

AFI-Uplift Ltd. Resale Terms & Conditions of Sale



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| Account Number | |
| Account Name | |

TERMS AND CONDITIONS OF SALE

1. INTERPRETATION
 - 1.1. In these terms and conditions the following words shall have the following meanings: "Seller" The Seller is AFI – Uplift Ltd. "Buyer" means the corporate entity, firm or person who accepts a quotation of the seller for the sale of Goods or whose order for Goods is accepted by the Seller. "Goods" means the equipment or parts supplied by the Seller to the Buyer in accordance with these conditions. "Conditions" means the terms and conditions of sale set out in this document. These conditions cancel and supersede any and all terms of sale pertaining to Parts and Equipment previously issued by Seller to Buyer and are subject to change without advance notice.
 - 1.2. In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as for time to time amended, consolidated, modified, extended, re-enacted or replaced.
2. APPLICATION OF TERMS
 - 2.1. Subject to any variation under condition 2.3 the contract will be on these conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation order, specification or other document).
 - 2.2. These conditions apply to all the Seller's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Seller's company. Nothing in this condition will exclude or limit the Sellers liability for fraudulent misrepresentation.
 - 2.3. Acceptance of an order for Goods by the Seller shall be deemed to constitute a binding agreement between the parties pursuant to the conditions contained herein and Buyer agrees that the order may not thereafter be cancelled, countermanded, or otherwise changed without prior written consent of the Seller.
 - 2.4. The Buyer must ensure that the terms of its order and any applicable specification are completely and accurately recorded in its order and the Seller shall have no liability whatsoever with regard to any order made which is not accurate. The Buyer must satisfy themselves as to the condition of the Goods and the Buyer is welcome to come and inspect the Goods at any time before entering into a contract to buy the Goods.
3. PRICE
 - 3.1. Any quotation is given on the basis that no contract will come into existence until the Seller despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days, provided that the Seller has not previously withdrawn it. If the validity period expires without acceptance by the Buyer the price may be altered by the Seller without giving notice to the Buyer.
 - 3.2. The Seller reserves the right by giving notice to the Buyer at any time to increase the purchase price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller including (but without limitation) any increase in the cost of raw materials, labour or services or duties or any currency fluctuations affecting the cost of raw materials; any alteration of taxes or other levies; any change in delivery dates, quantities or specifications for the Goods requested by the Buyer, any increase in cost of carriage, and any failure of the Buyer to provide adequate information or instructions.
 - 3.3. The price for the Goods shall be ex works and specifically exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.
 - 3.4. Unless expressly otherwise stated, prices quoted do not include taxes or duties of any kind or nature. The Buyer agrees that it will be responsible for filing all tax returns and paying applicable tax, duty, export preparation charge and export documentation charge resulting from the purchase of Goods. In addition, in the event any other similar tax is determined to apply to the Buyers purchase from the Seller, the Buyer agrees to indemnify and hold the Seller harmless from and against any and all such other similar taxes, duties and fees. The amount of any present or future taxes applicable to the sale, transfer, lease or use of the Goods shall be paid by the Buyer; or in lieu thereof, the Buyer shall provide the Seller with a tax exemption certificate satisfactory to the applicable taxing authority providing that no such tax is due and payable upon sale, transfer, lease, or use.
4. PAYMENT
 - 4.1. Payments for Goods purchased by the Buyer shall be made in accordance with any of the following terms, provided they have been previously arranged with and expressly approved by the Seller in writing:
 - 4.1.1. Cash in advance
 - 4.1.2. Confirmed, irrevocable letter of credit established in such amount and form and at such time and at such bank as shall be approved by the Seller in respect of each order
 - 4.1.3. Other payment arrangements expressly approved by the Seller in writing prior to or at the time the order is placed.
 - 4.1.4. Credit accounts must be paid within 30 days of receiving the invoice for the Goods
 - 4.2. If any Buyer credit account purchase is not paid in accordance with the Sellers credit payment terms, in addition to any other remedies allowed by the law, the Seller may refuse to make further shipments without advance payment by the Buyer.
 - 4.3. Such payment shall be made without deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
 - 4.4. No payment shall be deemed to have been received until the Seller has received cleared funds.
 - 4.5. The Buyer shall not alter any of the Goods, except as agreed in writing by the Seller until the price of the Goods has been paid to the Seller in full and all sums which are or become due to the Seller from the Buyer on any account are satisfied.
 - 4.6. Nothing contained herein shall be construed as requiring the Seller to sell any Goods to the Buyer on credit terms at any time, or prohibiting the Seller from making any and all credit decisions which it, in its sole discretion, deems appropriate for the Seller.
5. DELIVERY
 - 5.1. Any dates specified by the Seller for delivery of Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time. Subject to other provisions of these conditions the Seller will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Sellers negligence), nor will any delay entitle the Buyer to terminate or rescind the contract unless such delay exceeds 180 days.
 - 5.2. In the event of a delay in delivery caused by the Buyer or at the Buyers request, and the Goods are not shipped within 5 days from the first date they are ready to be shipped, the Seller may, in its sole discretion, sell such Goods to another Buyer without liability or responsibility to the Buyer whatsoever.
 - 5.3. If for any reason whatsoever the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
 - 5.4.1. Risk in the Goods will pass to the Buyer immediately (including risk for loss or damage caused by the Sellers negligence)
 - 5.4.2. The Goods will be deemed to have been delivered
 - 5.4.3. The Seller may store the Goods until delivery whereupon he Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance)
 - 5.5. The Buyer will provide at its expense at the delivery point (whether this be at the Seller or Buyers premises) adequate and appropriate equipment and manual labour for loading / unloading the Goods.
 - 5.6. The quantity and or quality of any consignment of Goods as recorded by the Seller upon despatch from the Sellers place of business shall be conclusive evidence of the quantity and or quality of the Goods received by the Buyer on delivery, unless the Buyer can provide conclusive evidence proving the contrary.
6. RISK / TITLE
 - 6.1. The Goods are at the risk of the Buyer from the time they are loaded onto the delivery vehicle at the Sellers premises.
 - 6.2. Nothing in these terms and conditions of sale or any other contract will constitute the Buyer the agent of the Seller in respect of the resale of the Goods so as to confer upon a third party any rights against the Seller.
 - 6.3. The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
 - 6.3.1. Any sale shall be effected in the ordinary course of the Buyers business at the full market value
 - 6.3.2. Any such sale shall be a sale of the Sellers property on the Buyers behalf and the Buyer shall deal as principal when making such sale. Sales to a third party shall be pursuant to an arms length transaction
 - 6.4. The Buyers right to possession and power of sale of the Goods shall terminate immediately if:
 - 6.4.1. The Buyer has bankruptcy order against them or makes an arrangement or composition with their creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) expect a solvent voluntary liquidation for the purpose of reconstruction or amalgamation, or has a receiver and or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given to the Buyer or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings commenced relating to the insolvency or possible insolvency of the Buyer
 - 6.4.2. The buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe / perform any of its obligations under the contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 of the Buyer ceases to trade
 - 6.5. Until such time as the Seller has received payment of all sums due to the Seller with respect to the Goods, the Buyer shall place any of the Goods still in existence in its possession or under its control at the disposal of the Seller and if required by the Seller immediately deliver the Goods to the Seller. The Seller (including its representatives, agents and employees) is irrevocably authorised by the Buyer at any time to enter upon any premises of the Buyer or any third party where the Goods are or may be stored in order to inspect them or where the Buyers right to possession has terminated for the purpose of repossessing, removing and if necessary dismantling such Goods for the purposes of removal.
7. CANCELLATION / CHANGES
 - 7.1. Prior to delivery to place of shipment, a Goods order may only be cancelled with the Sellers prior written consent and upon terms indemnifying the Seller from all resulting losses and damages.
 - 7.2. The Seller shall have the right to cancel and refuse to complete a Goods order if any term and or condition governing this agreement are not complied with by the Buyer.
 - 7.3. In the event of cancellation by the Seller, or where the Seller consents to a request by the Buyer to cancel the whole or any part of any order, the Buyer shall make reimbursement to the Seller as follows:
 - 7.3.1. For work in progress and any materials and supplies procured or for which definite commitments have been made by the Seller in connection with the order, the Buyer shall pay such sums as may be required to fully compensate the Seller for actual costs incurred.
 - 7.4. The Buyer may not cancel any order after the Sellers delivery to the place of shipment.
 - 7.5. Orders for special Goods may not be cancelled after acceptance, except by the Seller. Items of special Goods are those that differ from standard Seller specifications, have a limited market, or incorporate specifications that have been determined for a specific application. Determination of whether an item is special shall be made by the Seller in its sole discretion.
 - 7.6. In the event the Seller incurs any additional expense because of changes in specification or drawings previously approved by the Buyer, or in the event the Seller is required to modify the ordered Goods, perform any additional work or supply any additional Goods, the additional expense shall be added to the purchase price. The Seller shall have the right, in its sole discretion, to accept or reject any changes in specifications requested by the Buyer.
8. ACCEPTANCE OF GOODS
 - 8.1. The Buyer agrees that it shall inspect the Goods immediately after receipt and promptly (in no event later than 15 days after receipt) notify the Seller in writing of any nonconformity or defect. The Buyer further agrees that failure to give such prompt notice or the commercial use or resale of the Goods shall constitute acceptance.
 - 8.2. Acceptance shall be final and the Buyer waives the right to revoke acceptance for any reason, whether or not known by the Buyer at the time of such acceptance.
 - 8.3. The giving of any such notice by the Buyer shall automatically cause the provisions of the Sellers warranty to apply and govern the rights, obligations and liabilities of the parties with respect to such nonconformity or defect, provided under no circumstances shall rejection give rise to any liability of the Seller for indirect damages or losses of any kind, including, without limitation, loss of use, lost revenues or lost profits.



9. **WARRANTY**
- 9.1. The Seller warrants its new Goods to be free of defects in material or workmanship for the period and under the conditions as defined by the manufacturer of the Goods, to be confirmed in writing at the quotation stage, commencing on the date on which such Goods are invoiced to the original purchaser or the date on which such Goods are first put into service, whichever occurs first.
- 9.2. The Seller warrants its used Goods for a period of 30 days, commencing on the date on which such Goods are first put into service, whichever occurs first, that the Goods will:
- 9.2.1. Be of satisfactory quality within the meaning of the Sale of Goods Act 1994
- 9.2.2. Be reasonably fit for their purpose
- 9.2.3. Be reasonably fit for any particular purpose for which the Goods are being brought but only if the Buyer had made known that purpose to the Seller in writing and the Seller has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Seller
- 9.3. The Buyer must send the Seller written confirmation of any defect within 7 days of its discovery or discovery ought to have been made, and establish to the Sellers satisfaction that:
- 9.3.1. The Goods have been maintained and operated within the limits of rated and normal usage, and that there have been no alterations to it
- 9.3.2. The defect did not result in any manner from the intentional or negligent action or inaction of the Buyer or the end user or any of their respective agents or employees or any person using it
- 9.4. This warranty shall not apply to any of the Sellers Goods which have been subject to misuse, alteration, abuse, negligence, accident, acts of god or sabotage.
- 9.5. The Seller shall not be liable for a breach of any of the warranties herein if the Buyer makes further use of the machine after giving notice of a defect.
- 9.6. If requested by the Seller, the Buyer or end user must return the Goods to the Sellers facility for inspection, and if the Buyer or the end user can not establish that conditions 9.3.1 and 9.3.2 have been met, then this warranty shall not cover the alleged defect.
- 9.7. Failure to give written notice of a defect within the specified time shall be a waiver of this warranty and any assistance rendered thereafter shall not extend or revive it.
- 9.8. No warranty shall cover any item on which serial numbers have been altered, defaced or removed.
- 9.9. Maintenance, consumable items and wear parts are not covered by this warranty and are the sole maintenance responsibility of the Buyer or end user.
- 9.10. This warranty is limited to the first end user and is not assignable or otherwise transferable without written agreement of the Seller.
- 9.11. The Seller does not warrant used Goods sold as seen.
- 9.12. This warranty is expressly in lieu of and excludes all other warranties, representations and conditions, express or implied and all other statutory, contractual, tortious and common law obligations or liability on the Sellers part are hereby expressly excluded to the maximum extent permitted by law. There are no warranties that extend beyond the limited warranty contained herein.

10. **LIMITATION OF LIABILITY**
- 10.1. The following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in the respect of:
- 10.1.1. Any breach of these conditions
- 10.1.2. Any representation, statement or tortious act or omission including negligence arising under or in connection with the contract
- 10.2. Nothing in these conditions excludes or limits the liability of the Seller for death or personal injury caused by the Sellers negligence or fraudulent misrepresentation.
- 10.3. Subject to condition 10.2:
- 10.3.1. The Sellers total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the price paid to the Seller under the contract
- 10.3.2. The Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the contract.

11. **INDEMNIFICATION BY BUYER**
- 11.1. To the fullest extent permitted by applicable law, the Buyer hereby agrees to indemnify, release, defend and hold harmless the Seller, its directors, officers, employees, agents, representatives, successors, and assigns against any and all suits, actions or proceedings at law (including the costs, expenses and reasonable attorneys fees incurred in connection with the defence of any such matter) and from any and all claims, demands, losses, judgments, damages, costs, expenses or liabilities, to any person whatsoever (including the Buyers and Sellers employees or any third party), or damage to any property (including the Buyers property) arising out of or in any way connected with the performance or the furnishing of services or Goods under this agreement, regardless of whether any act, omission, negligence (including any act, omission or negligence, relating to the manufacture, design, repair, erection, service, installation of or warnings made or lack thereof with respect to any Goods furnished hereunder) of the Seller, its directors, officers, employees, agents, representatives, successors or assigns caused or contributed thereto. If the Buyer fails to fulfil any of its obligations under this paragraph or these conditions, the Buyer agrees to pay the Seller all costs, expenses and attorneys fees incurred by the Seller to establish or enforce the Sellers rights under this paragraph or this agreement. The provisions of this paragraph are in addition to any other rights or obligations set forth in these conditions.
12. **FORCE MAJEURE**
- 12.1. The Seller shall not be liable to the Buyer or be deemed to be in breach of these conditions by reason of any delay in performing, or any failure to perform, any of the Sellers obligations in relation to the Goods if the delay or failure was due to any cause beyond the reasonable control of the Seller including (but without limitation) strike or other labour dispute (whether or not relating to the Sellers workforce), lockout, riot, protests, civil commotion, fire, accident, explosion, tempest, act of God, war or national emergency, epidemic, stoppage of transport, terrorist activity, supply shortage or change in Government, Governmental agency, laws, regulations or administrative practices.
13. **MISCELLANEOUS**
- 13.1. The Buyer represents that it is solvent and has the financial ability to pay for the Goods purchased hereunder and it has all requisite right, power and authority to perform its obligations under this agreement.
- 13.2. If any provision of the contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable, or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the contract and the remainder of such provision shall continue in full force and effect.
- 13.3. Failure or delay by the Seller in enforcing or partially enforcing any provision of the contract will not be construed as a waiver of its rights under the contract.
- 13.4. The formation, existence, construction, performance, validity and all aspects of the contract shall be governed by English law and the parties submit to the exclusive jurisdiction if the English courts.

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| Signed | | Name | |
| For and on Behalf of | | Position | |
| Date | | | |