

TPS WeldTech Limited

TERMS AND CONDITIONS OF SALE AND HIRE



General

1. **Definitions:** (a) "TPS" refers to TPS WeldTech Limited; (b) "Equipment" refers to all items specified in the contract; (c) "Customer" refers to the entity purchasing or hiring the Equipment; (d) "Hirer" refers to the entity hiring the Equipment; (e) "Contract" refers to the written agreement between TPS and the Customer which includes these Terms and Conditions of Sale and Hire.
2. **Acceptance of Orders:** Every order or contract accepted by TPS shall be subject to the following Terms and Conditions of Sale and Hire which shall not be qualified or amended by any terms and conditions of the Customer. All goods are supplied and all work is undertaken by TPS on the express condition that in the event of any conflict between the Terms and Conditions of Sale and Hire of TPS and those contained in any order or other document from the Customer, the Terms and Conditions of Sale and Hire of TPS shall prevail. Acceptance of delivery of goods or hired Equipment from TPS implies acceptance of these Terms and Conditions.
3. **Specifications and Prices:** Specifications, prices and other terms appearing in TPS literature, price lists and advertisements are subject to change without notice. Where modification of standard equipment or manufacture of customised equipment is offered to fulfil the Customer's requirements, all descriptive and technical specifications, drawings, illustrations and particulars of weight and dimensions submitted with a quotation are approximate only and are confidential. Such equipment, once ordered, cannot be cancelled, returned or exchanged by the Customer.
4. **Delivery and Collection:** All prices are ex-works exclusive of carriage; any carriage quoted shall be subject to further charges should TPS or its representative be unable to deliver or collect in accordance with the Customer's instructions due to their acts or omissions. Any delivery date given by TPS is the best estimate of the time Equipment will be despatched from its warehouse and TPS assumes no liability for loss, damage or consequential damage due to delays. The Customer is responsible for the unloading and loading of Equipment at the site specified by the Customer. Equipment shall be deemed to have been delivered in good condition and to the Customer's satisfaction unless written notification is received by TPS within 48 hours of delivery.
5. **Payment:** Payment terms for an authorised credit Customer are 30 days net from end of month, unless otherwise agreed in writing. TPS reserves the right to charge interest on overdue accounts at a rate of 2% per month from the due date until the date of settlement. Any bank charges, solicitors' fees and outlays of any nature whatsoever in securing outstanding sums will be payable by the customer. The Customer is responsible for costs incurred in the production of bank guarantees and letters of credit and for bank charges incurred in the payment of currency accounts. TPS should be advised in writing of discrepant or disputed invoices within five working days of receipt, stating the points of concern.
6. **Indemnity:** The Customer will indemnify TPS against any and every expense, liability, financial loss, claim or proceedings whatsoever arising out of the use, non-use, non-delivery, late delivery, unsuitability, collection, return, repossession or any defect or breakdown of the Equipment. Should any negligence by TPS be proven this indemnity shall be reduced proportionally.
7. **Disclaimer:** In respect of the Equipment supplied, TPS will in no event be liable for (a) consequential damages of any kind from any cause arising out of or in any way connected with its manufacture, sale, handling, repair, maintenance, replacement or use; (b) any loss sustained by the Customer due to late or non-delivery, unsuitability, breakdown or unsatisfactory working; (c) loss of or damage to property or injury to personnel or third parties arising out of the operation of the goods supplied or the negligence of personnel, the liability for which, at common law or by satisfactory enactment, would ordinarily fall on the Customer; (d) failure to perform any obligation under the Contract for any reason other than its negligence or wilful default. If, through the negligence or wilful default of TPS or its employees, the Customer should suffer or become liable to indemnify third parties against loss of or damage to property or death of or injury to persons the liability of TPS shall be limited to £1,000,000 for any one incident. Whilst every effort is made to ensure the authenticity of representations and warranties by any person, including Dealers and Representatives of TPS, such shall not be binding unless approved in writing by an officer of TPS. TPS shall not be liable to the Customer in tort for any claim under or arising out of the Contract except as expressly set out in it.
8. **Condition Paramount:** TPS expressly disclaims any liability of whatsoever nature to its Customers, Dealers or Representatives except as expressly stated in these terms and conditions. In no circumstances, unless TPS states in writing, shall TPS be bound by any terms and conditions other than these Terms and Conditions of Sale and Hire. TPS' Acceptance of a Customer's order (Contract) containing the Customer's terms and conditions shall not amount to TPS acceptance of the Customer's terms and conditions.
9. **Special Conditions:** The Equipment offered for sale or hire by TPS is subject to these Terms and Conditions of Sale and Hire. Risk in the Equipment shall pass to the Customer upon the Equipment being delivered to the Customer, or to the carrier for transport to the Customer. Property in the said Equipment shall remain with TPS and shall not pass to the Buyer or any other party until such time as the full invoiced price of the Equipment has been paid to TPS.
10. **Validity:** Should any terms of the Contract be held invalid, this shall not affect the validity of the remaining terms. Any failure by TPS to enforce any or all of the conditions of the Contract shall not be interpreted as a waiver of any rights of TPS. All headings are for reference purposes only.
11. **WEEE (Waste Electrical and Electronic Equipment) – Customer Obligations.** The Customer shall be fully responsible for the collection, treatment, recovery and environmentally sound disposal of any WEEE (Waste Electrical and Electronic Equipment) supplied under this Contract. The Customer agrees that all resulting WEEE must be taken to an Approved Authorised Treatment Facility (AATF) or an Approved Exporter (AE), who will arrange for the WEEE to be reused as whole appliances, recycled, or recovered. Evidence of correct recycling must be issued by the AATF or AE and retained by the Customer. TPS expressly passes all B2B WEEE obligations to the Customer through this contractual term. By entering into this Contract, the Customer accepts full responsibility for ensuring compliance with all legal requirements relating to the disposal of WEEE, including but not limited to collection, transport, treatment, recovery, and provision of documentary evidence.
11. **Jurisdiction and Law:** These conditions and any act or Contract to which they apply shall be governed by Scottish Law and any dispute arising therefrom shall be subject to the exclusive jurisdiction of the Scottish Courts.

Hire



- Responsibility for the Equipment:** The Hirer becomes responsible for the Equipment when the equipment is made available to the Hirer at the delivery address (whether at TPS' premises or a site). Unless otherwise agreed by TPS in writing, risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on delivery or receipt, and will return to TPS once loading of the Equipment onto the collection vehicle is complete, or the Equipment is returned to TPS' premises by the hirer. The risk will always remain with the Hirer until loading onto the collection vehicle is complete or the Equipment is returned to TPS' premises.
- Fuel:** As of the 16th of February 2022 TPS can only supply red diesel as a sale item on all equipment. Any red diesel returned will not be credited. As of the 1st of April 2022 TPS will be supplying all equipment with either white diesel or HVO fuel.
- End of Hire:** The Customer must notify TPS when they wish to off-hire the Equipment. TPS do not accept off-hire dates specified on orders; the hire will continue to run until the Hirer requests the Equipment off-hired and TPS confirms that the request has been received and agreed.

On off-hire of the Equipment it is the responsibility of the Customer to arrange return or collection of the Equipment within a reasonable period as agreed with TPS. Failure to return or arrange collection of the equipment within the agreed period will invalidate the off-hire and the hire will continue to run from the original start date and charged accordingly.

- Hire Period and Charges:** The Hire Period commences when the customer receives the Equipment, including Saturdays, Sundays and Bank Holidays (first day of hire regardless of time received) and terminates when an off-hire date has been agreed and confirmed by TPS (last day of hire). The Hirer shall pay the hire charges stated in the Contract for the total period of the hire, i.e. the period between the first day of hire and the last day of hire.

The hire period is based on a five day week, i.e. Monday to Friday inclusive is five days, one week; Friday to Thursday inclusive is five days, one week; Friday to Friday is one week and one day (6 days).

M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
1 Week																				
				1 Week																
											1 Week & 1 Day (6 Days)									
	2 Weeks and 4 days (14 Days)																			

The minimum hire period charge is one week, i.e. hire periods of less than five days are charged as one week of hire.

Where a weekly hire rate is based on a specific number of hours use per week, any excess hours used will be charged as quoted.

- Suspension:** If suspension of the hire is requested by the Hirer, payments on the Hirer's account must be up to date and suspensions must be requested in writing giving a reason. Suspensions are not agreed unless TPS' acceptance is confirmed by email.
- Cylinder Gas Supplies:** Cylinders in which gases are supplied to the Hirer remain the property of the gas supplier; the Customer may not refill or sell them. The Hirer shall be liable for damage to, or misuse of, any cylinder in his possession or control unless TPS considers that the cylinder should be treated as destroyed or lost, in which case the Hirer shall pay TPS the current replacement cost as specified by TPS. Should a cylinder treated as lost under this clause be found and returned in good condition to TPS, the Hirer shall be refunded the replacement charge less a sum equal to the rental due for the period during which it was deemed to be lost.
- Care and Maintenance of Hire Equipment:** The Hirer shall be wholly responsible for (a) the proper use, care and safe keeping of the Equipment and its return in good clean condition to TPS, fair wear and tear accepted; (b) the instruction of users of the Equipment in its safe and correct use in accordance with instructions supplied by TPS and (c) the cost of fuel, oil and other consumable items required for the operation of the Equipment. Where the Equipment is returned damaged or dirty to TPS, the Hirer shall be responsible for the cost of restoring it to its original condition and for any consequential financial loss. Should the Equipment be lost, stolen or damaged beyond economic repair, the Hirer shall be liable for the manufacturer's current list price together with any consequential financial loss. Any breakdown, unsatisfactory working or accident involving the Equipment must be notified immediately to TPS; any claim for breakdown allowance can only be considered from the time such notice is received. The Hirer shall not repair or attempt to repair the Equipment unless authorised to do so by TPS.
- Health and Safety:** The Hirer is responsible for (a) compliance with all relevant Health and Safety regulations and (b) ensuring that the electrical supply is adequate and suitable for the safe operation of all hired Equipment supplied by TPS. Should the Hirer require to fit alternative plugs to hired Equipment, this must be undertaken by a competent qualified person; all original plugs must be replaced before return of the Equipment.
- Insurance of Hire Equipment:** The Hirer shall be responsible for obtaining insurance cover against loss of or damage to the Equipment, including third party liability; a copy of the policy shall be available to TPS on demand. Any monies received by the Hirer from an insurance company in settlement of a claim relating to damage to or loss or theft of the Equipment shall be deemed to be held in trust for TPS and payable to TPS on demand. The Hirer's responsibility for the Equipment commences upon receipt of the Equipment by the Hirer or his agent and ends when the Equipment is returned to or collected by TPS.
- Location of and Access to Hire Equipment:** The Equipment must not be (a) removed from the location to which it was consigned and/or (b) sublet, without the prior written consent of TPS. The Hirer shall allow TPS or its agent access to the Equipment at all reasonable times for the purpose of inspecting, testing, servicing, repairing or repossessing the Equipment. Where Equipment is moved to a location different to that to which it was originally consigned, the Customer is liable for any additional costs incurred in accessing the equipment as a result of the different location.
- Termination of Hire:** Should the Hirer at any time break any terms of the Contract or fail to pay any due sum or should insolvency proceedings be instituted against the Hirer, TPS is entitled to terminate the Contract with immediate effect. In such cases TPS will be entitled forthwith and without notice to take possession of the Equipment, for which purpose it shall be lawful for TPS to enter any premises or site where the Equipment may be. Such repossession shall not prejudice any right of TPS under these terms and conditions and TPS shall retain the right to recover any monies due under the Contract.