

## Terms and Conditions for the Sale of Vehicles

The customer's attention is drawn in particular to the provisions of clause 9.

### 1. INTERPRETATION

#### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 12.4.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Vehicle in accordance with these Conditions.

**Customer:** the person or firm who purchases the Vehicle from the Supplier.

**Force Majeure Event:** an event, circumstance or cause beyond a party's reasonable control.

**Manufacturer:** the manufacturer of a Vehicle or any part of it.

**Order:** the Customer's order for the Vehicle, as set out in the Customer's acceptance of the Supplier's quotation.

**Specification:** any specification for the Vehicle that is agreed in writing by the Customer and the Supplier.

**Supplier:** Blakedale Ltd, Unit D3 & D4 Binary Court, Matrix Park, Western Avenue, Buckshaw Village, Chorley, Lancashire, PR7 7NB (registered in England and Wales with company number 03045741).

**Vehicle:** the vehicle to be supplied by the Supplier to the Customer as set out in the Order. Vehicles may be new or used, in which case they shall be referred to as a 'New Vehicle' or a 'Used Vehicle' respectively.

#### 1.2 Interpretation:

- (a) A reference to a party includes its successors and permitted assigns.
- (b) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (c) A reference to **writing** or **written** includes post, fax and email.

## **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 law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Vehicle in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 A quotation for the Vehicle given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

## **3. VEHICLE**

- 3.1 The Vehicle is described in the Specification.
- 3.2 The Specification or other details given or applied to the Vehicle in any catalogue, brochure or other medium is approximate only and the use of such information shall not constitute a sale by description. The Customer acknowledges that any such details do not form part of the contract and in respect of such Specification, details and description the Supplier shall have no liability nor shall the Customer be entitled to any remedy under the provisions of the Misrepresentation Act 1967 as amended by the Consumer Protection (Amendment) Regulations 2014 or the Sale of Goods Act 1979. For the avoidance of doubt, the Customer hereby affirms that it does not in any way rely on any description when entering into the contract.
- 3.3 To the extent that the Vehicle is to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause **3.3** shall survive termination of the Contract.
- 3.4 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

#### 4. DELIVERY

- 4.1 Delivery shall take place at the location specified in the Order unless otherwise expressly agreed in writing by the Supplier.
- 4.2 Delivery is completed when the Customer takes possession of the Vehicle.
- 4.3 Any estimated delivery date is only an estimate and time for delivery is not of the essence of the Contract. The Supplier shall not be liable for any loss, damage or delay caused by any delay in delivery.
- 4.4 If the Customer fails to take delivery of the Vehicle within five Business Days of the Supplier notifying the Customer that the Vehicle has been made available for delivery, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
- (a) delivery of the Vehicle shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Vehicle was ready; and
  - (b) the Supplier shall store the Vehicle until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.5 If ten Business Days after the day on which the Supplier notified the Customer that the Vehicle was ready for delivery the Customer has not taken actual delivery of it, the Supplier may resell or otherwise dispose of the Vehicle and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Vehicle.
- 4.6 The Supplier shall have no liability to the Customer for loss or damage caused by release of the Vehicle to any person or persons who present themselves as authorised by the Customer to take delivery of the Vehicle without the Customer's authority unless the Customer has provided the Supplier with a copy of the ID documents to be presented by the collection driver and the Supplier fails to take reasonable steps to verify them against the collection driver's original ID documents.

#### 5. QUALITY

- 5.1 Where the Supplier is requested to undertake work to a Vehicle supplied by the Customer the Customer warrants that it has unencumbered title to that Vehicle or if it does not have unencumbered title that the Customer has obtained the permission of the legal owner or incumbrancer for the work to be undertaken.
- 5.2 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the work carried out to the Vehicle by the Supplier shall:

- (a) conform in all material respects with its description and any applicable Specification; and
- (b) be free from material defects in design; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by the Supplier.

5.3 Subject to clause 5.4, if:

- (a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that the Vehicle does not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity to examine the Vehicle; and
- (c) the Customer (if asked to do so by the Supplier) returns the Vehicle to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective work undertaken to the Vehicle by the Supplier, or (where a New Vehicle has been supplied by the Supplier) refund the price of the defective Vehicle in full.

5.4 The Supplier shall not be liable for the Vehicle's failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of the Vehicle after giving notice in accordance with clause 5.3;
- (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 Vehicle 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 the Vehicle 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 Vehicle differs from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Vehicle's failure to comply with the warranty set out in clause 5.1.

- 5.6 The warranty in this clause 5 does not extend to parts, materials, equipment or any part of the Vehicle not manufactured by the Supplier, and does not extend to any work undertaken to the Vehicle by persons other than the Supplier. In such case the Customer's sole recourse shall be to any available Manufacturer's warranty, or warranty provided by work undertaken by third parties and the Manufacturer's warranty/third party's warranty shall apply to the exclusion of any warranty made by the Supplier, whether contained in these terms or otherwise.
- 5.7 Where the Customer has supplied a vehicle on which the Supplier is working to fulfil its obligations under the contract, it is assumed that the vehicle provided to the Supplier by the Customer is fit for its intended purpose after modification and the Supplier shall have no liability if the Vehicle is unfit for its intended purpose due to the specification of the vehicle provided by the Customer.
- 5.8 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.
- 5.9 These Conditions shall apply to any repaired or replacement Vehicle supplied by the Supplier.

## **6. TITLE AND RISK**

- 6.1 The risk in the Vehicle shall pass to the Customer on completion of delivery.
- 6.2 Notwithstanding delivery and the passing of risk in the Vehicle, title and property in the Vehicle, including full legal and beneficial ownership, shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full for the Vehicle under this and all other contracts between the Supplier and the Customer for which payment of the full price of the goods thereunder has not been paid. Payment of the full price of the Vehicle shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the Supplier and the Customer under which the Vehicle was delivered.

## **7. PRICE AND PAYMENT**

- 7.1 Subject to the other provisions of this clause 7 the price of the Vehicle shall be the price set out in the Order.
- 7.2 The Supplier may increase the price set out in the Order to take account of any additional work required beyond that which would be reasonably expected as a consequence of any issue arising once a vehicle provided by the Customer to the Supplier for work has been inspected by the Supplier.

- 7.3 [The Supplier may, by giving notice to the Customer at any time up to twenty-one days before delivery, increase the price of the Vehicle to reflect any increase in the cost of the Vehicle that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, increases in shipping or other delivery costs, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the delivery date or the Specification; 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.]
- 7.4 The price of the Vehicle excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 7.5 The Customer shall not be entitled to take delivery of the Vehicle until the Supplier has received payment of the price in full.
- 7.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **8. LIMITATION OF LIABILITY**

- 8.1 If the Vehicle is a Used Vehicle supplied by the Supplier, it is sold:
- (a) Subject to any defect which the Supplier has drawn to the Customer's attention prior to delivery; and
  - (b) Subject to any defects which the Customer discovered or ought reasonably to have discovered in examining the Vehicle prior to delivery (irrespective of whether the Customer has carried out such examination) and the Customer acknowledges that the Supplier has given it full opportunity to examine the Vehicle.
- 8.2 Whether new or used the Vehicle is sold strictly on the basis that the Customer has examined the Vehicle and satisfied itself of its suitability for the Customer's purpose and of its satisfactory quality.
- 8.3 The restrictions on liability in this clause 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 8.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence; or
  - (b) fraud or fraudulent misrepresentation;
- 8.5 Subject to clause 9.4, the Supplier's total aggregate liability for all claims of the Customer shall not exceed the price paid for the Vehicle.
- 8.6 Subject to clause 9.4, the following types of loss are wholly excluded:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of or damage to goodwill; and
  - (f) indirect or consequential loss.
- 8.7 This clause 8 shall survive termination of the Contract.

## **9. TERMINATION**

- 9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of that party being notified in writing to do so;
  - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

- 9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Vehicle under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), 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.
- 9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 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 and, in respect of Vehicle supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **10. FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for twelve months, the party not affected may terminate the Contract by giving thirty days written notice to the affected party.

## **11. GENERAL**

- 11.1 Assignment and other dealings.** The contract between the Customer and Supplier for the sale of the Vehicle may not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Customer, without the prior written consent of the Supplier.
- 11.2 Entire agreement.**



- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

**11.3 Relationship of parties.** Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

**11.4 Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**11.5 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**11.6 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause **11.6** the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**11.7 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by email to the address specified in the Order
- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;

- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the Business Day after posting; or
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.7(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**11.8 Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**11.9 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

**11.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.