



ACKLEA

The UK's Leading Traffic Management Vehicle Specialist
A Division of SHB Hire Ltd

ACKLEA, A DIVISION OF SHB HIRE LTD

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

Definitions

- **Business Day** – a day other than a Saturday or Sunday or a public holiday in the UK
- **Commencement Date** – the confirmed receipt and acceptance of the order as per clause 1.3
- **Contract** – the contract between the Supplier and Customer for the supply of Goods and services in accordance with these conditions.
- **Customer** – the person who purchases the Goods or Services
- **Goods** – the goods or part of them set out in the order
- **Order** – the Customers written acceptance of the Suppliers quotation
- **Services** – Services as agreed to be provided to the Customer
- **Supplier** – the person who sells the Goods or Services

1. THE AGREEMENT

- 1.1. These conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate.
- 1.2. The Order constitutes an offer by the Customer to purchase Goods in accordance with these terms.
- 1.3. The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order; at that point the Contract shall start and be confirmed as the Commencement Date.
- 1.4. The Contract constitutes the entire agreement between the parties.
- 1.5. Any variation to the Order or Contract must be agreed in writing by both parties and will be deemed an amendment and not a new Contract.
- 1.6. Any quotations and estimates given shall not constitute an offer and are valid for 30 days from dispatch by the Supplier.
- 1.7. Unless specifically stated in the quote or estimate, all prices quoted by the Supplier for the parts are based upon prices current at the time of preparing the quote or estimate. The Supplier reserves the right to increase such prices to the Customer if the price to the Supplier is increased between preparing the quote or estimate and obtaining the parts in order to carry out the work.

2. DELIVERY OF GOODS

- 2.1. The Supplier will use its best efforts to carry out the work in the time advised to the Customer but time shall not be of the essence and no liability accepted by the Supplier for any delays.
- 2.2. All vehicles deposited at the Suppliers premises for the purpose of the Supplier preparing quotes or estimates will be stored free of charge for a period of up to 30 days after the despatch of the quote or estimate. Without acceptance of the quotation upon the 31st day the Supplier reserves the right to charge a

storage rate based on the Suppliers current storage rate per day thereafter, or the vehicle must be removed by the Customer.

2.3. The Supplier shall ensure that:

2.3.1. Each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods and any applicable instructions.

2.4. The Goods will be delivered to the Customer or collected as per the instructions on the Order.

2.5. Delivery of Goods shall be completed on the Goods arrival to the delivery location as agreed on the Order or when collected from the Supplier.

2.6. The Supplier shall have no liability for any failure to deliver any Goods to the extent that such failure is caused by a Force Majeure.

2.7. If the Customer fails to accept or take delivery of the Goods within 5 Business Days of the Supplier notifying the Customer that the Goods are ready then;

2.7.1. Delivery of Goods shall be deemed to have been completed at 09:00 on the fifth Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

2.7.2. The Supplier shall store the Goods until delivery or collection takes place and charge the Customer all related costs and expenses, including insurance.

2.8. If twenty Business Days had passed after the Supplier notified the Customer that the Goods were ready and the Goods had not been collected nor delivered then the Supplier may resell the Goods and charge the Customer for any shortfall below the agreed Customer purchase price.

2.9. The Supplier may deliver the Goods in instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

3. THE GOODS

3.1. The Supplier warrants that on delivery and for a period of twelve months from the date of delivery, the Goods shall:

3.1.1. Subject to clause 3.5 conform in all material respects with their description and any applicable specification;

3.1.2. Be free from material defect in design, material and workmanship;

3.1.3. Be of satisfactory quality (within the meaning of the Sales of Goods Act 1979); and

3.1.4. Be fit for use provided always that the Customer has complied fully with all the operating instructions and/or instruction manuals supplied by the Supplier and followed any maintenance regimes given..

3.2. Subject to clause 3.3, if:

3.2.1. The Customer gives notice in writing during the Warranty Period within seven days of discovery that some or all of the Goods do not comply with the warranty set out in clause 3.1;

3.2.2. The Supplier is given reasonable opportunity to examine such Goods; and

3.2.3. The Customer (if asked to do so by the Supplier) returns such Goods to the Suppliers place of business at the Customers cost;

3.2.4. The Supplier shall, at its choice, chose to repair or replace the defective Goods, or refund the price of the defective Goods in full.

3.3. The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 3.1 if:

3.3.1. The Customer makes any further use of such Goods after giving a notice in accordance with 3.2;

3.3.2. The defect arises because the Customer failed to follow the Supplier's oral or written instructions as the storage, installation, use, maintenance or the Goods or;

3.3.3. The defect arises as a result of the Supplier following any drawing, design or specification supply by the Customer;

3.3.4. The Customer alters or repairs the Goods without the written consent of the Supplier; or

3.3.5. The defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions.

- 3.4. If the products are to be manufactured or any process is to be applied to the products by the Supplier in accordance with a specification submitted by the Customer, the Customer shall indemnify the Supplier against loss, damages, costs and expenses awarded against or incurred by the Supplier in settlement of any claims for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Suppliers use of the Customers specification.
- 3.5. The Supplier has the right to make any changes to the Goods which are necessary to comply with any applicable law or safety requirement, and which do not materially affect the nature or quality of the Goods.
- 3.6. The terms of these conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 3.7. Where a host vehicle has been provided it is assumed by the Supplier that the host vehicle is 'fit for its intended purpose' after modification and no liability will be accepted by the Supplier for any host vehicle that proves to be unfit for purpose due to the specification of the host vehicles suitability for the tasks undertaken by the host vehicle after modification.
- 3.8. Where new paintwork is required and the metal work of the host vehicle is found to be rusted, every reasonable precaution will be taken to prevent the rust from penetrating the paintwork. However no guarantee is given in this respect. If partial paintwork is required we cannot guarantee to match any colour perfectly.
- 3.9. The Supplier reserves the right to increase the contract quoted charges should additional work to that as would be reasonably expected manifests itself upon dismantling any part of the vehicle or equipment. The Customer shall, on giving notice to the Supplier, have the right to remove the vehicle or equipment upon payment of all charges levied by the Supplier for the work carried out and storage prior to the requirements for the additional repairs being communicated to the Customer.
- 3.10. Unless specifically stated in the quote, all quotes are deemed to reflect where possible, current legislation, codes of practice and industry standards applicable at the time of quote. Should any changes occur in legislation, codes of practice and industry standards between quote, commencement of work or completion of work all changes will be deemed to be a variation and any cost increases that the Supplier may incur will be passed on to the Customer.
- 3.11. Work shall be deemed to be completed when the Customer is advised by the Supplier that such work is completed. The Customer will pay the Supplier for all work done and parts supplied as well as any storage costs in line with the terms of the quote or in no more than 30 days where no date is specified in the quote. If the Customer fails to pay the amount due and fails to collect the vehicle within seven days of the payment due date the company will charge storage at its current rates. The Supplier may sell the vehicle if the Customer shall fail to pay and collect the vehicle within 3 months of being notified that the payment is overdue by the Supplier. Upon such a sale the Supplier shall pay the balance of proceeds of the sale to the Customer after deducting all unpaid charges and disposal costs.
- 3.12. All goods supplied and used in any conversion, modification or repair shall remain the property of the Supplier until the contract price has been discharged in full. A cheque accepted by the Supplier in payment shall not be treated as discharge until the sum has been cleared.
- 3.13. No order which has been accepted by the Supplier may be cancelled by the Customer, except with the agreement in writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against the costs of all labour and materials incurred as a result of the cancellation.

4. PRICE OF THE GOODS

- 4.1. The price of the Goods shall be the Suppliers quoted price. All offered prices are valid for only 30 days, after this time they may be altered by the Supplier without giving notice to the Customer.
- 4.2. The Supplier reserves the right by giving notice at any time to the Customer before delivery to renegotiate the price of the products to reflect any increase in the cost to the Supplier which is due to any factor

beyond the control of the Supplier, any change in delivery dates quantities or specification for the products which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instruction.

4.3. The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay the Supplier.

5. TITLE AND RISK

5.1. The risk in the Goods shall pass to the Customer on completion of delivery or collection.

5.2. Title shall not pass to the Customer until the Supplier has received payment in full.

5.3. Until such time as the property in the products passes to the Customer, they shall hold the products like a fiduciary agent or Bailee of the Supplier, and shall keep the products separate from those of the Customer and other parties.

5.4. The Customer shall not be entitled to pledge or in any way charge (by way of security for any indebtedness) any of the products which remain the property of the Supplier, but if the Customer does this then all outstanding amounts owned by the Customer to the Supplier shall for with become due for payment.

5.5. If before title of the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 11 or the Supplier reasonable believes that any such event is about to happen and notifies the Customer accordingly then the Supplier at any time may recover the Goods.

6. SUPPLIERS OBLIGATIONS

6.1. The Supplier warrants that all new genuine parts and equipment provided or fitted to a vehicle or supplied for fitment by others will be free from defects in accordance with the manufacturers warranty period. In respect of any other parts fitted, the Supplier assigns to the Customer the benefit of the applicable manufacturers' warranty. The Supplier warrants its work free from defects for a period of 12 months from date of handover of the vehicle or equipment.

6.2. The Supplier shall use all reasonable endeavours to meet any delivery dates for the Order but any dates shall be estimates only and time shall not be of the essence of the agreement.

6.3. All parts removed during service or repair, except those that have to be returned to the manufacturer's or suppliers under warranty of service exchange will only be retained by the Supplier if expressly instructed to do so by the Customer prior to commencement of repairs or service. The Company is otherwise at will to dispose of such parts as it sees fit. The Supplier shall obtain the Customers express permission to repair or to fit repaired units where new parts quoted for are unavailable or not obtainable within a reasonable time frame.

7. CUSTOMER OBLIGATIONS

7.1. The customer shall:

7.1.1. Ensure the Order is correct and accurate and has all the correct information;

7.1.2. Follow all written instructions with regard to the fitment (if applicable), use and maintenance of the product;

7.1.3. Make payment in the agreed timeframes.

8. TERMS OF PAYMENT

8.1. Subject to any special terms agreed in writing between the Customer and Supplier the Supplier shall be entitled to invoice for Goods once ready for supply.

8.2. Unless otherwise agreed in writing the Customer shall pay the invoice within 30 days of the invoice date or earlier if required to receive goods.

8.3. If the Customer fails to make full payment on the stipulated due date, the Supplier will be entitled to invoice any late payments with an uplift of 4% above the Bank of England's base rate from the day after the payment was due.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1. All intellectual property rights in or arising out of or in connection with the design manufacture and/or supply of the Goods and/or Services shall be owned by the Supplier.
- 9.2. If the products are to be manufactured or any process is to be applied to the products by the Supplier in accordance with a specification submitted by the Customer, the Customer shall indemnify the Supplier against loss, damages, costs and expenses awarded against or incurred by the Supplier in settlement of any claims for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Suppliers use of the Customers specification.
- 9.3. All Supplier intellectual property is the exclusive property of the Supplier.

10. LIMITATION OF LIABILITY

- 10.1. Nothing in these Conditions shall limit or exclude the Suppliers liability for:
 - 10.1.1. Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 10.1.2. Fraud or fraudulent misrepresentation;
 - 10.1.3. Breach of the terms implied by Section 2 or Section 12 of the Supply of Goods and Services Act 1982;
 - 10.1.4. Defective products under the Consumer Protection Act 1987.
- 10.2. Subject to clause 10.2:
 - 10.2.1. The Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising or in connection with the Contract (including any losses that may result from a deliberate breach of the Contract by the Supplier, its employees, agents of subcontractors); and
 - 10.2.2. The Suppliers total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by the Supplier, its employees, agents or subcontracts shall not exceed the price paid or payable to the Supplier for the Goods;
 - 10.2.3. The Supplier will not be liable for any damages caused by the Customer not following specific operations and mechanical instructions given by the supplier on use and aftercare;
 - 10.2.4. The Supplier will not be responsible for any personal items that are left in a vehicle whilst in our possession ;
 - 10.2.5. Whilst all endeavours will be carried out to check the authenticity of a collection driver the Supplier will not be held liable to the Customer for loss or damage occasioned by release of the vehicle to any person or persons who present themselves as duly authorised by the Customer to have possession of the vehicle unless photographic ID is given by the Customer prior to collection that matches that of the individual collecting the vehicle.

11. TERMINATION

- 11.1. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 11.1.1. The other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within twenty eight days after receipt of notice in writing of the breach;
 - 11.1.2. The other party suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due;
 - 11.1.3. The other party commences negotiations or any clause of its creditors with a view to rescheduling any of its debts or makes a proposal for or enters into any compromise arrangements;
 - 11.1.4. A petition is filed, a notice is given, a resolution is passed, or an order is made in connection with winding up of the company;
 - 11.1.5. The other party is subject to a bankruptcy petition or order;

- 11.1.6. A creditor of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 11.1.7. An application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- 11.1.8. A person becomes entitled or does appoint a receiver over the assets of the other party;
- 11.1.9. The other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.
- 11.2. Without limiting its other rights or remedies, the Supplier may terminate the contract:
 - 11.2.1. By giving the Customer one month's written notice;
 - 11.2.2. With immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

12. CONSEQUENCES OF TERMINATION

- 12.1. On termination of the Contract for any reason:
 - 12.1.1. The Customer shall immediately pay to the Supplier all of the Suppliers outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 12.1.2. The Customer shall return all the Supplier Materials and Goods which have not been fully paid for;
 - 12.1.3. The accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 12.1.4. Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. DATA PROTECTION

- 13.1. In this clause 13, "data processor", "data controller", "personal data" and "process" will have the meaning given to them in the Data protection Act 1998 ("DPA").
- 13.2. The Supplier will comply with the provisions of the DPA (as amended or re-enacted from time to time) and with all appropriate regulations and guidance notes.
- 13.3. The Supplier will have a robust Data Protection policy in place.
- 13.4. In relations to any personal data the Supplier shall have in connection with this Contract it shall:
 - 13.4.1. Process the personal data only to the extent and in such a manner, as is necessary for the purposes connected to this Contract;
 - 13.4.2. Keep full written records of any processing of personal data that is carried out;
 - 13.4.3. Promptly comply with any request to amend, transfer or delete the personal data;
 - 13.4.4. Provide upon request a copy of the types of personal data applicable to the Customer being held;
 - 13.4.5. Implement appropriate technical and organisation measures to protect personal data against unauthorised and unlawful processing, accidental loss, destruction, damage, alteration or disclosure;
 - 13.4.6. Ensure that access to the personal data is limited to those employees who need access to meet the Suppliers obligations in this Contract.
- 13.5. All the Suppliers employees will be:
 - 13.5.1. Informed of the confidential nature of the personal data;
 - 13.5.2. Have undergone the appropriate training in the DPA and relating laws;
 - 13.5.3. Are aware of the companies and their personal duties and obligations.
- 13.6. The Supplier will promptly notify the Customer if:
 - 13.6.1. Any personal data is lost or destroyed or becomes damaged, corrupted or unusable;
 - 13.6.2. If the Supplier receives a complaint with regard to the Customers personal data;

13.6.3. If the Supplier receives a request from a data subject for access to the data.

14. GENERAL

- 14.1. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.2. The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to a third party.
- 14.3. The Customer shall not, without the prior written consent of the Supplier assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract
- 14.4. Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first class recorded delivery to its registered company or principle place of business.
- 14.5. Nothing in this Contract is intended to, or shall be deemed to constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as an agent for, or to bind the other party in any way.
- 14.6. Variations including the introduction of any additional terms and conditions to the Contract shall only be binding when agreed in writing and signed by the Supplier.
- 14.7. The Supplier agrees to comply at all times with the Modern Slavery Act 2015. Specifically this will include no child labour or forced labour to be used when providing Services or Goods. Employees to be paid in line with the national Living Wage and National Minimum wage and work hours in accordance with national regulations.
- 14.8. This Contract and any dispute of claim arising out of or in connection with it or its subject matter shall be governed by, and construed in accordance with English law.