

TERMS & CONDITIONS

1 - DEFINITIONS

- 1.1 In these conditions the following terms shall have the following meanings.
- "Company" means JOHN MOORE (TRAFALGAR PARTS) LIMITED.
- "Customer" means the customer of the Company.
- "Conditions" means these terms and conditions as amended from time to time in accordance with Clause 2.5.
- "Contract" means any contract for the sale of Goods by the Company to the Customer or for the performance of the Services for the Customer on the Customer's vehicle or vehicle components in accordance with these Conditions.
- "Goods" means the Goods specified in the order including parts and components of or materials incorporated in them.
- "Manufacture" and words derived therefrom include goods created, manufactured, reconditioned, modified or in any sense worked upon by the Company.
- "Mechanical Works" means any works to a vehicle or part of vehicle (a vehicle component) for its repair or modification.
- "Order" means the Customer's order for the supply of Goods and/or Services as set out in the Customer's purchase order form, or the Customer's written acceptance of the Company's quotation, or overleaf, or any other method as agreed with the Company as the case may be.
- "Services" means the Mechanical Works undertaken by the Company at the request of the Customer in accordance with a specification which the Customer provides to the Company in writing.

2 - EXISTENCE OF CONTRACT

- 2.1 Any quotation given by the Company shall be open for acceptance in 30 days of the date of the quotation unless otherwise stated therein.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods and Services in accordance with these Conditions and shall only be deemed accepted by the Company at either the earliest of:
- 2.2.1 the Company's written acceptance; or
- 2.2.2 delivery of the Goods; or
- 2.2.3 the Company's invoice (together the "Commencement Date")
- 2.3 on which dated the Contract shall come into existence.
- 2.3 These conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer.
- 2.4 This Contract constitutes the entire agreement between the parties and the Customer acknowledges it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 2.5 No variation or amendment of its contract or oral promise or commitment related to which will be valid unless committed to writing and signed by or on behalf of the Company when it shall bind all parties.

3 - GOODS

- 3.1 The Goods are described in the Company's catalogue/price list unless modified and agreed in writing between the Company and the Customer (the "Goods Specification").
- 3.2 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 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 Company's use of the Goods Specification. This clause shall survive termination of the Contract.

4 - TITLE AND RISK

- 4.1 For the purpose of section 12 of the Sale of Goods Act 1979 the Company shall transfer only such title of rights in respect of the Goods as the Company shall have and if the Goods are purchased from the third party shall transfer only such title of rights as that party had and has transferred to the Company.
- 4.2 The risk in the Goods shall pass to the Customer on delivery.
- 4.3 Title to the Goods shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for the Goods and Services and in the case of any exchange unit its condition has been assessed by the Company and accepted in writing by the Company as complying with the terms of the Contract.
- 4.4 Until title to the Goods passes the Customer shall:-
- 4.4.1 hold the Goods as bailee for the Company and shall store or mark them so that they can at all times be identified as the property of the Company.
- 4.4.2 not remove, deface or obscure any identifying mark or packaging on the Goods and maintain the Goods in satisfactory condition and keep them insured against all risks for their full price.
- 4.5 The Customer may at any time inspect and without any liability to the Customer, reject and dismantle and use or sell all or any of the Goods and by doing so terminate the Customer's right to use, sell or otherwise deal in them and for that purpose or for the purpose of determining what if any Goods are held by the Customer and inspecting them enter any premises or occupied by the Customer.
- 4.6 The Company may maintain an action for the price of the Goods notwithstanding that title in them has not passed to the Customer.

5 - DELIVERY AND PERFORMANCE

- 5.1 The Goods or vehicle or vehicle components after Mechanical Works thereto are delivered to the Customer when the Company makes them available to the Customer or any agent of the Customer or any carrier (who shall be the Customer's agent whoever pays its charges) at the Company's premises or other delivery point agreed by the Company (the "Delivery Location").
- 5.2 Delivery of the Goods shall be completed on delivery of the Goods or completion of the Mechanical Works at the Delivery Location.
- 5.3 The Company may at any time deliver the Goods by instalments in any sequence and no default or failure by the Company in respect of any one or more instalments shall vitiate the Contract in respect of the Goods previously delivered or undelivered Goods.
- 5.4 The Company may deliver to the Customer and the Customer shall accept in satisfaction of the Contract a lesser number than the number of Goods ordered in which case the price shall be adjusted pro rata.
- 5.5 Any date quoted by the Company for the delivery of the Goods or performance of the Services are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of the Company no regard has been paid to any quoted delivery dates. Further the Customer shall not (unless the Company otherwise agrees in writing) be entitled to serve notice to make time of the essence of the Contract whether for delivery or in any other respect.
- 5.6 The Customer shall pay the amount of any invoice without any deduction and the Customer shall pay the Company all costs and expenses (including legal costs on an indemnity basis) incurred in the collection of any overdue amount. The Customer shall pay the amount of any invoice without any deduction and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limited its other rights and remedies, set-off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 5.7 In the case of the Services, if the Customer shall fail to pay the sum due under the Contract the Company may cease performance of the Services and shall not be liable for any penalty, loss, injury, damage or expenses arising from any delay or failure in delivery or performance nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the Contract.

6 - SUPPLY OF SERVICES

- 6.1 The Company shall supply the Services to the Customer and the Customer shall use reasonable endeavours to meet any performance dates specified in writing but any such dates are subject to Clause 5.5 above.
- 6.2 The Company shall have no liability to the Services which are necessary to comply with any applicable law or safety requirement which do not materially affect the nature or quality of the Services.
- 6.3 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

7 - PRICES

- 7.1 The prices for the Goods and Services are ex-works and exclude packing, insurance and carriage, VAT and other taxes or duties which will be paid in addition (as applicable) by the Customer. Prices invoiced are calculated in respect of the quantity of Goods actually delivered irrespective of the quantity in respect of which any quotation was issued or order given or accepted and this shall apply even when the Company delivers less than the quantity of Goods ordered or requested by the Customer through no fault of the Customer.
- 7.2 The Company shall have the right in respect of any uncompleted portion of the Contract to adjust its prices for any increase in the price of the materials, parts, labour, transport, changes in work or delivery schedules or quantities or any other costs of any kind arising for any reason after the Commencement Date.
- 7.3 Price changes shall take effect on the date of service on the Customer of notice of the change in respect of any pending deliveries but otherwise shall be at the rate quoted or ruling from time to time for such Goods or Services in the Company's customer price list adjusted in accordance with these Conditions as to quantity in accordance with the Company's policy from time to time.

8 - PAYMENT

- 8.1 All invoices are payable without discount of any kind in pounds sterling on the invoice date at the Company's premises stated on the invoice and in no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason at all. A Customer with an approved credit account agreed by the Company shall be bound by this clause varied to the extent stated by the terms of a written credit account contract or undertaking.
- 8.2 Without prejudice to any other rights of the Company if the Customer fails to pay the invoice price by the due date the Customer shall pay interest on any overdue amount from the date on which the payment was due to that on which it is made (whether before or after judgment) on a daily basis at a rate of 4% per annum over the base rate from time to time quoted by the Royal Bank of Scotland plc and shall reimburse the Company all costs and expenses (including legal costs on an indemnity basis) incurred in the collection of any overdue amount.
- 8.3 The Customer shall pay the amount of any invoice without any deduction and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limited its other rights and remedies, set-off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

9 - TRADE-IN

- 9.1 Where the Company agrees to allow part of the price of any Goods to be discharged in part by the Customer delivering exchange parts or units that allowance shall be given and the exchange of parts or units shall be accepted as part of the sale price of the Goods on the following conditions.
- 9.1.1 The exchanged parts or units tendered by the Customer are the absolute property of the Customer and free from encumbrances.
- 9.1.2 If the Company has examined the exchange parts or units before the completion of the Contract the Customer shall deliver the same to the Company on completion of the Contract in the same condition as at the date of the examination.
- 9.1.3 If the Company has not examined the exchange parts or units before the completion of the Contract the Customer shall deliver the same to the Company on completion of the Contract in a condition which is appropriate for reconditioning or in such other condition as the Company are willing to accept.
- 9.1.4 The exchanged parts or units shall be delivered to the Company on or before the delivery of the Goods and in any event within 14 days of notification to the Customer that the Goods have been completed for delivery and the property in the exchanged parts or units shall then pass to the Company absolutely.
- 9.1.5 If the exchange parts or units through no fault of the Company are not delivered by the Customer within 30 days after the date of the Contract or the estimated date of delivery (whichever is the latter) or are not delivered in a condition so as to comply with Clause 9.1.2 above:-
- 9.1.5.1 the allowance on the exchange parts or units shall be subject to a reduction by 2.5% for each completed period of 30 days from the date of the expiry of the first mentioned 30 days to the date of the delivery to the Company of the exchanged parts or units, or
- 9.1.5.2 the Company's special price shall pay in cash the full price of the Goods and be discharged from any obligation to deliver the used exchanged parts or units (which if already delivered to the Customer said it shall be re-delivered to the Customer in the condition which has resulted from their examination (if any) by the Company for compliance with the terms of this agreement).
- 9.2 If any of the conditions in 9.1 (except 9.1.5) are not fulfilled the Company shall be discharged from any obligation to accept the exchanged parts or units or to any allowance in respect of them and the Customer shall pay for the Goods in full in cash or cleared funds.

10 - CLAIMS NOTIFICATION

- 10.1 Any claim for non-delivery, damage, incorrect quantity or failure to comply with description of any Goods or vehicle or vehicle components on which the Services have been performed shall be made in writing by the Customer to the Company within 3 days of the date of the Company's invoice.
- 10.2 Any alleged defect of Goods supplied or Services undertaken by the Company shall be notified by the Customer to the Company within 5 days of the delivery or in the case of any defect which is not reasonably apparent on inspection within 3 days of the defects coming to the Customer's attention and in any event in the following periods:
- 10.2.1 for Goods manufactured by the Company or for Mechanical Work undertaken within 3 months from the date of delivery;
- 10.2.2 for second-hand Goods manufactured or reconditioned by the Company no period is applicable unless otherwise specified in writing by the Company prior to the Contract; and
- 10.2.3 for Goods not of the Company's manufacture the warranty period given by the manufacturer less 10 days.
- 10.3 Any claim under these conditions must be in writing and must contain full details of the claim including the part numbers of any allegedly defective Goods.
- 10.4 The Company shall be entitled to inspect and facilitate to investigate any claim under these conditions and the Customer shall if so requested in writing by the Company promptly return any Goods or (in the case of Mechanical Work) any vehicle or vehicle components the subject of any claim and any packing materials securely packed and carriage paid to the Company for examination.
- 10.5 The Company shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedures in these conditions.

11 - LIMITATION OF LIABILITY

- 11.1 Under no circumstances shall the Company have any liability of whatever kind for:
- 11.1.1 any defects resulting from wear-and-tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions or advice of the Company or the manufacturer of any Goods or any vehicle or vehicle components the subject of Mechanical Works by the Company or neglect or under any instructions or materials provided by the Company;
- 11.1.2 any Goods or (following Mechanical Works), any vehicle or vehicle components which have been adjusted, modified or repaired except by the Company;
- 11.1.3 the suitability of any Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company;
- 11.1.4 any substitution by the Customer of any materials or components not forming part of any specification of the Goods or vehicle or vehicle components unless agreed in writing by the Company in advance;
- 11.1.5 any descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by the Company contained in the Company's catalogues, price list or elsewhere since they are merely intended to represent the general idea of the Goods and not to form part of the Contract or be treated as representations;
- 11.1.6 any technical information, recommendations, statements or advice furnished by the Company its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made; or
- 11.1.7 any variations in the quantities or dimensions of any Goods or changes of their specification or substitution of any materials or components, if the variation or substitution does not materially affect the characteristics of the Goods, and substituted materials or components are of a quality equal or superior to her those originally specified.
- 11.2 The Company shall have no liability to the Customer for any loss or damage of any nature (and in particular for any loss of profit, or any indirect or consequential loss arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of the Company or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract) except:-
- 11.2.1 for death or personal injury resulting from the Company's negligence;
- 11.2.2 for fraud or fraudulent misrepresentation; or
- 11.2.3 as expressly stated in these conditions.
- 11.3 If the Customer establishes that any Goods have not been delivered, have been delivered damaged, are not of the correct quantity or do not comply with their description the Company shall, at its option, replace with similar goods any Goods which are missing, lost or damaged or do not comply with their description and allow the Customer credit for their invoice value or repair any damaged Goods.
- 11.4 If the Customer establishes that any Goods or Services are defective the Company shall, at its option, replace with similar goods or repair any defective Goods or Mechanical Works and allow the Customer credit for their invoice value or to the extent that the Goods are not of the Company's manufacture and assign to the Customer (so far as the Company are able to do so) any warranties given by the manufacturer of the Goods to the Company.
- 11.5 The delivery of any repaired or replacement Goods or (following Mechanical Works) return of any vehicle or vehicle components shall be at the Company's premises or other delivery point specified for the original Goods or vehicle or vehicle components.
- 11.6 Where the Company is liable in accordance with this condition in respect of only some all part of the Goods the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set off or other claim shall be made by the Customer against or in respect of such other or other parts of the Goods.
- 11.7 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments, alterations or other work has been done to the Goods by any person except the Company.
- 11.8 The Company shall not be liable where any Goods the price of which does not include carriage are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such lost or damaged Goods, will be available and be supplied by the company at the prices ruling at the date of dispatch.
- 11.9 In no circumstances shall the liability of the Company to the Customer under this condition exceed the invoice value of the Goods and/or Services.

12 - TERMINATION

- 12.1 The Company may at its discretion suspend or terminate the supply of any Goods of the performance of Mechanical Works immediately if the Customer:-
- 12.1.1 fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other contract with the Company (including but not limited to the terms and any credit agreement);
- 12.1.2 suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts within the meaning of s123 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 s208 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 12.2 If the Force Majeure Event in 15.1 prevents the Company from supplying any Goods or Services for more than two weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 12.3 On termination of the Contract for any reason:
- 12.3.1 the Customer shall immediately pay to the Company all monies due on outstanding unpaid invoices and interest, and in respect of Goods and Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which will be payable by the Customer immediately on receipt; and
- 12.3.2 at the Company's request the Customer shall return all Goods and materials supplied in relation to the Services, which have not been fully paid for. If the Customer fails to do so the Company may enter the Customer's premises and take possession of them.
- 12.4 Orders for Goods which have to be purchased or made specific for the Customer will be charged in full unless written notice of cancellation is received no later than three weeks before the expected delivery date quoted in the Customer's order acknowledgment AND manufacture of them or any components for them has not commenced at the date of that notice. Orders for ITEMS held in stock (otherwise than against the requirement of the Customer) may be cancelled by written notice at any time before the Goods are allocated to the Contract but if a cancellation notice is received after the Goods have been allocated to the Contract then a packing and handling charge of 15% of the Contract price plus VAT will be payable by the Customer.

13 - GENERAL

- 13.1 The Company may assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights under the Contract and may sub-contract or delegate the performance of its obligations under the Contract to any third party.
- 13.2 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 13.3 The Company shall have a lien on all the Customer's property in the Company's possession for all amounts due at any time from the Customer and may use, sell or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such amounts on 28 days' notice to the Customer which may be purchased or made specific for the Customer will be charged in full unless written notice of cancellation is received no later than three weeks before the expected delivery date quoted in the Customer's order acknowledgment AND manufacture of them or any components for them has not commenced at the date of that notice. Orders for ITEMS held in stock (otherwise than against the requirement of the Customer) may be cancelled by written notice at any time before the Goods are allocated to the Contract but if a cancellation notice is received after the Goods have been allocated to the Contract then a packing and handling charge of 15% of the Contract price plus VAT will be payable by the Customer.

14 - CONFIDENTIALITY

- The Customer shall not at any time whether before or after the termination of his Contract divulge or use any unpublished technical information deriving from the Company or any other confidential information in relation to the Company's affairs or business or method of carrying on business.

15 - FORCE MAJEURE

- 15.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Company, including but not limited to failure of a utility service or transport network, act of god, war, riot, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 15.2 The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

16 - SEVERANCE

- If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

17 - WAIVER AND CUMULATIVE REMEDIES

- No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise and unless specifically provided otherwise, rights arising under the Contract are cumulative.

18 - THIRD PARTY RIGHTS

- A person who is not a party to the Contract shall not have any rights under or in connection to it.

19 - NOTICES

- 19.1 Any notice given under this Contract shall be in writing and may be served:
- 19.1.1 personally;
- 19.1.2 by registered or recorded delivery mail;
- 19.1.3 by facsimile transmission (confirmed by post); or
- 19.1.4 by any other means which any party specifies by notice to the others.
- 19.2 A notice shall be deemed to have been served:
- 19.2.1 if it was served in person, at the time of service;
- 19.2.2 if it were sent by post, 48 hours after it is posted; or
- 19.2.3 if it were sent by facsimile transmission, at the time of transmission.

20 - LAW AND JURISDICTION

- Contracts will be governed by English law and the Customer consents to the exclusive jurisdiction of the English Courts.