

HEAVY DUTY PARTS LIMITED - CONDITIONS OF BUSINESS

1. Definitions

In these Conditions the following words shall have the following meanings:-

“Company”	Heavy Duty Parts Limited
“Customer”	the national or local authority or agency, person, firm, company or other entity who accept a quotation of the Company for the supply of Products and/or Services or whose order for Products and/or Services is accepted by the Company.
“Products”	Vehicles and Parts to be supplied by the Company.
“Services”	means service labour provided from time to time by the Company to the Customer by means of a service engineer.
“Vehicles”	Vehicles to be supplied or repaired by the Company.

Words importing the singular meaning shall include the plural meaning and vice versa.

2. Basis of Sale

- (a) All contracts for the supply of Services shall be deemed to incorporate these Conditions. No Contract, and no purported variation of or addition to these Conditions or any contract, is effective unless and until the Company so agrees in writing.
- (b) These Conditions shall override and take the place of any other terms and conditions in any document or other communication used by the Customer in concluding the contract with the Company.
- (c) Where the Products or the Services are supplied for export from the United Kingdom the Customer shall be responsible for complying with any legislation or regulations governing the importation of the Products or the Services into the country of destination and for the payment of any duties or levies thereon.

3. Quotations and Specifications

- (a) A quotation issued by the Company is not a legal offer to the Customer unless it is expressly stated in writing to be an offer by the Company. An order placed with the Company, to become a binding contract, requires written acceptance by the Company.
- (b) The quantity, quality and description of and any specification for the Products and/or Services shall be those set out in the Company’s quotation (if expressly stated in writing to be an offer by the Company and accepted by the Customer) or the Customer’s order (if accepted by the Company)
- (c) The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving the Company any necessary information relating to the Products

and/or the Services within a sufficient time to enable the Company to perform the contract in accordance with its terms.

- (d) The Company reserves the right to make any change in the specification of the Products and/or Services which in the Company's opinion is necessary or desirable to conform with any applicable laws (including regulations, requirements or guidelines of any relevant international, European, national or local governmental or other authority or agency).

4. Representations, Intellectual Property

- (a) Illustrations, photographs, descriptions, particulars and specifications of Products and Services are intended as a general guide only and do not constitute representations on which the Customer may rely unless expressly agreed in writing by the Company. The Company may without limitation alter the Product and Services to introduce improvements, and no contract shall be a contract by description and/or sample.
- (b) All drawings, models and similar items prepared by the Company and the copyright and other intellectual property rights therein shall remain the property of the Company or other owner so that property therein shall not pass to the Customer and shall be returned by the Customer on demand. All know-how, samples, models, designs and drawings relating to the Products and Services shall remain the property of the Company or other owner so that property therein shall not pass to the Customer, shall be treated as confidential and shall not be copied, reproduced or disclosed to any third party without the Company's prior written consent.
- (c) If any Products are to be manufactured or any process is to be applied to Products or Services in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damage, cost and expense awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement or any patent, copyright, registered design, trade mark, service mark or other industrial or intellectual property rights or any other person which results from the Company's use of the Customer's specification.

5. Cancellation of Contracts

The Company may by notice in writing to the Customer terminate any contract forthwith if: -

- (a) The Customer shall commit any breach of any of the terms (including without limitation terms concerning the time for payment of the purchase price) of that or any other contract with the Company and on its part to be observed or performed PROVIDED that if such breach is remediable that the Company

has previously given to the Customer notice therefore and the same has not been remedied within seven days thereafter.

- (b) Being an individual the Customer shall die or have a receiving order made against him or commit any act of bankruptcy:
- (c) Steps are taken to (i) propose any composition, scheme or arrangement, compromise or arrangement involving the Customer and its creditors generally; (ii) obtain an administration order or appoint any administrative or other receiver or manager in relation to, or put in force any legal process against the Customer or any of its property, (iii) enforce any charge or other security over the Customer's property (iv) repossess any goods in the Customer's possession under any agreement; or (v) wind-up or dissolve the Customer; or (vi) any event or circumstance similar to any of the foregoing shall occur in any jurisdiction to which the Customer is subject; or (vii) the Customer ceases, or threatens to cease to carry on business; or (viii) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer; or
- (d) Outside England and Wales, anything corresponding to any of the above occurs.

In the event of any such termination: -

- (1) the Customer shall forthwith upon demand, deliver to the Company any Products, property in which remains with the Company, failing which the Company may repossess them, enter the premises where they are or are thought to be and sever them therefrom, without liability for any resulting damage and the Customer shall indemnify the Company against all liabilities in relation thereto;
 - (2) the Company shall be entitled by notice in writing to the Customer to declare (and there shall forthwith become) immediately due and payable any amounts owing from the Customer to the Company under that or any other contract and all such amounts shall bear interest at the rate which is 5% (five per cent) per annum above the Bank of England base rate and calculated from the date of notice until actual payment.
 - (3) The provisions above and the exercise by the Company of its rights thereunder are without prejudice to any other rights of the Company.
- (e) The Customer may not cancel any contract or order except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages, charges and expenses incurred by the Company as a result of cancellation.
 - (f) The Company reserves the right not to accept the return of goods supplied correctly in accordance with the Customer's order. The Company may (at the Company's discretion) accept the return of goods which have been supplied correctly subject to a handling charge of 20% as well as all shipping costs incurred as a cost to the

Company. These costs are to be paid by the Customer. The Company reserves the right not to accept the return of goods supplied correctly which were specifically ordered as per the Customer order if the goods are normally a non stock item

6. Delivery

- (a) Unless otherwise expressly agreed in writing by the Company delivery of Products shall take place at the Company's depot nominated. Whilst the Company intends to use all reasonable endeavours to keep any stated despatch or delivery date it shall incur no liability whatsoever (in contract, negligence or otherwise) for any loss or damage resulting from delay howsoever caused.
- (b) Except where delivery is under paragraph (a) above or the contract expressly provides otherwise, the Company may select the method and charge the Customer for the cost, of carriage.
- (c) Even if the price includes carriage then, subject to Condition 9, the risk in the Products shall pass to the Customer upon transfer at the Company's Depot to the carrier's or the Customer's transport save that where the contract is stated to be "f.o.b." or "c.i.f" risk shall pass to the Customer when the Products are delivered onto the ship or aircraft. If the Products are to be transported by the Company, risk shall pass to the Customer on delivery at the Customer's premises.
- (d) The Customer shall keep the Products fully insured in their full replacement value against all risks prudently insured against at least throughout the period between the risk therein passing to the Customer and the property therein ceasing to remain within the Company.
- (e) Where the Customer has agreed to collect Products it shall do so at its own expense, within seven days after the date of delivery, reasonably stipulated by the Company, failing which the Customer shall be responsible for the storage costs involved and shall pay such costs on demand by the Company.
- (f) In the case of Products to be delivered other than at the Company's Factory or depot nominated by it the contract will state or, before delivery, the Company will send the Customer an advice note or inform the Customer orally of, the expected date of delivery. If the Products are not delivered or on delivery are damaged the Company shall in no event be liable unless the Customer.
 - (i) notifies the Company and the carrier in writing within 24 hours of the date of delivery or in the case of non-delivery 3 days of the expected date of delivery so stated; and
 - (ii) in the case of damaged delivery, gives the Company a reasonable opportunity to inspect the Products as and where delivered.
- (g) Any dates quoted for delivery of Products are approximate only and the Company shall not be liable for any delay in delivery of Products howsoever caused. Time for delivery shall not be of the

essence unless previously agreed by the Company in writing Products may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer. Where Products are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with the contract or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the contract as a whole as repudiated. If the Company fails to deliver any Products for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar products to replace those not delivered over the price of the relevant Products.

7. Price

Unless otherwise expressly agreed in writing by the Company orders are accepted on the basis that :-

- (a) the price for the Products and/or the Services shall be the Company's quoted price, or where no price has been quoted (or a quoted price is no longer valid or has been superceded by a new price list) the price listed in the Company's price list correct at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer after which time they may be withdrawn or altered by the Company without giving notice to the Customer. Except as otherwise agreed in writing signed on behalf of the Company all prices are given by the Company on an ex works and unpacked basis and where the Company agrees to the Products the Customer shall be liable to pay the Company's charges for transport, packing, insurance and other expenses incurred in such delivery. The price is exclusive of any applicable value added tax or other sales tax or imposition which the Customer shall be additionally liable to pay the Company; and
- (b) the Company reserves the right, by giving notice to the Customer at any time before delivery or within a reasonable time after such delivery, to increase the price of the Products and/or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (including, without limitation, any change in specification effected by the Company under clause 3(d) hereof, any foreign exchange fluctuation, currency regulation, alteration of import or export duties or taxes, increase in the costs of labour, materials, sub-contracted services, transport, or other costs or manufacture) any change in delivery dates, quantities or specifications for the Products and/or Services which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

8. Payment

- (a) Unless otherwise expressly agreed in writing prices are due and payable in United Kingdom Sterling 30 days from the date of invoice.
- (b) Time of payment is the essence of every contract. On failing to make full and prompt payment in accordance with the terms specified in 8(a) above (without prejudice to any other rights of the Company) the Customer shall become liable to pay to the Company interest on the amount due at 5% (five per cent) per annum above the Bank of England base rate and calculated from the date of due payment before and after (as a separate continuing obligation not merging with) any judgement.
- (c) Any carriage, packing and other charges stated separately from the price are payable by the Customer at the same time, and shall be treated as, an addition to the price.
- (d) If the Customer fails to make payment on the due date then, without prejudice to any other right or remedy available to the Company the Company shall be entitled to cancel the contract or suspend any further deliveries to the Customer and/or appropriate any payment made by the Customer to such of the Products and/or Services (or any Products and/or Services) supplied under any other contract between the Company and the Customer as the Company may think fit, notwithstanding any purported appropriation by the Customer.

9. Risk and Property

- 9.1 Risk of damage to or loss of Products shall pass to the Customer;
 - 9.1.1 in the case of Products to be delivered at the Company's depot, at the time when the Company notifies the Customer that the Products are available for collection; or
 - 9.1.2 in the case of Products to be delivered otherwise than at the Company's depot, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Products, the time when the Company has tendered delivery of the Products.
- 9.2 Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Conditions, the property in the Products shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Products and all other goods agreed to be sold by the Company, to the Customer for which payment is then due.
- 9.3 Until such time as the property in the Products passes to the Customer, the Customer shall hold the Products as the Company's fiduciary agent and bailee, and shall keep the Products separate from those of the Customer and third parties and properly stored,

protected and insured and identified as the Company's property. Until that time the Customer shall be entitled to resell or use the Products in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the Products, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

- 9.4 Until such time as the property in the Products passes to the Customer (and provided the Products are still in existence and have not been resold), the Company shall be entitled at any time to require the Customer to deliver up the Products to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products.
- 9.5 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 Company, but if the Company does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 9.6 The Company shall in respect of debts owed to it by the Customer have a Lien upon all goods, vehicles or parts of vehicles handed or delivered to the Company by the Customer or otherwise in the possession of the Company and owned or used by the Customer until all monies due to the Company from the Customer whether due under a contract or any other have been paid in full and shall be entitled, upon the expiration of 14 days notice to the Customer, to dispose of such goods, vehicles or other property as it thinks fit and to apply any proceeds of sale thereof (after deducting the Companies reasonable selling expenses) towards the payment of such debt.

10. Services, Repair etc.

Products or other vehicles or goods delivered to the Company for repair or services or any other reason remain at the risk of the Customer at all times.

11. Warranty

- (a) The Company warrants that if any Products or Services supplied by the Company are defective as to material or workmanship not caused wholly or partly while at the Customer's risk by wilful default, accident, improper storage or use or failure to follow instructions, in any case whether by the Customer or otherwise the Company shall make good the defect without charge or repair or (at the Company's discretion) replacement provided that: -
- (i) the Company (acting reasonably) is satisfied that the Products or Services are so defective;

- (ii) the Products are returned to the Company carriage paid immediately the Customer becomes aware of the defect and, in any event within twelve months from the date the Product enters service.
- (b) Any part which has been replaced under this Warranty shall become the property of the Company.
- (c) Although parts not of the Company's manufacture are not covered by the Warranty in Condition 11(a) OR by any warranty and the Company does not accept any liability in relation to them, the Company will, to the extent that it is able to do so assign the benefit of any warranty given to the Company in relation to such parts or (at the Company's discretion) will pursue as far as the Company considers reasonable any remedy of the Company for the benefit of the Customer but shall not otherwise be liable for any defect in such parts
- (d) The Company further warrants that if any part supplied by the Company becomes defective, due to faulty manufacture or materials within twelve months from the date the Customer takes delivery of the part will be repaired or replaced free of charge, subject to the following:
 - (1) this warranty shall cease to apply in the event of abuse, neglect, unauthorised repair or modification of or tampering with a part;
 - (2) this warranty does not cover replacement vehicle hire, accommodation, recovery costs, loss of use or any other consequential loss, damage (whether for loss of profit or otherwise) or expense howsoever arising (whether caused by the negligence of the Company, its employees or agents or otherwise);
 - (3) a part replaced under this warranty shall become the property of the Company;
 - (4) the warranty period for a replacement part shall expire on the same date as the warranty period for the part replaced;
 - (5) any cost for the delivery of part to the Company and for the collection of the same, or any replacement, shall be borne by the Customer;
 - (6) claims under warranty must be made to the Company within fourteen days of the defect occurring and;
 - (7) this warranty does not cover items which require replacement in the course of normal maintenance or as a result of fair wear and tear.

12. Limitations and Exclusion of Liabilities

- (a) Subject as expressly provided in these Conditions and except where the Products or Services are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law or equity are excluded to the fullest extent permitted by law. Where Products and Services are sold under a

consumer transaction (as defined by The Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions. Except in respect of Death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation or any implied warranty, condition or other term or any duty at common law or in equity or under the express terms of the contract for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees, agents of sub-contractors or otherwise) which may arise out of or in connection with the supply of the Products or the Services or (so far as applicable) their use or resale by the Customer, except as expressly provided in these Conditions.

- (b) The Company's employees or agents are not authorised to make any representation concerning the Products or the Services unless confirmed by the Company in writing. In entering into any contract for the supply of Products or Services the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed. Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees, or agents as to the performance, storage, application, effect or use of the Products and/or the Services which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

13. Force Majure

Whilst the Company intends to use all reasonable endeavours to perform, the Company may terminate cancel, rescind and/or suspend any contract without any liability if the performance of its obligations under such contract is in any way adversely affected by any cause whatsoever beyond the Company's reasonable control, including without limitation any war, not civil commotion, strike, lock-out, sit-in, trade dispute, flood, accident to plant or machinery or shortage of any material, labour, electricity or other supply or any regulations or measures of any kind on the part of any governmental, parliamentary or other authority whether international, European or local.

14. Identification Marks

The Customer shall not remove, obscure, alter or tamper with any plate, trade or other identification mark, name or number on the Products.

15. Forbearance

The Company's rights shall not be prejudiced or restricted by any indulgence or forbearance extended to the Customer and no waiver by the Company in respect of any breach shall operate as a waiver in respect of any subsequent breach.

16. Invalidity

The complete or partial invalidity or unenforceability of any provisions herein for any purpose shall in no way affect the validity or enforceability of such provision for any other purpose or the remaining provisions.

17. Law and Jurisdiction

The construction, validity and performance of all contracts shall be governed by English Law and any claim or dispute arising from them shall without prejudice to the Company's other rights be subject to the jurisdiction of and be determined by the English Courts.

18. Headings

The headings used herein are for convenience only and shall not affect construction.

19. General

Any notice required or permitted to be given by either party to the other under Conditions shall be in writing and addressed to the other party at its registered office or principal place of business such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.