

# FP&S Parts and Service Ltd

## Conditions of Sale and Trading

### THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF PARAGRAPHS 9, 10 & 20.3

1. Definitions: Where the context allows the "Company" means FP&S Parts and Service Ltd Registered No. 3535355 England; the "Customer" means the party dealing with the Company; "Goods" and "Services" mean respectively all the goods or products and services the subject matter of the dealing between the Company and the Customer. "in writing" means in writing signed by the Customer's duly authorised representative.

2.1. Conditions: The Company and the Customer will contract exclusively on the basis of these Conditions and any other terms expressly agreed by the Company in writing. Any contractual condition or term sought to be imposed by the Customer inconsistent with these Conditions will have no force or effect except to the extent, if at all, that the contractual condition or term sought to be imposed by the Customer is expressly agreed by the Company in writing

2.2. Each provision of these Conditions will be construed separately applying and surviving even if any other is held void, inapplicable or unreasonable.

3. Parties: Both the Company and the Customer will contract as principals and not otherwise. The Company will not be under any liability whatsoever arising in respect of any private dealings between the Customer and any of the Customer's employees or agents. All contracts with the Company will be personal to the Customer who, subject only to the terms of paragraph 26, may not assign the benefit or burden of them except with the consent of the Company in writing. The Company may assign the benefit and/or burden of any contract with the Customer to any person, firm or company.

4. Quotations: Every price quoted or estimated for Goods or Services is quoted or estimated upon the basis of these Conditions and subject thereto.

5. Orders: No order will be accepted by the Company except upon the terms of these Conditions. No order given to the Company will be binding on it until accepted by it and any required deposit has been paid.

6.1. Price, and VAT: All prices and estimates given by the Company for Goods and/or Services are based on current wages and materials costs and are valid for a period of two months after they are given. After the expiry of such two month period, the Company may revise any such price or estimate given by it.

6.2. All prices are subject to the addition of Value Added Tax when payable the amount of which will be paid by the Customer. All prices and estimates given by the Company are for the quantities and dispatch conditions agreed by the Company and the Customer and will not apply to other quantities or for different conditions of dispatch.

7. Additional charges: If it appears to the Company after receipt of an order that for satisfactory completion of such order, goods or services additional to those specified in the order are necessary, the Company will so inform the Customer and at the option of the Customer, will either provide an estimate for the additional goods and services or complete such order and charge the Customer for the additional goods and services at the price in force at the date of completion of the order

8.1. Delivery: Delivery of Goods will be at the Company's works at the place notified when appropriate by the Company to the Customer or as otherwise agreed between the Company and the Customer.

8.2. Any time or date specified by the Company for any matter will be taken as an estimate in good faith which the Company will use its reasonable endeavours to fulfil but will not be binding upon the Company.

9. Payment: Payment to the Company for Goods and/or Services will be made in full upon receipt of invoice by the Customer on the terms set out in such invoice. No credit will be given by the Company unless agreed in writing. The Company reserves the right to await the clearance of any cheque tendered to the Company in payment for Goods prior to the surrender of them. All payments payable to the Company under any contract shall become due immediately upon termination of such contract. The Customer shall make all payments due to the Company without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

10.1. Transfer of Title: Ownership of any Good supplied by the Company to the Customer (or at the Customer's direction) shall not pass to the Customer, notwithstanding delivery, until the Company has received payment in full in cash or cleared funds;

in respect of the Good, and of all sums due from the Customer to the Company on any other account, and until such time the Customer shall hold the Goods and Products as bailee for the Company.

10.2. Risk in the Goods shall pass to the Customer at the time of delivery.

10.3. If any of those matters set out in the opening paragraph of paragraph 22 occur or the Customer encumbers or in any way charges the Goods, the Customer shall cease to be entitled to deal with or dispose of or of any interest in the Goods.

10.4. The Company, its employees and agents shall be entitled during normal business hours to enter any premises where the Goods may be located to ensure that this paragraph 10 is being complied with and, where paragraph 10.3 applies, to recover possession of any Goods (taking steps as may be reasonably necessary to gain entry).

10.5. Until ownership of the Goods has passed to the Customer, the Customer must: (a) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property; and

(b) maintain the Goods in satisfactory condition and not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

(c) not resell the Goods.

10.6. The Company may maintain an action for the price of the Goods once payment has become due, whether title has passed or not.

11.1. Cancellation: Accepted orders placed by the Customer cannot be cancelled in whole or in part unless agreed in writing and on the condition that the Customer will reimburse the Company for any loss or expense incurred by the Company as a result of the cancellation. The Company will be entitled at any time to require the Customer to pay a deposit against costs. If an accepted order is cancelled (or treated as cancelled in accordance with these Conditions) the Company will be entitled to retain the deposit or part of it and to recover from the Customer any loss or expense in excess of such retained amount incurred by the Company by reason of such cancellation. If work on an order is suspended because of the Customer's instructions or lack of them the Company reserves the right to treat such circumstances as cancellation by the Customer.

11.2. If the Customer fails on the due date to make any payment to the Company under any contract with the Company the Company may at its option and without prejudice to its other rights

(a) treat all or any contracts between the Company and the Customer as cancelled or suspended and/or

(b) charge Interest on any amount outstanding at any time from the date upon which any such amount was due for payment until payment whether before or after judgement at a rate of 4% per annum above HSBC Bank plc Base Rate from time to time.

11.3. If the Company provides an estimate in accordance with paragraph 6.1 of these Conditions and such estimate is not accepted by the Customer then the Company will be entitled to cancel the contract in which event the Customer will pay the Company for any Goods supplied or Services rendered by the Company under the contract prior to such cancellation at the prices set out in the estimate

12.1. Lien: The Company will have a general lien on all Goods and property in its possession including that belonging to the Customer for all monies due to the Company by the Customer. If any such monies remain unpaid at the expiry of three months after notice in writing has been given by the Company to the Customer that any such Goods or property are being detained the Company will have the irrevocable authority of the Customer to sell any such Goods or property and to apply the proceeds of sale (after deducting any costs and expenses incurred including without limitation storage and interest charges) in discharge of the Customer's indebtedness and thereafter to account to the Customer for the surplus balance if any or demand payment from the Customer of any outstanding balance.

12.2. If any of those matters set out in the opening paragraph of paragraph 22 occur, the Company has the right to stop Goods in transit, take possession of such Goods and to make a storage charge at its rates current from time to time, such rights to be in addition to all other rights which the Company has.

13. Improvements and Alterations: The Company, whose policy is one of continuous improvement, reserves the right to make any changes to Goods, without notice, in materials, dimensions, specifications and designs which it thinks reasonable or desirable. Any such changes will be deemed not to constitute a change in any description of the Goods nor to affect the validity of any order or contract.

14. Illustrations and Descriptions: General illustrations, photographs and descriptions contained in or accompanying any quotations from the Company or contained in the Company's catalogues, price lists, advertisements or other material or otherwise provided by the Company are intended as a guide only and will not be binding on the Company and will not form part of any contract.

15. Advice: The Company will not be under any liability whatsoever in respect of any advice given or views expressed to the Customer whether or not such advice is given or such views are expressed at the Customer's request.

16. Goods may not be returned without the consent in writing of the Company.

17. Replacement Parts: Any part of any vehicle which is renewed or replaced by the Company in the course of rendering Services will be at the disposal of the Company unless the Customer before completion of the Services makes a request in writing for its return.

18. Method of working: The Company is entitled to carry out all Services in such manner and by such means as the Company in its absolute discretion thinks fit.

19.1. Warranty and Guarantee: Goods are sold by the Company with the benefit of the warranty contained in paragraph 19.2 of these conditions only. Save for the conditions implied by section 12 of the Sale of Goods Act 1979, all other warranties, conditions or other terms implied by statute or common law (whether in respect of the provision of Goods or Services or otherwise) are excluded to the fullest extent permissible by law

19.2. Subject to paragraph 19.1, the Company warrants that if any defect becomes apparent in the Goods which is

(a) notified in writing to the Company by the customer within 6 months of the date of notification that Goods are ready for delivery or delivery whichever is the sooner and (b) upon examination by the Company found to be due to defective material or workmanship by the Company, then the Company will make good any such defect by repair or replacement free of charge.

19.3. The warranty contained in paragraph 19.2 of these Conditions will

(a) not apply to defects caused by wear and tear, overloading, misuse or neglect or to any of the Goods or any part of them which have been repaired, modified or altered in any way by anyone other than the Company or one of its duly authorised representatives and

(b) not make the Company liable to the Customer for any monetary claims for damages or loss and

(c) not make the Company liable to the Customer for any claims for consequential or incidental loss including without limitations cargo loss, loss of use or loss of profit and

(d) cease to apply if any identification plates, numbers or marks on the Goods are altered, tampered with, defaced or removed.

19.4. Services are rendered by the Company on the basis that the Company will at its own expense make good (by repair or replacement only) any defect in the product of the Services attributable to bad workmanship or the use of unsatisfactory material which occurs and becomes apparent within six months of the completion of the Services if and only if the Customer has notified the Company in writing of the defect within that period and within one month of the defect becoming apparent. Where the Company uses in connection with the Services materials which are not its own manufacture the Company will in addition use its reasonable endeavours to pass on to the Customer any guarantee or warranty given to the Company in relation to such materials by the manufacturer or supplier of them.

20.1. Exclusion of Liability: The following provisions of this paragraph 20 set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a) any breach of these Conditions and/or any other term expressly agreed to between the Company and the Customer; and

(b) any representation, statement or tortious act or omission including negligence under or in connection with these Conditions and/or any other term expressly agreed to between the Company and the Customer.

20.2. Nothing in these Conditions excludes or limits the liability of the Company for fraudulent misrepresentation or for death or personal injury caused by the Company's negligence.

20.3. Subject to the terms of paragraphs 20.1 and 20.2 above:

(at 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 each transaction between the Company and the Customer shall be limited to the total price payable by the Customer to the Company in respect of such transaction;

(b) The Company shall not be liable to the Customer for any loss (whether direct or indirect) of profits, time, business, goodwill or anticipated savings or for any incidental, indirect, special, consequential or punitive loss, cost, expense or damage whether foreseeable or unforeseeable whatsoever or whosoever caused.

21. Force Majeure: The Company will be relieved of all or any of its obligations under all contracts to the extent that performance of such obligations is prevented,

frustrated or impeded in consequence of any statute, regulation, order of any government, Council or other authority or any strike, lockout or trade dispute (whether or not involving the Company's employees) or any other cause whether or not of a like or similar nature beyond the Company's control

22. Default by the Customer: If the Customer breaches any term of any contract with the Company, or any of these Conditions or not being a company ceases to trade, becomes bankrupt or has a bankruptcy petition presented against him or makes or offers to make a composition or arrangement with his creditors or being a company ceases to trade, has a petition presented or any order made or any resolution passed or any other action taken for or with a view to its liquidation or winding up or an administrative receiver, receiver, administrator, liquidator, provisional liquidator or similar officer is appointed in respect of the whole or any part of its undertaking, property or assets or if it convenes a meeting for the purpose of making or proposing to enter into any arrangement for the benefit of its creditors or if the Customer takes or suffers any similar analogous action in consequence of debt, then and in any such case, the Company will be entitled.

(a) to terminate any or all contracts with the Customer without prejudice to any other claims or rights which the Company may have and

(b) to recover from the Customer an amount equal to any loss or damage sustained by the Company as a result of, or in connection with, any such occurrence or termination.

(c) to sell or resell any Goods or property in its possession including that belonging to the Customer and to apply the proceeds of sale (after deducting any costs and expenses incurred) towards any sums due from the Customer to the Company on any account, any surplus balance of such proceeds to be paid to the Customer.

23. Errors: No claim regarding errors in dispatch or invoicing will be accepted unless received by the Company within 7 days of receipt by the Customer of the Company's advice note or invoice as the case may be.

24. Agents and Distributors: Traders selling or distributing goods manufactured by or originating from the Company whether or not called in the trade "Agents" or "Distributors" are not in law the agents of the Company and cannot bind it in any way whatsoever. No employee of the Company (other than the Company's duly authorised representative and only in writing under his hand) and no such trader has any authority to vary these Conditions.

25. Inspection and Tests: If requested and before contract the Customer may inspect and test such vehicles as may be available for inspection and testing at the Company's works.

26. Resale by Customer: Any resale of Goods by the Customer will be as principal and the Customer will not incur nor purport to incur any liability whatsoever on behalf of the Company or, subject only to the following provisions of this paragraph 26, attempt to bind it to third parties in any matter whatsoever. The Customer will in all dealings relating directly or indirectly to the resale or other disposition of Goods clearly indicate that it is acting as principal and will not expressly or implicitly do any act or thing which may cause it to be taken by a third party as acting as an agent of the Company. The Customer may transfer to any third party purchaser of Goods and/or products which have been subject to Services the benefit of the warranties relating to such Goods and/or Services given by the Company to the Customer pursuant to, and subject to the terms of, paragraphs 19.2 and/or 19.4 above provided that the Customer shall notify the Company of any such transfer within seven days of its occurrence.

27. Repairs: if any Goods or property received by the Company for repair or other work are not collected or the Company's charges are not paid, in each case within 21 days of notification that they are ready for collection, the Company may after the expiry of a further period of two calendar months charge for storage and may at any time thereafter sell the Goods or property and apply the proceeds (after deducting any costs and expenses incurred) towards all unpaid repairing and storage charges. any surplus balance of such proceeds to be paid to the Customer.

28. Credit Sales Etc: Goods will only be supplied on credit sale, hire purchase or like terms if agreed by the Company and subject to approval of the Customer's references, completion of documents in approved terms, acceptance by the insurance company of the insurance proposal and compliance with all requirements of the Company and of the finance company or other party involved for the purpose of the credit sale, hiring or like arrangement. The Company reserves the right to sell the Goods to any third party for the purpose of supply to the Customer on credit sale, hire purchase or like terms

29. Arbitration: Any dispute arising out of or in connection with these Conditions and/or any other term expressly agreed to between the Company and the Customer shall be referred to and finally resolved by arbitration by a single arbitrator under the rules of the Chartered Institute of Arbitrators, which rules are deemed to be incorporated by reference into this clause.

30. Notices: Any notice, invoice or other document required or otherwise to be served or given under these Conditions or any contract between the Company and the Customer will be written in the English language and will be served or given by being delivered by hand or sent by pre paid First Class post or transmitted by facsimile transceiver to the registered office or last known principal place of business of the party to whom it is addressed. Any such documents will be deemed to be served or given in the case of delivery by hand, at the time of delivery, where sent by inland post, 48 hours after posting, sent by airmail to or from Countries outside the United Kingdom, 7 days after posting and transmitted by facsimile transceiver, at the time of transmission. In proving such service or giving it will be sufficient to prove in the case of delivery that the document was delivered to the appropriate address, in the case of posting that the document was placed in the post in a properly stamped and addressed envelope and in the case of facsimile transceiver, that the document was duly transmitted to a current facsimile transceiver number of the party to whom it is addressed.

31.1. General: Failure or delay by the Company in enforcing or partially enforcing any provision of these Conditions and/or any contract between the Company and the Customer will not be construed as a waiver of any of its rights under these Conditions and/or any such contract. Any waiver by the Company of any breach of, or any default under, any provision of these Conditions and/or any such contract will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of these Conditions and/or any such contract.

31.2. These Conditions and any other terms of any contract between the Company and the Customer will not by virtue of the Contracts (Rights of Third Parties) Act 1999 be enforceable by any person that is not a party to it.

31.3. Each right or remedy of the Company under the Conditions and/or any contract with the Customer is without prejudice to any other right or remedy of the Company whether under these Conditions and/or any such contract or otherwise.

32. Proper Law: The proper law of these conditions and of any contract between the Company and the Customer is English law in accordance with which they shall be interpreted and construed. The Customer submits to the exclusive jurisdiction of the English courts.

33. Goods delivered for imprest stocks are subject to the terms and conditions of the imprest stock agreement.