

## **Stapleton's (Tyre Services) Ltd. – BUSINESS TO BUSINESS TERMS AND CONDITIONS OF TRADE**

### **1. INTERPRETATION**

In these Conditions:

- 1.1 The "Buyer" is the other party to the transaction who agrees to purchase the Products or the Services from the Seller subject to these Conditions.
- 1.2 The "Conditions" are the terms and conditions set out in this document.
- 1.3 The "Contract" is the agreement between the Seller and the Buyer for the supply of Products and / or Services.
- 1.4 The "Examination Period" is the time permitted for the Buyer to examine the Products upon receipt, as specified within these Terms and Conditions.
- 1.5 The "Order" means or refers to the written or verbal request for goods made by the Buyer to the Seller. Written requests are to include all forms of communication including, inter alia, e-mail, internet and facsimile.
- 1.6 The "Products" are any goods which the Seller is to supply to the Buyer in accordance with these Conditions.
- 1.7 The "Seller" refers to Stapleton's (Tyre Services) Ltd (company number 332098) whose principal place of business is at Fourth Avenue, Letchworth, Hertfordshire, SG6 2TT.
- 1.8 The "Services" are any services which the Seller is to supply to the Buyer in accordance with these Conditions.

### **2 GENERAL**

- 2.1 These Conditions apply to all Contracts for the sale of Products and/or the supply of Services by the Seller to the Buyer. By placing an Order with the Seller or accepting the Seller's quotation, the Buyer agrees to deal with the Seller on these Conditions to the exclusion of all other terms, conditions, warranties or representations.
- 2.2 The Buyer agrees to purchase the Products and / or accept the Services from the Seller and the Seller agrees to sell the Products and / or provide the Services to the Buyer.
- 2.3 No variation to these Conditions shall be binding unless made in writing specifying both which clause is to be varied and full details of such variation and signed on behalf of each of the Buyer and the Seller by an authorised representative.
- 2.4 The Seller's employees or agents are not authorised to make any representations concerning the Products or the Services unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

- 2.5 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the application or use of the Products or as to the Services which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance or offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### **3 ORDERS**

- 3.1 The Buyer shall be responsible to the Seller for ensuring that all adequate information and specifications are provided to the Seller in sufficient time to ensure that the Seller is able to perform the contract within its terms.
- 3.2 If it is a pre-requisite of the Buyer that order numbers are quoted on all invoices related to the transaction then it is the responsibility of the Buyer to provide a valid Order number at the point of placing the order. Failure by the Buyer to supply a valid order number shall not remove the Buyer's liability to pay within the stated payment terms.
- 3.3 No Order that has been accepted by the Seller from the Buyer or any offer of the Seller which the Buyer has accepted may be cancelled by the Buyer in whole or in part without the agreement in writing of the Seller. The Seller shall be entitled to reclaim from the Buyer any costs that have already been incurred in executing the Order up to the point of the cancellation acceptance.
- 3.4 The Seller reserves the right to make any changes in, or to, the Products and the Services which are required to conform with any applicable safety or other requirements or which do not materially affect their quality or performance.

### **4 FITTING**

Where fitment of Products or supply of Services is to be performed as part of the Contract, unless otherwise stated in the Contract or solely at the Seller's discretion, any fitment of Products or supply of Services that is to be performed by the Seller shall be carried out at the Seller's premises.

### **5 DELIVERY**

- 5.1 Where the Products are to be delivered to the Buyer, the following conditions shall apply:
- 5.1.1 Delivery dates and times, where indicated, are approximations and are not of essence to the Order.
- 5.1.2 Where the delivery is made in instalments or part-deliveries, each instalment or part delivery shall be deemed to be a separate Order. Failure by the Seller to deliver any instalment under the Order shall not entitle the Buyer to rescind the whole of the Order.

- 5.1.3 If the Buyer refuses to accept a delivery that has been properly delivered in accordance with the Order the Seller shall be entitled to recover from the Buyer any costs that have already been incurred in executing the Order up to the point of non-acceptance.
- 5.1.4 In no circumstances whatsoever is the Buyer entitled to recover loss of profits, indirect and consequential loss or damages arising in connection with delivery time or from non-delivery of the goods.
- 5.1.5 Unless otherwise stated, prices include delivery to destinations within the United Kingdom via a mode of transport selected by the Seller.

## **6 PRODUCT LAWS AND REGULATIONS**

- 6.1 The Buyer shall comply with all laws and regulations relating to the ownership and use of the Products including in particular all laws and regulations relating to the conditions and configuration of tyres on motor vehicles.
- 6.2 The Seller reserves the right in its discretion to refuse to supply any Products or Services at all or in such a way that the vehicle in relation to which they would be supplied would in the Seller's opinion be unsafe or illegal as a result of or notwithstanding such supply.

## **7 EXAMINATION**

- 7.1 Where Products are delivered to the Buyer by or on behalf of the Seller, the Buyer shall count and examine the Goods immediately on receipt and any shortages or defects from the Order must be recorded on the accompanying paperwork and signed by the Seller's representative. If no notification is made at the time of the delivery, the Order shall be deemed to have been fulfilled and the Seller shall be under no obligation to redress shortages or defects that are subsequently notified.
- 7.2 If implied defect of the goods was found after the Examination Period but no later than 6 months after the delivery from the Seller to the Buyer, the Seller shall, as exclusive remedies and compensation granted to the Buyer under the relevant law, replace it with a new one or refund the received amount to the Buyer at its discretion.

## **8 RETURNS**

- 8.1 Where Products are delivered to the Buyer by or on behalf of the Seller, any Products that are returned must be done so with the prior agreement of the Seller. Where Products have been properly delivered in accordance with the Order and are subsequently returned by the Buyer subject to Contract, the Seller reserves the right to levy a handling charge of 10% of the Products sale value.

## **9 RISK AND TITLE**

- 9.1 Risk of damage to or loss of the Products shall pass to the Buyer on delivery or, if fitted by the Seller, on fitting. It is the responsibility of the Buyer to ensure that sufficient insurance is in place to cover the full value of the Products delivered.

- 9.2 Notwithstanding delivery and the passing of risk in the Products, or any other provisions of these Conditions, the property in the Products shall not pass to the Buyer and shall be retained by the Seller until the Seller has received in cleared funds payment in full for the price of the Products and the supply of all Services.
- 9.3 The Buyer shall be entitled to resell or use such goods in the ordinary course of its business but shall account to the Seller in respect of the proceeds of sale or otherwise of such goods, whether tangible or intangible, including insurance proceeds. The Buyer shall maintain records of the persons to whom it sells or disposes of such goods and of the payments made by such persons for such goods and will allow the Seller to inspect these records and the goods themselves on request. The Seller shall be entitled to trace the proceeds of sale or otherwise of such goods.
- 9.4 For avoidance of doubt, all Products and other goods supplied to the Buyer by the Seller which are in the Buyer's possession shall be presumed to belong to the Seller unless the Buyer can prove otherwise.
- 9.5 Until such time as the property in any goods owned by the Seller passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up such goods to the Seller and the Seller reserves the right to reclaim delivered or fitted Products from the Buyer should the Buyer fail to pay for the Products or Services or the Buyer falls within any of the items set out in "Termination" below. If the Buyer fails to deliver up the Products forthwith, the Buyer permits the Seller to enter any premises of the Buyer or any third party where such goods are stored and repossess them. The Buyer shall procure that any third party which holds such goods shall permit the Seller to take possession of them. The Seller shall be entitled to use or dispose of such goods as it wishes. Unless the Seller expressly elects otherwise any contract between it and the Buyer for the supply of the Products shall remain in existence notwithstanding any exercise by the Seller of any of its rights under this clause.
- 9.6 The Buyer 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 Seller but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **10 WARRANTY AND LIABILITY**

- 10.1 The Seller warrants that the Products shall on delivery and / or fitting by the Seller be free from defects in material and workmanship and shall, if fitted by the Seller, be fitted with reasonable care and skill and that the Services shall be supplied with reasonable care and skill provided that the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage or negligence by the Buyer or persons using the Products or the vehicle on which they have been fitted or in relation to which the Services have been supplied.
- 10.2 The Seller hereby assigns to the Buyer so far as it is able the benefit of any warranty or guarantee given to the Seller by the manufacturer of the Products.

- 10.3 The Seller may offer additional warranties from time to time. These are only applicable to products fitted by the Seller to the Buyer's vehicle and may not be assigned. Specific details of these warranties should be obtained from the Seller at the time of purchase.
- 10.4 Where the Products are vehicle tyres and the Buyer alleges their premature failure, the Seller shall submit such Products on behalf of the Buyer to their manufacturer for examination under standard service complaint procedures on the understanding, recognition and acceptance by the Buyer that the decision reached by the manufacturer is not the responsibility of nor binding upon the Seller and does not absolve the Buyer from nor permit the Buyer to delay payment for any Products supplied as replacements for tyres so submitted on the Buyer's behalf.
- 10.5 In the event of any valid claim under clause 10.1 above being made by the Buyer, the Seller shall be entitled to replace the Products (or the part in question) or perform the Services again free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Products or the Services (or a proportionate part of the price as appropriate) but the Seller shall have no further liability to the Buyer.
- 10.6 There are no warranties, conditions, guarantees or representations as to merchantability, fitness for a particular purpose or quality of the Products or the Services or other warranties, conditions, guarantees or representations whether express or implied, oral or in writing, except as expressly stated in the Contract.
- 10.7 The Seller does not seek to limit or exclude its liability for any death or personal injury arising from proven negligence.
- 10.8 The total liability of the Seller under the Order to the extent that it results from the proven negligence of the Seller will be limited to the sale price of the relevant Products and / or Services, other than in respect of death or personal injury.
- 10.9 Except pursuant to sub-clause 10.6 above, the Seller shall not in any event be liable for any indirect, special or consequential damages, howsoever arising (including but not limited to loss of anticipated profits) in connection with or arising out of the furnishing, functioning or use of the Products or supply of the Services or any other item or service provided and shall not be liable for any other damages except as provided in the Contract.
- 10.10 Except pursuant to sub-clause 10.6 above, no action, regardless of form, arising out of the transactions under the Contract may be brought by the Buyer more than one year after the cause of action has accrued.
- 10.11 Nothing in the Contract shall affect the statutory rights of the Buyer.

## **11 PRICE**

- 11.1 The price of the Products and the Services shall be the price quoted by the Seller or, if no price has been quoted (or the quoted price is no longer valid), the price listed in the Seller's price list current at the date of the Contract. Such price list shall be subject to alteration by the Seller without notice. All quoted prices are only open for acceptance for thirty (30) days

from the date of the Seller's quotation, after which time they may be altered by the Seller without notice.

- 11.2 Unless explicitly stated, the price is exclusive of any applicable value added tax and any other tax under relevant law.

## **12 PAYMENT**

- 12.1 Payment for Products or Services supplied shall be made in accordance with the payment terms that are in force at the time of sale or supply.
- 12.2 The Buyer shall make payment to the Seller in respect of all invoices in full and without any deductions or set off (whether in relation to such invoice or otherwise). Time of payment shall be of the essence.
- 12.3 The Seller reserves the right to offset any monies owed by the Buyer against any outstanding debt owed by the Seller to the Buyer.
- 12.4 Where the Buyer has no credit account with the Seller, or an account exists but money is owed to the Seller beyond the terms of the account, the Buyer shall make payment for the Products or Services supplied in full before removing the Products and / or the vehicle in relation to which the Services have been performed from the Seller's premises. The Seller shall have a lien over and be entitled to detain the Products and any vehicle on which they have been fitted or in relation to which the Services have been performed until payment is made by the Buyer.
- 12.5 Where the Buyer has a credit account with the Seller, the following conditions apply:
- 12.5.1 All payments shall be applied to invoices and to the Products and Services listed in such invoices in the order determined in its discretion by the Seller.
- 12.5.2 If full payment is not received by the Seller by the due date then without prejudice to its other rights or remedies under this Agreement or otherwise, the Seller shall be entitled to:
- 12.5.2.1 sue for the entire price; and / or
- 12.5.2.2 require the immediate return to the Seller of all goods agreed to be sold by the Seller to the Buyer in which the property has not passed to the Buyer in accordance with the provisions of clause 8 below and the Buyer hereby agrees to reimburse to the Seller upon demand the Seller's costs or expenses in recovering such goods together with the sum determined by the Seller to represent their diminution in value resulting from their use and / or attachment to a vehicle.
- 12.5.2.3 The Buyer indemnifies the Seller in respect of any costs, legal or otherwise, incurred by the Seller in respect of recovering any outstanding monies due from the Buyer to the Seller.
- 12.6 Where payments for Products or Services remain outstanding beyond the due date, the Seller retains the right to levy a finance charge of 5% per month over the Barclays base rate

on the outstanding balance which interest shall be compounded from month to month until payment is received and cleared through the Seller's bank account. Furthermore, the Seller retains the right to cancel outstanding Orders and suspend further deliveries to the Buyer until all outstanding balances have been cleared.

### **13 TERMINATION**

13.1 The Seller shall, without prejudice to any other right or remedy available to the Seller, be entitled to terminate all outstanding Contracts, Orders and suspend further deliveries to the Buyer immediately without any liability to the Buyer, if:

6.1.1 the Buyer commits an irremediable breach of the Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same; or

6.1.2 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an application for the commencement of an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction) or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer or any equivalent or similar event happens to or in respect of the Buyer in any jurisdiction other than England or the Buyer ceases, or threatens to cease, to carry on business or if the Seller reasonably apprehends that any of such events is about to occur in relation to the Buyer and notifies the Buyer accordingly.

13.2 If the Products or the Services have already been supplied but not paid for, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Seller shall be entitled to charge interest (both before and after any judgement) at the rate of 5% over the base rate from time to time of Barclays Bank PLC from the time of such cancellation or suspension until the Seller receives payment, which interest shall be compounded month by month.

### **14 DATA PROTECTION**

14.1 The Buyer agrees to allow the Seller to use information gathered from the placement of Orders for use in the Seller's normal course of business.

14.2 The Buyer agrees the Seller may undertake a credit search on the Buyer independently or through a service company for the purposes of accepting or fulfilling an Order, or for opening a credit account.

### **15 INTELLECTUAL PROPERTY**

The fulfilment of an Order by the Seller in no way shall transfer trademark, patent or other intellectual property rights from the Seller to the Buyer.

### **16 REMEDIES**

- 16.1 The remedies available to the Seller under the Contract shall be without prejudice to any other rights, either at common law or under statute, which it may have against the Buyer.

## **17 WAIVER, VALIDITY OF CONTRACT TERMS & HEADINGS**

- 17.1 The failure of the Seller to enforce or to exercise, at any time or for any period of time, any term of or any right arising pursuant to the Contract does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect the Seller's right later to enforce or exercise it.
- 17.2 The invalidity or unenforceability of any term of, or any right arising pursuant to, the Contract shall not in any way affect the remaining terms or rights which shall be construed as if such invalid or unenforceable term or right did not exist.
- 17.3 Clause headings are purely for case of reference and do not form part of or affect the interpretation of the Contract.

## **18 ASSIGNMENT**

The Contract is personal to the Buyer and the Buyer may not assign, transfer, sub-contract or otherwise part with the Contract or any right or obligation under it without the Seller's prior written consent. The Seller shall be entitled to subcontract performance of its obligations under the Contract.

## **19 FORCE MAJEURE**

The Seller reserves the right to cancel all outstanding contracts, Orders and suspend further deliveries to the Buyer without any liability to the Buyer if it is prevented from or delayed in carrying on its business or performing its contractual obligation due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to the Seller's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## **20 GOVERNING LAW**

The formation, construction, validity and performance of the Contract is governed by the laws of England and the parties accept the jurisdiction of the English Courts.