



ZF Services UK Ltd's Terms & Conditions Of Sale

1 DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation set out below apply to these Conditions.

“Account” a trading account for the Buyer administered by the Seller to facilitate the Buyer's purchase of Goods.

“Buyer” the person whose order for the Goods or Services is accepted by the Seller or who accepts a quotation of the Seller for the sale of Goods or Services.

“Conditions” these standard terms and conditions of sale.

“Contract” a contract for the purchase and sale of Goods and/or Services incorporating these Conditions.

“Deliverables” all documents, Goods, products and materials developed by the Seller or its agents, sub-contractors, consultants and employees in relation to the Services in any form, including computer programs, data reports and specifications (including drafts).

“Goods” any goods agreed in the Contract to be supplied by the Seller to the Buyer

“Seller” ZF Services UK Limited (company number 01137722).

“Services” any work, labour or services carried out by or on behalf of the Seller under a Contract including provision of the Deliverables.

“Warranty Document” a specific document containing the Seller's standard warranty terms and conditions (as may be amended from time to time) which are incorporated into and form part of the Contract. A copy of the current version is attached to these Conditions.

“Working Day” a day other than a Saturday, Sunday or public holiday.

“Writing” and any similar expression includes faxes and communications delivered in accordance with clause 2.2.



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- 1.2 A person includes a natural person, corporate or an incorporated body (whether or not having separate legal personality).
- 1.3 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.5 Words in the singular include the plural and vice versa.

2 BASIS OF THE SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with:

2.1.1 any written order of the Buyer which is accepted by the Seller; or

2.1.2 any written quotation of the Seller which is accepted by the Buyer;
or

2.1.3 any telephone order of the Buyer via a telephone ordering process approved by the Seller from time to time

2.1.4 any order made pursuant to Clause 2.2

subject in each case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such written or telephone order is made or purported to be made, or any such quotation is accepted or purported to be accepted by the Buyer.

2.2 In this clause 2.2:

“Electronic Communication” any communication transmitted electronically either to the Seller by the Buyer or to the Buyer by the Seller in connection with the ordering and/or supply of the Goods or provision of Services including without limitation the submission by the Buyer and acceptance by the Seller of orders for the Goods or Services.

“the Originating Party” any party transmitting an Electronic Communication.



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“the Receiving Party” the party receiving an Electronic Communication.

To the extent permitted by English law the Buyer and the Seller shall, where the Seller permits, conduct transactions for the supply of Goods and/or Services using Electronic Communications in respect of which the following conditions shall apply:

- 2.2.1 The Buyer shall provide and maintain the equipment, software, services and testing facilities necessary for it to effectively and reliably transmit and receive Electronic Communications.
- 2.2.2 Any Electronic Communication will be deemed received:
 - 2.2.2.1 where the Buyer is the Receiving Party, upon arrival at its mailbox at the internet address apparent from the last Electronic Communication successfully transmitted by it; or
 - 2.2.2.2 where the Seller is the Receiving Party, when the Electronic Communication is accessed by it in intelligible form.
- 2.2.3 The Receiving Party shall promptly notify the Originating Party if an Electronic Communication is received in unintelligible form providing that the Originating Party can be identified. In the absence of such notice, the Seller’s record of the contents of any such Electronic Communication will prevail.
- 2.2.4 The Buyer shall authenticate Electronic Communications transmitted by it using a digital signature or user identification in accordance with procedures and instructions specified by the Seller from time to time and shall maintain security procedures to prevent unauthorised use of any such authentication. The Buyer agrees that any authentication contained in any Electronic Communication shall be sufficient to confirm that the Buyer originated the Electronic Communication in question.



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- 2.3 The Seller reserves the right to vary these Conditions from time to time provided that the Seller shall give the Buyer not less than 30 days notice of any changes. The Buyer may not vary these Conditions.
- 2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.
- 2.5 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller, is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3 ORDER SPECIFICATIONS

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.2 The quantity, quality and description of the Goods and any specification for the Goods or Services shall be those set out in the Buyer's order (if accepted by the Seller) or the Seller's quotation (if accepted by the Buyer).
- 3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and



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expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement, of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

- 3.4 The Seller reserves the right to make any changes in the specification of the Goods or the Services which are required to conform with any applicable safety or other statutory or EU requirements, or where the Goods or Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except at the Seller's discretion and with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.6 Notwithstanding that a sample of the Goods be exhibited to and inspected by the Buyer, such sample is so exhibited or inspected solely to enable the Buyer to judge for itself the quality of the bulk, and not so as to constitute a sale by sample. The Buyer shall take the Goods at its own risk as to their corresponding with the said sample, and subject to the normal variation between the bulk and sample accepted by the trade.
- 3.7 Without prejudice to the generality of the foregoing any particular purpose for which the Buyer proposes to use the Goods shall be deemed not to be known by or have been made known to the Seller unless specifically recorded in a schedule signed by the Seller's authorised representative. The Buyer hereby acknowledges that any purpose stated in such schedule shall be deemed to have been specified by the Buyer.



4 **DELIVERY AND DELAY**

- 4.1 The risk in the Goods shall pass to the Buyer on completion of delivery which shall be deemed to take place:
 - 4.1.1 where the Goods are to be collected by the Buyer, when those Goods have been loaded onto the Buyer's or the Buyer's carrier's vehicle, or if the Buyer fails to collect the Goods after the expiry of 5 working Days from the date the Buyer is notified that the Goods will be available for collection;
 - 4.1.2 where the Goods are to be delivered by the Seller or its carrier, when the Goods are actually delivered.
- 4.2 Time of delivery of the Goods and/or performance of the Services is not of the essence of the Contract. The Seller shall not be liable to the Buyer 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 delivery of the Goods or the provision of the Services (even if caused by the Seller's negligence), and in any event, such delay shall not entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days from the stated date of delivery.
- 4.3 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
 - 4.3.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; and/or
 - 4.3.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.



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- 4.4 Where the Goods are to be delivered or Services are to be performed in instalments, each delivery and each performance shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 4.5 If the Goods are to be delivered or the Services are to be performed in instalments and the Buyer cancels the Contract then the Buyer shall promptly pay such sum as the Seller notifies the Buyer as representing an appropriate part of the Contract price for Goods supplied and/or for Services performed prior to the date of cancellation and the Seller shall be entitled to retain any deposit or other interim payment to satisfy such sum.
- 4.6 Provided an order for the Goods is a bulk purchase with an aggregate value equal to or in excess of an amount set by the Seller from time to time, the Seller shall deliver the Goods to the Buyer free of charge if orders are placed in accordance with the Seller's standard delivery deadline times which are published on the Seller's website at www.zf.com/en otherwise be notified by the Seller to the Buyer.
- 4.7 For the avoidance of doubt guaranteed next day delivery (where applicable) means that the Goods can be delivered on the next Working Day but not that they can be delivered by a particular time on that day. The Seller can arrange for guaranteed delivery on the morning of the next Working Day on payment of an additional fee by the Buyer.

5 PRICE

- 5.1 The price of the Goods and/or Services shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order by the Seller. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer after which time they may be altered by the Seller without giving notice to the Buyer.



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- 5.2 The prices quoted are exclusive of carriage costs for Goods and exclusive of any applicable Value Added Tax and any other levy or tax which the Buyer shall additionally be liable to pay. The Buyer shall also pay, in addition to the Contract price, any extra costs that may be incurred by the Seller by reason of any of the following acts or omissions by the Buyer or its agents:
- 5.2.1 the failure to provide any or adequate instructions, specifications or other information as required by or implicit in the Contract, or other matters within the control of the Buyer;
 - 5.2.2 the request of the Buyer for the Seller to arrange for its employees to work overtime; or
 - 5.2.3 any alteration in design, quantity, quality, specification or manufacturing details (including the corrections of any error therein) by the Buyer.
- 5.3 All the provisions of these Conditions and the Contract applicable to payment of the price of the Goods and/or Services shall apply equally to the payment by the Buyer of any additional costs set out in these Conditions.
- 5.4 The Seller may, by giving notice to the Buyer at any time before delivery or performance, increase the price of the Goods or Services to reflect any increase in cost which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increases in the costs of labour, materials or other costs of manufacture).

6 TERMS OF PAYMENT

- 6.1 Where the Buyer has an Account the Seller will generate and issue an Account statement on a monthly basis where there has been at least one transaction since the date of the last preceding Account statement.
- 6.2 The Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, or (where the Buyer does not have an Account or has defaulted under the terms of the Account) in accordance with



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Condition 6.9. If the Buyer wrongfully fails to take delivery of the Goods or accept performance of the Services, the Seller shall be entitled to invoice the Buyer at any time after the Seller has notified the Buyer the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods or made itself available for provision of the Services.

6.3 The Buyer shall pay the price of the Goods in full in advance where Condition 6.9 applies and otherwise by direct debit or bank transfer within 30 days of the end of the month in which the Seller's invoice is raised or such other number of days as may be agreed in Writing between the Buyer and the Seller, in each case notwithstanding that delivery may not have taken place and that title in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.

6.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.4.1 reserve the right to cancel the Contract and suspend further trading and/or deliveries to the Buyer;

6.4.2 demand payment of all outstanding balances whether or not due and/or cancel any outstanding orders from the Buyer;

6.4.3 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);

6.4.4 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of four (4) per cent per annum above Lloyds TSB base rate from time to time, until payment in full is made;

6.4.5 instruct a third party to obtain payment from the Buyer on behalf of the Seller.



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- 6.5 The Buyer must forward any trading account query in Writing to the Seller, be it invoice, delivery or general terms related, not more than seven (7) Working Days after the receipt of the Goods or data relevant to the query being raised (“**Query Notification Period**”). If the Buyer fails to notify the Seller within the Query Notification Period any outstanding payment must be made in full by the due date.
- 6.6 The Seller may issue a credit to the Buyer, after investigation into any query forwarded to the Seller, from the Buyer during the Query Notification Period. The Seller is under no obligation to consider a query raised after the expiry of the Query Notification Period.
- 6.7 The Seller may agree from time to time to an extended Query Notification Period. Any query notification extension must be agreed in Writing between the Seller and the Buyer and is otherwise not valid.
- 6.8 The Buyer agrees that the Seller may exchange information about the Buyer and the Account including details of the Goods and/or Services purchased with members of the Seller’s group of companies and other companies (who may include competitors) selected by the Seller for the purpose of assessing credit and financial risk and to assist in the purpose of recovering debt.
- 6.9 Subject to the Buyer satisfying such credit checks as the Seller deems appropriate, the Seller will establish an Account for the Buyer. If the Seller has not opened an Account for the Buyer or if the Buyer defaults on its Account, the Seller reserves the right to only enter into a Contract with the Buyer on the condition that the Buyer pays in advance for the Goods or Services.

7 **WARRANTIES AND LIABILITIES**

- 7.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for such period as is defined in individual invoices and such warranty will start from the date of fitting of the Goods (the “**Warranty Period**”).



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- 7.2 The terms of the Warranty Document shall apply to any warranty. A copy of the Warranty Document is annexed to these Conditions. In case of any conflict between the terms of these Conditions and the Warranty Document, the terms of the Warranty Document shall take precedence.
- 7.3 The warranty given by the Seller is subject to the Seller having no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the vehicle manufacturers guidelines, misuse or alteration or repair of the Goods without the Seller's approval. The Seller reserves the right to make a handling charge if the Goods are found not to be in breach of warranty.
- 7.4 Any warranty given by the Seller is subject to the following conditions:
- 7.4.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 7.4.2 the Seller shall have no liability if the total price for the Goods has not been paid by the due date for payment;
- 7.5 Parts, materials or equipment not manufactured by the Seller are not covered by the Seller's warranty and the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 7.6 If the Goods are sold by the Seller to the Buyer as a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 7.7 Any warranty claim by the Buyer must be notified to the Seller in Writing (including a description of the fault), in accordance with the Warranty Document.
- 7.8 Where any valid warranty claim is made in accordance with these Conditions, the Seller at the Seller's sole discretion shall either replace the Goods (or the part in question) free of charge or refund to the Buyer the price of the Goods and postage and packing (or a proportionate part of the price in respect of the part in question), but the Seller shall have no further liability to the Buyer.



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- 7.9 Except in respect of death or personal injury caused by the Seller's negligence or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods and/or Services, except as expressly provided in these Conditions.
- 7.10 Unless stated explicitly in Writing the Seller has priced this Contract on the basis that the Seller's liability for consequential loss has been excluded and its liability for other loss has been excluded or limited by these terms. If the Buyer wishes the Seller to bear liability for additional loss the Seller may consider doing so but on the basis that the Contract price will have to be increased to cover the increased risk.
- 7.11 Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control and the Seller shall not be liable for any failure to fulfil its obligations in circumstances where any of them occur:
- 7.11.1 Act of God, explosion, flood, tempest, fire or accident;
 - 7.11.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 7.11.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 7.11.4 import or export regulations or embargoes;



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- 7.11.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - 7.11.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 7.11.7 power failure or breakdown in machinery.
- 7.12 All claims under the Warranty Document shall be made within 14 days of delivery of the Goods or completion of any Services or (where any defect in the Goods or Services was not apparent on reasonable inspection) within a reasonable time after discovery of the defect. Any materials or Goods that the Buyer claims are defective must be returned to the Seller within 7 days of the complaint being made to the Seller. Any claim under the Warranty Document that does not comply with these Conditions will be considered invalid and will not be considered by the Seller.

8 INTELLECTUAL PROPERTY

- 8.1 The copyright subsisting or which subsequently subsists in all documents, drawings, specifications, designs, programmes or any other material prepared by the Seller whether readable by humans or by machines shall belong to the Seller absolutely and they shall not be reproduced or disclosed or used in their original or translated form by the Buyer without the Seller's written consent for any purpose other than that for which they were furnished.
- 8.2 The Seller accepts no responsibility for the accuracy of drawings, patterns or specifications supplied by the Buyer. The Buyer shall indemnify the Seller against all claims whatsoever for damages and costs and against all liability in respect of any infringement of patent or other intellectual property rights resulting from compliance with the Buyer's instructions, express or implied and the Buyer will indemnify the Seller against any liability in respect thereof and shall pay all costs and expenses which may be incurred by the Seller in reference to any such claim. The indemnity shall extend to any amount paid on a lawyer's advice in respect of any such claim.



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- 8.3 Should the Buyer request the Seller to provide it with drawings for the Goods, the drawings may be provided at the Seller's discretion.

9 INDEMNITY

- 9.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person unless the claim arises from the use of a drawing, design or specification supplied by the Buyer, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim or paid or agreed to be paid by the Buyer in settlement of the claim provided that:

- 9.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 9.1.2 the Buyer shall give the Seller all reasonable assistance for the purpose of such proceedings or negotiations;
- 9.1.3 except pursuant to a final award the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Seller (which shall not be unreasonable withheld);
- 9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 9.1.5 the Seller shall be entitled to the benefit of and the Buyer shall accordingly account to the Seller for all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any third party in respect of any such claim; and
- 9.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this Condition.

10 ADVERTISING

The Seller believes that the contents of any advertising in respect of any Services or appearing on the Goods or their packaging or appearing on any other material issued



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by the Seller is true and accurate but makes no representation to the Buyer in respect thereof. The Seller accepts no liability in respect of any costs, claims, damages, awards or other compensation which the Buyer may incur as a result of any of the advertising being untrue or as a result of its infringing any trademark, copyright, design right or any other intellectual property.

11 TITLE

- 11.1 Title in the Goods will not pass to the Buyer until the Seller has received payment in cleared funds from the Buyer of the Contract price in full with all VAT thereon together with all other moneys that may be or become due from the Buyer to the Seller hereunder and under any other contract between the Buyer and the Seller.
- 11.2 Until title to the Goods passes to the Buyer, the Seller may require the Buyer to deliver the Goods or any of them to it on demand. The Goods, whilst in the possession of the Buyer, shall be held as the Seller's fiduciary agent and bailee and shall be stored separately from any other goods and marked clearly in a manner which makes them readily identifiable as the Goods of the Seller. The Buyer shall ensure that the Goods are kept fully insured at all times until such time as title has transferred to the Buyer in accordance with these Conditions.
- 11.3 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so, all monies owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.
- 11.4 The Seller (and / or its agents or representatives) shall be entitled at any time to enter the Buyer's premises to inspect the Goods and all stock entries, books of account, invoices, sales ledgers and other documents pertaining to them and to collect the Goods or any of them. The Buyer shall be responsible for all the Seller's costs and expenses in connection with so doing and the Seller shall not be liable for any damage caused by entering the Buyer's premises.
- 11.5 The Buyer may sell any Goods in the ordinary course of business which may have been delivered but which are still owned by the Seller PROVIDED THAT the Seller may by notice given at any time terminate the right to sell. Such right shall terminate automatically upon a receiver or administrative receiver being appointed over any assets of the Buyer or the Buyer going into liquidation or becoming subject to an administration order.
- 11.6 If the Buyer sells the Goods pursuant to the rights granted in clause 11.5 above, the Buyer shall hold the proceeds of sale as trustee for the Seller until the Contract price has been paid and shall open a separate account with its bankers for the sole purpose of receiving the proceeds of sale of the Goods and paying out of it the price of the Goods to the Seller.



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- 11.7 The Buyer may attach the Goods to goods of a third party or its own but not in such a way that the Goods lose their separate identity and are not capable of being removed PROVIDED THAT the Seller may by notice given at any time terminate this right and such right shall terminate automatically upon a receiver or administrative receiver being appointed over any assets of the Buyer or the Buyer going into liquidation or becoming subject to an administration order.
- 11.8 Nothing in this clause 11 shall entitle the Buyer to return the Goods or to delay payment thereof or constitute or be deemed to have constituted the Buyer as the Seller's agent or render the Seller liable to any third party for any unauthorised representation or warranty made or given by the Buyer to such third party in relation to the Goods or prevent the Seller from maintaining an action for the price notwithstanding that the title in the Goods may not have passed to the Buyer.

12 LIEN

The Seller shall, in respect of debts owed to it by the Buyer, have a lien upon all goods, vehicles or parts of vehicles handed or delivered to the Seller by the Buyer or otherwise in the possession of the Seller and owned or used by the Buyer until all monies due to the Seller from a Buyer whether due under this Contract or any other have been paid in full and shall be entitled, upon the expiration of 14 days' notice to the Buyer, to dispose of such goods, vehicles or other property as it thinks fit and to apply any proceeds of sale thereof (after deducting the Seller's reasonable selling expenses) towards the payment of such debts.

13 REPAIRS

If any Goods or other materials received by the Seller from the Buyer for repair or for any other reason are not removed within seven days of the Seller's request to the Buyer to remove the same, the Seller may charge for storage (at the rate at which it normally charges for storage) and may at any time thereafter sell the Goods or other materials and deduct all unpaid charges for repairing or storing the Goods together with any other expenses incurred by the Seller out of the proceeds of sale, the balance being paid to the Buyer. Any defective Goods or parts which are not fit for further use and which are not collected by the Buyer within seven days of the Seller's request that they



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be collected will be disposed of and the Seller will not be called upon to make any payment to the Buyer in respect thereof.

14 **TERMINATION OF CONTRACT**

- 14.1 Without prejudice to any other right or remedy available to it the Seller may cancel the Contract or suspend any further deliveries or performance of Services without liability if:
- 14.1.1 the Buyer commits any breach of these Conditions or of any other term of the Contract; or
 - 14.1.2 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a Seller) goes into liquidation; or
 - 14.1.3 an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property or assets of the Buyer; or
 - 14.1.4 the Buyer ceases or threatens to cease to carry on business; or
 - 14.1.5 the Buyer becomes subject to or bound by any event or circumstances similar to any of the events or circumstances mentioned above in any jurisdiction; or
 - 14.1.6 the Seller reasonably believes that any of the events mentioned above is about to occur; or
 - 14.1.7 there is a material change of control in the ownership of the Buyer's business;

and if any Goods have been delivered or Services performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

15 **GENERAL**

- 15.1 The Seller may assign, novate, transfer or sub-contract this Contract or any part of it. The Buyer may not assign, novate, transfer or sub-contract this Contract or any part of it without the prior written consent of the Seller.
- 15.2 The Seller is a member of a group of companies and the Seller may, at its sole discretion, perform any of its obligations or exercise any of its rights under the Contract by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.



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- 15.3 No waiver by the Seller by of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions and the remainder of the provision in question shall not be affected.
- 15.5 A person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.
- 15.6 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), as expressly provided in the Contract. Nothing in this condition shall limit or exclude any liability for fraud.
- 15.7 No variation or modification of these Conditions will bind the Seller unless specifically agreed in writing between authorised representatives of the Seller and the Buyer.
- 15.8 The Buyer shall not disclose to any third party any confidential matters relating to the Seller, any order or quotation or the existence or content of the Contract without the prior written consent of an authorised representative of the Seller.
- 15.9 These Conditions shall be governed by English Law and the Buyer and the Seller hereby submit to the non-exclusive jurisdiction of the English Courts.