

Terms and Conditions for After-sales Service

Effective from 1st February 1998

Nothing contained in these Terms and Conditions will affect or restrict the statutory rights of a consumer.

1. Definitions and Interpretation

1.1 In these terms unless the context shall require otherwise:

- (a) 'Company' means T.J. Vickers & Sons Ltd. its successors and assigns.
- (b) 'Customer' means the person, firm or company at whose request the Work is to be done or Goods supplied.
- (c) 'Vehicle' means a vehicle delivered to the Company as bailee upon which the Customer has requested the Company to perform Work or provide an estimate of Work.
- (d) 'Manufacturer' means, in respect of a Vehicle, the manufacturer of vehicles of that type and ancillary parts for that vehicle.
- (e) 'Completion' means, in the case of the contract for Work, the date of the Company's notice to the Customer that Work has been completed.
- (f) 'Goods' means any goods or replacements thereof to be supplied by the Company under the Contract.
- (g) 'Order' means the instructions written or otherwise received by the Company from the Customer for Work to be done or Goods to be supplied.
- (h) 'Contract' means the contract between the Company and the Customer for the sale or supply of Work and/or Goods.
- (i) 'Work' means any works to be performed on a Vehicle at the Customer's request whether by way of repairs, servicing, fitting or otherwise.
- (j) 'Manufacturer parts' means vehicle parts manufactured by the Manufacturer.

1.2 These terms and the terms set out on the Order constitute the only terms of the Contract and no amendment or addition thereto shall be effective unless agreed in writing by an authorised representative of the Company.

1.3 Headings are for convenience only and shall not affect the construction of these terms; the masculine shall include all genders and the singular shall include the plural; any reference to statutory provisions is a reference to such statutory provisions as amended or re-enacted from time to time.

2. Formation of Contract

2.1 The Customer's request (or that of his insurance company) to the Company to carry out Work or supply Goods is an offer to enter into a contract upon these terms. Acceptance occurs and the Contract is formed upon either:

- (a) the Company's accepting the Customer's duly signed authority to the Company to proceed with Work and accepting delivery of the Vehicle at its premises; or
- (b) the Company's issuing to the Customer an acknowledgement of the Order signed and dated by an authorised representative of the Company; or
- (c) in the case of Goods only, the Company's proceeding to fulfill the Customer's order.

2.2 The Contract is personal to the Customer and the Customer shall not assign the benefit of the Contract without the prior written consent of an authorised representative of the Company.

3. Estimates

3.1 Any estimate given by the Company is a considered approximation of the likely costs of Work and Goods. Estimates do not constitute an offer by the Company and are valid for 14 days from the date stated there on.

3.2 If the Customer deposits a Vehicle with the Company for the purposes of an estimate and does not either give instructions for the carrying out of the Work or collect the Vehicle within 14 days from the date of the estimate the Company shall be entitled either to store the Vehicle itself or have it stored by third parties (as the Company may in its absolute discretion think fit) and to charge the Customer with the cost of such storage for the period from the 15th day after the date of estimate until the Customer collects the Vehicle. The Customer shall be deemed to have given instructions to the Company for the storage of the Vehicle for such period and the Company shall be constituted a bailee for reward and obtain a lien against the Vehicle for its reasonable storage charges during such a period. Such storage charges shall be paid before the Vehicle may be removed from the premises at which it is being stored.

3.3 Unless otherwise agreed in writing by an authorised representative of the Company if, during progress of the Work, it appears that the estimated costs will be exceeded by a significant amount, the Company will cease performing Work and notify the Customer of the anticipated costs and will not resume performance of Work until it has received the Customer's express permission (which need not be in writing).

4. Prices and Variation

4.1 Prices of Goods stated in any estimate or in the Order are based on prices current at the date of the estimate or Order (as the case may be).

4.2 The Company reserves the right to vary the price of Work or Goods by any amount attributable to a change in the Customer's instructions or any variation in cost to the Company of goods, materials, or labour required for the performance of the Contract and taxes or any other costs whatsoever between the date of the Contract and the date of Completion or payment (whichever is the later).

4.3 The Contract may not be varied without the express consent in writing of an authorised representative of the Company. Any variations so agreed shall not constitute a new contract, but shall be deemed to be an amendment of this Contract.

5. Time

Dates given for completion of Work or delivery of Goods are estimates only. Time is not of the essence of the Contract. The Company will use reasonable endeavours to perform Work or supply Goods within the time (if any) specified to the Customer. The Customer shall not be entitled to reject Work or Goods completed or delivered later than the estimated date. The Company may suspend or delay delivery and shall not be liable for any loss, damage or delay occasioned by failure to deliver Goods or complete Work on the estimated delivery date.

6. Completion and Payment

6.1 Unless otherwise expressly agreed in writing by an authorised representative of the Company, delivery of Goods shall be at the Company's premises.

6.2 The Company shall notify the Customer when Goods on order from a supplier are ready for collection. If the Customer shall fail to pay for and take delivery of such Goods within 7 days of such notice the Company shall (without prejudice to its other rights and remedies under the Contract) be entitled to treat the Contract as repudiated and to sell the Goods.

6.3 Goods ordered from stock shall be delivered upon payment of the price.

6.4 Upon completion of Work the Company shall advise the Customer that the Vehicle is ready for collection and the Customer shall be obliged to pay for Work and/or Goods and collect the Vehicle. The Customer will pay the Company for all Work done and Goods supplied and any storage charges before the Vehicle may be removed from the Company's premises.

6.5 If the Customer shall fail to collect the Vehicle within 7 days after Completion

the Company shall be entitled to store the Vehicle itself or to have it stored by third parties (as the Company in its absolute discretion may think fit) and to charge the Customer with the cost of such storage for the period from the eighth day after Completion until the Vehicle is either collected by the Customer or sold pursuant to Clause 6.6 below. Such storage charges shall be added to and form part of the Contract price. The Customer shall be deemed to have given instructions to the Company for the storage of the Vehicle for such period and the Company shall be constituted a bailee for reward and obtain a lien against the Vehicle for its reasonable storage charges during such period.

6.6 If the Customer is in breach of any obligation hereunder to take delivery of the Vehicle, the Company may serve on the Customer notice pursuant to the Torts (Interference with Goods) Act 1977 of its intention to sell the Vehicle upon the expiry of three months from the date of such notice. If the Customer shall fail within such period to pay all monies due to the Company and take delivery of the Vehicle the Company may sell the Vehicle. Upon any such sale the Company shall pay the balance of the proceeds of sale to the Customer, after the deduction of all monies due to the Company, interest on overdue amounts, and all costs of sale.

6.7 Interest will be charged on all sums due under or by way of damages for breach of the Contract at the rate of 2% per annum above the base rate of Lloyds Bank PLC from time to time in force and shall be calculated and accrue on a day-to-day basis from the date on which payment fell due until payment whether made before or after judgement has been obtained.

6.8 The Company may at any time at its absolute discretion appropriate any payment by the Customer to such outstanding debt as the Company thinks fit notwithstanding any purported appropriation to the contrary by the Customer.

6.9 The Company reserves the right at any time at its absolute discretion to demand security for payment before continuing performance of an Order.

6.10 VAT will be charged on the price at the rate ruling at the time of delivery of the Goods or Completion or (if different) the basic tax point (as defined in regulations governing VAT from time to time in force).

6.11 Without prejudice to the provisions of Clause 6.7 and to the Company's other rights and remedies for breach of contract or otherwise, the Company reserves the right to make a single late-payment charge to cover the Company's administrative expenses of recovery (up to but not including issue of proceedings). Such charge shall be added to and form part of the price payable by the Customer if the Customer does not make payment in full for the Goods or Work on or before the due date in accordance with this Clause

6. The amount of such charge shall be calculated at 2.5% of the total invoice price and shall be shown as a separate item on the invoice to the Customer but payable only in the event of late payment.

7. Risk and Retention of Title

7.1 Goods are at the risk of the Customer as soon as they are delivered by the Company to the Customer.

7.2 Until the Company has received payment in full of all sums owed to it on any account by the Customer, whether arising out of this or any other contract, legal and beneficial title to the Goods shall remain in the Company; such Goods are referred to in this condition as Retained Goods.

7.3 The Customer may use Retained Goods and acknowledges that he shall be in possession of Retained Goods as bailee for the Company.

7.4 The Customer will store Retained Goods separately from his own Goods or those of any other person, keep them safe, in good condition and clearly identifiable as the Company's property with all identifying marks intact and legible.

7.5 The Customer irrevocably authorises the Company to enter upon its premises for the purposes of inspecting Retained Goods and identifying them as the Company's property.

7.6 The Customer's power of possession and use of Retained Goods shall terminate:

- (a) forthwith on notice from the Company if the Company has reasonable doubts as to the ability or willingness of the Customer to pay any sum to it on the due date; and
- (b) automatically upon the occurrence of any of the following events:
 - (i) if the Customer becomes insolvent or commits any act of bankruptcy or causes a meeting of or makes any arrangement or composition with all or any part of its creditors
 - (ii) if there is presented a petition for the winding up of the Customer or for the appointment of an administrator or receiver of the whole or any part of the assets or undertaking of the Customer
 - (iii) if there is appointed an administrator or receiver of the whole or any part of the assets or undertaking of the Customer
 - (iv) if there is passed a resolution or made an order for the winding up of the Customer (otherwise than for the purposes of a bona fide reconstruction or amalgamation of a solvent company)

7.7 Upon suspension, revocation or determination of the power of possession and use of Retained Goods under this Condition the Customer shall place all the Retained Goods in its possession or under its control at the Company's disposal and shall be deemed irrevocably to authorise the Company to enter upon any of its premises with or without vehicles for the purpose of removing such Goods.

7.8 The repossession of Retained Goods by the Company in accordance with this Condition shall be without prejudice to all or any of the Company's other rights or remedies against the Customer.

8. Loss or Damage

8.1 The Company is only responsible for loss of or damage to any Vehicle or its accessories or contents caused by the negligence of the Company or its employees.

8.2 The Customer is strongly advised before delivering the Vehicle to the Company to remove from the Vehicle any items of property not related to the Vehicle. The Company shall not be liable for loss or damage to any such item remaining in the Vehicle.

9. Replacement Parts

All parts replaced during performance of Work, except those that have to be returned to manufacturers or suppliers under warranty or service exchange arrangements, will be retained by the Company for return to the Customer upon collection of the Vehicle. If the Customer does not ask to take possession of such replaced parts when collecting the Vehicle, replaced parts shall become the property of the Company to dispose of as it deems fit.

10. Returned Goods

The Company may (in its absolute discretion) agree to rescind the Contract and accept return of Goods upon the following conditions:

- (a) the Goods were not specially ordered from the manufacturer or supplier for the Customer; and
- (b) the Customer returns the Goods in good condition within 5 working days after delivery; and
- (c) the Customer produces the original invoice for the Goods; and

(d) the Customer pays the Company's current handling charges for returned Goods.

11. Sub-Contracting

The Company shall be entitled to appoint sub-contractors for the performance of its obligations under the Contract.

12. Health and Safety

12.1 Upon delivery of a Vehicle to the Company the Customer shall immediately inform the Company of any circumstances or matters known to him which render the Vehicle unsafe or in a hazardous condition.

12.2 For the purposes of Section 2 of the Consumer Protection Act 1987, the producer of Manufacturer parts is the Manufacturer.

12.3 The instructions for use, cautionary notices and other technical notices supplied to the Customer with the Goods have been prepared by the relevant manufacturer of the Goods. The Customer should read such notices carefully. The Company shall not be liable for any loss or damage suffered by the Customer through the Customer's failure to read and comply with instructions specified in such notices.

13. Warranties

13.1 Genuine Manufacturer parts fitted to the Vehicle or supplied as Goods are warranted by the Manufacturer free from defect for 12 months from the date of supply. In respect of any other parts fitted or supplied as Goods, the Company assigns to the Customer the benefit of the applicable Manufacturer's warranty (if any).

13.2 The Company warrants Work free from defects for a period of 3 months from Completion or until the Vehicle following Completion has covered 3,000 miles (whichever occurs sooner) ('the Warranty Period').

13.3 If the Work includes painting then:

(a) if the metal to be painted is rusted, whilst every reasonable precaution will be taken to prevent rust penetrating the paint after Completion no warranty can be given in this respect and accordingly the Company shall not be liable for rust-affected paintwork appearing after Completion.

(b) no warranty can be given that the new paintwork will match existing paintwork exactly.

13.4 If within the Warranty Period material defects in the Work shall be discovered and:

(a) the Customer notifies the Company within 14 days after discovery giving particulars and returns the Vehicle to the Company's premises to allow an inspection to be carried out; and

(b) such defect has arisen from faulty materials employed or Workmanship carried out by the Company, then the Company shall remedy the defect and, if necessary, supply replacement parts. Any parts so replaced shall become the property of the Company to dispose of as it deems fit.

13.5 The Company's liability for defective Work is limited in all circumstances to remedying the Work and supplying (where necessary) replacement parts; completion of such remedial Work shall constitute fulfilment of the Company's obligations under the Contract.

13.6 The Company's liability under this Condition applies only to defects appearing whilst the Vehicle has been used and driven in a proper manner and serviced in accordance with the Manufacturer's recommendations and in particular (but without limitation) the Company shall not be liable in the case of defects arising out of normal deterioration, failure to follow Manufacturer's instructions or improper or faulty handling of the Vehicle.

13.7 The warranties contained in this Clause are in addition to any statutory rights implied in favour of a purchaser of goods.

13.8 Nothing in this Condition shall be construed as limiting or excluding the Company's liability under the Consumer Protection Act 1987 or for death or personal injury resulting from its negligence (as defined in Section 1 of the Unfair Contract Terms Act 1977).

14. Force Majeure

14.1 The Company shall not be liable to the Customer if unable to carry out any provision of the Contract for any reason beyond its control or owing to any inability to procure parts or materials required for the performance of the Contract.

14.2 The Company shall notify the Customer as soon as reasonably practicable after circumstances preventing performance arise. During the continuance of such a contingency the Company may, within its absolute discretion, withhold, reduce or suspend performance of its contractual obligations so far as prevented or hindered by such contingency without liability to the Customer for any loss or damage whatsoever suffered directly or indirectly by reason of any such withholding, reduction, or suspension.

14.3 Should such contingency continue for more than one month either party may cancel the Contract and, subject to payment for any parts fitted and Work done pursuant to the Contract, the Customer may collect the Vehicle and the parties' respective obligations under the Contract shall be deemed to be discharged.

15. No Waiver

No waiver of any of the Company's rights under the Contract shall be effective unless in writing signed by an authorised person on behalf of the Company. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of the Company's rights in relation to different circumstances or the recurrence of similar circumstances.

16. Notices

Any notice under these Conditions shall be properly given if in writing and sent by first class post, telex or facsimile to the address of the intended recipient as stated in the Contract or to such address as the Company and the Customer from time to time communicate to each other at their respective addresses for service and shall be deemed served, in the case of postal notice, on the expiry of 48 hours from time of posting, in the case of telex, on the recording of the 'answer back' code on the sender's machine, and in the case of facsimile, on the expiry of 15 minutes from completion of transmission by the sender.

17. Construction and Jurisdiction

17.1 English Law shall govern construction and operation of the Contract and the Customer agrees to submit to the exclusive jurisdiction of the English Courts.

17.2 Each of these conditions and each paragraph hereof shall be construed as a separate condition; should any provision hereof be found to be invalid or unenforceable or an unreasonable restriction of the Company's liability then such provision shall apply with such modification as may be necessary to make it valid and effective.