

## **CONDITIONS OF PURCHASE**

### **1 Interpretation**

1.1 In these conditions:

**'BUYER'** means Avon Automotive UK Holdings Ltd and its subsidiaries. **'CONDITIONS'** means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller. **'CONFIDENTIAL INFORMATION'** means all information in respect of the business of the Buyer including, but not limited to, know-how or other matters connected with the Goods or Services, and information concerning the Buyer's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Buyer and of such persons and any other information which, if disclosed, will be liable to cause harm to the Buyer. **'CONTRACT'** means the contract for the sale and purchase of the Goods and/or the supply and acquisition of the Services. **'DELIVERY ADDRESS'** means the address stated on the Order. **'GOODS'** means the goods (including any instalment of the goods or any part of them) described in the Order. **'INTELLECTUAL PROPERTY'** means copyright, patents, trade marks, design rights, know-how and other industrial or intellectual property of any kind whatsoever whether registered or capable of registration or not, in any part of the world and including all applications and the right to apply for any of the foregoing rights. **'MATERIALS'** means all items, data and other product of the Services (whether tangible or intangible, in paper, electronic or other form) created or provided by the Seller in the course of supplying the Services, **'ORDER'** means the Buyer's purchase order to which these conditions are annexed or in which these conditions are referred to. **'PRICE'** means the price of the goods and/or the charge for the Services. **'SELLER'** means the person, firm or company selling the goods and/or providing the Services to the Buyer. **'SERVICES'** means the services (if any) described in the Order. **'SPECIFICATION'** includes any plans, drawings, data or other information relating to the Goods or Services. **'WRITING'** includes any form of written communication, paper, electronic or otherwise.

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 In these Conditions, unless the context otherwise requires, "person" means any person, firm, company or state authority, any reference to the singular shall include the plural and vice versa and any reference to the masculine shall include the feminine and neuter and vice versa.

### **2 Basis of purchase**

2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Conditions.

2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller. No conduct by the Buyer shall be deemed to constitute acceptance of any terms put forward by the Seller.

2.3 The Order is unconditionally accepted by the Seller unless notified in writing to the Buyer within 7 days of its date.

2.4 Seller's commencement of work against the Order will constitute acceptance by the Seller of these conditions.

2.5 No variation to the Order or these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

### **3 Specifications**

3.1 The quantity, quality, and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.

3.2 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the Intellectual Property in the Specification, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract. For the avoidance of doubt, the Seller acknowledges that it shall not be entitled, without the express written consent of the Buyer, to sell or make use of any Goods or parts of any Goods manufactured by the Seller (or on the Seller's behalf) to any Specification produced by the Buyer.

3.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.

3.4 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party including the Seller's sub-contractors prior to despatch, and the Seller shall provide the Buyer with (or procure the provision to the Buyer of) all facilities reasonably required for inspection and testing.

3.5 If as a result of inspections or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller as soon as reasonably practicable after inspection or testing, the Seller shall take such steps as are necessary to ensure compliance. Any failure of this obligation by the Seller will be deemed a material breach.

3.6 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary

course of business.

3.7 The Seller will maintain detailed quality control and manufacturing records for the period of at least 10 years from the date of supply of Goods or performance of the Services

#### **4 Price of the goods and services**

4.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:

4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and

4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imports or levies other than value added tax

4.2 No increase in the Price may be made (whether on account of increased materials, labour or transport cost, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.

4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.

#### **5 Terms of payment**

5.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods or performance of the Service, as the case may be, and each invoice shall quote the number of the Order.

5.2 Payment will be made in accordance with the terms stated on the Order, but in any case, shall not be due until at least 30 days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer.

5.3 The Buyer will make every reasonable attempt to pay the invoice in line with the conditions detailed in 5.2, but in the event that it fails to pay any properly raised invoice by the due date for payment and has not paid the outstanding sums within ten working days of the Seller serving the Buyer a reminder of overdue payment notice the Seller shall be entitled to charge interest on the amount outstanding from time to time at 1% above the base rate for the time being of Barclays Bank plc.

5.4 The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.

5.5 The Seller is not entitled to suspend deliveries or performance of the Goods or Services as a result of any sums being outstanding.

#### **6 Delivery**

6.1 The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours.

6.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of an Order, the Seller shall give the Buyer reasonable notice of the specified date.

6.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

6.4 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.

6.4.1 A Certificate of Conformity in a form specified by the Buyer must accompany each delivery or consignment of the Goods unless agreed otherwise in writing.

6.5 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.

6.6 The Seller acknowledges that precise conformity of the Goods and Services with the Contract is of the essence to the Contract and the Buyer shall be entitled to reject any Goods delivered or terminate the Contract if the Goods or Services are not in conformance with the Contract, however slight the breach may be and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

6.7 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.

6.8 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.

6.9 If the Goods are not delivered or the Services are not performed on the due date then, without prejudice to any other remedy, the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the price) to claim from the Seller by way of liquidated damages for delay 5% per cent of the Price for every week's delay up to a maximum of 25% per cent.

#### **7 Risk and Property**

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.

7.2 The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

#### **8 Seller's Production**

8.1 The Seller shall comply, in relation to the production of the Goods or performance of the Services, with the applicable requirements of any quality system or standard designated by the Buyer from time to time.

8.2 The Seller shall immediately inform the Buyer if the Seller becomes aware of any defect, or potential defect, in any Goods already dispatched to the Buyer.

## 9 Testing

9.1 In order that the Buyer shall (if the Buyer so requests) be given an opportunity to evaluate whether Goods or Services are free from defects, the Seller shall prior to the delivery of any Goods incorporating a new or amended specification, manufacture and perform quality control tests of samples in accordance with the Buyer's requirements as specified from time to time.

9.2 Once the sample has been approved by the Buyer no adjustments to the function, appearance, characteristics, material, production methods, place of manufacture, tooling or other equipment which may affect the Goods or Services may be carried out by the Seller other than with the prior written approval of the Buyer. Delivery thereafter shall be only after renewed approval of a sample.

9.3 The Buyer's final approval of any sample shall not affect the Seller's liability and obligations under these Conditions.

## 10 Warranties and Liability

10.1 The Seller warrants to the Buyer that the Goods and/or any Materials:

10.1.1 will be delivered in the exact quantities required by the Buyer, as stated in the Order or otherwise specified by the Buyer in writing;

10.1.2 will be of satisfactory quality (within the Sale of Goods Act 1979, as amended) and fit for any purpose made known by the Buyer or reasonably to be inferred from the circumstances relating to the Contract;

10.1.3 will be free from defects in design, material and workmanship;

10.1.4 will correspond with any relevant Specification or sample;

10.1.5 will comply with all statutory requirements and regulations relating to the sale or use of such Goods or Materials;

10.1.6 will not, and their use by the Buyer and/or any customer of the Buyer will not, infringe any Intellectual Property of any other person, except to the extent that the infringement arises from compliance with any Specification provided by the Buyer.

10.2 The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.

10.3 Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:

10.3.1 to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract, within 7 days or such other period as shall be agreed between the Buyer and the Seller in Writing; or

10.3.2 at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

10.4 The Seller shall indemnify the Buyer in full against any damages, loss, (including financial or economic loss) costs, claims, expenses (including legal fees and disbursements) and other liabilities awarded against or incurred or paid by the Buyer as a result of or in connection with:

10.4.1 breach of any warranty given by the Seller in relation to the Goods and Services (including but not limited to those set out at clause 10.1 above) or failure by the Seller to comply with the requirements of the Order for the Goods and Services;

10.4.2 any claim brought by a third party for any loss, injury or damage wholly or partly caused by a defect in the Goods;

10.4.3 without prejudice to the generality of clause 10.4.2 above, any liability in respect of the Goods under the Consumer Protection Act 1987 or any other legislation enacted in any part of the European Union to give effect to EC Directive 85/374/EEC on product liability;

10.4.4 any act omission or negligence of the Seller or its employees, agents or sub-contractors in supplying, delivering and (if appropriate) installing the Goods; and any act omission or negligence of any of the Seller's personnel in connection with the performance of the Services.

Except, in each case, to the extent that such damages, loss, costs, claims, expenses or other liabilities were caused or contributed to by the negligence of the Buyer.

10.5 Subject to clauses 10.6 and 10.7 below, neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure is caused by an event beyond that party's reasonable control ("Event of Force Majeure").

10.6 In the event that the performance by either party of its obligations under this Agreement is affected by an Event of Force Majeure, such party shall:-

10.6.1 as soon as reasonably practicable give notice to the other party of it being so affected;

10.6.2 continue to perform any obligations under the Contract that are not affected by the event in question;

10.6.3 use all reasonable endeavours to mitigate the effect of such event on the performance of its obligations under the Contract and resume full performance of such obligations as soon as possible.

10.7 The Seller shall not be entitled to claim it is delayed or affected by an Event of Force Majeure if the cause in question is one which a reasonable supplier of goods or services similar to the Goods or Services (as the case may be) should have foreseen and provided for.

10.8 If the Seller fails to resume full performance of its obligations under the Contract within a period of 7 days after first being affected by an Event of Force Majeure, the Buyer shall be entitled to terminate the Contract at any time on giving

immediate written notice to the Seller.

## **11 Product Recall and Insurance**

11.1 The Seller shall assist the Buyer in any enquiries, which it or its customer may have in relation to the Goods and/or any defect in them. If the Buyer or its customer decides to recall the Goods or recall products into which the Goods have been incorporated as a result of any defect in the Goods, the Seller shall compensate the Buyer for all its costs expenses and losses incurred in connection with such recall.

11.2 The Seller shall effect and maintain adequate product liability insurance with an insurance company of repute and the Seller shall at the Buyer's request supply to the Buyer a copy of the relevant Insurance Certificate.

## **12 Tooling**

12.1 Where the Seller purchases new or adapts existing tooling in order to fulfil an Order of Goods the following terms shall apply:-

12.1.1 All tooling, including the Intellectual Property therein, shall belong to and be clearly labelled as the property of the Buyer, be available for inspection and/or removal by the Buyer on 24 hours' notice and housed in appropriate conditions by the Seller at all times.

12.1.2 The Seller shall be responsible for the safe keeping of the tooling and any damage suffered to it is the responsibility of the Seller. Tooling must be covered by the Seller's insurance policy at all times.

12.1.3 Where the Seller agrees the Price of the Goods based on the manufacture of a new tool and the Buyer places a tooling order as a result, the Seller may not subsequently increase the Price. If the Seller seeks to impose an increase in the Price the Buyer shall be entitled to take possession of the tool, for which purpose the Seller agrees to allow the Buyer access to its premises, transfer it to another manufacturer and claim the costs from the Seller of modifying the tool for the contemplated use. In the event that the Buyer exercises its rights under this clause 12.1.3 it shall reimburse the Seller's costs of the new tool up to the point the Buyer took possession.

12.1.4 Where the Seller adopts a tool already in existence but which needs conditioning in order to manufacture the Goods, the Seller shall only be able to recover the costs of modification from the Buyer if they are notified to the Buyer within 30 days of adoption of the tool.

12.1.5 In the event that a tool is not fit for the purpose for which it was designed or fails in bulk production runs the Seller is obligated to replace/refurbish/modify it at its own cost to ensure the manufacture and delivery of the original parts at the agreed specification, volume and contract price.

## **13 Termination**

13.1 The Buyer shall be entitled to cancel the Order in respect of all or part only of the Goods and /or the Services by giving notice to the Seller at any time prior to delivery or performance, in which event the Buyer's sole liability shall be to pay to the Seller the Price for the Goods or Services in respect of which the Buyer has exercised its right of cancellation, less:-

13.1.1 in respect of the Goods in question, the price (if any) that the Seller, using all reasonable endeavours, is able to obtain for them on the open market; and

13.1.2 the Seller's actual net saving of cost arising from such cancellation or (at the Buyer's discretion) such amount as the Buyer reasonably believes the Seller should have been able to save as a result of such cancellation.

13.2 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

13.2.1 the Seller becomes or is deemed to have become unable to pay its debts or makes any voluntary arrangements with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or a firm one of whose partners becomes bankrupt) or (being a firm or LLP) is made the subject of winding-up proceedings or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or

13.2.2 an encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of the Seller; or

13.2.3 the Seller ceases, or threatens to cease, to carry on business; or

13.2.4 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly;

13.2.5 the Seller commits any material breach of the Contract

## **14 General**

14.1 The Seller acknowledges that the Buyer's actual need for Goods and Services is continually determined by the Buyer's customers. Accordingly the Seller recognises that the Buyer will require the Seller to demonstrate responsiveness to the Buyer's needs including a rapid exchange of information when the circumstances require and a high flexibility to adjusting circumstances.

14.2 The Buyer is a member of the group of companies whose holding company is Avon Automotive UK Holdings Ltd, and accordingly the Buyer may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Buyer.

14.3 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.

14.4 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the

relevant time have been notified pursuant to this provision to the party giving the notice.

14.6 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

14.7 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.

14.8 The Contract shall be governed by English Law, and the Seller agrees to submit to the non-exclusive jurisdiction of the English courts.

### **15 Confidential Information**

15.1 The Seller will keep confidential any and all Confidential Information that it may acquire.

15.2 The Seller will not use the Confidential Information for any purpose other than to perform its obligations under the Contract and will ensure that its officers and employees comply with these provisions.

15.3 The obligations on the Seller regarding Confidential Information will not apply to any information which: is publicly available through no act or omission of the Seller; or the Seller is required to disclose by order of a court of competent jurisdiction.