

TERMS AND CONDITIONS

of

MBA SOCIALISTS

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF *CLAUSE 8* (LIMITATION OF LIABILITY).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

"Business Day"	means a day other than a Saturday, Sunday or public holiday in Scotland, when banks in Glasgow are open for business.
"Charges"	means the charges payable by the Customer for the supply of the Services in accordance with clause 5.
"Commencement Date"	has the meaning given in clause 2.1.
"Conditions"	means these terms and conditions as amended from time to time in accordance with clause 8.2.
"Contract"	means the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.
"Customer"	means the person or firm who purchases Services from the Supplier.
"Customer Default"	has the meaning set out in clause 4.2.
"Deliverables"	means the deliverables set out in the Order produced by the Supplier for the Customer.
"Order"	means the Customer's order for Services in accordance with these Conditions, as set out in the Customer's verbal or written acceptance (as the case may be) of the Supplier's quotation.
"Parts"	means any parts provided by the Supplier in provisions of the Services.
"Services"	means the services, including the provision of any Parts, supplied by the Supplier to the Customer as set out in the Order.
"Supplier"	means [NAME OF SUPPLIER] registered in [Scotland / England & Wales with company number [NUMBER].
"Vehicle"	has the meaning given in clause 6.1.

1.2 Interpretation:

- 1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes email.

2. Basis of contract

- 2.1 The Order shall only be deemed to be accepted when the Customer verbally accepts, or issues written acceptance of, the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.2 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.3 No drawings, descriptive matter, dimensions or specifications issued by the Supplier or the manufacturer or supplier of the Parts nor descriptions or illustrations contained in the Supplier's, manufacturer's or supplier's catalogues, price lists or other advertising material shall be deemed to form part of the contract nor be regarded as a warrant or representation relating to the Parts.
- 2.4 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 law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. Supply of Services

- 3.1 These Conditions shall apply to all contracts for any parts or service provided by the Supplier to the Customer, to the exclusion of all other terms and conditions, including any terms and conditions the Customer may purport to apply under any purchase order, confirmation of order or similar document.
- 3.2 Agreement of any work to be carried out by the Supplier shall be deemed conclusive evidence of the Customer's acceptance of these Conditions.
- 3.3 The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.
- 3.4 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.5 The Supplier reserves the right to amend the Order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.6 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.7 The Supplier will endeavour to deliver Parts ordered within the time agreed between the Customer and Supplier and if no time is agreed within a reasonable time but in no circumstances will the Supplier be liable for loss or damage of any kind whatsoever caused directly or indirectly by any delay in the delivery or any Parts nor will any such delay entitle the Customer to cancel or rescind the contract.
- 3.8 If the Customer fails to make payment for the Parts ordered by the Supplier, the Supplier reserves the right to re-sell the parts to a third party without giving notice to the Customer of the Supplier's intention to re-sell.

3.9 The Customer acknowledges that the Supplier is not the manufacturer or original supplier of the Parts and accordingly agrees and acknowledges that all conditions, warranties or representations whether express or implied or statutory or otherwise in respect of the Parts or their fitness for any particular purpose are hereby expressly excluded to the fullest extent permitted by law. The Supplier shall use reasonable endeavours to assign to the Customer or enable the Customer to take the benefit under the Contracts (Rights of Third Parties) (Scotland) Act 2017, of any manufacturers guarantee or warranty for a Part.

4. Customer's obligations

4.1 The Customer shall:

4.1.1 ensure that the terms of the Order and any information it provides in the Order are complete and accurate;

4.1.2 co-operate with the Supplier in all matters relating to the Services;

4.1.3 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

4.1.4 comply with any additional obligations as set out in the Order.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

4.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and

4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. Charges and payment

5.1 The Charges for the Services shall be calculated on a time and materials basis as set out in the Order.

5.2 The Supplier shall invoice the Customer on completion of the Services in arrears.

5.3 The Customer shall pay each invoice submitted by the Supplier:

5.3.1 within 24 hours of the date of the invoice; and

5.3.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, 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 Services at the same time as payment is due for the supply of the Services.
- 5.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under this agreement, the Customer shall pay:
- 5.5.1 interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.5 will accrue each day at **8% above the base rate of the Bank of England per annum**;
- 5.5.2 any costs incurred by the Supplier in storing the Vehicle at a third party storage facility in accordance with clause 6.4.2; and
- 5.5.3 any costs incurred by the Supplier in transporting the Vehicle to and from any third party storage facility.
- 5.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Title and Risk

- 6.1 The Customer's vehicle, its contents and accessories (together, the "**Vehicle**") shall remain at the Customer's entire risk whilst in the possession of the Supplier.
- 6.2 Title to any Part shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Parts and all other sums that are or that become due to the Supplier from the Customer for the provisions of the Services or on any account, in which case title to the Parts shall pass at the time of payment of all sums.
- 6.3 Without prejudice to any of the Supplier's other rights, the Supplier may at any time after any sum payable by the Customer to the Supplier has become due and remains unpaid rescind the Contract and/or recover any parts which are the Supplier's property and may enter on the Customer's premises itself or through its agents for that purpose.
- 6.4 The Customer acknowledges that the Supplier:
- 6.4.1 has a legal lien upon any Vehicle left by the Customer with the Supplier for the supply of Services for all monies due from the Customer on any account (the "**Sums Due**"); and
- 6.4.2 is entitled to transfer the Vehicle to a third party storage facility until such time as the Customer or a third party settles the Sums Due in full.

7. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 7.1 The restrictions on liability in this clause 7 apply to every liability arising under or in connection with the Contract including liability in contract, delict (including negligence), misrepresentation, restitution or otherwise.
- 7.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 7.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- 7.3.1 death or personal injury caused by negligence;
 - 7.3.2 fraud or fraudulent misrepresentation; and
 - 7.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.4 Subject to clause 7.3, the Supplier's total liability to the Customer shall not exceed the amount of the Charges (excluding the price payable for any Parts).
- 7.5 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.6 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 7.7 This clause 7 shall survive termination of the Contract.

8. General

8.1 Entire agreement.

8.1.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

8.1.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

8.1.3 Nothing in this clause shall limit or exclude any liability for fraud.

8.2 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

8.3 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

8.4 **Severance.** 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 8.4 shall not affect the validity and enforceability of the rest of the Contract.

- 8.5 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of Scotland.
- 8.6 **Jurisdiction.** Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.