

1. INTERPRETATION

- a. **Definitions.** In these Conditions, the following definitions apply:
- b. **Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- c. **Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 13.b.
- d. **Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Vehicle in accordance with these Conditions.
- e. **Customer:** the person or firm who purchases the Vehicle from the Supplier.
- f. **Force Majeure Event:** has the meaning given in clause 11.
- g. **Manufacturer:** the manufacturer of the Car Transporter rigid and draw-bar trailer.
- h. **Order:** the Customer's order for the Vehicle, as set out in the Customer's written acceptance of the Supplier's quotation.
- i. **Specification:** the specification for the Vehicle, including any related plans and drawings, which is agreed in writing by the Customer and the Supplier.
- j. **Supplier:** Hunwick Engineering Limited (registered in England and Wales with company number 04437451).
- k. **Vehicle:** The Car Transporter consisting of varying models (or any part of it) to be supplied by the Supplier to the Customer as set out in the Order.
- l. **Construction.** In these Conditions, the following rules apply:
 - i. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
 - ii. A reference to a party includes its personal representatives, successors or permitted assigns.
 - iii. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
 - iv. Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
 - v. A reference to **writing** or **written** includes faxes and emails.

2. BASIS OF CONTRACT

- a. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- b. The Order constitutes an offer by the Customer to purchase the Vehicle in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- c. The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- d. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- e. Any drawings, descriptive matter, or advertising produced by the Supplier or and any descriptions or illustrations contained in the Supplier's or the Manufacturer's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Vehicle described in them. They shall not form part of the Contract or have any contractual force.
- f. A quotation for the Vehicle given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 60 days from its date of issue.
- g. The Customer may within 7 days of placing an Order amend or cancel an Order by written notice to the Supplier. If the Customer amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of deemed receipt of the amendment or cancellation. In addition, the Supplier may retain all or any part of any deposit paid by the Customer in satisfaction or diminution of any liability attaching to the Customer as a result of such amendment or cancellation.

3. VEHICLE

- a. The Vehicle is described in the Specification.
- b. To the extent that the Vehicle is to be supplied in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.b shall survive termination of the Contract.
- c. The Supplier reserves the right to amend the Specification, without notice, in the following circumstances:
 - i. if required by the Manufacturer or any applicable statutory or regulatory requirements; and
 - ii. where the Supplier considers that alterations in the design material or dimensions would be desirable to the Customer.

4. DELIVERY

- a. The Customer shall collect the Vehicle from the Supplier's premises at Unit 4-7 The Old Airfield, Gosfield, Halstead, Essex, CO9 1SA or delivered to such other location as may be requested by the customer at their cost and advised by the Supplier prior to delivery within 5 Business Days of the Supplier notifying the Customer that the Vehicle is ready.
- b. Delivery shall be completed the moment when the Customer or their appointed representative collects the Vehicle from the Delivery Location or the vehicle is delivered as in clause 4.1 (as indicated by the Customer taking physical control of the Vehicle).
- c. Any dates quoted for Delivery are approximate only, and the time of Delivery is not of the essence. The Supplier shall not be liable for any delay in Delivery under any circumstances and not limited to a Force Majeure Event or the Customer's failure to provide the Supplier with any instructions that are relevant to the supply of the Vehicle.
- d. The Supplier shall have no liability for any failure to deliver the Vehicle under any circumstances and not limited to failure caused by a Force Majeure Event, the Customer's failure to provide the Supplier with any instructions that are relevant to the supply of the Vehicle or the Customer's failure to make payment under clause 8.4.
- e. If the Customer fails to accept Delivery of the Vehicle within 5 Business Days of the Supplier notifying the Customer that the Vehicle is ready for collection, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
 - i. Delivery of the Vehicle shall be deemed to have been completed at 9:00 am on the fifth Business Day after the day on which the Supplier notified the Customer that the Vehicle was ready for collection; and
 - ii. the Supplier shall store the Vehicle until collection takes place, and charge the Customer for all related costs and expenses (including insurance and the costs of storage (which shall be at the rate of £14.00 per day per Vehicle as updated by the Supplier in writing from time to time)).

- f. If 10 Business Days after the day on which the Supplier notified the Customer that the Vehicle was ready for collection the Customer has not collected it, the Supplier may resell or otherwise dispose of part or all of the Vehicle and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Vehicle or charge the Customer for any shortfall below the price of the Vehicle.

5. QUALITY

- a. The Supplier warrants that on Delivery the Vehicle shall:
- i. subject to clause 3.3, conform in all material respects with the Specification; and
 - ii. be free from material defects in design, material and workmanship.
- b. The Vehicle is also sold with the benefit of the warranties detailed in the Supplier's Quotation or any other document supplied by the Supplier (**Warranty**) subject to any applicable terms and conditions.
- c. Subject to clauses 5.e and 5.5, if:
- i. the Customer gives notice in writing to the Supplier within a reasonable time of discovery in relation to the warranties at clause 5.1, or during the warranty period stated within the Warranty, or within 5 Business Days of Delivery where the defect in question is apparent on normal visual inspection, that the Vehicle does not comply with the warranties at clause 5.1 or the Warranty (as the case may be);
 - ii. the Supplier is given a reasonable opportunity of examining the Vehicle; and
 - iii. the Customer (if asked to do so by the Supplier) returns the Vehicle to the Delivery Location at the Customer's cost,
- d. the Supplier shall, at its option, arrange for the repair or replacement of the defective Vehicle or parts thereof, or refund the price of the defective Vehicle in full.
- e. The Supplier shall not be liable for the failure of the Vehicle to comply with the warranties at clause 5.1 or the Warranty (as the case may be) in any of the following events:
- i. the Customer makes any further use of the Vehicle after giving notice in accordance with clause 5.c(a), other than delivering the Vehicle to the Delivery Location in accordance with clause 5.3(c); or
 - ii. the defect arises because the Customer failed to follow the Supplier's or the Manufacturer's oral or written instructions as to the storage, use or maintenance of the Vehicle; or
 - iii. the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer; or
 - iv. the Customer alters or repairs the Vehicle contrary to any instructions given by the Supplier or Manufacturer; or
 - v. the defect arises as a result of fair wear and tear, wilful damage, negligence, abnormal use, storage or working conditions or any other type of abuse; or
 - vi. the Vehicle differs from the Specification as a result of changes made to ensure it complies with applicable statutory or regulatory requirements or changes made under clause 3.3; or
 - vii. where the Customer has failed to comply with any terms and conditions which apply to the Warranty.
- f. Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Vehicle's failure to comply with the warranties at clause 5.1 or the Warranty.
- g. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- h. These Conditions shall apply to any repaired or replacement vehicle supplied by the Supplier.

6. USE OF THE VEHICLE

- a. The Customer shall at its own expense comply with all laws and regulations relating to its use of the Vehicle, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals and the Supplier shall have no liability to the Customer in respect of any such non-compliance by the Customer.
- b. To the extent that the Customer requests that the Supplier drives or tows the Vehicle at any time, then the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with such request.

7. TITLE AND RISK

- a. The risk in the Vehicle shall pass to the Customer on completion of Delivery.
- b. Title to the Vehicle shall not pass to the Customer until:
- i. the Supplier receives payment in full (in cash or cleared funds) for the Vehicle; and
 - ii. the Supplier receives payment in full (in cash or cleared funds) for any other vehicles that the Supplier has supplied to the Customer and that have become due and payable.

8. PRICE AND PAYMENT

- a. The price of the Vehicle shall be the price set out in the Order.
- b. The Supplier may, by giving notice to the Customer at any time up to 60 days before Delivery, increase the price of the Vehicle to reflect any increase in the cost of the Vehicle that:
- i. is applied by the Manufacturer and, if the Supplier gives notice of the same, the Customer has a right to terminate the Contract under clause 9.4;
 - ii. is due to any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or
 - iii. is due to any request by the Customer to change the date of Delivery, the Specification or type of Vehicle ordered or, if more than one Vehicle has been ordered, the quantity of the Vehicles; or
 - iv. is due to any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- c. The price of the Vehicle is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Vehicle.
- d. Payment for the Vehicle must be made in advance of Delivery to the bank account nominated in writing by the Supplier. The Supplier may require the Customer to pay a deposit at such time as an Order is placed.
- e. If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- f. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

- g. If for any reason title to the Vehicle passes to the Customer, or the Customer otherwise takes possession of the Vehicle, in circumstances where the price has not been paid to the Supplier in full, then, without limiting any other right or remedy the Supplier may have:
- i. the Customer's right to resell or lease the Vehicle or otherwise use it in the ordinary course of its business ceases immediately; and
 - ii. the Supplier may at any time:
 1. require the Customer to deliver up the Vehicle in its possession; and
 2. if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Vehicle is stored in order to recover it.

9. TERMINATION AND SUSPENSION

- a. If the Customer becomes subject to any of the events listed in clause 9.b, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.
- b. For the purposes of clause 9.a, the relevant events are:
- i. the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - ii. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - iii. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - iv. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - v. the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - vi. a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - vii. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - viii. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.b.i to clause 9.b.vi (inclusive);
 - ix. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; and
 - x. the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- c. Without limiting its other rights or remedies, the Supplier may suspend provision of the Vehicle under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.b.i to clause 9.b.viii, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- d. Where the Supplier gives notice of an increase in price under clause 8.2(a), the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier and, upon giving such notice, the Customer's liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of deemed receipt of the notice of termination served by the Customer. In addition, the Supplier may retain all or any part of any deposit paid by the Customer in satisfaction or diminution of any liability attaching to the Customer as a result of such termination.
- e. On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- f. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- g. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10. LIMITATION OF LIABILITY

- a. Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- i. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
 - ii. fraud or fraudulent misrepresentation; or
 - iii. breach of the terms implied by section 12 of the Sale of Vehicles Act 1979; or
 - iv. defective products under the Consumer Protection Act 1987; or
 - v. any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- b. Subject to clause 10.a:
- i. the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise:
 1. for any loss of profit or loss of earnings (including, without limitation, loss of profit or earnings resulting from the Customer being unable to use a defective Vehicle which is awaiting or undergoing a repair or is being replaced under clause 5.3, including, without limitation, drivers wages and the costs of engaging any third party contractor to undertake the services originally intended to be undertaken by the defective Vehicle); or
 2. for any loss of goodwill, loss of business, loss of business opportunity, loss of use or loss of anticipated saving arising under or in connection with the Contract; or
 3. any indirect or consequential loss arising under or in connection with the Contract; or
 4. where the Customer is in breach of, or has breached, clause 6.1;
 - ii. the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Vehicle to which such loss relates.

11. FORCE MAJEURE

- a. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

- b. Provided it has complied with clause 11.4, if the Supplier is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event, the Supplier shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- c. The corresponding obligations of the Customer will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Supplier.
- d. The Supplier shall:
 - (a) as soon as reasonably practicable after the start of the Force Majeure Event notify the Customer of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- e. If the Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 4 weeks, either party may terminate this agreement by giving 2 weeks' written notice to the other party.

12. DISPUTE RESOLUTION

- a. If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause 12.
- b. Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the relevant Director of the Supplier and a representative of the Customer (**Representative**) shall attempt in good faith to resolve the Dispute.
- c. If the relevant Director of the Supplier and the Representative of the Customer are for any reason unable to resolve the Dispute within 20 days of service of the Dispute Notice, the Dispute shall be referred to the Managing Director or Chairperson of the Supplier and the Managing Director of the Customer who shall attempt in good faith to resolve it.
- d. If the Managing Director or Chairperson of the Supplier and the Managing Director are for any reason unable to resolve the Dispute within 20 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by the president for the time being of the Society of Motor Manufacturers and Traders Limited. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. The mediation will start not later than 20 days after the date of the ADR notice.
- e. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 13.8, which clause shall apply at all times.
- f. If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 13.8.

13. GENERAL

- a. **Assignment and other dealings.**
 - i. The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
 - ii. The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- b. **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.
- c. **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- d. **Severance.**
 - i. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
 - ii. If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- e. **Notices.**
 - i. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
 - ii. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.e.i; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
 - iii. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- f. **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- g. **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- h. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).