

**G. & J. PECK LIMITED**  
**CONDITIONS OF SALE / PURCHASE AND THE SUPPLY OF SERVICES**

**1 Definitions**

- 1.1 "Party 2" means the contracting party with Pecks.
- 1.2 "Conditions" means the terms and conditions of sale / purchase and the supply of services set out in this document and any special terms and conditions agreed in writing by Pecks.
- 1.3 "Goods" means the articles that Party 2 agrees to purchase from Pecks in accordance with these Conditions.
- 1.4 "Pecks" means G. & J. Peck Ltd whose registered office is 90 Lancaster Way Business Park, Ely, Cambs, CB6 3NX.
- 1.5 "Price" means the price for the Goods excluding carriage, packing, insurance and VAT.

**2 Conditions applicable**

- 2.1 These Conditions shall apply to (i) all contracts for the sale of Goods by Pecks to Party 2 (all conditions other than 14-16 inclusive); (ii) all contracts for the purchase of goods by Pecks from Party 2 (conditions 11, 16 and 18-20 inclusive); (iii) the provision of services by Pecks to Party 2 (conditions 11, 14 and 18-20 inclusive); and (iv) the acceptance of a trade-ins / part exchange by Pecks (conditions 11, 15 and 18-20 inclusive), to the exclusion of all other terms, conditions, warranties or representations that Party 2 seeks to impose or incorporate (including, but not limited to, any terms or conditions which Party 2 may purport to apply under any purchase order confirmation of order or similar document), or which are implied by trade, custom, practice or course of dealing, with the exception of any terms specified in writing by Pecks in accordance with condition 2.4. These Conditions shall apply to any repaired or replacement Goods supplied by Pecks.
- 2.2 All orders for Goods by Party 2 shall be deemed to be an offer by Party 2 to purchase Goods pursuant to these Conditions. A quotation given by Pecks shall not constitute an offer.
- 2.3 Collection or acceptance of delivery shall be deemed conclusive evidence of Party 2's acceptance of the Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by Pecks.
- 2.5 No clerical errors or omissions in quotes or order acceptance by Pecks shall annul sales but shall be subject to subsequent correction by Pecks and no compensation shall be deemed payable to Party 2 in this respect.

**3 The Price and the Payment**

- 3.1 The Price shall be as set out on Pecks' invoice overleaf. The Price is exclusive of VAT, which shall be due at the rate ruling on the date of Pecks' invoice.
- 3.2 Payment of the Price and VAT shall be due at the end of the month following date of invoice except where Party 2 is not an account holder or the Goods comprising agricultural or horticultural machinery or horticultural service in which case payment shall be due on collection / delivery (as arranged between the parties). Time of payment by Party 2 shall be of the essence. Goods that are to be financed are required to be signed up with the finance company 10 days prior to delivery of the Goods.
- 3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 5% above Barclays Bank plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment.
- 3.4 Subject to condition 2.2 and this condition 3.4, a Price quoted by Pecks shall be open for acceptance for 14 days unless otherwise stated in or at the time of the quotation. Pecks may by giving notice to Party 2 at any time up to 7 days before delivery increase the Price of the Goods to reflect any increase in the cost to Pecks which is due to the occurring, after agreeing the sale, any matter or thing which is beyond the reasonable control of Pecks (including without limitation foreign exchange fluctuation, taxes and duties, increases in costs by the manufacturer and other manufacturing costs and the cost of labour and materials).
- 3.5 Party 2 shall not be entitled whether by reason of any claim against Pecks or for any other reason whatsoever under any circumstance (by set-off or otherwise) to defer payment of any monies payable to Pecks as and when such monies become due and payable.
- 3.6 In the event of non-payment, Pecks' reserve the right to instruct debt collection agencies to recover all outstanding balances. Party 2 shall be liable to pay ALL costs, fees, disbursements and charges incurred through debt recovery, legal and insolvency costs.

**4 Goods**

- 4.1 The quantity and description of the Goods shall be supplied in accordance with all applicable British Standards, which relate specifically to the Goods and, in the case of new machine wholegoods (not parts), in accordance with the terms set out in Pecks' 'Confirmation of Order'.
- 4.2 The representation by Pecks that Goods are second hand (where applicable) shall be taken into consideration in the interpretation of these Conditions (more specifically, conditions 3 and 6).
- 4.3 Pecks may from time to time make changes in the specifications of the Goods that are required to comply with any applicable safety or statutory requirements or which do not materially negatively affect the quality or fitness for purpose of the Goods.
- 4.4 Pecks is not bound to sell Goods that correspond with illustrations, leaflets, advertisements, drawings or other matter issued by or on its behalf. Pecks' designs are subject to necessary alterations and Party 2 shall contract with Pecks upon the understanding that such alterations may be made if Pecks deems such alterations necessary.
- 4.5 All weights, measurements and horsepower etc given in estimates, illustrations, leaflets, advertisements or drawings or other matter issued by or on behalf of Pecks are believed to be correct but are not guaranteed and shall not be binding on Pecks insofar as it is fair and reasonable to vary such estimates, illustrations, leaflets, advertisements, drawings or other matter issued by or on behalf of Pecks.

**5 Cancellations**

No orders given to Pecks can be cancelled without Pecks consent in writing having been obtained and it shall be an implied condition of such cancellation that Party 2 shall indemnify Pecks against all loss and expenses suffered.

**6 Warranties and Liability**

- 6.1 Pecks warrants that the Goods will at the time of delivery correspond to the description given by Pecks. Except where Party 2 is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12) all other warranties, conditions or terms relating to fitness for purpose, merchantability or condition of the Goods and whether implied by statute or common law or otherwise are, to the fullest extent permitted by law, excluded, save in respect of those terms in the Sale of Goods Act 1979 (as amended) requiring Goods supplied to be of satisfactory quality.
- 6.2 Subject to condition 6.3, if (i) Party 2 gives notice in writing to Pecks within a reasonable period of time (in the reasonable opinion of Pecks) within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in condition 6.1; (ii) Pecks is given a reasonable opportunity of examining such Goods; and (iii) Party 2 (if asked to do so by Pecks) returns such Goods to Pecks' place of business at Pecks' cost, Pecks shall, at its option (notwithstanding the rights that a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12) may have), repair or replace the defective Goods, or refund the Price in full.
- 6.3 Pecks shall not be liable for Part 2's failure to comply with the warranty set out in condition 6.1 in any of the following events: (i) Party 2 makes any further use of such Goods after giving notice of a defect in accordance with condition 6.2; (ii) the defect arises because Party 2 failed to follow Pecks' oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; (iii) Party 2 alters or repairs such Goods without the written consent of Pecks; (iv) the defect arises as a result of fair wear and tear, willful damage, accident, negligence by Party 2 or any third party, or abnormal storage or working conditions; or (v) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

**7 Delivery**

- 7.1 The time given for delivery is given in good faith and Pecks shall use its reasonable endeavours to comply with it but is an estimate only and is not guaranteed, is not of the essence and Pecks will not be bound by it.
- 7.2 If the Goods delivered by Pecks are damaged on delivery then unless Party 2 notifies Pecks and the carrier (otherwise than by a note on the delivery note) within three days of delivery no claim against Pecks may be made in respect of damage to such Goods.

**8 Acceptance of the Goods**

Party 2 shall be deemed to have accepted the Goods upon either collection by Party 2 or delivery to Party 2 (notwithstanding any late delivery by Pecks).

**9 Title and Risk**

- 9.1 The Goods shall be at Party 2's risk as from delivery or collection.
- 9.2 In spite of delivery having been made, property in the Goods shall not pass from Pecks until:
  - 9.2:1 Party 2 shall have paid the Price plus VAT in full; and
  - 9.2:2 no other sums whatsoever shall be due from Party 2 to Pecks.
- 9.3 Until property in the Goods passes to Party 2 in accordance with condition 9.2, Party 2 shall hold the Goods and each of them on a fiduciary basis as bailee for Pecks. Party 2 shall maintain the Goods in satisfactory condition and store the Goods (at no cost to Pecks) separately from all other goods in its possession, being marked in such a way that they are clearly identified as Pecks' property.
- 9.4 Notwithstanding that the Goods (or any of them) remain the property of Pecks, Party 2 may sell or use the Goods in the ordinary course of Party 2's business at full market value for the account of Pecks. Any such sale or dealing shall be a sale or use of Pecks' property by Party 2 on Party 2's own behalf and Party 2 shall deal as principal when making such sales or dealings. Until property in the Goods passes from Pecks the entire proceeds of sale or otherwise of the Goods shall be held in trust for Pecks and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as Pecks money.
- 9.5 Pecks shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from Pecks to Party 2. If the Goods are being exported to Party 2 and VAT is not initially invoiced by Pecks, Pecks reserves the right to raise a VAT only invoice if Party 2 fails to provide Pecks with reasonable (in the sole opinion of Pecks) evidence of removal (being a shipping note or such other appropriate evidence) within 14 days of shipment, which shall be payable in accordance with condition 3.2.
- 9.6 Until such time as property in the Goods passes from Pecks, Party 2 shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to Pecks. If Party 2 fails to do so Pecks may enter upon any premises owned, occupied or controlled by Party 2 where the Goods are situated and repossess the Goods. On the making of such request the rights of Party 2 under condition 9.4 shall cease.
- 9.7 Party 2 shall not pledge or in any way charge by way of security for any indebtedness any of the Goods, which are the property of the seller. Without prejudice to the other rights of Pecks, if Party 2 does so all sums whatever owing by Party 2 to Pecks shall forthwith become due and payable.
- 9.8 Party 2 shall insure and keep insured the Goods to the full Price against "all risks" to the reasonable satisfaction of Pecks until the date that property in the Goods passes from Pecks, and shall whenever requested by Pecks produce a copy of the policy of insurance. Without prejudice to the other rights of Pecks, if Party 2 fails to do so all sums whatever owing by Party 2 to Pecks shall forthwith become due and payable.

**10 Sub-contracting**

Party 2 shall not assign, sub-contract, license or otherwise dispose of any part of its rights or obligations under these Conditions without the prior written consent of Pecks.

**11 Force Majeure**

Neither party shall be liable for any failure, delay or default in performing its obligations due to any act of God, war, terrorism, riot, strike, lockout, industrial action, fire, flood, failure of energy sources or transport network, breakdown of plant or machinery, loss at sea, malicious damage, drought, tempest, storms, natural disasters or extreme adverse weather conditions, default of suppliers or subcontractors or other event beyond the reasonable control of either party (which, by its nature, could not have been foreseen and was unavoidable).

**12 Pecks' Cancellation Clause**

Pecks may cancel its contract with Party 2 at any time before the Goods are delivered or collected (as the case may be) by giving written notice to Party 2. On giving such notice Pecks shall promptly repay to Party 2 any sums paid in respect of the Price. Pecks shall not be liable for any loss or damage whatever arising from such cancellation.

**13 Remedies (THIS CLAUSE 13 LIMITS YOUR RIGHTS)**

- 13.1 Exclusion of liability for indirect loss – Subject to condition 16.1, Pecks shall not be liable whatsoever to Party 2 (whether in contract, tort (including negligence), breach of statutory duty or otherwise) for any indirect loss and/or expense (including loss of profit) suffered by Party 2 arising out of a breach by Pecks of these Conditions.
- 13.2 General limitation of Pecks' liability - In the event of any breach of these Conditions by Pecks the remedies of Party 2 shall be limited to damages. Under no circumstances shall the liability of Pecks exceed the Price.
- 13.3 Exclusion of liability for delay in delivery - Pecks shall not be liable for any loss or damage whatever due to failure by Pecks to deliver the Goods (or any of them) promptly or at all.
- 13.4 Notwithstanding that Pecks may have delayed or failed to deliver the Goods (or any of them) promptly Party 2 shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time with 3 months of the estimated date of delivery.
- 13.5 No Goods delivered to Party 2 which are in accordance with these Conditions will be accepted for return without prior written approval of Pecks on terms to be determined at the absolute discretion of Pecks.
- 13.6 If Pecks agrees to accept any such Goods for return the Goods must be in an as new saleable condition. Party 2 will be liable to pay a handling charge of up to 50% of the invoice price. Such Goods must be returned by Party 2 carriage-paid to Pecks and returned by Pecks to the manufacturer carriage-paid by Party 2.
- 13.7 Goods returned without prior written approval of Pecks may at Pecks absolute discretion be returned to Party 2 or stored at Party 2's cost without prejudice to any rights or remedies Pecks may have.

**14 Servicing Work**

Any servicing work carried out by Pecks shall be carried out to the standard of a competent firm in the field at the then standard hourly rate of Pecks at the time of providing such services together with the cost of any parts provided by Pecks and VAT. Any dispute as to price shall be decided by an independent agricultural engineer whose identity in default of agreement shall be decided by the President for the time being of the British Agricultural and Garden Machinery Association acting as expert, whose decision shall be final, and binding the costs of whose appointment and acting shall be borne by Party 2 in the event that the price is deemed to be reasonable.

**15 Trade-in / Part Exchange by Party 2**

Upon agreement by Pecks to accept a trade-in / part exchange as part payment for Goods, Party 2 must provide the V5C Registration Certificate (if applicable) for it, together with proof of identity and address acceptable to Pecks. The trade-in item must be registered in the name of Party 2 (if applicable) and must not be subject to any financing arrangement.

**16. Purchase of goods by Pecks from Party 2**

- 16.1 Party 2 shall ensure that the goods shall (i) correspond with their description and any applicable specification; (ii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by Party 2 or made known to Party 2 by Pecks expressly or by implication; (iii) where applicable, be free from defects in design, material and workmanship; and (iv) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the goods.
- 16.2 Payment of the price (plus VAT if payable), which shall be agreed between Pecks and Party 2, shall be due at the end of the month following date of invoice. Title and risk in the goods shall pass to Pecks upon delivery.
- 16.3 If the goods do not comply with the obligations set out in condition 16.1, then, without limiting any of its other rights or remedies, Pecks shall have the option to reject the goods (in whole or in part) and return them to Party 2 at Party 2's own risk and expense or require Party 2 to repair or replace the rejected goods, or to provide a full refund of the price of the rejected goods (if paid) and recover from Party 2 any costs incurred by Pecks in obtaining substitute goods from a third party, as well as claim damages for any other costs, loss or expenses incurred by Pecks which are in any way attributable to Party 2's failure to carry out its obligations under this condition 16.
- 17 Pre-Sale Release

Should Goods be released or loaned by Pecks for viewing, inspection or trial to Party 2 or an agent on its behalf, title to the Goods shall remain with Pecks and the provisions at conditions 9.1-9.3 and 9.6-9.8 shall apply.

**18 Law and Jurisdiction**

These Conditions and any dispute arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**19 Waiver**

The waiver or delay by Pecks or Party 2 (whether express or implied) in enforcing any term of or any of its rights, powers or privileges under these Conditions (whether in whole or in part) shall not be construed as a waiver and shall in no way prejudice its right to enforce or exercise it in the future.

**20 General**

- 20.1 Nothing in these Conditions will operate to amend, detract, limit, exclude or adversely affect Pecks' liability for (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); (ii) fraud or fraudulent misrepresentation; (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; (iv) defective products under the Consumer Protection Act 1987 (if applicable); or (v) any matter in respect of which it would be unlawful for Pecks to exclude or restrict liability.
- 20.2 For the avoidance of doubt nothing in these Conditions is intended to confer on any third party any benefit or right to enforce any terms of these Conditions.
- 20.3 The invalidity or unenforceability of any term of, or any right arising shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.
- 20.4 Any notice or written communication required or permitted to be served on or given to either party under these Conditions shall be delivered by hand or sent by recorded delivery mail to the other party at its registered address (or such other address (including electronic mail address) which it has previously notified to the sending party for this purpose) and shall be deemed to have been given upon delivery during business hours if by hand or electronic mail (or upon the subsequent reopening of business if outside of business hours) or 2 business days after sending in the case of recorded delivery.