

## **TERMS & CONDITIONS FOR SERVICING, REPAIRS AND SUPPLY OF PARTS**

### **1. Definitions**

1. "The Company", the person designed overleaf who is the vendor of the services and or goods to the customer.
2. "The Customer", the person designed overleaf, contracting for goods and services to be supplied by the Company.
3. " Consumer", a Customer, being an individual who, for the purposes of the purchase, is acting wholly or mainly outside of their trade, business, craft or profession
4. "Goods" means all things to be sold by the Company to the Customer.
5. "Services" means all services, including repairs, provided by the company to the Customer

### **2. Whole Contract**

These terms shall represent the whole contract between the Company and the Customer. They may be varied only by written agreement between the parties.

### **3. Interpretation**

The singular shall include the plural and the male shall include the female or business entity as may be appropriate.

### **4. Enforceability**

In the event of any one or more of these terms and conditions being declared unenforceable, the remaining terms and conditions shall nonetheless remain in full force and effect.

### **5. Estimate**

1. Unless specifically agreed in writing, all work is agreed on an estimate basis.
2. Unless specifically agreed in writing, time for completion of any work is *not* essential.

3. Any estimate is based on the costs of labour and materials relevant at this date and the Company reserves the right to alter the charges to meet any variations, whether due to increase in wages (controlled by national agreements), materials or increased cost from any other cause outside of the Company reasonable control.
4. Should any additional work or materials be found necessary in the course of these repairs or subsequent testing, it will be necessary to make an extra charge. Where this additional work involves a substantial increase in the amount estimated, a supplementary estimate will be submitted for acceptance.

## **6. Paintwork**

Where new paintwork is required and the metal work is found to be rusted, every reasonable precaution will be taken to prevent this penetrating through after completion of painting, but no guarantee can be given in this respect. If partial paintwork only is required, every endeavour will be made to match the existing colour schemes, but no guarantee can be given of a perfect colour match.

## **7. Goods Supplied**

1. Where the service includes the provision of goods, the Company reserves the right to impose a handling charge on goods returned for credit (which have been correctly supplied to order).
2. All 'Special Orders' correctly supplied and of satisfactory quality will not be accepted for credit. Goods supplied that are of satisfactory quality will not be accepted for credit more than 7 working days from the date of issue of an invoice.
3. Worn units will only be accepted in a clean and oil free condition.
4. All claims or queries pertaining to this invoice must be made within 7 working days of issue of an invoice quoting the invoice number.

5. In the event of cancellation, for any reason, the customer agrees to return any Goods to the Company's premises.
  
6. The title in any goods/services shall pass when payment has been received by the Company (and all cheques/bankers drafts cleared) and not on delivery. Until such time as the property in the goods passes to the Customer, the Company shall be entitled at any time to require the Customer to deliver up the goods and if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party (including where the Customer is in administration/ receivership). The Customer must store the goods separately from other goods until paid for.

## **8. Variation**

Any variation agreed between the Company and the Customer regarding the Goods to be supplied shall be deemed to be an amendment to this Contract and shall not constitute a new contract.

## **9. Delivery**

1. The Company shall give the estimated time for the repair of a vehicle and shall make every effort to inform the Customer if this estimated time cannot be met, although the Company can accept no responsibility for delays outside its control.
  
2. Unless otherwise agreed in writing delivery of the Goods shall take place at the Dealer's premises.

## **10. Payment**

Payment in respect of any services or work undertaken shall be made on or prior to taking delivery of the vehicle unless a credit account has been opened.

## **11. Warranties**

1. Except where the Customer is acting as a Consumer, in so far as liability may be placed upon the Company by the Consumer Rights Act 2015 or any other statutory provision, or in respect of a vehicle subject to a manufacturer's warranty or other written warranty, no warranty is given or implied as to the quality of Goods or Services or their fitness for any particular purpose whether known to the Company or not.
2. The Company will, however, without prejudice to its right hereunder, correct all faults in goods or services carried out by the Company and occurring by reason of the Company's default or negligence and shown to be such to the Company's satisfaction.
3. Subject to clause 11.4 below, the Company assigns to the Customer, the benefits of any applicable manufacturer's warranty for parts fitted to a vehicle in the course of a repair or service. Further, the Company warrants its work free of defects in workmanship for a period of 12 months.
4. The Company's obligations under the contract shall be mitigated or removed if any defect is caused or worsened by any of the following:-
  1. Failure to notify the Company of the defect.
  2. Failure to afford the Company opportunity to rectify the problem.
  3. Subjecting the goods to misuse, negligence or accident or using the vehicle for racing, rallying or similar sports.
  4. Installation of a part into the goods not approved by either the manufacturer or the Company, or altering them in a way not approved by either the manufacturer or the Company.
  5. Failure to adhere to maintenance instructions regarding the care, treatment or upkeep of the goods, or in failing to have servicing and preventative maintenance carried out as recommended by either the manufacturer or the Company.

## **12. Liability**

Where the Company contracts to carry out a defined repair or diagnostic operation, the Company's liability shall be limited to the performance of such work as may be defined by the standard manufacturer's schedule as coming within the scope of such operation.

**13. Use of the Customer's Vehicle**

The Company and its employees and agents are expressly authorized to use the customer's vehicle on the highway and elsewhere for all purposes in connection with the work outlined. The Company undertakes to take reasonable care of the vehicle so used, and to provide legally required insurance of the vehicle.

**14. Authority to Contract**

Goods supplied by the order of any person in the Customer's employment or by any person reasonably believed by the Company to be the Customer's agent or by any person to whom the Company is entitled to make delivery of the vehicle, shall be paid for by the Customer.

**15. Authority to Uplift**

Where a person who, so far as the Company is aware, has authority to uplift Goods or Vehicles and does so, the Company shall have no liability to the Customer for any loss or damage resulting on any grounds whatsoever. It shall not be obligatory upon the Company to confirm the authority of any person reasonably believed to be the agent, or to have been at some time, connected with the Customer.

**16. Lien**

The customer acknowledges that the Company has a legal lien upon any vehicle or vehicles left with the Company for supply of goods and services for all monies due from the customer on any account.

**17. Risk / Delay**

Subject to the provisions of the Consumer Rights Act 2015 and any amendment thereof, vehicles, including components, fittings and contents are left with the Company entirely at the Customer's risk. The Company shall in no circumstances be liable for loss or damage thereto or for delay in completing service or repairs unless the same is caused by the negligence or default of the Company, its employees or agents.

## **18. Bankruptcy / Insolvency of Customer**

If the Customer shall become bankrupt or insolvent or make any agreements with the creditors or allow a Receiver of their effects to be appointed or being a body corporate enter into liquidation, the Company shall have the right to terminate any agreement with the Customer subject to these conditions and henceforth cease to have any further obligation under the contract. In these circumstances the price for all the services rendered and goods supplied shall immediately become payable.

## **19. Storage Charges**

If, following the completion of services the Customer's vehicle(s) is left at the Company's premises or the premises of the Company's agent, then the Company reserves the right, after 14 days, to make a reasonable daily charge for the storage of the vehicle or vehicles.

## **20. Replacement Parts**

The Company shall obtain the Customer's express permission to repair or to fit repaired units where new parts quoted for are unavailable or not obtained within a reasonable time.

## **21. Exchange Units**

In the event of a factory reconditioned unit being fitted, a surcharge may be made pending examination by the manufacturers to confirm that the unit is, in their opinion, fit for reconditioning within the Exchange Scheme. If the unit is accepted for reconditioning, and the manufacturer's credit note is received, the surcharge will be cancelled

## **22. Disposal of Uncollected Goods**

Any vehicle which is not collected by the Customer and in respect of which payment for repairs carried out has not been made within three calendar months of the Customer having been advised of the completion of the work, may be sold by the Company and the cost of the repairs and any storage charges may be deducted by Company from the net proceeds of the sale of the vehicle. However, before proceeding to sell the vehicle the

Company shall first give the Customer seven days written notice of its intention to do so which notice shall be sent by prepaid first class post to the address of the Customer last known to the Company and shall be deemed to have been received by the Customer on the day following the date of posting, or if that shall be a Sunday or a Public Holiday, to be the first working day thereafter. Any sale of the vehicle under this clause shall be by Public Auction and the Company shall after discharging the costs of the sale, the repairs and the storage charges, at its absolute discretion, either retain the balance for the benefit of the Customer or forward the same to the Customer at the Customer's last known address.

### **23. Data Protection**

1. The Company will hold the information overleaf for sales, service and warranty purposes as Data Controllers. This information will be used to perform our obligations to you and to regulatory authorities may be passed to other carefully selected third party organizations. Any data provided will be used in line with our data and privacy policies which are available on request.
2. All the agreements between the Company and the Customer are personal to the Customer. The Customer may not assign his rights or liabilities to any third party by any means.

### **24. Distance Selling Regulations**

1. Where the Customer is acting as a Consumer, if this Agreement has been conducted without any face to face contact between the Company and the Customer, or anyone acting on each party's respective behalf, the Customer has the right to cancel this Agreement without giving any reason. The cancellation period will expire 14 days from the day on which the Customer first instructs us to carry out the service and no service can be performed within this period unless the Customer expressly requests we do so.
2. To exercise the right to cancel, the Customer must inform the company of their decision to cancel this Agreement in writing by clear statement (e.g. a letter sent by post, fax or email). The Customer may use the model cancellation form provided.
3. If the Customer requests any service to be provided during the 14 day period then they will lose the right to cancel this Agreement. The Customer shall pay the Company an

amount which is in proportion to that service performed until they communicated their cancellation of the Agreement.

4. If the Customer cancels this Agreement, the Company will reimburse to the Customer all payments received from the Customer under this Agreement, without undue delay, and not later than:-
  1. 14 days after the date on which the Company receives any Goods back; or
  2. (if earlier) 14 days after the day you provide evidence that the Customer has returned any Goods; or
  3. if there were no Goods supplied, 14 days after the day on which the Company are informed about the Customer's decision to cancel this Agreement.
5. The Company will make the reimbursement using the same means of payment as the Customer has used for the initial transaction, unless the Customer has expressly agreed otherwise, but in any event the Customer will not incur any fees as a result of the reimbursement.
6. The Company may withhold reimbursement until the Company has received any Goods back or the Customer has sent evidence of having sent back any Goods to the Company, whichever is the earliest. The Customer should send back any Goods or deliver them back to the Company at the address shown overleaf, without undue delay and in any event not later than 14 days after the day on which the Customer communicates cancellation of this Agreement to the Company.
7. This deadline is met if the Customer sends back any Goods before the period of 14 days has expired. The Company will require that the Customer bears the cost of returning any Goods to the Company.

## **25. Return of Parts**

1. The Customer must take reasonable care of any Goods whilst they are in the Customer's possession. The Customer will be responsible for any loss or damage from when they are delivered to the Customer until and when they are returned to the Company.
2. The Customer is liable for any diminished value of any Goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the Goods.

## **26. Dispute Resolution**

26.1 In the event of a complaint or dispute of any kind our complaints handling procedure which can be found on our website at [www.smc-uk.net](http://www.smc-uk.net) and is available from the Company on request.

26.2 Where the Customer's complaint cannot be resolved, once the Customer has exhausted the Company's internal process the Customer may refer the dispute to the following ADR processes,

26.2.1 where the Customer's complaint does not relate to a financial service, National Conciliation Service. For details of this service the Customer can contact them at <https://www.nationalconciliationservice.co.uk/ncs-code-of-practice/>.

26.2.2 where the Customer's complaint relates to Financial Services, the Financial Ombudsman Service. This service is free to use. Their consumer helpline is available on 0800 023 4 567 or 0300 123 9 123 or you can visit their website at [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk), email them at [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk) or write to the Financial Ombudsman Service, Exchange Tower, London E14 9SR.

26.3 Where any dispute cannot be resolved through ADR, this Purchase Order and Contract shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.

## **27. Statutory Rights**

Where the Customer is acting as a consumer, nothing in this contract is intended to exclude or limit the Customer's statutory rights.