

MOTOR TECHNOLOGY LTD

TERMS AND CONDITIONS OF SALE

1. **DEFINITIONS**

In these Terms and Conditions "the Company" means MOTOR TECHNOLOGY LIMITED and its servants or agents, "Goods" shall mean the product supplied by the Company, and where appropriate shall include any services rendered by the Company, and "the Customer" shall mean the person firm or company buying the goods from the Company.
2. **TERMS AND CONDITIONS**
 - 2.1 All goods supplied by the Company are supplied on the following terms and conditions and no variation of these terms and conditions shall have effect unless expressly accepted by a Director of the Company in writing. The Company's conditions exclude any other terms and conditions which the Customer may seek to impose whether or not the Customer's conditions are contained in any order, offer, acceptance or counter-offer made by the Customer.
 - 2.2 These terms and conditions of sale supersede all prior representations, arrangements, understandings, agreements and conditions of sale between the Company and the Customer relating to the subject matter hereof and set forth the entire complete and exclusive agreement and understanding between the parties hereto relating to the subject matter hereof.
 - 2.3 All orders for Goods shall be deemed to be an offer by the Customer to purchase Goods from the Company pursuant to these Conditions. The quantity and description of the Goods shall be as set out in the Company's confirmation of order.
 - 2.4 Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Customer's acceptance of these Conditions.
 - 2.5 No party has relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set out or referred to in this Agreement.
3. **QUOTATIONS**

Quotations are valid for 90 days unless otherwise stated. All quotations given by the Company are subject to written acceptance by the Company on receipt of the Customer's order and a contract will only be formed when the Company has accepted the Customer's order or (if sooner) the Company procures goods for the order. Whenever the Company is requested by the Customer to give a series of quotations within the same Contract, each and every quotation is to be construed as the subject of a separate agreement and the provisions of this clause will apply to each quotation given by the Company.
4. **DESCRIPTION OF GOODS**

All descriptions, specifications, calculations, drawings, particulars of weights and dimensions and coverage rates submitted by the Company or otherwise contained in the Company's price lists, catalogues or other published matter are approximate only and none of these shall form part of any contract or give rise to any contractual or collateral liability upon the Company being intended merely to present a general idea of the Goods as described therein.
5. **PRICE**

All prices quoted are the Company's current prices (in Pounds Sterling unless otherwise indicated) at the time of quotation and are "ex works" unless otherwise stated. The price payable for the Goods shall be the price ruling at the date of despatch and the Company shall be entitled to adjust the price of the goods at any time between the date of confirmation of order and the date of delivery of the goods to take account of any increase in costs incurred by the Company or changes to its price list. All prices quoted are exclusive of the current rate of VAT which will be charged on all prices at the current rate.
6. **HAULAGE CHARGES**

Haulage charges will be calculated and charged on an individual contract basis and unless otherwise stated in writing by the Company prices quoted are exclusive of packaging, transportation and insurance to the Customer.
7. **DELIVERY**
 - 7.1 Delivery shall be deemed to have been effected when the Goods leave the Company's premises.
 - 7.2 Time for delivery is not of the essence of the contract and the Company shall not be liable for any loss or damage or any consequential or special loss claimed by the Customer for late delivery or non-delivery including without any limitation loss of profit, loss of production, loss of time charges or liability to any third parties.
 - 7.3 The Company shall be entitled to make delivery by instalments and to invoice separately for each instalment. Where delivery is made by instalments, each instalment shall be construed as the subject of a separate agreement to which all the provisions of these conditions shall (with any necessary modifications) apply.
 - 7.4 Where the Company has agreed to deferred deliveries, such deliveries shall be accepted by the Customer within six months from the date of order. If the Customer fails to take delivery within such period, the risk shall pass to the Customer and the balance remaining undelivered together with storage costs shall be invoiced to the Customer and payment shall become immediately due.
 - 7.5 Goods which the Customer agrees to collect ex-works must be collected within 7 days of the Company notifying the Customer that the Goods are ready. If the Goods are not collected within this period the Company shall be entitled to invoice the Customer for the Goods and to charge for storage of the Goods, the Goods being held at the Customer's risk.
 - 7.6 Deviations in quantity of the Goods delivered from those stated in the contract shall not give the Customer the right to repudiate the contract, to reject the Goods (save insofar as they materially exceed the amount ordered) or to claim damages for breach of Contract.
8. **PAYMENT**
 - 8.1 The price of the Goods shall be due and payable within 30 days following the date of the Company's invoice, unless otherwise stated.
 - 8.2 The Customer shall pay all accounts in full and not exercise any rights of set-off or counter-claim against invoices submitted by the Company.
 - 8.3 Time for payment shall be of the essence of the Contract and the Company shall be entitled to charge interest at 8% per annum above the Bank of England base rate for the time being from the date when payment falls due until actual payment on all overdue accounts.
 - 8.4 The Company reserves the right at any time to require payment in advance before continuing with or delivering any order.
9. **RISK AND PROPERTY**
 - 9.1 Risk in each consignment of the Goods shall pass to the Customer on delivery.
 - 9.2 Notwithstanding that risk in the Goods shall have passed to the Customer title in the Goods shall not pass to the Customer until the Customer has made payment to the Company for the Goods and until full payment has been received by the Company under any other Contract outstanding with the Customer.
 - 9.3 The property in each consignment of the Goods shall remain in the Company until such time as the whole of the price therefore shall have been paid by the Customer to the Company in accordance with condition 8 hereof whereupon the property in the relevant consignment shall pass to the Customer. In so far as consignments may be delivered to the Customer prior to the time when payment therefore is received by the Company the Customer shall hold the same in the capacity of a fiduciary for and on behalf of the Company until the time when payment is received by the Company in accordance with condition 8 hereof and in such capacity and until such time shall remain liable to account to the Company for the same or if the same shall be sold by the Customer in accordance with the next paragraph of this condition for that part of the proceeds of sale thereof ("the Company's part of the proceeds") which is equivalent to the price at which the same were invoiced by the Company to the Customer.
 - 9.4 The Customer shall have the right to sell any consignment or part thereof before payment for the same shall have been received by the Company provided that the Customer shall pay the Company's part of the proceeds of such a sale into a separate bank account clearly denoted as an account containing monies deposited for the benefit of the Company by the Customer acting in a fiduciary capacity.
 - 9.5 In the case of consignments of the Goods sold while the property is still vested in the Company the Company hereby gives the Customer the right to pass the property therein to the purchaser in the normal course of its business.
 - 9.6 The Company shall be entitled at any time while payment is outstanding in respect of a consignment of the Goods to re-take possession of such consignment from the Customer and the Customer undertakes to deliver the same to the Company or its duly authorised agent upon request, and the Company or its duly authorised Agent shall have the right during normal business hours to enter upon the land or buildings of the Customer to take possession of the said consignment.
 - 9.7 The Customer shall store or otherwise denote consignments of the Goods in respect of which property remains with the Company in such a way that the same can be immediately recognised as the property of the Company.
10. **INSPECTION SHORTAGES AND RETURN OF GOODS**
 - 10.1 The Customer shall inspect the Goods immediately upon delivery or collection of same as the case may be. The Customer shall be deemed to have accepted the Goods 48 hours after delivery to the Customer.
 - 10.2 The Customer shall carry out a thorough inspection of the Goods within 48 hours of delivery and shall give written notification to the Company of any defects which a reasonable examination would have revealed. In respect of all claims for damage to or loss of all or part of the Goods comprised in the contract notification must be made to the Company within 5 days of delivery or collection of the Goods and separately to the carrier within the period stipulated by the carriers terms of carriage for claims against the carrier.
 - 10.3 In all cases where the Customer complains of defects or shortages the Company shall without prejudice to the question of liability generally be under no liability in any event if it has not been given an opportunity to inspect the Goods before they have been used or altered by the Customer.
 - 10.4 Where the Customer has accepted, or has been deemed to have accepted, the Goods the Customer shall not be entitled to reject Goods which are not in accordance with the contract.
 - 10.5 No Goods may be returned without the Company's prior written consent.
11. **WARRANTY AND LIABILITY**
 - 11.1 The Company warrants that it has title to and the right to sell the Goods.
 - 11.2 No representation or warranty is given by the Company as to the suitability or fitness of the Goods for any or any particular purpose and the Customer shall satisfy himself in this respect and shall be totally responsible therefore.
 - 11.3 The Company warrants that the Goods will at the time of delivery correspond to the description given by the Company in the confirmation of order.
12. **LIABILITY/EXCLUSIONS**
 - 12.1 Introduction
 - 12.1.1 Nothing in condition 11 shall exclude or restrict the Company's liability for death or personal injury caused by the negligence of the Company.
 - 12.1.2 Each of the sub-clauses in condition 11 is to be treated as separate and independent.
 - 12.2 Defects
 - 12.2.1 Subject as hereinafter mentioned the Company will either repair the Goods at its own expense or at its option replace the Goods if any defects which the Company is reasonably satisfied are caused by faulty design manufacture materials or workmanship are discovered within three months from the date of despatch. The Company shall not be liable for defects caused by abnormal use, mis-use or neglect or defective fitting or affixing.
 - 12.2.2 The Customer may only claim the benefit of this condition if he informs the Company of the relevant defect in writing within 5 days of discovering same and returns the Goods to the Company at his own expense.
 - 12.3 Exclusion of Liability
In consideration of the Company's obligations under condition 12.2 the Customer agrees that apart from the terms set out herein no other terms conditions or warranties express or implied statutory or otherwise shall form part of the Contract.
 - 12.4 Exclusion of Consequential Loss
 - 12.4.1 The Company shall not be liable for any consequential or indirect loss or damage suffered by the Customer howsoever arising whether or not caused by the Company's negligence.
 - 12.4.2 Without prejudice to the generality of the foregoing, the Company shall not be liable for loss of profits, loss of contracts or damage to property of the Customer or anyone else whosesoever, howsoever arising.
 - 12.5 Limitation
Without prejudice to the foregoing provisions of condition 12 of these conditions or to the Company's other rights hereunder, the Company's total liability for any one claim or for the total of any claims arising from any one act or default of the Company (whether arising from the Company's negligence or otherwise) shall not in any event exceed the Contract price for the Goods the subject of the claim.
13. **TERMINATION**

The Company shall at its option be entitled by notice to terminate all or any of its contracts with the Customer forthwith and recover all expenses and losses resulting to the Company including (but without limitation to) loss of profit or other consequential loss if:-

 - 13.1 The Customer has a Bankruptcy Petition presented against him or a Bankruptcy Order is made;
 - 13.2 The Customer makes or seeks to make any composition or arrangement with his creditors;
 - 13.3 The Customer makes a proposal to his creditors for a voluntary arrangement or applies for any interim order within the meaning of Section 268 of the Insolvency Act 1986;
 - 13.4 An encumbrancer takes possession of any of the Customer's assets or any of the Customer's property is taken in execution or due process of law;
 - 13.5 A Petition is presented or an Order is made or a Resolution is passed for the Winding-Up of the Customer;
 - 13.6 A Petition is presented or an Order is made for an Administration Order in relation to the Customer;
 - 13.7 The Customer's Directors make a proposal for a voluntary arrangement with the Customer's Creditors;
 - 13.8 The Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
 - 13.9 A receiver or administrative receiver is appointed over any of the Customer's assets;
 - 13.10 The Customer fails to make any payment owed to the Company on the due date and for this purpose "the Company" shall be deemed to include any other company which is a subsidiary of the Company and "the Customer" shall be deemed to include where it is a member of a group of companies any other company in that group;
 - 13.11 The Customer fails to make payment in advance when requested in accordance with condition 8 above within 7 days of being requested to do so;
 - 13.12 The Customer fails to take delivery of or to collect the Goods within 14 days of being notified by the Company that they are to be delivered or are ready to be collected; or
 - 13.13 The Customer is in breach of the terms and conditions of any Contract with the Company (including breach of these conditions) and for this purpose "the Company" shall be deemed to include any other company which is a subsidiary of the Company and "the Customer" shall be deemed to include where it is a member of a group of companies any other company in that group.
14. **CANCELLATION**

No cancellation by the Customer is permitted unless expressly agreed in writing by a Director of the Company. In the event of cancellation the Customer will fully indemnify the Company against all expenses incurred by the Company together with liquidated damages equivalent to 20% of the contract price. Goods returned to the Company will be accepted only at the discretion of the Directors and subject to a minimum 20% re-stocking charge plus any accrued transport costs.
15. **ASSIGNMENT**

The Customer shall not assign or transfer or purport to assign or transfer any contract to which these conditions apply or the benefit thereof to any other person firm or company whatsoever.
16. **WAIVER**

Waiver by the Company of any breach of these conditions or any grant of time or indulgence by the Company to the Customer shall in no way derogate from the Company's rights hereunder.
17. **INDEMNITY**

The Customer shall indemnify and keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature made by third parties arising directly or indirectly out of any act or omission of the Customer in connection with the use or storage or sale of the Goods or in connection with the use, functioning or state of the Goods or in connection with the performance of services rendered.
18. **SUB-CONTRACTING**

The Company shall be entitled to sub-contract all or any of its obligations hereunder without any necessity to obtain the prior consent of the Customer.
19. **FORCE MAJEURE**

The Company shall not be liable for any failure to deliver the Goods arising from circumstances outside the Company's control including by way of example but without prejudice to the generality of the foregoing inability to obtain materials, war, invasion, act of foreign enemy, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection, or military or usurped power, accidents, plant breakdown, abnormal weather, fire, flood, interference by labour or strike or lockouts of employees, acts of God, or any restriction, regulation, order, act, omission or operation by any local or municipal authority, public corporation or Government Department. If by reason of any such circumstances the Company is unable to supply the total demand for a product the Company may allocate its available supply among all its customers (including the Customer) and itself on what it adjudges to be an equitable basis.
20. **TESTING AND INSPECTION**

Where the Customer requires the Company to commission Goods at the Customer's premises this will constitute a separate contract between the Customer and the Company.
21. **INSTALLATION**

When the Customer undertakes the installation of the Goods in the Customer's premises the Company shall not be responsible for any consequential loss or damage occurring as a result thereof nor in respect of any third party claims in connection therewith.
22. **NOTICES**

Any notice, consent, notification, acknowledgement, authority or agreement required or referred to in the contract or these conditions shall be in writing and shall be sent to the party for whom it is intended by post or by facsimile transmission at such party's registered or main office or last known address and shall be deemed to have been received three days after the date of posting.
23. **JURISDICTION**

This contract shall be governed by and be construed in accordance with English Law and all disputes arising out of or in relation to this contract shall be submitted to the exclusive jurisdiction of the English Courts. If any of these conditions or any part of a condition is rendered void or unenforceable by any legislation to which it is subject or by any rule of law it shall be void and unenforceable to that extent but not further or otherwise.