

David Boatwright Partnership Ltd
TERMS AND CONDITIONS - BUSINESS to BUSINESS Supply of Goods

1. INTERPRETATION

1.1 Definitions:

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

Company: The David Boatwright Partnership Limited (registered in England and Wales with company number 06408436).

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.5

Contract: the contract between the Company and the Customer for the sale and purchase of the Goods and/or Services incorporating these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from the Company.

Delivery Location: the address for the delivery of the Goods as set out in the Order.

Force Majeure Event: has the meaning given in clause 113.

Goods: the goods and any related accessories, spare parts and documentation set out in the Order.

Order: an order for the provision of Goods and/or Services by the Company to the Customer and accepted by the Company on the Company's order documentation prevailing at the time of acceptance.

Product Description: the latest production description howsoever described applicable to the Goods published by the Company at the date of acceptance of the relevant Order.

Services: the work specified in the Order and any additional work authorised by the Customer to be carried out by or on behalf of the Company.

Specification: any specification for the Goods and/or Services, including any related plans and drawings, that is agreed in writing by the Customer and the Company..

1.2 Interpretation

(a) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(b) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(c) A reference to **writing** or **written** includes faxes and emails.

2. BASIS OF CONTRACT

2.1 These Conditions apply and form part of the Contract between the Company and the Customer 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. No variation to these Conditions, or to an Order or to a quotation from the Company will be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Company.

- 2.2 The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 [The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.]
- 2.4 [A quotation for the Goods and/or Services given by the Company shall not constitute an offer. A quotation shall only be valid for a period of [20] Business Days from its date of issue].

3. GOODS

- 3.1 The Goods are supplied only by reference to their Product Description. Any other descriptive material provided by the Company is provided for the sole purpose of giving an approximate idea of the Goods and shall not form part of the Contract or have any contractual force. The Customer is responsible for selecting the Goods to achieve its intended uses and required results and has not relied upon the Company's skill or knowledge regarding suitability of the Goods for any particular purpose or use.
- 3.2 [To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Company 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 reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the use of the Specification. This clause 3.2 shall survive termination of the Contract].
- 3.3 The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 3.4 The Company may cancel the Contract at any time if the manufacturer ceases to make the Goods or if the manufacturer or supplier ceases to supply the Goods to the UK market or as a result of any applicable statutory or regulatory requirement.
- 3.5 If the Company is unable to supply any option or accessory, whether factory fitted or otherwise, the Company may at its discretion either substitute a reasonable equivalent or delete the option or accessory from the Contract. If any accessory is deleted the purchase price shall be adjusted by the price of the deleted option. The inability of the Company to supply any option or accessory or any after sale service shall not constitute a breach of contract and entitle the Customer to reject the Goods.
- 3.6 Should any Services be purchased to enhance, vary or modify the Goods and should such Services prove defective or faulty, the Company shall at its absolute discretion have the option of removing, repairing or replacing the enhancement, variation or modification, and such defect or fault shall not constitute a breach of contract for the supply of Goods and entitle the Customer to reject the Goods.

4. PRICE

- 4.1 The price of the Goods and/or Services shall be the price set out in the Order, or, if no price is quoted, the price set out in the Company's published price list in force as at the date of delivery or deemed delivery. The price does not include VAT or any other similar sale or fiscal tax applying to the sale of the Goods and/or Services which shall be charged at the rate applicable at the date of delivery or deemed delivery.
- 4.2 The Company may, by giving notice to the Customer 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 Company'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 and/or Services ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.

5. PAYMENT

- 5.1 Subject to clauses 5.2 and 5.3, the Customer shall pay all invoices from the Company for the Goods and/or Services, in full in cleared funds and within [30] days of the invoice date or on delivery of the Goods and/or Services.
- 5.2 Vehicles are to be paid for in full in cleared funds prior to delivery or where specified as set out in the Order.
- 5.3 [If a credit account has been agreed for the Customer for any part of the Goods and/or Services, the terms of that credit account shall apply in relation to the Goods and/or Services that may be purchased under the terms of the credit account. The Company may withdraw a credit account or vary the credit terms at its sole discretion upon provision of notice to the Customer. Any sums outstanding in the credit account must be paid in cleared funds upon demand].
- 5.4 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4.0% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 5.5 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 Company 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 Company to the Customer.
- 5.6 Time for payment is of the essence.

6. DELIVERY

- 6.1 The Goods will be deemed delivered by or for the Company on arrival of the Goods at the Delivery Location where the Order provides for delivery to a Delivery Location and otherwise if collected by or on behalf of the Customer.

- 6.2 Any dates quoted for delivery and any periods of performance specified on Orders are approximate only, and the time of delivery is not of the essence. Where dates are not specified in the Order, delivery or performance will be within a reasonable period of time. The Goods may be delivered by instalments. Any delay in delivery or defect in an instalment will not entitle the Customer to cancel any other instalment.
- 6.3 The Company shall not be liable for any delay in or failure of delivery or to collect the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods or to make the Delivery Location available to the Company.
- 6.4 If the Customer fails to accept delivery of the Goods or fails to collect any vehicle in relation which Services have been provided, on the date in the Order or notified by the Company to the Customer, subject to clause 6.5 below the Company will store and may (but will be under no obligation to insure the Goods and/or vehicles in relation to which Services have been provided) pending delivery and the Customer will pay to the Company reasonable storage and any insurance charges at the daily rate specified in the Company tariff charges.
- 6.5 If, 10 Business Days after the day specified in the Order or notified by the Company or the Customer for delivery or collection of Goods, the Customer has not taken delivery of or collected the Goods the Company may, at its sole discretion, resell or otherwise dispose of the Goods. The Company will invoice the Customer for, and the Customer shall pay, any shortfall of the resale price below the price due to be paid by the Customer for the Goods.

7. TITLE AND RISK

- 7.1 The risk in the Goods shall pass to the Customer on collection or the earlier to occur of i) delivery; ii) deemed delivery and iii) transfer to a carrier for delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the earlier of:
- (a) the Company receiving payment in full (in cash or cleared funds) for the Goods and any other goods that the Customer has supplied to the Customer, 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;
 - (b) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (c) notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.1; and
 - (d) give the Supplier such information relating to the Goods as the Company may require from time to time.
- 7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.1, then, without limiting any other right or remedy the Company may have:
- (a) the Company may at any time:
 - (i) require the Customer to deliver up all Goods in its possession that 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. WARRANTIES AND LIMITATION OF LIABILITY

- 8.1 Subject to clause 8.2, the Company gives no warranties in relation to the Goods and/or Services. There shall be no warranty or assurance by the Company that any particular Goods are fit for any specific purpose or application unless the Company shall have given such assurance in writing.
- 8.2 The Customer shall in relation to the Goods only be entitled to the benefit of any such warranties as are given by the manufacturer to the Company and/or Customer.
- 8.3 Unless otherwise agreed, all used Goods are sold 'as is' and without any warranty (save in relation to any manufacturer's warranty).
- 8.4 Notwithstanding clauses 8.1, 8.2 and 8.3, the Customer may have the option of purchasing a separate warranty in relation to the Goods [and/or Services] but which will not form part of the Contract. The terms and conditions of any such warranty shall apply.
- 8.5 The Company shall be under no liability in respect of any effect or failure arising from or related to, any fair wear and tear, or the Customer's wilful damage, negligence, misuse, abnormal working condition, failure to comply with the manufacturer's or the Company's instructions or with good practice, the Company following any Customer Specification or requirements of the Customer and/or the Customer repairing or altering any Goods without the Company's prior written consent.
- 8.6 The Company may at its option and without prejudice to the exclusion of liability set out in clause 8.7 below, repair, replace, or refund the Customer the price of the defective Goods and/or at its own option, rectify any defective Services, and if the Company so requests, the Customer shall give the Company a reasonable opportunity to examine the defective Goods and/or Services and return the defective Goods and/or any vehicle in relation to which defective Services have been provided to the Company for repair. These Conditions will apply to any Goods repaired or replaced and/or any Services rectified under this clause 8.6
- 8.7 The Company's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), misrepresentation, restitution, breach of statutory duty, or otherwise, shall in no circumstances exceed the cost of replacing or repairing the Goods and/or Services under the Contract.
- 8.8 the Company shall under no circumstances whatsoever 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
- 8.9 Nothing in these Conditions shall limit or exclude the Company'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.
- 8.10 The Customer must report to the Company any defect or damage in relation to the Goods and/or Services within 5 Business Days from delivery or in the case of a latent defect within 5 Business Days of such latent defect becoming known to the Customer otherwise the Company shall have no liability in respect of this clause 8.10.

9. SERVICES

- 9.1 The Company will provide the Services to the Customer in accordance with the Order and any additional authority provided by the Customer subject to the Company's entitlement (without obligation) to make any changes to the Services as are needed due to an applicable law or safety requirement or which do not materially affect the fault or nature of the Services.

10. TERMINATION

- 10.1 In addition to its rights at clause 3.4, and without limiting its other rights or remedies, the Company 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 10 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), 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;
 - (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 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.
- 10.2 Without limiting its other rights or remedies, the Company may suspend provision of the Goods and/or Services under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in clause 10.1 (a) to clause (d), or the Company 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.
- 10.3 Without limiting its other rights or remedies, the Company 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.
- 10.4 On termination of the Contract for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.

- 10.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11. CANCELLATION

- 11.1 The Company may by giving written notice to the Customer cancel the Contract at any time prior to delivery or the Services being carried out upon which the Company will repay to the Customer any sums paid under the Contract without deduction or set-off.

12. PART EXCHANGE

- 12.1 Where the Company agrees to allow the Customer to pay part of the purchase price of the Goods by the Customer delivering a used vehicle to the Company in part exchange, such allowance is agreed subject to the used vehicle being delivered in the same condition as when originally examined by the Company subject only to fair wear and tear and provided always that:
- (a) the used vehicle for which the Customer receives such allowance must be their property absolutely and not the subject of any hire purchase agreement or other legal encumbrance whatsoever; or
 - (b) if such used vehicle shall be the subject of a hire purchase transaction then such hire purchase transaction must be capable of early settlement by the you and the total price due to you shall be reduced by the amount of such settlement.
- 12.2 In the event the above conditions cannot be met the Company shall be discharged from any obligations to accept the used vehicle in part exchange or to make any allowance in respect of the same and the Customer shall discharge in cash the full price of the Goods to the Company.

13. FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for two months, the party not affected may terminate this Contract by giving 10 days written notice to the affected party.

14. GENERAL

14.1 Assignment and other dealings.

- (a) The Company 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.

14.2 Entire agreement.

- (a) This 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 this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 14.3 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 14.4 **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.
- 14.5 **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.
- 14.6 **Notices.**
 - (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause (a); if sent by pre-paid first class post or other next working day delivery service, at 9:00 am on the two Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
 - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 14.7 **Third party rights.** No one other than a party to this Contract shall have any right to enforce any of its terms.
- 14.8 **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.
- 14.9 **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 this Contract or its subject matter or formation.