

TERMS FOR THE SALE OF VEHICLES AND FOR THE SUPPLY OF SERVICES

1. Interpretation

“Company” means Adams Morey Ltd.

“Contract” means the Contract for the sale and purchase of any Vehicle or Parts or the provision of Services.

“Customer” means the person named overleaf.

“Order” means an order by the Customer for the purchase of a Vehicle or Parts or the provision of Services which is accepted by the Company in writing.

“Parts” means any parts (including any instalments) sold by the Company or used or supplied by the Company in connection with the sale of a Vehicle or the supply of any Services (and “Part” shall be construed accordingly).

“Quotation” means a quotation in writing signed by the Customer and the Company, which is accepted by the Customer within the acceptance period stated in the Quotation.

“Services” means the service and/or repair of any Vehicle, including warranty work, breakdown and roadside assistance services or any other services carried out by the Company for the Customer. “Terms” means the terms for the sale of a Vehicle or Parts or for the supply of Services, as set out in this document.

“Vehicle” means any new or used heavy or light commercial vehicle or van including all accessories.

Any reference to a clause (unless otherwise stipulated) is reference to a clause of these Terms.

A reference to one gender includes a reference to the other gender.

A reference to the singular includes the plural and vice versa.

Clause headings are for convenience only and shall not affect the interpretation of these Terms.

2. The Contract Specification and Orders

2.1. The Vehicle or Parts will be sold or Services will be supplied by the Company to the Customer on these Terms and in accordance with the Quotation or Order.

2.2. No other terms including, without limitation, any terms specified in an Order or any variation to the Terms shall apply unless set out in writing and signed by the Customer and the Company.

2.3. The Customer understands and confirms that any employee or agent of the Company has no authority to make any representation about the Vehicle, Parts or Services nor shall the Company be liable for any advice or recommendations given by it or its employees or agents to the Customer as to the Vehicle, Parts or Services, unless such advice is confirmed by the Company in writing.

2.4. Any error or omission in any document or information issued by the Company or other person relating to the Vehicle, Parts or Services shall be subject to correction by, and without any liability on the part of, the Company.

2.5. The Customer shall be responsible for the accuracy of any Order (including the specification).

2.6. If the manufacturer or supplier discontinues the sale of, or alters the specification of, any Vehicle or Parts, the Company reserves the right (without any further liability on the part of the Company) to:
(a) deliver in satisfaction of the Contract a Vehicle or Parts conforming to the manufacturer’s or supplier’s specification prevailing at the time of delivery; or
(b) fit another Part; or
(c) cancel the Contract and refund to the Customer (as applicable) either any deposit or part exchange allowance paid by the Customer to the Company.

2.7. An Order or Quotation shall not be cancelled by the Customer, except with the agreement in writing of the Company. In the event of such cancellation, the Customer shall indemnify the Company in full against all loss (including loss of profit), costs, damages and expenses incurred by the Company as a result of cancellation.

3. Prices and Payment

3.1. The Company may require a deposit under the Contract.

3.2. Unless there is a written agreement for a fixed price, the price for a Vehicle or Parts shall be the price applicable on delivery. If the manufacturer of a Vehicle or supplier of any Parts increases their prices, the Company reserves the right to increase its prices.

3.3. The price for the provision of Services shall be the price applicable on completion of such Services.

3.4. Any price estimates given by the Company in respect of the supply of Services shall be provisional and treated as an estimate only. The Company shall use all reasonable endeavours to obtain the authority of the Customer where the total price for the provision of Services is likely to be a substantial divergence from the estimate previously given.

3.5. All prices shall be payable together with value added tax and (where appropriate) delivery, transport and insurance charges.

3.6. Unless otherwise agreed in writing prior to delivery: (a) payment in

3.7. cash or cleared funds for the sale of Parts or the supply of Services shall be due within 20 days of the month following the invoice date; and (b) payment for the sale of a Vehicle shall be made prior to, or on the date of, delivery of the Vehicle.

Time for payment of all sums shall be of the essence and failure by the Customer to pay in accordance with the provisions of this clause shall entitle the Company, without prejudice to its rights to damages, to suspend any outstanding deliveries or Services or to cancel the Contract.

3.8. If the Customer fails to pay any sum due on the due date for payment the Company shall be entitled to charge the Customer interest at the rate of 4% a year above the National Westminster Bank Base Rate from time to time in force, accruing on a daily basis, until payment is made in full. Such interest shall be payable both before and after any legal judgement the Company may obtain against the Customer.

3.9. The Customer shall not be entitled to withhold payment of any sums after they have become due by reason of any right of set off or counter-claim or for any reason whatsoever.

3.10. All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract despite any other provision.

3.11. In addition to the Company’s lien for repairs, the Company shall have a general lien on all property of the Customer in the possession of the Company pending payment of all sums due and after 14 days notice shall have the right to sell any of the Customer’s property as agent for and at the expense of the Customer and apply all proceeds of sale towards payment of such sums.

4. Delivery

4.1. In the absence of any express agreement, delivery shall take place by the Customer collecting the Vehicle, Customer’s vehicle or Parts from the Company’s place of business, following the Company’s notification that the Vehicle, Customer’s vehicle or Parts are ready for collection.

4.2. Any dates specified by the Company for delivery are intended to be an estimate only and shall not be of the essence unless previously agreed in writing between the parties. If no dates are so specified, delivery will be within a reasonable time.

4.3. Subject to the other provisions of these Terms, the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar losses), costs, damages, charges or expenses caused directly or indirectly by any delay in delivery of the Vehicle or Parts (even if caused by the Company’s negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.4. If for any reason the Customer will not accept delivery when, as applicable, the Vehicle, the Customer’s vehicle or the Parts are ready for delivery, or the Company is unable to deliver on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

(a) the risk in the applicable goods will pass to the Customer (including for loss or damage caused by the Company’s negligence);

(b) such goods will be deemed to have been delivered; and
(c) the Company may store such goods until delivery in which case the Customer will be liable for all related costs and expenses (including without limitation, storage and insurance).

4.5. Any time or date for completing the Services shall be an estimate only and the Company shall not be liable for any failure to complete the Services within such time or date.

4.6. Parts may be delivered in instalments. Failure by the Company to deliver any of the instalments in accordance with these Terms shall not entitle the Customer to treat the Contract as a whole as repudiated. Claims for shortages or discrepancies or loss or damage of Parts in transit will not be accepted unless notified to the Company and (if appropriate) the Company’s carriers within 48 hours of receipt and confirmed in writing within 7 days after receipt. Packaging and damaged parts shall be retained for inspection.

4.7. Following delivery, the Customer will inspect any Vehicle or Parts. Unless the Customer notifies the Company within 48 hours of delivery of any defect the Customer will be deemed to have accepted it. After acceptance, the Customer shall not be entitled to reject a Vehicle or Parts which are not in accordance with the Contract.

5. Risk and Retention of Title

5.1. Risk shall pass to the Customer from the time of delivery.

- 5.2 Any Vehicle or Parts supplied by the Company to the Customer shall remain the sole and absolute property of the Company until the Customer has paid to the Company in cash or cleared funds the price in full together with the full price of any other vehicle, part(s) or services agreed to be sold or supplied by the Company to the Customer for which payment is then due. The Customer acknowledges that it is in possession of the Vehicle or Parts solely as a fiduciary agent and bailee of the Company until payment.
- 5.3 The Customer will store protect and maintain records of the Vehicle or Parts on its own premises in a manner which makes them readily identifiable as the property of the Company and shall keep them insured in their full replacement value.
- 5.4 Until the Customer becomes the owner of the Vehicle or Parts, the Company shall be entitled at any time to require the Customer to deliver up the Vehicle or Parts to the Company and if the Customer fails to do so forthwith the Company shall have the right to enter upon the premises of the Customer or any third party where such Vehicle or Parts are stored and repossess them. The Customer shall indemnify the Company against any liability which the Company may incur in connection with the taking or attempting to take possession of them.
- 5.5 Whilst the Company retains title to the Parts, the Customer may sell the Parts before ownership has passed to it solely on the following conditions:
- (a) any sale shall be effected in the ordinary course of the Customer's business at full market value and the Customer shall hold such part of the proceeds of sale as represent the amount owed by the Customer to the Company on behalf of the Company and the Customer shall account to the Company accordingly; and
- (b) any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 5.6 The Customer may not pledge or in any way charge as security for any indebtedness any Vehicle or Parts which remain the property of the Company.
- 5.7 The Company shall be entitled to recover payment for the Vehicle or Parts notwithstanding that ownership of any such goods has not passed from the Company.
- 5.8 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Vehicle or Parts are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 5.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this clause shall remain in effect.
- 6. Company's Warranties and Liabilities**
- 6.1 Nothing in these Terms excludes or limits the Company's liability for:
- (a) death or personal injury resulting from its negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) for any breach of Section 12 of the Sale of Goods Act 1979; or
- (d) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.
- 6.2 Where the Customer deals as a consumer within the meaning of the Unfair Contract Terms Act 1977, the Company shall be liable for any breach of the terms set out in Sections 13, 14 and 15 of the Sale of Goods Act 1979 in so far as such terms are implied in the Contract.
- 6.3 Subject to clauses 6.1 and 6.2 above, all representations (other than fraudulent misrepresentations), warranties, conditions or other terms which are either expressly given or implied by statute or common law are excluded from the Contract and the Company shall not be liable for any loss or damage whether caused by the negligence of the Company, its servants or agents or however caused.
- THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSES 6.4 AND 6.5**
- 6.4 Save for claims under clause 6.1 or 6.2 above: (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the Vehicle, Parts or Services under the Contract and no claims arising out of the Contract may be brought more than one year after the Customer becomes aware of the claim; and
- (b) the Company shall in no circumstances whatsoever be liable for any loss of profit, loss of business or production, depletion of goodwill or any similar loss or damage (in each case whether direct, indirect, or consequential and whether or not foreseeable) or any indirect or consequential loss or damage, costs, expenses or any other claims for consequential compensation whatsoever which arise out of or in connection with the Contract; and
- (c) the Customer shall indemnify the Company in respect of any costs, claims, loss or liability made or incurred by any person in connection with the Vehicle, Parts or Services.
- 6.5 The Company shall not be liable to the Customer for any delay or failure to perform any of the Company's obligations if the delay or failure was beyond the reasonable control of the Company including but not limited to an act of God, legislation, war, fire, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a trade dispute or owing to any inability to procure materials required for its performance of the Contract.
- 7. Manufacturer's Warranty**
- Each new Vehicle and any new Parts supplied by the Company under the Contract have the benefit of a manufacturer's warranty. A copy of the full terms are available upon request.
- 8. Termination Following Customer's Default**
- 8.1 If any of the following events occur, the Company may:
- (a) cancel the Contract; or
- (b) suspend any further supply of any Vehicle or Parts; or
- (c) discontinue the performance of any Services; or
- (d) cancel any credit arrangements; and
- the price for each Vehicle or all Parts ordered (whether or not delivered) and for all Services that have been performed shall become immediately due and payable if the Customer:
- 8.1.1 fails to pay any sum due on the due date under this or any other contract made with the Company; or
- 8.1.2 breaches any other term of the Contract (other than in clause 8.1.1. above) and (if capable of remedy) fails to remedy the breach within 7 days of receipt of a notice from the Company requiring the Customer to do so; or
- 8.1.3 dies or ceases to carry on business; or
- 8.1.4 is unable to pay its debts within the meaning of the Insolvency Act 1986 or a petition is presented for bankruptcy or an interim order; or
- 8.1.5 makes any arrangement with its creditors or convenes a meeting of its creditors, a proposal is made for a voluntary arrangement or any scheme or arrangement for the benefit of creditors; or
- 8.1.6 an administrator, receiver, or administrative receiver is appointed over any of its assets, or a petition is presented for an administration or winding up order.
- 9. General**
- 9.1 Any communications or notices between the parties shall be in writing and may be delivered: (i) by hand, first class post or by fax and addressed to the addressee at its registered office or principal place of business; or (ii) by e-mail to the e-mail address stated in the Contract.
- 9.2 All such communications (in the absence of proof of earlier receipt) shall be deemed to be received:
- (a) if sent by post, 2 days (excluding Saturdays, Sundays and bank holidays in England) after posting (exclusive of the date of posting);
- (b) if delivered by hand, on the day of delivery;
- (c) if sent by fax, on a working day prior to 4pm, at the time of transmission and otherwise on the next working day; and
- (d) if sent by e-mail, only when an acknowledgment of receipt has been provided by the intended recipient to the e-mail sender.
- 9.3 The Company contracts as principal and not as agent.
- 9.4 The Company may appoint an independent contractor to perform all or any part of the Contract for the Company.
- 9.5 The Customer shall not assign the Contract.
- 9.6 Any failure by the Company to exercise any of its rights shall not be a waiver of the Company's rights. If any of the provisions in the Contract are found to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected.
- 9.7 The Contract shall be governed in accordance with English Law and all disputes relating to it shall be decided by the English Courts.
- 9.8 The parties to the Contract do not intend that any provision of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 9.9 These Terms supersede any previous terms and conditions issued by the company relating to the subject matter of these Terms.
- 9.10 Nothing in these Terms nor any Contract shall commit the Company to any form of buy back obligation or residual value agreement unless a separate agreement is entered into between the parties in writing and signed by the Managing Director from time to time of the Company.