

Atkinson Equipment Ltd

Moad Road, West Wilts Trading Estate, Westbury, Wiltshire, BA13 4JF
Tel: 01373 822220 Fax: 01373 826996 E-mail Sales@atkinsonequipment.com

Application for 30 day nett account facilities

To open an account with the above company, please give the following information:-

Company Title _____ Telephone:- _____
Trading address _____ Fax:- _____
_____ E-mail:- _____
_____ Post Code _____

Registered Office (if different from above). _____

No. of year's trading:- _____ Date of Incorporation:- _____ Company Registration No:- _____

Are you a Sole Trader? Yes / No Partnership? Yes / No

If Sole Trader or Partnership please give name and address of Proprietor or Partners.

To make trading with us more efficient, please advise the following:-

Where should invoices be posted? _____

Who is responsible for payment of your account? Name:- _____

Who is responsible for the buying in your company? Name:- _____

Please list any other contacts that may be of use to us _____

Your Banks Name & Address:- _____

Business Reference 1)

Tel:- _____

Fax:- _____

E-mail:- _____

Business Reference 2)

Tel:- _____

Fax:- _____

E-mail:- _____

Please state (tick) the Nature/Classification of your Business:-

Heating and Plbg _____ Agricultural _____ Storage Tank _____ Fuel _____
Hydraulic and Hose _____ Commercial _____ Industrial _____ Other _____

Please Note: Payment is due 30 days from the end of the month of invoice. Failing to comply with these terms will result in the suspension of your account, and the possible withdrawal of your account facility, making the total account balance payable upon demand.

Signed _____

Date _____

Print name _____

Position _____

ATKINSON EQUIPMENT LIMITED
TERMS & CONDITIONS FOR THE SUPPLY OF GOODS

The Customer's attention is drawn in particular to the provisions of Clause 10

1. Definitions

In these Conditions, the following definitions apply:

"Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

"Conditions" means the terms and conditions set out in this document;

"Contract" means the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions;

"Customer" means the person or firm who purchases the Goods from the Supplier;

"Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable;

"Goods" means the goods (or any part of them) set out in the Order;

"Order" means the Customer's order for the Goods, as set out in the Customer's written acceptance of the Supplier's quotation; and

"Supplier" means Atkinson Equipment Limited, a private company limited by shares and incorporated in England and Wales with company number 01050233.

2. Basis of Contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier acknowledges acceptance of the Order either orally or in writing, at which point the Contract shall come into existence.

2.4 The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's website, catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

3. Goods

3.1 The Goods are described in the Supplier's website, catalogues or brochures.

3.2 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements or in line with any manufacturer's amendments.

3.3 The Supplier may, at the request of the Customer, provide technical advice to the Customer regarding use of the Goods, provided that such advice is given at the Customer's sole risk and the Supplier shall not be liable for any loss, damage or claim arising therefrom.

4. Delivery & Carriage

4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (the "Delivery Location") at any time after the Supplier notifies the Customer that the Goods are ready.

4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

4.3 The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. If the Supplier delivers fewer of the Goods than was ordered by the Customer or the Goods were damaged prior to arrival at the Delivery Location, the Customer must inform the Supplier in writing within three Business Days of the delivery.

5. Cancellation

5.1 The Customer may, by written notice to the Supplier, return stock Goods delivered to the Customer, provided that such Goods are (in the opinion of the Supplier) in new condition and remain covered by any applicable warranty time period specified by the manufacturer. Any returned stock Goods shall be subject to a restocking charge equal to 20% of the price paid for them by the Customer.

5.2 Any Goods made to the Customer's specification cannot be returned and must be paid for in full.

6. Warranty & Claims

6.1 No warranty is to be provided as to the Goods other than that of the manufacturer of the Goods, and shall be limited to repair or replacement of the Goods as advised by the manufacturer.

6.2 Any Goods which are believed to be defective and are covered by a manufacturer's warranty should be returned (at the Customer's expense) for inspection by the Supplier. The Supplier will provide to the best of its ability the contact details of any manufacturer or UK importer of any Goods.

6.3 Prior to any return of the Goods, the Customer must obtain from the Supplier a returns form and an authorisation number. The returns form, a copy of which is to be found at the back of the Supplier's price list, must accompany the returned Goods.

6.4 A claim for damages resulting from the suspected defectiveness of any Goods will be handled solely by the manufacturer of those Goods. The Supplier will not honour, handle, transfer, or follow up claims made against any manufacturer other than itself.

6.5 In respect of Goods of which the Supplier is the manufacturer (the "Atkinson Equipment Goods"), the Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (the "Warranty Period"), the Goods shall:

- (a) conform in all material respects with their description;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

6.6 Subject to Clause 6.7, if:

- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Atkinson Equipment Goods do not comply with the warranty set out in clause 6.5;
- (b) the Supplier is given a reasonable opportunity of examining such Atkinson Equipment Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Atkinson Equipment Goods to the Supplier's place of business at the Customer's expense,

the Supplier shall repair or replace the defective Atkinson Equipment Goods. Whilst the Supplier will deal with any Customer's notice within a reasonable time period, the Customer accepts that the involvement of the Supplier's insurers may delay resolution of its claim.

6.7 The Supplier shall not be liable for Atkinson Equipment Goods' failure to comply with the warranty set out in clause 6.5 in any of the following events:

- (a) the Customer makes any further use of such Atkinson Equipment Goods after giving notice in accordance with clause 6.6;

(b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Atkinson Equipment Goods or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;

(d) the Customer alters or repairs such Atkinson Equipment Goods without the written consent of the Supplier;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(f) the Atkinson Equipment Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.8 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Atkinson Equipment Goods' failure to comply with the warranty set out in clause 6.5.

6.9 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

7. Title & Risk

7.1 The risk in the Goods shall pass to the Customer upon completion of delivery.

7.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.2; and

(e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

7.4 Subject to clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

(a) it does so as principal and not as the Supplier's agent; and

(b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

7.5 If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 9.2, then, without limiting any other right or remedy the Supplier may have:

(a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

(b) the Supplier may at any time:

(i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. Price & Payment

8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.

8.2 The Supplier may, at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

(a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the specification thereof; or

(c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

8.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

8.4 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

8.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

8.6 The Customer shall pay the invoice in full and in cleared funds upon delivery or, in the case of a Customer with a credit account, within 30 calendar days from the end of the month of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

8.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 3% per annum above the base rate of the Bank of England from time to time. Such interest shall accrue on a monthly basis from the due date until actual payment of the overdue amount, whether before or after judgment. For the purposes of calculating the interest payable by the Customer, a part month shall be treated as a full month. The Customer shall pay the interest together with the overdue amount.

8.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9. Termination & Suspension

9.1 If the Customer becomes subject to any of the events listed in clause 9.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.

9.2 For the purposes of clause 9.1, the relevant events are:

(a) the Customer suspends, or threatens to suspend, payment of its debts, or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

(b) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

(c) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

9.3 If the Customer becomes subject to any of the events listed in clause 9.2(a) to clause 9.2(c), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment, then the Supplier may, without limiting its other rights or remedies:

(a) the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier;

- (b) terminate the Contract or any other contract between the Customer and the Supplier; or
 - (c) require payment upon or in advance of delivery in respect of any undelivered Goods.
- The Customer indemnifies the Supplier in respect of all costs and expenses (including, but not limited to, any legal costs or disbursements) incurred for or on behalf of the Supplier in enforcing its rights under clause 8 and this clause.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 9.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
10. Limitation of Liability
- 10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 10.2 Subject to clause 10.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.
11. Assignment
- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
 - (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
12. Severance
- If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
13. Governing Law
- The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
14. Jurisdiction
- Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Important

Please read the terms and conditions carefully and then print, sign, date and email/fax back to us. Without this form being filled in a credit account cannot be set up.

Company Name

Name.....
(please print in block capitals)

Signed.....

Date.....

www.atkinsonequipment.com
Telephone: 01373 822220
Fax: 01373 826996

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