumstances exist as a result of which any person or court is entitled to appoint a receiver or administrative receiver of the whole or any part of the Customer's property and
- e) none of the circumstances set out in section 122 of the Insolvency Act 1986 as a result of which the Customer may be liable to be wound up by the Court exist.

(c) In the event that any of the representatives and warranties set out in paragraph 2 of this condition are or become untrue or are broken by the Customer:

- i) Masterhitch shall be immediately entitled to terminate without notice any agreement between Masterhitch and the Customer
- ii) all sums owed to Masterhitch by the Customer shall immediately become due.

## 6. Delivery

For the purposes of these Conditions delivery of goods to the Customer shall be deemed to take place at the time the Customer collects the goods from Masterhitch premises or if Masterhitch have agreed to deliver or arrange for the delivery of the goods to some other place at the time the goods are delivered at such other agreed place or failing such collection or agreement, at the time the goods are delivered at the Customer's place of business.

Where any delivery time is mentioned it is hereby accepted that this is an indication in good faith and is not guaranteed. Delivery time shall not be of the essence.

MASTERHITCH shall not be held responsible for late delivery by reason of the non-availability of raw materials or constituent parts industrial action wars fires floods or any natural disasters or any circumstance whatsoever beyond their control.

## 7. Risk

Subject to the provision of Condition 19 and irrespective of who at any time has the property in any goods sold or supplied by Masterhitch to the Customer the risk of any loss or damage to or deterioration of all such goods shall be the Customer's upon delivery.

## 8. Title to goods etc.

- a) All goods sold or supplied by Masterhitch to the Customer shall remain Masterhitch sole and absolute property as legal and beneficial owner until such time as the Customer shall have paid to Masterhitch:
  - i) The agreed price for such goods and
  - ii) All other sums due from the Customer to Masterhitch, whether arising under any agreement between the Customer and Masterhitch or otherwise.
  
- b) i) Where Masterhitch carry out work for the Customer on any goods which are the property of the Customer, the property in those goods shall, at the time when the work begins be transferred to Masterhitch as legal and beneficial owner until such time as the Customer shall have paid to Masterhitch:
  - a) The agreed charges for such work and
  - b) All other sums due from the Customer to Masterhitch, whether arising under any agreement between the Customer and Masterhitch or otherwise whereupon the legal and beneficial ownership of those goods shall revert to the Customer.
- ii) In the event that the Customer fails to pay to Masterhitch by the due date any charges for the work carried out by Masterhitch on the goods or any other sums due from the Customer to Masterhitch, Masterhitch shall be entitled to sell the goods and to apply the proceeds of sale in reduction or elimination of such charges and other sums due from the Customer to Masterhitch. Any surplus proceeds remaining after such application shall be paid by Masterhitch to the Customer.
  
- c) Until property in goods sold or supplied by Masterhitch shall pass to the Customer in accordance with Clause b above
  - i) the Customer shall hold such goods and each of them on a fiduciary basis as bailee for Masterhitch and
  - ii) the Customer shall keep such goods
    - a) in his own exclusive possession and
    - b) save as provided by condition 9 below separately from his own goods and the goods of any other person and
    - c) in a manner which makes them readily identifiable as Masterhitch goods and
  - iii) the Customer shall keep such goods properly stored and protected and
  - iv) the Customer shall at his own expense insure and keep insured such goods against "all risks" to a value equal to the full price payable by the Customer for the goods to Masterhitch reasonable satisfaction and whenever requested by Masterhitch shall produce a copy of the policy of insurance for Masterhitch inspection. Without prejudice to Masterhitch other rights if the Customer fails to insure the goods in accordance with this paragraph all sums owed to Masterhitch by the Customer shall immediately become due and payable.

**9. Additions for Statutory Taxation**

Masterhitch shall be entitled to charge additionally any statutory taxation to the Customer. (For example Value Added Tax).

**10. License to attach/incorporate**

- a) The Customer is licensed by Masterhitch to attach or incorporate any Masterhitch goods which are in his possession to or into any other goods which are the property of the Customer. Goods consisting of Masterhitch goods and goods of the Customer to or into which Masterhitch goods have been attached or incorporated pursuant to this licence are hereafter referred to as "amalgamated goods".
- (b) The licence granted by the preceding paragraph is subject to the following conditions
  - i) the customer shall continue to hold Masterhitch goods after such attachment or incorporation on a fiduciary basis as bailee for Masterhitch and
  - ii) The customer shall keep all amalgamated goods:
    - a) in his own exclusive possession and
    - b) separately from those of his own goods which do not include Masterhitch goods and separately from the goods of any other person and
    - c) in a manner which makes them readily identifiable as amalgamated goods and in a manner which also makes those of Masterhitch goods included in such amalgamated goods readily identifiable as Masterhitch goods and
  - iii) the Customer shall keep all amalgamated goods properly stored and protected and
  - iv) the Customer shall at his own expense insure and keep insured all amalgamated goods against "all risks" to a value equal to their market to Masterhitch reasonable satisfaction and whenever requested by Masterhitch shall produce a copy of the policy of insurance for Masterhitch inspection. Without prejudice to Masterhitch other rights if the Customer fails to insure the amalgamated goods in accordance with this paragraph all sums owed to Masterhitch by the Customer shall immediately become due and payable.

**11. Cessation of rights of possession**

On the occurrence of any of the following circumstance all rights of the Customer to possession of Masterhitch goods shall cease:

- (a) in the case of an individual or firm, if he or, where the Customer is a firm any member of that firm
  - i) makes with or proposes to any of his creditors any composition in satisfaction of his debts or scheme of arrangement of his affairs
  - ii) applies to any court for an interim order under Para VIII of the Insolvency Act 1986
  - iii) becomes subject to a bankruptcy order
  - iv) ceases to be solvent
- (b) in the case of a company
  - i) a petition is presented to any court for the Customer or any other company which is a holding company or subsidiary of the Customer to be wound up or for an administration order to be made in respect of the Customer or any such holding company or subsidiary
  - ii) a resolution to wind the Customer up voluntarily has been passed or notice of any meeting to consider any such resolution has been given
  - iii) A composition in satisfaction of the Customer's debts, or a scheme of arrangement of the Customer's affairs has been proposed or made
  - iv) any receiver or administrative receiver of the whole or any part of the Customer's property is appointed
  - v) the Customer ceased to be solvent
- c) any sum payable by the Customer to Masterhitch is not paid on the due date.

**12. Amalgamated goods**

- (a) In any case where the Customer's right to possession of Masterhitch goods ceases Masterhitch shall be entitled to possession both of Masterhitch goods and any amalgamated goods but in the case of amalgamated goods such entitlement shall only be for the purpose of detaching or separating Masterhitch goods from the amalgamated goods.
- (b) In any case where Masterhitch are entitled to possession of Masterhitch goods or any amalgamated goods, the Customer will upon being so required by Masterhitch:
  - i) immediately refrain from using Masterhitch goods and
  - ii) immediately and at his own expense and without damaging Masterhitch goods detach or separate Masterhitch goods from any amalgamated goods and until such detachment or separation has been completed refrain from using the goods to or into which Masterhitch goods have been attached or incorporated

**13. Rights of access**

For the purpose of obtaining possession of Masterhitch goods and in accordance with condition 11 above regarding any amalgamated goods

Masterhitch servants or agents may enter upon any land or premises owned occupied or controlled by the Customer where Masterhitch goods and/or any amalgamated goods are or are reasonably suspected of being situated and may remove Masterhitch goods and any amalgamated goods from such land or premises.

**14. Property in the goods**

Until property in all goods sold or supplied by Masterhitch has passed to the Customer in accordance with Condition 8a the customer shall not offer for sale or purport to sell Masterhitch goods or any amalgamated goods.

**15. General Lien**

- (a) In addition to any other right of lien to which Masterhitch may be entitled by law or under these Conditions in the event of the occurrence of any of the circumstances specified in Condition 11 above as the case may be Masterhitch shall be entitled to a general lien on all goods in Masterhitch possession which are either the property of the Customer or which have been placed in Masterhitch possession by the Customer with the express or implied authority of the true owner for all sums due from the Customer to Masterhitch immediately following such bankruptcy or insolvency.
- (b) In the event that payment in full of all such sums is not made within 30 days of the occurrence of any of the circumstances referred to in the preceding paragraph of this Condition Masterhitch shall be entitled to sell the goods the subject of Masterhitch general lien and to apply the proceeds of sale in reduction or elimination of such sums. Any surplus proceeds remaining after such application shall be paid by Masterhitch to the Customer.

**16. Delivery Times and Dates**

- (a) Times and dates quoted by Masterhitch for the delivery of goods to or the performance of services are to be treated as estimates only and not as binding in any way
- (b) Where any delay occurs in the delivery of goods or the performance of services beyond the time or date quoted by Masterhitch for such delivery or performance and that delay is caused by lock-outs strikes or other industrial action breakdown of plant non-availability of parts or raw materials interruptions in transport facilities or fuel or electricity supplies or by any other cause beyond Masterhitch control such time or date shall be deemed to be extended by the period of the delay so caused.
- (c) All implied conditions warranties and terms as to the time or date for the delivery of goods or the performance of services by Masterhitch whether implied by statute or by common law or otherwise are hereby excluded.
- (d) Masterhitch hereby exclude all liability for loss and damage of whatsoever nature resulting from any delay by Masterhitch in delivering goods or performing services whether such liability arises in contract tort delicti or otherwise and whether it arises as a result of Masterhitch negligence or otherwise.

**17. Loss or Damage in Transit**

- (a) Without prejudice to the provision of Condition 20 when goods are delivered to the Customer he shall immediately examine them with care. If there is any shortage in the goods delivered or the goods are damaged otherwise than as a result of faulty materials or workmanship or other lack of merchantable quality the Customer shall notify Masterhitch of such shortage or damage by telephone or facsimile, within 2 working days of the delivery being made and shall confirm such notification in writing in accordance with the provisions of Condition 24 below within 5 working days of the delivery being made time being of the essence in each case.
- (b) If notification and confirmation are not given in accordance with paragraph (a) of this Condition then the following consequences shall ensue
  - i) Masterhitch shall be deemed to have delivered to the Customer the correct quantity of goods
  - ii) Save in respect of damage caused by faulty materials or workmanship or other lack of merchantable quality the goods shall be deemed to have been undamaged and properly packed when delivered to the Customer.
  - iii) The Customer shall be deemed to have accepted the goods
  - iv) The Customer shall make no claim against Masterhitch in respect of such storage or damage and shall indemnify Masterhitch against any claim made against Masterhitch in consequence of a claim made by the Customer against any other person in respect of such shortage or damage.
- (c) Where goods are damaged on delivery as a result of faulty materials or workmanship or other lack of merchantable quality the provisions of Condition 19 shall apply.

**18. Responsibility for Advise Etc.**

- (a) Any express or implied advise guidance recommendations representations or other statements in this Condition collectively referred to as 'statements' which Masterhitch may give or make to the Customer as to the goods sold or supplied by Masterhitch or as to the services Masterhitch perform or as to any matter relating to such goods or services are given or made on the sole basis that Masterhitch accept no responsibility for the accuracy or correctness of such statements.
- (b) In particular and without prejudice to the generality of the foregoing the Customer agrees that prior to entering into this agreement he has relied and thereafter he shall rely exclusively on his own skill and judgement as to
  - i) the fitness of goods sold or supplied by Masterhitch for any particular purpose for which they are required by him and
  - ii) the correct selection fitting and adjustment of parts for his machinery and equipment and
  - iii) the correct method of operation and maintenance of his machinery and equipment to the exclusion of any reliance upon Masterhitch statements in relation to such matters

- (c) Accordingly the Customer further agrees that Masterhitch shall not be liable to him whether in contract tort delicti or otherwise for any loss or damage of whatsoever nature caused by reliance by him or by any other person on Masterhitch statements or skill and judgement regardless of whether such statements were given or made or such skill and judgement was exercised negligently or otherwise. For the avoidance of doubt the loss or damage which the Customer hereby agrees that Masterhitch shall not be liable to him for includes but is not limited to all economic loss or damage.

#### **19. Responsibility for Goods and Services and Exclusion of Statutory Provisions**

- (a) This paragraph applies to all goods and services sold or supplied by Masterhitch except for Ground Engaging Tools. The responsibilities that Masterhitch undertake in respect of such goods and services are that free of charge Masterhitch will repair or (at Masterhitch sole discretion) replace:
- i) any goods sold or supplied by Masterhitch which are either defective as a result of faulty materials or workmanship or are otherwise not of merchantable quality and
  - ii) any goods repaired by Masterhitch which are defective as a result of Masterhitch faulty repair work
- (b) The responsibilities set out in paragraph (a) above are subject to the following conditions
- i) Masterhitch accept no responsibility in respect of the defects referred to in paragraph (a) above where
    - a) such defects were drawn to the Customer's attention before the relevant agreement for the sale or supply of the defective goods was made or
    - b) the Customer examined the goods before the relevant agreement was made and the defects should have been apparent on such examination
  - ii) a) where the defects referred to in paragraph (a) are or should have been apparent on reasonable inspection and testing by the Customer following delivery of the defective goods Masterhitch are given written notice of the defects in accordance with Condition 24 below within 14 days of the delivery or
  - b) Where the defects are not so apparent, Masterhitch are given such written notice of the defects either as soon as reasonably practicable after they become apparent or within 90 days of delivery of the defective goods whichever is the sooner unless in either case the period for notification is extended by Masterhitch express written consent
- iii) If Masterhitch so the defective goods are returned to Masterhitch at the Customer's expense
- iv) If Masterhitch so request the Customer allows Masterhitch access to any place where the defective goods are situated to perform any inspection, testing, repair or replacement which Masterhitch consider necessary
- v) In the case of goods containing lubricating oil which are filled before delivery the responsibilities Masterhitch undertake in paragraph (a) above shall not extend to the repair or replacement of any such goods which have been severely damaged as a result of a continuing leakage of oil where the leakage was or reasonably could have been noticed by the Customer and notified to Masterhitch in time to prevent such damage
- (c) i) The expression "Ground Engaging Tools" includes all cutting edges end bits outer bits side cutters tips adapters and solid teeth
- ii) The responsibility that Masterhitch undertake and the warranty that Masterhitch give in respect of Ground Engaging Tools is that in the event of a Ground Engaging Tool sold or supplied by Masterhitch breaking during operation Masterhitch will, at Masterhitch sole discretion either repair the Ground Engaging Tool or provide in replacement a new Ground Engaging Tool or give a full credit against the original price
- (d) The responsibility and warranty set out in paragraph (c) above are subject to the following conditions
- i) the repair of a Ground Engaging Tool its replacement or the giving of a full credit will only be undertaken on delivery of the broken Ground engaging Tool by the Customer at his expense, either to the place of business from which it was supplied or to such other place as Masterhitch may specify
  - ii) Masterhitch obligations under paragraph (c) above do not include
    - a) the provision of equipment or hardware for the removal of broken Ground Engaging Tools or the fitting of replacement Ground Engaging Tool or
    - b) the labour costs involved in such removal or fitting or
    - c) the repair, replacement or the giving of credit in respect of broken Ground Engaging Tools which have been hard-faced or improperly welded after delivery to the Customer.
- (e) Notwithstanding anything in this Condition or in Condition 18 above Masterhitch accept liability
- i) for death or personal injury resulting from Masterhitch negligence and
  - ii) for defective products arising under Part 1 of the Consumer Protection Act 1987 to the extent provided in part 1 of that Act.
- (f) i) The responsibility for goods and services sold or supplied by Masterhitch which Masterhitch undertake in paragraphs (a) to (d) of this Condition is the totality of Masterhitch liability to the customer in respect of such goods and services
- ii) All further conditions, warranties and terms relating to the sale or supply of such goods and services whether express or implied by statute by common law or otherwise are hereby excluded.
- iii) Save as provided in this Condition, Masterhitch hereby exclude all liability for loss or damage of whatsoever nature arising out of or relating to the sale or supply of goods and services by Masterhitch whether arising in contract tort delicti or otherwise and whether arising as a result of Masterhitch negligence or otherwise. For the avoidance of doubt the liability for loss or damage which is hereby excluded includes but is not limited to all liability for economic loss or damage.

#### **20. Patents**

Where any work is done by Masterhitch or on Masterhitch behalf, in accordance with the Customer's instructions or specifications

the Customer warrants that the carrying out of such work in accordance with such instructions or specifications will not cause Masterhitch to infringe any British or foreign patent trade mark trade name or registered design or to breach any British or foreign copyright or design right. In case any such infringement or breach shall occur the Customer will indemnify Masterhitch against all loss damage penalties costs and expenses to which Masterhitch may become liable in consequence of such infringement or breach.

#### **21. Cancellation**

Once any order has been accepted by Masterhitch the Customer shall have no right to cancel it except with the written consent signed by a Director of Masterhitch.

#### **22. Goods not Returnable**

Subject to Condition 19 above goods are not returnable to Masterhitch unless Masterhitch have previously agreed in writing to accept their return and a restocking charge of 20% (minimum charge £5.00) will be made on all goods returned for credit that were originally correctly supplied. Damaged goods will not be accepted for credit.

#### **23. Subcontracting**

Masterhitch shall be entitled to subcontract the fulfilment of any order or performance of any agreement or the fulfilment or performance of any part thereof.

#### **24. Notices and other Communications**

Where under these conditions the Customer is required to give written notice to Masterhitch or otherwise communicate with Masterhitch in writing such notice of communication shall be signed by the Customer or by some responsible person on his behalf and shall be delivered by hand or sent by facsimile transmission or by first class pre-paid letter post to whichever of Masterhitch establishments has dealt with the transaction in question. Any such notice or communication will not be deemed to have been received until receipt is confirmed by Masterhitch.

#### **25. Interpretation**

In these Conditions the following words and phrases bear the meanings assigned to them below:

"Company" bears the same meaning as in section 735 of the Companies Act 1985 and includes in addition any corporate body.

"Holding Company" and "Subsidiary" bear the same meanings as in sections 736 and 736A of the Companies Act 1985.

"Merchantable Quality" bears the same meaning as in section 14 (6) of the Sale of Goods Act 1979.

"Solvent" means able to pay his debts and meet his other obligations as they fall due.

"Apparently insolvent" bears the same meaning as in section 7 of the Bankruptcy (Scotland) Act 1985.

#### **26. Masterhitch Warranty**

- (a) Masterhitch warrants that any new Masterhitch or Masterhitch bucket supplied shall be free of defect in manufacture at the time of supply and further warrants that any defect due to faulty workmanship or material defect which develops during the warranty period of 12 months or 2000 hours whichever is the sooner (6 months or 1000 hours in the case of a Masterhitch used with a hydraulic breaker) from date of supply will be rectified/replaced at their discretion provided that:-
  - i) The goods have been used and maintained only in accordance with Masterhitch's instructions and recommendations.
  - ii) That the goods have not been misused.
  - iii) That the goods have not been altered or adapted in any way.
  - iv) That any Masterhitch has been used only with genuine buckets and/or cradles supplied by Masterhitch.
  - v) That only genuine replacement parts supplied by Masterhitch have been correctly fitted where any parts have been required.
- (b) In the case of Masterhitch buckets the warranty only extends to bending and cracking during the correct and normal use and does not cover wear parts sides or bases or any failure due to intensive use of General-Purpose buckets in a rock/concrete environment.
- (c) Masterhitch shall not under any circumstance be liable for any damages compensation loss of use claims expenses losses or other potential liabilities whether direct or consequential and any other remedy which may otherwise be available in law is hereby excluded except where such exclusion is prohibited by law.
- (d) The customer shall immediately notify Masterhitch of any failure or potential failure as it becomes apparent. Damage caused by continued use shall be excluded from this warranty.
- (e) No warranty is given on any parts supplied by Masterhitch in kit form or any pipework affixed to the machine or for hydraulic connections.
- (f) Warranty shall be on a "parts returned basis", and no claim for labour will be accepted under any circumstances.
- (g) In the event of non-agreement on any failure claimed under warranty, the decision of Masterhitch shall be final and binding.

#### **27. Product Designs**

MASTERHITCH engages in a policy of continuous development and improvement of its products and therefore reserves the right to alter the design and/or specification of any product without notice and without incurring liability subject only to the product remaining fit for its original purpose.

## **28. Patents & Copyright**

There is a patent existing on the design of the Masterhitch and its buckets. In addition the logo used the trade name "Masterhitch " all instructions manuals etc. are copyright. Only Masterhitch Europe Limited their licensed and approved agents (such license given in writing by a Director of Masterhitch Europe Limited) may manufacture products or issue literature of any kind using these patents/copyrights. Any infringement of these conditions shall automatically render the infringer(s) liable for losses/ damages incurred by Masterhitch Europe Limited (and connected parties) and the suspension of further supplies without notice.

## **29. Internet and e-mail communications and e-commerce transactions.**

(a) The customer may place orders direct from MASTERHITCH website at [www.masterhitch.co.uk](http://www.masterhitch.co.uk) using an electronic order form system and/or e-commerce solutions as and when available. Customers that hold an accredited account may use an "account order" form. Customers paying by credit card must use a "credit card order" form. The provision of details by the customers by these methods shall not be considered an order until confirmed by MASTERHITCH. Orders cannot be accepted in this way for any other payment method such as cheque or cash.

(b) Where correspondence/transactions are carried out by e-mail or e-commerce the electronic "signature" or e-mail "signature" shall constitute an authorised signature on behalf of either party and shall bind both parties to contract.

(c) Although MASTERHITCH and its e-commerce provider will take all reasonable steps to ensure security is of the highest order no warranty expressed or implied is given that e-commerce solutions that MASTERHITCH offer are secure.

(d) MASTERHITCH reserves the right to change without notice any item on its Web Site or literature.

## **30. Data Protection Act and Consumer Credit License.**

(a) MASTERHITCH uses a number of credit reference agencies and clubs to protect itself from fraud and bad credit risk as well as taking references from Trade Suppliers and Bankers where appropriate. By applying for an account with MASTERHITCH the customer hereby agrees that MASTERHITCH may access store and use such information about their Company and/or Directors and/or Shareholders and/or Partners to allow MASTERHITCH to decide whether to offer or continue to offer credit.

(b) For it's part MASTERHITCH agrees that any information accessed as detailed in clause (a) above will be held solely for the purposes detailed in the said Act and that at no time shall this information be imparted to a third party except to our legal representatives and where we are required to by law. Use and storage of such data shall at all times be in conformity with the Act.

(c) MASTERHITCH is registered under the Data Protection Act and holds a current Consumer Credit License. Details are available upon written request to the Financial Director at MASTERHITCH Head Office.

## **31. Right to Communicate.**

(a) By applying to open an account ordering from or requesting a quotation from MASTERHITCH the customer hereby confers upon MASTERHITCH the right to contact the customer by telephone facsimile or e-mail to offer advice or additional services that MASTERHITCH believe will be of interest to the customer.

(b) The customer has the right to opt out of any of the agreements in clause 31a above by writing to MASTERHITCH stating which of the above he does not wish to receive. Letters should be addressed Private & Confidential to The Group Marketing Manager, Masterhitch Europe Ltd, Whitewall Road, Strood, Kent ME2 4DZ.

## **32. General**

(a) If any provision in these conditions is held by any competent court of law to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provisions in question shall not be adversely affected thereby.

(b) MASTERHITCH shall not be liable to the customer nor be deemed to be in breach of any of these conditions by reason of any delay in performing or failure to perform and obligation of these conditions due to any of the following causes which are beyond its control:

- i. Act of God explosion flood tempest fire or accident.
- ii. War or threat of war sabotage insurrection civil disturbance or requisition or act of terrorism.
- iii. Acts restrictions byelaws regulations prohibitions or measures of any kind on the part of any governmental parliamentary or local authority.
- iv. Strikes lock-outs or other trade disputes



v. Difficulties in obtaining raw materials labour fuel spare parts or machinery.

vi. Power failure or breakdown in machinery.

(c) Whilst MASTERHITCH will at all times endeavor to deliver orders the times requested by the customer delivery times shall not be of the essence on any order.

(d) This contract shall be governed by the laws of England and is subject to the jurisdiction of the English Courts.

(e) Notwithstanding anything to the contrary in the absence of any specific condition English Common Law applies.

(f) Masterhitch shall be entitled at any time and from time to time to vary or replace the terms and conditions and exceptions herein contained without notice.

(g) To enable us to offer constant improvements in our customer service and to ensure accuracy by verifying instructions where necessary Masterhitch may monitor and/or record telephone calls.

**33. Valid from**

These Terms and Conditions of Sale are valid from January 2007 and supersede all previous Terms and Conditions of sale.