

TERMS AND CONDITIONS – MC TRUCK & BUS LIMITED

1 Definitions and application of terms

1.1 The following words shall have the following meanings:

Company: M C Truck & Bus Limited (Company No. 1241061) whose registered office is at Beddow Way Forstal Road Aylesford Maidstone Kent ME20 7BT.

Purchaser: the person, firm or company who purchases goods and/or services from the Company.

1.2 Unless other terms and conditions are expressly accepted by the Company by means of a written amendment to these Terms and Conditions signed by one of the Company's directors, the contract will be on the terms and conditions set out below and (if applicable) the order form attached (the "Contract") to the exclusion of any other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification or any other document).

2 Design, description, quality and warranties

2.1 No drawings, descriptive matter, weights, dimensions or shipping specification issued by the manufacturer or the Company, nor the descriptions and illustrations contained in any catalogues price lists and other advertising matter shall be deemed to form part of the Contract nor be regarded as a warranty or representation relating to such goods.

2.2 In the event of an alteration of the design, specification, construction and/or equipment of the goods by the manufacturer, the Company reserves the right without previous notice to supply the goods ordered with or without such alteration.

2.3 The Company warrants that (subject to the other provisions of the Contract) on delivery the goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979. No terms or conditions are made or to be implied nor is any warranty given or to be implied as to the life or wear of the goods supplied or that they will be suitable for any particular purpose.

2.4 The Company shall not be liable for a breach of any of the warranties in condition 2.3 unless:

- the Purchaser immediately gives written notice of the defect to the Company; and
- the Company is given a reasonable opportunity after receiving the notice of examining the goods.

2.5 The Company shall not be liable for a breach of any of the warranties in condition 2.3 if:

- the Purchaser makes any further use of the goods after giving such notice; or
- the defect arises because the Purchaser failed to follow the Company's oral or written instructions as to the storage, use or maintenance of the goods or (if there are none) good trade practice; or
- the Purchaser alters or repairs the goods without the written consent of a director of the Company.

2.6 The Purchaser will notify the Company immediately of any defect that appears in the goods which the Purchaser considers is the responsibility of the Company under the Contract or otherwise and the Purchaser will not take any action to have such defect remedied or to incur any expense (including but not limited to towing charges and car hire charges) arising in connection with such defect without the prior consent of a director of the Company. If the Purchaser fails so to notify the Company and obtain such consent the Company will not be liable either for the cost of any work carried out otherwise than by the Company, or for any such expense incurred by the Purchaser.

2.7 The Company will use reasonable endeavours short of taking legal proceedings to transfer to the Purchaser the benefit of any warranty or guarantee given to the Company in respect of the goods.

3 Purchaser's Specification

3.1 The Purchaser warrants to the Company that the Purchaser's specification does not infringe and shall not infringe any patent, registered design, copyright, design rights, or other like protection, or the provision of any statute or regulation for the time being in force, and the Purchaser shall indemnify the Company (on demand) against any liability it may incur by reason of or in connection with any such infringement.

3.2 The Company shall have the right to retain any drawings, specifications or other documents supplied by the Purchaser to the Company.

3.3 No allowance or discount can be made by the Company for any part of the standard equipment comprised in the goods that is not taken or required by Purchaser.

4 Limitation of liability

The Purchaser's attention is particularly drawn to this condition. This condition limits the Company's liability to the Purchaser under the Contract

4.1 Subject to condition 2, the following conditions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Purchaser in respect of:

- any breach of the Contract;
- any use made or resale by the Purchaser of any of the goods, or of any product incorporating any of the goods; and
- any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

4.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

4.3 Nothing in these conditions excludes or limits the liability of the Company:

- for death or personal injury caused by the Company's negligence; or
- under section 2(3), Consumer Protection Act 1987; or
- for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- for fraud or fraudulent misrepresentation.

4.4 The Company shall not be liable to the Purchaser for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

4.5 Subject to conditions 4.2 and 4.3 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the goods and/or services provided.

4.6 Subject to conditions 4.2 and 4.3, no recommendation by the Company of any goods or services supplied by any other person shall make the Company in any way liable in respect of such goods or services.

5 Delivery

5.1 The Company will use reasonable endeavours to complete the Contract or deliver the goods within the time agreed and if no time is agreed, within a reasonable time. Any dates specified by the Company are estimates only and time for delivery shall not be of the essence of the Contract.

5.2 Subject to the other conditions of the Contract, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the goods or any delay in the completion of the Contract nor will any such delay entitle the Purchaser to repudiate or rescind the Contract. The Company shall not be obliged to fulfil orders in the sequence in which they are placed.

5.3 If the Purchaser shall fail to take delivery of and pay for the goods within 7 days of notification that the goods have been completed for delivery, the Company shall be at liberty to treat the contract as repudiated by the Purchaser and thereupon any deposit shall be forfeited without prejudice to the Company's right to recover from the Purchaser by way of damages any loss or expense which the Company may suffer or incur directly or indirectly by reason of the Purchaser's default.

6 Passing of property and risk

6.1 The risk in the goods shall pass on delivery to the Purchaser.

6.2 Ownership of the goods shall not pass to the Purchaser until the Company has received in full (in cleared funds) all sums due in respect of the goods and/or the services and all other sums which are or which become due to the Company from the Purchaser on any account. A cheque given by the Purchaser in payment shall not be treated as a discharge until the same has been cleared.

6.3 Until ownership of the Goods has passed to the Purchaser, the Purchaser shall hold the goods on a fiduciary basis as the Company's bailee and shall not destroy, deface or obscure any identifying mark on or relating to the goods. The Purchaser shall maintain the goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company.

6.4 The Purchaser's right to possession of the goods shall terminate immediately if the Purchaser has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory), or has a receiver and/or manager, administrator or

administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Purchaser or notice of intention to appoint an administrator is given by the Purchaser or its directors or by a qualifying floating charge holder, or a resolution is passed or a petition presented to any court for the winding-up of the Purchaser or for the granting of an administration order in respect of the Purchaser, or any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser.

6.5 The Company shall be entitled to recover payment for the goods notwithstanding that ownership of any of the goods has not passed from the Company.

6.6 The Purchaser grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them.

6.7 On termination of the Contract, howsoever caused, the Company's (but not the Purchaser's rights in this condition 6) shall remain in effect.

7 Price and Payment

7.1 Unless otherwise agreed by the Company in writing, the price for the goods shall be the price set out in the order. All disputes must be raised within 7 days from receipt of the Company's invoice.

7.2 Unless otherwise agreed payment must be made in cash on delivery for vehicles. Parts and service invoices must be settled within 30 days of invoice, including items covered by policy claim. Time for payment shall be of the essence.

7.3 The price for the goods or services shall be exclusive of VAT and costs or charges in relation to carriage, insurance and delivery, all of which the Purchaser shall pay in addition when it is due to pay for the goods or services. Any rate of VAT shall be charged at the prevailing rate when the taxable supply occurs.

7.4 If the Purchaser fails to pay the Company any sum due pursuant to the Contract, the Purchaser shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of [8%] above the base lending rate from time to time of Bank of England, accruing on a daily basis until payment is made, plus Late payment fees in line with the Late Payment of Commercial Debts (Interest) Act 1998.

8 Service charges for cash customers

In the event of repairs being made to a Purchaser's vehicle, 50% of the estimated cost of repair must be paid in advance. The balance must be paid in cash or by bankers draft on collection of the vehicle.

9 Trade in

9.1 Where the Company agrees to allow part of the price of the goods to be discharged by the Purchaser delivering a used motor vehicle to the Company, such allowance is hereby agreed to be given and received and such used vehicle is hereby agreed to be delivered and accepted, as part of the sale and purchase of the goods and upon the following further conditions:

- either that such used vehicle is the absolute property of the Purchaser and is free from all encumbrances, or, that such used vehicle is the subject of a hire purchase agreement or other encumbrance capable of cash settlement by the Company in which case the allowance shall be reduced by the amount required to be paid by the Company in settlement thereof;
- that if the Company has examined the said used vehicle, the said used vehicle shall be delivered to the Company in the same condition as at the date of such examination (fair wear and tear excepted);
- that such used vehicle, its log book and keys shall be delivered to the Company on or before delivery of the goods to be supplied by the Company under the Contract, and that the ownership in the used vehicle shall thereupon pass to the Company absolutely;
- that without prejudice to 9.1(c) above such vehicle shall be delivered to the Company within 14 days of notification to the Purchaser that the goods to be supplied by the Company have been completed for delivery.

9.2 If the goods to be delivered to the Purchaser, through no default on the part of the Company, shall not be delivered to the Purchaser within 30 days after the date of the Company's acknowledgement of the Purchaser's order, or the estimated delivery date where that is later, the allowance on the said used vehicle shall be subject to reduction by an amount not exceeding 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 delivery to the Purchaser of the goods.

9.3 In the event of the non-fulfilment of any of the conditions 9.1 (a) to (d), the Company shall be discharged from any obligation to accept the said used vehicle or to make any allowance in respect thereof, and the Purchaser shall discharge in cash the full price of the goods to be supplied by the Company.

10 Finance Company Arrangements

Notwithstanding any other terms of the Contract, the Purchaser shall be at liberty before the expiry of 7 days after notification to the Purchaser that the goods have been completed for delivery, to arrange for a finance company to purchase the goods from the Company at the price payable under the Contract. Upon the purchase of the goods by such finance company any used vehicle for which an allowance was thereunder agreed to be made to the Purchaser shall be bought by the Company at a price equal to such allowance, upon the conditions set forth in Clause 9 above, and the Company shall be accountable to the finance company on behalf of the Purchaser for the said price and any deposit paid by the Purchaser.

11 General conditions

11.1 Notwithstanding any sum for Motor Vehicle Tax specified in the order, the sum payable by the Purchaser in respect thereof shall be such sum as the Company has legally had to pay or becomes legally bound to pay for Motor Vehicle Tax in respect of the goods at the prevailing rate when the taxable supply occurs.

11.2 If, after the date of the quotation and before delivery of the goods to the Purchaser, the manufacturer's or concessionaire's recommended price for any of the goods shall be altered, the Company shall give notice of any such alteration to the Purchaser and:

- in the event of the manufacturer's or concessionaire's recommended price for the goods being increased, the amount of such increase which the Company intends to pass to the Purchaser shall be notified to the Purchaser. The Purchaser shall have the right to cancel the Contract within 7 days of the date of such notice by giving written notice to the Company to that effect. If the Purchaser does not give such written notice as aforesaid the increase in price shall be added to and become part of the Contract price payable by the Purchaser.
- in the event of the recommended price being reduced the amount of such reduction, if any, which the Company intends to allow to the Purchaser shall be notified to the Purchaser. If the amount allowed is not the same as the reduction of the recommended price, the Purchaser shall have the right to cancel the contract within 7 days of the date of such notice by giving written notice to the Company to that effect. If the Purchaser does not give such written notice as aforesaid the Contract will proceed at the Company's reduced price.

11.3 In the event of the manufacturer of the goods specified in the Contract ceasing to make goods of that type, the Company may (whether the estimated delivery date has arrived or not) by notice in writing to the Purchaser, cancel the Contract.

11.4 If the Contract be cancelled under the provision of conditions, 11.2(a), 11.2(b) or 11.3, the deposit shall be returned to the Purchaser and the Company shall be under no further liability to the Purchaser or otherwise.

12 Notices

Any notice given under the Contract may be served personally or be left at the residence or place of business or registered office of the person to whom it is addressed, or may be sent by post, in which case notice shall be deemed to have been received in due course of post.

13 Part Sales

13.1 Parts ordered on a V.O.R (Class 1) basis cannot be returned for credit.

13.2 Any order Parts returned, where the order has been correctly executed, will be subject to a 10% handling charge.

13.3 Old care service exchange units must be returned within 14 days of date of invoice. Failure to do this will result in the Company being unable to raise a credit note, a surcharge will then become payable.

13.4 All parts for credit must be returned within 14 days accompanied by the purchase invoice number. Failure to do this will result in the credit note not being raised.

13.5 All non credit transactions must be paid for on receipt or collection of goods and may be paid for by cheque up to a limit of £150. If total amount of goods exceed the said limit, cash or a bankers draft will be required to finalise the transaction unless agreement to go beyond the aforementioned upper limit is authorised by a Director or Senior Manager of the Company.

13.6 It is the Purchaser's responsibility to ensure that goods received are signed for upon collection or receipt.

13.7 Warranty parts must be returned to the Company with a copy of the purchase invoice within 7 days of purchase.

14 Interpretation

14.1 The headings to these conditions are for convenience or reference only and will not affect the meaning of anything contained herein.

14.2 This Contract shall be construed and operate in accordance with English Law and the Purchaser hereby submits itself to the exclusive jurisdiction of the English Courts.