

FAROL LIMITED
Standard conditions for business
sale of goods and services

THE CONDITIONS SET OUT BELOW APPLY TO ALL CONTRACTS [‘Order’] BETWEEN FAROL LIMITED AND PURCHASERS FOR THE SUPPLY OF GOODS AND/OR SERVICES PLEASE READ ALL OF THEM CAREFULLY THEY CONTAIN EXCLUSIONS AND LIMITATIONS OF OUR LIABILITY UNDER ANY SUCH CONTRACT.

Seller means: Farol Limited Registered in England with Company Number 04157398 and having its Registered Office at Rycote Lane Farm, Milton Common, Thame, Oxon OX9 2NZ

Purchaser means: You as the buyer of goods/services from Farol Limited.

1 Formation of contract

1.1 Any order however communicated to the Seller by the Purchaser shall be accepted entirely at the discretion of the Seller, and, if so accepted, will only be accepted upon these conditions (hereafter referred to as the “Conditions”) and by means of the Seller’s standard order acknowledgment form.

1.2 Each order which is so accepted shall constitute an individual legally binding contract between the Seller and the Purchaser and such contract is hereafter referred to in these Conditions as an “Order”. Subject to paragraphs 2.3 and 15 of these Terms and Conditions in relation only to Consumer sales any deposit paid by the Buyer to the Seller in order to create the Order shall be non-refundable. In the event of any actual or purported cancellation of the Order by the Purchaser the deposit paid by the Purchaser shall be retained and forfeited by the Seller in partial satisfaction of the Seller’s entitlement to and the Purchaser’s obligation to pay liquidated damages for breach of contract.

1.3 These Conditions shall override

any contrary different or additional law or terms or conditions (if any) contained on or referred to in any order form or other documents or correspondence from the Purchaser, and no addition alteration or substitution of these terms will bind the Seller or form part of any Order unless they are expressly accepted in writing by a person authorised to sign on the Seller’s behalf.

1.4 In the case of an Order for second hand goods then the Seller’s standard conditions for the sale of second hand goods apply in addition to these Terms and Conditions. But in such sales/supplies the words ‘within 1 month of the date of delivery’ in paragraph 9.1.1 of these terms and conditions is hereby deleted and of no effect and the term ‘on delivery’ is substituted therefor and paragraph 9.1.2 is amended accordingly.

SALE/SUPPLY OF GOODS

2 Specification

2.1 All goods supplied by the Seller shall so far as practicably possible be in accordance with (i) the current edition of the relevant Product Description Leaflet as published from time to time by the Seller (copies of which are available from the Seller upon request) and (ii) those further specifications or descriptions (if any) expressly listed or set out on the face of the Order and accepted in writing by the Seller. No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Order save that while the Seller will use its best endeavours to supply goods and materials in accordance with the Order specification the Company reserves the right to substitute other goods or materials at their discretion, provided that the substitution of goods or materials shall be of appropriate design and of quality at least equal to the specification insofar as is reasonably possible.

2.2 While the Seller will use its best endeavours to complete the Order at the original price, the Purchaser

agrees that the contract price may be increased at the Seller’s entire discretion up to but not exceeding the retail price prevailing for a similar transaction at the time when the Order is performed by the Seller.

2.3 In the event the Seller shall be unable within a reasonable time to obtain from the supplier or manufacturer the goods or materials necessary to complete the Order or suitable substitutes therefore, the Seller may terminate the contract by notice to the customer, whereupon the Seller may and is hereby authorised to repossess any goods or materials already supplied and shall refund any money paid by the Purchaser but otherwise neither party shall have any right or liability under the Order.

3 Acceptance

The Purchaser shall be deemed to have accepted all goods upon their delivery by the Seller to the address specified in the Order regardless of whether delivery is by instalments or otherwise.

4 Delivery and risk

4.1 Unless otherwise stated in the Order, the price quoted includes delivery to the address specified in the Order, provided that the Seller reserves the right to make an additional charge to cover any increase in transport costs occurring before the date of delivery.

4.2 Any time or date for delivery given by the Seller is given in good faith, but is an estimate only and time is not of the essence.

4.3 Risk in the goods shall pass to the Purchaser upon delivery.

5 Title and payment

5.1 The Seller warrants that (except in relation to intellectual property rights of third parties as referred to in Condition 5.3) the Seller has good title to the goods and that (pursuant to s.12 (3) of the Sale of Goods Act 1979, or s.2 (3) of the Supply of Goods and Services Act 1982, whichever Act applies to the Order) it will transfer such title as it may have

in the goods to the Purchaser pursuant to Conditions 5.5 and where applicable 5.6.

5.2 The Seller warrants that it is not aware of any actual or alleged infringements of any intellectual property rights of third parties which relate to the goods other than those (if any) which the Seller has disclosed to the Purchaser prior to acceptance of the Order.

5.3 The Seller shall have no liability to the Purchaser (other than as provided in Condition 10) in the event that the goods to be supplied under the Order infringe any intellectual property rights of a third party (including without limitation by reason of their possession, sale or use, whether alone or in association or combination with any other goods); the Seller gives no warranty that the goods to be supplied under the Order will not infringe as aforesaid, and all conditions, warranties, stipulations or other statements whatsoever relating to such infringement or alleged infringement (if any), whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded.

5.4 Unless otherwise stated in the Order, payment of the price of the goods comprised in each consignment delivered pursuant to an Order shall become due at the end of the month following the month in which that consignment is delivered.

5.5 Title to the goods comprised in each consignment shall not pass to the Purchaser until the Purchaser has paid their price to the Seller, but, even though title has not passed, the Seller shall be entitled to sue for their price once its payment has become due. The Seller shall be entitled in the absence of payment to and is hereby authorised by the Purchaser (on behalf of him/her/itself and all successors in title and assigns as well as any insolvency practitioner appointed to manage the affairs of the Purchaser) to enter on the Purchaser's land and/or buildings or any location where the goods are from time to time located to retrieve and uplift all goods delivered and unpaid for. The Purchaser will keep harmless and

shall not pledge or charge howsoever nor allow any distraint to be exercised over any and all goods supplied under the Order and which have not been paid for and the Purchaser shall (on behalf of him/her/itself and all successors in title and assigns as well as any insolvency practitioner appointed to manage the affairs of the Purchaser) fully and effectively indemnify on demand the Seller in respect of any breach of these several Conditions as well the costs, expenses and any disbursements and legal fees relating thereto.

5.6 The Purchaser shall pay to the Seller and as a debt interest on the balance of any sum due to the Seller and outstanding after 30 [thirty] days from the due date for payment at the rate of 1.5 [one.five] per cent per month such interest to be calculated on a daily basis from and including the due date for payment until the actual date of payment as cleared funds in the Seller's account.

6 Storage

If the Seller shall be unable, through circumstances beyond its control (including without limitation lack of shipping instructions from the Purchaser), to deliver the goods within 14 days after notification to the Purchaser or its agent that the goods are ready for delivery, the Seller shall be entitled to arrange storage on behalf of the Purchaser, whereupon delivery shall be deemed to have taken place, all risk in the goods shall pass to the Purchaser, and delivery to the Purchaser of the relevant warehouse receipt shall be deemed to be delivery of the goods for the purposes of Condition 4. All charges incurred by the Seller for storage or insurance shall be paid by the Purchaser within 30 days of submission of an invoice.

7 Damage in transit and delivery

7.1 Subject to the provisions of this clause 7 the Seller will replace free of charge any goods proved to the Seller's satisfaction to have been damaged in transit provided that within 24 hours after delivery both the Seller and the carriers have

received from the Purchaser notification in writing of the occurrence of the damage and also, if and so far as practicable, of its nature and extent.

7.2 The Purchaser undertakes that before delivery is undertaken on the Purchaser's land or premises the Purchaser will inform the Seller in writing of the position of all service pipes and cables and of any other hazards of which he is aware, and will indemnify the Seller against any liability in respect of damage caused to any service pipes or cables of which it is not aware whether or not the Purchaser is aware of the same.

7.3 In the event that the Seller shall in the course of performing delivery come upon hazard which it could not reasonably have foreseen and/or the Purchaser had not notified to the Seller in writing, the additional cost of overcoming the same shall be borne by the customer.

7.4 While the Seller will use its best endeavours to deliver goods or materials on the customer's land or premises insofar as possible without damaging the same, the Seller does not accept liability for any such damage howsoever caused or for failing to reinstate the said land or premises unless the Order expressly proves for such liability and/or reinstatement.

8 Force majeure

8.1 The Seller shall not be under any liability for any failure to perform any of its obligations under the Order due to *Force Majeure*. Following notification by the Seller to the Purchaser of such cause, the Seller shall be allowed a reasonable extension of time for the performance of its obligations.

8.2 For the purposes of this Condition, "*Force Majeure*" means fire, explosion, flood, lightning, Act of God, act of terrorism, war, rebellion, riot, sabotage, or official strike or similar official labour dispute, or events or circumstances outside the reasonable control of the party affected thereby.

9 Guarantee

9.1 For goods which are manufactured by the Seller or which bear one of the Seller's trade marks, the Seller grants the following guarantee:

9.1.1 The Seller shall free of charge either repair or, at its option, replace defective goods where the defects appear under proper use within 1 month from the date of delivery, PROVIDED THAT:

9.1.1.1 notice in writing of the defects complained of shall be given to the Seller upon their appearance, and

9.1.1.2 such defects shall be found to the Seller's entire satisfaction to have arisen solely from the Seller's faulty design, workmanship or materials, and

9.1.1.3 the defective goods shall be returned to the Seller's factory at the Purchaser's expense if so requested by the Seller.

9.1.2 Any repaired or replaced goods shall be redelivered by the Seller free of charge to the original point of delivery but otherwise in accordance with and subject to these Conditions of Sale save that the period of one month referred to in Condition 9.1.1 shall be replaced by the unexpired portion of that period only.

9.1.3 Alternatively to Condition 9.1.1, the Seller shall be entitled at its absolute discretion to refund the price of the defective goods in the event that such price shall already have been paid by the Purchaser to the Seller, or, if such price has not been so paid, to relieve the Purchaser of all obligation to pay the same by the issue of a credit note in favour of the Purchaser in the amount of such price.

9.2 In respect of all goods manufactured and supplied to the Seller by third parties the Seller will pass on to the Purchaser (in so far as possible) the benefit of any warranty given to the Seller by such third parties and will (on request) supply to the Purchaser details of the terms and conditions of such warranty and copies of any relevant product information sheets, technical data sheets or product leaflets issued by such third parties and the Purchaser shall be solely responsible to the entire exclusion of the Seller for

complying with all of these.

9.3 The Seller's liability under this Condition shall (subject to Condition 14) be to the exclusion of all other liability to the Purchaser whether contractual, tortious or otherwise for defects in the goods or for any loss or damage to or caused by the goods, and (subject to Condition 14) all other conditions, warranties, stipulations or other statements whatsoever concerning the goods, whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded; in particular (but without limitation of the foregoing) the Seller grants no warranties regarding the fitness for purpose, performance, use, nature or quality of the goods, whether express or implied, by statute, at common law or otherwise howsoever.

10 Intellectual property rights

10.1 In the event that any claim is made against the Purchaser for infringement of Intellectual Property Rights arising directly from the use [or sale] by the Purchaser of the goods, the Seller at its own expense shall conduct any ensuing litigation and all negotiations for a settlement of the claim. The Seller will bear the costs of any payment (either by way of a lump sum or a continuing royalty payment) made in settlement, or as a result of an award in a judgment against the Seller in the event of litigation.

10.2 The benefit of Condition 10.1 is granted to the Purchaser by the Seller only in the event that the Purchaser shall give the Seller the earliest possible notice in writing of any such claim being made or action threatened or brought against it, shall make no admission of liability or take any other action in connection therewith, shall permit the Seller to have the conduct of the claim pursuant to Condition 10.1, and shall (at the Seller's expense) give all reasonable information, co-operation and assistance to the Seller (including without limitation lending its name to proceedings) in relation to the conduct of the claim. In addition, if it is made a condition of any settlement made by the Seller, or judgment

awarded against the Purchaser, pursuant to Condition 10.1, the Purchaser shall return or destroy, as applicable, all infringing goods still under its control subject to a refund by the Seller of any payment for such goods already made less a reasonable allowance for depreciation of the goods by reason of their use (if any) by the Purchaser prior to their return or destruction as aforesaid.

10.3 The provisions of Condition 10.1 shall not apply to any infringement caused by the Seller having followed a design or instruction furnished or given by the Purchaser nor to any use of the goods in a manner or for a purpose which shall have been specifically prohibited in writing by the Seller, nor to any infringement which is due to the use of such goods in association or combination with any other product.

10.4 Any design or instruction furnished or given by the Purchaser shall not be such as will cause the Seller to infringe any intellectual property rights.

10.5 For the purposes of this Condition, the capitalised term "Intellectual Property Rights" means Patents, Registered Designs, Unregistered Designs, Registered Trademarks and Copyright only, having effect in the United Kingdom.

10.6 The foregoing states the Seller's entire liability to the Purchaser and the Purchaser's sole and exclusive remedies against the Supplier in connection with claims based on or resulting from the infringement of intellectual property rights, of any kind whatsoever, of third parties.

11 Confidentiality

Both the Seller and the Purchaser shall each keep confidential and shall not without the prior consent in writing of the other disclose to any third party any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications between them relating to the goods and the Order.

12 Economic loss

Subject to Condition 14, and notwithstanding anything contained in these Conditions (other than Condition 14) or the Order, in no circumstances shall the Seller be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof (i) for any loss of profit, business, contracts, revenues, or anticipated savings, or (ii) for any special indirect or consequential damage or (iii) for any expenses, costs or disbursements or any VAT thereon of any nature whatsoever.

13 Limitation of liability

Subject to Condition 14, and notwithstanding anything contained in these Conditions (other than Condition 14) or the Order, the Seller's liability to the Purchaser in respect of the Order, in contract, tort (including negligence or breach of statutory duty) or howsoever otherwise arising, shall be limited to the price of the goods specified in the Order.

14 Unfair Contract Terms Act 1977

14.1 If and to the extent that s.6 and/or s.7(3A) of the Unfair Contract Terms Act 1977 applies to the Order, no provision of these terms and conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Seller for breach of the express warranties contained in Condition 5, or for breach of the applicable warranties as to title and quiet possession implied into the terms and conditions of the Order by s.12(3) of the Sale of Goods Act 1979, or s.2(3) of the Supply of Goods and Services Act 1982, whichever Act applies to the Order.

14.2 Where the Purchaser is a natural person nothing in these terms and conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Seller for

death or personal injury caused by reason of the negligence of the Seller or of its servants, employees or agents.

14.3 No provision of these terms and conditions shall have effect or operate so as to exclude any liability of one of the parties in respect of fraud or a fraudulent misrepresentation made by that party to the other, or to restrict or exclude any remedy which the other party may have in respect of such fraud or fraudulent misrepresentation.

15 Applicable law

The Order shall be considered a contract made in England and shall be governed in all respects by the law of England and the parties agree to submit to the exclusive jurisdiction of the English courts.

16 Notices

Any notice to be given to the Seller by the Purchaser pursuant to these Conditions must be given in writing and delivered to the Registered Office of the Company by hand or by first class recorded delivery post. Service by e mail is not accepted. The Seller may in its absolute discretion communicate electronically.

17 Data capture

The Purchaser agrees to the processing of his/her/its personal data by the Seller, by John Deere and their respective service providers for the purpose of marketing products and services of any kind offered by John Deere from time to time. It is understood and agreed that this may include the transfer to and processing of data for such purpose by John Deere companies located outside the EEA.

SALE/SUPPLY OF SERVICES

Where the Purchaser contracts by Order with the Seller for the supply of services by the Seller then paragraphs 1 - 17 of these terms and conditions apply AND the following additional terms and conditions apply.

18. All goods supplied by the Seller within or as part of the supply of services shall be subject to the provisions of paragraphs 1 - 17 inclusive of these Terms and Conditions.

19. The Seller shall use its best endeavours to supply the services at the location and on the date provided by the Order but reserves the right to perform and/or deliver the services at an alternative location on a different date or dates and time shall not be of the essence.

20. Where the services are provided other than at the Seller's premises:

20.1 The contract Order price is calculated on the basis that the Seller's workmen or contractors have free access to the site at the agreed date and time and are able to work continuously on the site until the work is completed. In the event of any interruption or delay caused otherwise than by the Seller, the additional expense incurred shall be paid by the Purchaser to the Seller in accordance with these terms and conditions.

20.2 The Purchaser warrants to the Seller that he/she/it has public liability insurance and employer's liability insurance all which provides appropriate cover for these services.

20.3 The Purchaser undertakes to allow the Seller's workmen or contractors the use free of charge services of water, electricity and/or gas, which may be available on site.

21 The Order will be completed in a workmanlike manner, and machinery rendered operational before delivery / the Seller's workmen leave site unless otherwise requested by the Purchaser. If the Purchaser requires further services the work will be charged for at the prevailing time rates for such work and the Purchaser shall pay the Seller for the same as an accretion to the Order and otherwise in accordance with these terms and conditions.