

Terms & Conditions of Use – usedhyster.co.uk

Welcome to usedhyster.co.uk website. This website is strictly an on-line site where you may bid for and buy equipment published for sale by the Seller. Access to the Website is subject to the following Terms and Conditions.

On accessing this website on this and on each subsequent occasion you will be required to accept these Terms and Conditions that apply to its use. If you do not accept the Terms and Conditions you may not use this website. We reserve the right to alter these Terms and Conditions at any time and it is your obligation to check if changes have been made. Your use of the website after changes are posted on-line shall constitute acceptance of the new Terms and Conditions.

Definitions

‘Agreement’	means these Terms and Conditions.
‘website’	means the website located at www.usedhyster.co.uk or any subsequent URL which may replace it or any links to or from this website.
‘usedhyster.co.uk’	means the on-line website owned and operated by Barloworld Handling Ltd.
‘equipment’	means fork lift trucks and other associated materials handling equipment as displayed on the website for sale.
‘we/ us /our’	means collectively the Sellers of the equipment and Barloworld Handling Ltd.
‘you/ your’	means each and every user of this website.
‘service’	means the trading of equipment by means of the use of this website.
‘Seller(s)’	means Barloworld Handling Ltd or any of their authorised funding partners.
‘user(s)’	means a user of the website duly registered as such in accordance with the provisions of these Terms and Conditions.

1. Content

- 1.1 In consideration of our agreeing to permit you to use the website to search our database of equipment, you agree that you will only use, reproduce and print materials comprising the results of such searches for your own purposes and for no other purpose whatsoever.
- 1.2 The pages contained in the website may contain technical inaccuracies and typographical errors. liability arising from any error, omission or inaccuracy in such material, howsoever arising.
- 1.3 We give no warranties, conditions, guarantees or representations, express or implied, as to the completeness or accuracy of the advice and information contained on the website or any website to which it is linked.

2. Copyright and Trade marks

- 2.1 All rights, including copyright, in the content of these web pages and in the photographs of any equipment displayed on the website from time to time and all database rights in our database of equipment, are owned or controlled for these purposes by us.
- 2.2 All trade marks, names, and logos are the proprietary marks of us or of our associated companies. Marks identifying third parties are owned or licensed by those third parties or their associated companies. Nothing in these terms and conditions in any way confers on you any licence or right to use any trade marks, names or logos in any manner or form whatsoever.
- 2.3 Except as expressly permitted by these Terms and Conditions, you may not copy, reproduce, redistribute, download, republish, transmit, display, adapt, alter, create derivative works from or otherwise extract or re-utilise any of the contents of the website. In particular, you must not cache any of the contents for access by third parties nor mirror or frame any of the contents of the website, nor incorporate it into another website the information contained herein without our prior express written permission, which may be given withheld within our sole discretion.

3. Liability

- 3.1 We will need to carry out routine maintenance and servicing of our servers and hardware equipment from time to time. While we will seek to keep disruption to a minimum we cannot guarantee that the website will be continuously available on-line. We therefore provide the website on an "as is" and "as available" basis.
- 3.2 We make no warranty that the website (or websites which are linked to the website) is free from computer viruses or any other malicious or impairing computer programs. It is your responsibility to ensure that you use appropriate virus checking software.
- 3.3 We are not liable for any failure to perform any of our obligations under these Terms and Conditions caused by matters beyond our reasonable control.
- 3.4 We shall not be liable for any loss, damage, death, injury or any claim whatsoever and howsoever arising, including without limitation, direct, indirect, special or consequential damages, howsoever arising out of your use of the website or in respect of any of your actions or omissions taken in reliance on any of the advice or information contained on the website or any website to which the website is linked.

4. Registration

- 4.1 In order to use any of the website's options you will first be required to register as a user. By your registration, you unconditionally and irrevocably consent to your use of this site (and all transactions concluded on it) being subject to the Terms and Conditions contained herein.
- 4.2 Registration can only take place by completing the registration form which we will make available via fax, email or online. All prospective users are required to fully complete a registration form. Registration will be conditional upon acceptance of these Terms and Conditions of use and continued compliance therewith.
- 4.3 By completing a registration form you agree that Barloworld Handling Ltd or the Seller or their nominated agents may undertake the necessary credit checks on you and/ or your business. Should you not agree to this clause Barloworld Handling Ltd and/ or the Seller reserves the right to refuse registration as a user or prevent you from using their website where it is later found that you have circumvented this procedure.
- 4.4 On registration you will be given a Login ID and password. It is your responsibility to protect such password and you hereby indemnify Barloworld Handling Ltd and all Sellers against any loss or damage which may arise as a result of the unauthorised use of your password. Barloworld Handling Ltd reserves the right to alter or vary the Login ID or password at any time and will notify the user of such alteration by e-mail.
- 4.5 We will treat all your personal information as confidential. We will keep it on a secure server and will fully comply with all applicable UK Data Protection.

5. User Conditions

- 5.1 You agree and warrant to each Seller and separately to Barloworld Handling Ltd that:
 - 5.1.1 your information as provided in your registration form:
 - 5.1.1.1 is accurate and not false, misleading, deceptive or fraudulent;
 - 5.1.1.2 does not breach any Intellectual Property Rights of a third party;
 - 5.1.1.3 is made in compliance with all applicable laws, government regulations or guidelines;
 - 5.1.1.4 is not forged, threatening or offensive or otherwise constitute harassment;
 - 5.1.1.5 does not contain confidential information or trade secrets of a third party unless you have obtained the consent of the third party owner;
 - 5.1.1.6 will not defame (libel or slander) another person, transmit misleading or inaccurate information of any nature, whether of a personal or commercial nature;

- 5.1.2 you will not by virtue of your use of this website insert any matter which contains any viruses, worms, trojan horses or other invidious programs or data, whether attached to or embedded in other programs or data or not, which may result in the failure of this site;
- 5.1.3 you agree that we may and will monitor your conduct and use of this website from time to time. If we do, then we will respect your confidentiality, unless your behaviour constitutes a crime or the law compels or requires that the seller or Barloworld Handling Ltd divulges such information to the relevant authorities.
- 5.1.4 you have the legal capacity to enter into this Agreement and purchase any equipment that you bid for, and, will not otherwise be breaching any law in purchasing such equipment.
- 5.1.5 you will not bid for any equipment on this website unless you are able, and have sufficient, available capacity to pay for such equipment.
- 5.1.6 the purchase of any equipment on this website is done absolutely at your own risk
- 5.1.7 to the extent permitted by law, the seller may exclude all terms, conditions and warranties whether express, implied, statutory, common law, or otherwise, relating to the equipment in all of the Sellers dealings in connection with the equipment that you may purchase from the Seller on this website.

6. Trading Conduct

- 6.1 The rules for trading conducted on this website are as follows:
- 6.2 The Seller shall publish equipment for sale on the website from time to time.
- 6.3 The Terms and Conditions set out herein shall apply to the sale of all equipment on this website but the Seller may add further Terms and Conditions applicable to the sale of specific equipment from time to time.
- 6.4 A user may not engage in bid manipulation to unfairly induce any other person to make bids and/ or manipulate the bid price. This includes the prohibition against bidding for any other person who is not a registered user or any attempts at collusion between bidders. Where the Seller or Barloworld Handling Ltd is of the opinion that any of the aforementioned has occurred they reserve the right to automatically revoke user access to this website or to reject the users bid;
- 6.5 Save for any provision to the contrary herein, all bids are final and irrevocable and a user shall be deemed to be the successful bidder ("the buyer") if such user placed the highest bid:
- 6.6 If the user is a successful bidder as determined by Clause 6.5 and that bid is accepted, or deemed to be accepted, by the Seller, the user must complete the purchase of the equipment save in the following exceptional circumstances:
 - 6.6.1 the description of the equipment is materially different following the commencement of bidding; or
 - 6.6.2 the Seller fails to deliver the equipment (or fails to procure delivery thereof, as required) to the user, by the date agreed by the Seller and user in Clause 7; and
- 6.7 If the Seller receives more than one bid above its stated minimum price, the Seller shall accept the highest bid and complete the sale of the equipment to that user save in the following exceptional circumstances:
 - 6.7.1 the user fails to complete the purchase of the equipment (for example, the user fails to pay for the equipment); or
 - 6.7.2 the Seller is unable to authenticate the identity of the user or the creditworthiness of the user and the user's ability to pay for the equipment.
- 6.8 In all instances the Seller shall have the sole discretion to actually accept a bid or to reject it.
- 6.9 Bidding shall close on the date and time as indicated on the reference to specific equipment and no further extensions of time or negotiations with regard thereto shall be entered into.

7. Completion of Sale & Purchase of Goods

- 7.1 The Seller shall notify the successful user, of its acceptance of its bid by email on close of trade.
- 7.2 Following receipt of the aforementioned confirmation notice from the Seller the following procedure will apply:
- 7.3 The user has five working days, excluding Saturdays, Sundays and public holidays in the United Kingdom, from receipt of the confirmation notice to effect payment of the full accepted bid price.
- 7.4 Payment shall be made by means of an irrevocable bank guaranteed cheque or electronic funds transfer into the bank account nominated by the Seller on his confirmation notice in pounds sterling, without deduction, set-off or exchange.
- 7.5 On receipt of payment, the Seller shall notify the user that they may collect the equipment together with all documentation from the Seller's premises as notified in the confirmation notice.
- 7.6 Ownership and risk shall pass from the seller to the user on receipt of full payment by the user to the Seller.
- 7.7 The user shall comply with all the formalities required and sign all documentation required in order to transfer ownership of the equipment.
- 7.8 Any enquiries, of whatever nature, with respect to the equipment purchased must be directed to the Seller and the Seller shall deal with the matter in its own discretion.
- 7.9 Failure by the user to comply with its obligations in terms of this clause either partially or completely shall constitute a material breach of these conditions and should the user fail to remedy such breach within 48 hours following receipt by the user of a written notice to that effect from the Seller, the Seller shall be entitled, without prejudice to any other right which it may have in terms of this agreement or in law to cancel the sale or to claim specific performance of all the user's obligations whether or not such obligations would otherwise have fallen due for performance without prejudice to the Seller's right to claim damages.

8. Conditions of Sale

- 8.1 Whilst the Seller has made every effort to ensure that the description, condition and details with regards to the equipment are accurate and correct, the Seller accepts no liability whatsoever for any errors or omissions in the aforementioned description and the user, by virtue of his bid, acknowledges that he has satisfied himself as to the correct condition and description of the equipment for which he enters a bid.
- 8.2 Save for the warranties, undertakings and representations made in this agreement the equipment is sold as it is (subject to any manufacturers warranties which may still be applicable to the equipment) and the Seller accepts no liability for any patent or latent defects in the equipment and gives no other warranties, undertakings and makes no other representations in respect of the equipment whatsoever.
- 8.3 The Seller does not warrant merchantability of the equipment nor does the seller warrant that the equipment is fit for the purpose or purposes intended by the user or any other person.

9. Disclaimer and Limitation of Liability

- 9.1 Notwithstanding, any other provision in this Agreement, you agree that we will not be liable to you or any other person for any loss, damage, expense, or other amounts incurred, savings foregone, or hardship suffered, by any person however arising (including where the cause cannot be determined), or whether it arose directly or indirectly from any authorised or unauthorised use of, access to, reliance on, or any inability to use or access this website, the services, or as a consequence of such use, access, reliance, or inability to access the site, including, but not limited to any loss relating to one or more, or a combination, of the following.
 - 9.1.1 in relation to trading on this website, that bids were not processed or accepted due to technical difficulties or for any reason whatsoever;

- 9.1.2 whether we, or any other person, could have foreseen such a loss or type of loss, or were negligent or reckless, whether or not the loss was suffered in connection with a business or commercial enterprise, including, but not limited to, any economic or consequential loss or damage, any and all damage to, or loss of profits, and any losses relating to contracts, business, revenue, goodwill, or any anticipated savings;
- 9.1.3 any errors or omissions in any documentation or other information provided by us and any errors or omissions in any data on the website, or any breach of contract or negligence on the part of us, our employees, agents or authorised representatives;
- 9.1.4 any reliance on, the information and material contained on the website about any equipment or any other information whatsoever.

9.2 To the extent permitted by law, all terms, conditions and warranties or representations, whether express, implied, statutory, common law or otherwise relating to the service or anything in these Terms and Conditions, are excluded unless expressly included in this Agreement.

9.3 Notwithstanding anything else in this Agreement if any party is liable to you, whether, in respect of negligence or other tort, breach of contract or warranty, breach of statute or statutory duty, equity or otherwise directly or indirectly in relation to the performance of or any delay or failure in performance of its obligations under this Agreement, the maximum aggregate liability of a party, in respect of all claims made by you for every 12 month period commencing on the execution of this Agreement or the anniversary thereof shall be £1,000.

10. Breach

- 10.1 If you breach any of the Terms and Conditions contained in this Agreement we may in our absolute discretion:
 - 10.1.1 withhold from you, your use of any or all of the services, and access to the website; and
 - 10.1.2 delete or remove, without incurring any liability to you, any or all of your information and block your access to this website; and
 - 10.1.3 restore your access to the service, if and when, you can demonstrate clear and complete adherence to the terms of this Agreement on a permanent and consistent basis; or
 - 10.1.4 terminate the Agreement that we have entered into with you, and cancel our obligations to provide the service, if we are not satisfied that you will clearly and completely adhere to the terms of this Agreement, on a permanent and consistent basis, if the service is restored to you.

11. General

- 11.1 This Agreement constitutes the entire agreement between the parties hereto.
- 11.2 Nothing in this Agreement shall be deemed to constitute any party as the agent, partner or joint venturer of another party.
- 11.3 The Terms and Conditions contained on either party's purchase order, order acceptance forms and/or invoices shall not apply to, supplement or supersede any provisions of this agreement.
- 11.4 No party shall be bound by any representation, warranty, promise or the like not recorded in this Agreement.
- 11.5 No addition to, variation, novation or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 11.6 No indulgence which a party may grant to another party shall constitute a waiver of any of the rights of the grantor unless in writing signed by both parties.
- 11.7 All costs, charges and expenses of any nature whatsoever which may be incurred by a party in enforcing its rights in terms of this Agreement, including without limiting the generality of the foregoing, legal costs on the scale of attorney and own client and collection commission, irrespective of whether any action has been instituted, shall be recoverable on demand from the party against which such rights are successfully enforced and shall be payable on demand.

- 11.8 All provisions in this Agreement are, notwithstanding the manner in which they have been put together or linked grammatically, are severable from each other. Any provision of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be deemed pro non scripto and the remaining provisions of this Agreement shall be of full force and effect. The parties declare that it is their intention that this Agreement would be executed without such unenforceable provisions if they were aware of such unenforceability at the time of its execution.
- 11.9 No remedy conferred by this Agreement is intended, unless specifically stated, to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by a party shall not constitute a waiver by such party of the right to pursue any other remedy available at law.
- 11.10 This Agreement supersedes and cancels all prior agreements and/or arrangements relating to the subject matter hereof.
- 11.11 Each of the parties acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent legal or other advice or dispensed with the necessity of doing so.
- 11.12 A party shall take all such steps, execute all such documents and do all such acts and things as may be reasonably required by another party to give effect to any of the transactions contemplated by this Agreement.
- 11.13 These Terms and Conditions shall be governed by and construed in all respects in accordance with Laws of England and Wales, and subject to the exclusive jurisdiction of the English Courts.
- 11.14 All correspondence, notices, legal processes and any other documentation relating to this website should be sent to:

Barloworld Handling Ltd
Maidenhead Office Park
Westacott Way
Maidenhead
Berkshire
SL6 3QN

Email: usedhyster@handling.barloworld.co.uk