

# SPAL AUTOMOTIVE (UK) LTD

## TERMS & CONDITIONS OF SALE

Note: These Conditions contain exclusion and jurisdictional conditions.

- 1. Definitions**

In these Conditions of Sale all references to "the Seller" are to Spal Automotive (UK) Ltd whose registered office is at Unit 3 Great Western Business Park, McKenzie Way, Tolladine Road, Worcester, WR4 9PT, and its assignees. All references to "the Buyer" are to the person, firm or entity by whom the order is given. All references to "Goods" are to the goods which are the subject of the order, and all references to "the Contract" are to the contract of sale of the Goods by the Seller.
  - 2. Entire Agreement**
    - 2.1 The Contract shall be deemed to incorporate these conditions which represent the complete agreement of the Seller and Buyer with regard to the Goods except as otherwise specifically agreed in writing by the Seller. These conditions shall override any terms and conditions stipulated, incorporated, or referred to by the Buyer in any order, correspondence, negotiations or any other way.
    - 2.2 Without prejudice to the foregoing, acceptance of delivery of the Goods by the Buyer shall be deemed to constitute acceptance of these conditions to the exclusion of all other terms and conditions whatsoever.
    - 2.3 Catalogues, price lists, advertisements and other published information are only indications of the type of products available and shall not form part of the Contract or any other contract with the Buyer nor be considered a collateral warranty or a representation inducing the same.
    - 2.4 If any term or condition herein or part thereof is held to be invalid for any reason by any court or competent authority it is to that extent to be deemed removed from the Contract without prejudice to the validity or other effectiveness of the remaining terms and conditions thereof.
  - 3. Acceptance**

No order is binding on the Seller until accepted by the Seller's issue of a Goods invoice notwithstanding any act or statement of the Seller prior to such issue.
  - 4. Prices**

All quotations and prices are in pounds sterling and are based on the current cost of the Seller of Goods, materials, labour, services and transport. If between the date of the quotation and the date of despatch any increase in such costs shall occur or if the Seller shall agree any variation to the specification of the Goods then the Seller shall be entitled to add to the price such sum as may be necessary to cover the amount of such increase or to take into account such variation including any variation in exchange rates and any bank charges associated with wire transfers or currency conversions.
  - 5. Taxes**

All HM Revenue & Customs duties import and/or export duties and all other taxes (VAT or otherwise) tariffs and surcharges of any nature whatsoever now or hereafter levied or imposed in any country or territory either directly or indirectly in respect of the sale, supply, delivery or use of the Goods or payments for them or upon freight or other charges shall be borne by the Buyer and are additional to the price for the Goods.
  - 6. Delivery**
    - 6.1 Except where it is specifically stated to the contrary in the Seller's quotation or invoice all quotations and Contracts are for delivery of the Goods Ex Works, Seller's UK facility (Incoterms 2000). If the Seller (at its discretion) agrees with the Buyer to arrange transport of the Goods it shall be deemed to do so as agent for the Buyer and in the absence of express agreement with the Buyer shall be entitled to make such arrangements as it considers appropriate. The Buyer shall indemnify the Seller against all costs and expenses the Seller may incur in connection with such transport. Section 32 (2) of the Sale of Goods Act 1979 shall not apply to the Contract.
    - 6.2 Unless otherwise expressly agreed between the Seller and Buyer, the Seller shall perform the Contract within a maximum of 30 days beginning with the day on which the full technical specification of the Goods has been agreed.
    - 6.3 Subject to condition 6.2, the time period and date for delivery are approximate only and in particular shall be subject to revision if any variation to the specification of the Goods is agreed.
  - 7. Risk**

The risk in the Goods shall pass to the Buyer on delivery of the Goods to the carrier. If the Buyer requires postponement of the delivery beyond the agreed delivery date the Seller may at its option exercisable by notice in writing to the Buyer treat the risk in the Goods as having passed to the Buyer and store the Goods at the Buyer's expense (but without liability).
  - 8. Installation and Training**
    - 8.1 Unless expressly agreed, installation and training are not covered by the Contract and shall be the subject of a separate contract.
    - 8.2 Where the parties agree installation, the Buyer shall carry out prior to the estimated installation date all preparatory work that may be required at the location where the Goods are to be installed necessary for their proper installation and shall be responsible for the installation of the Goods in accordance with the Seller's installation instructions. In the event that the Goods are not properly installed the Buyer shall indemnify the Seller for all costs incurred including all travel and accommodation expenses of installation and training personnel incurred during any aborted visit.
  - 9. Passing of Property**
    - 9.1 The Goods (whether separate and identifiable or incorporated in or mixed with other goods) shall remain the property of the Seller as legal and beneficial owner and the property in the Goods shall not pass to the Buyer until payment in full has been made of the purchase price for the Goods and for all other items sold or agreed to be sold under any other contract of sale between the Buyer and the Seller or any associated Company of the Seller together with any interest thereon.
    - 9.2 Until property in the Goods has passed to the Buyer,
      - (i) the Buyer shall not be entitled to and shall not purport to sell, hire, charge or otherwise dispose of encumber or part with possession of the Goods.
      - (ii) any resale by the Buyer of Goods in which property has not passed to the Buyer shall (as between the Seller and the Buyer only) be made by the Buyer as agent for the Seller, and the Buyer shall hold the proceeds of such resale in trust for the Seller until the Buyer has fully paid the Seller for those Goods.
      - (iii) the Buyer shall keep the Goods separately and readily identifiable as the property of the Seller.
      - (iv) the Buyer hereby irrevocably licences the Seller to enter upon any premises occupied by the Buyer at which the Goods are then kept for the purpose of taking possession of the Goods in the event of any default by the Buyer under the Contract or under any other contract of sale between the Buyer and the Seller or any associated company of the Seller.
    - 9.3 Notwithstanding the provisions of this Condition 9 the Seller shall be entitled to bring an action against the Buyer for the whole or any instalment of the purchase price of the Goods in the event of non payment thereof by the due date for payment as if the property in the Goods had already passed to the Buyer and/or shall have the right by notice in writing to the Buyer at any time after the agreed delivery date to pass the property in the Goods to the Buyer as from the date of such notice.
    - 9.4 Notwithstanding the foregoing, the Buyer may not return any Goods to the Seller or refuse to accept delivery thereof and the Seller shall not be under any liability whatsoever for Goods returned by the Buyer without permission.
  - 10. Cancellation**
    - 10.1 Where the Buyer gives notice in writing of cancellation to the Seller during the cancellation period as specified in condition 10.2, the notice of cancellation shall operate to cancel the contract and the contract shall be treated as if it had not been made.
    - 10.2 The cancellation period begins with the day on which the contract is concluded and ends on the expiry of the period of seven working days beginning with the day after the day on which the Buyer receives the Goods.
    - 10.3 Unless the parties agree otherwise, the Buyer will not have the right to cancel the contract by giving notice of cancellation pursuant to this condition 10 in respect of contracts for:
      - (i) the sale of Goods made to the Buyer's specifications or clearly personalised; and
      - (ii) the sale of audio or video recordings or computer software if they are unsealed by the Buyer.
    - 10.4 On cancellation of a contract pursuant to this condition 10 the Seller shall reimburse any sum paid by or on behalf of the Buyer under the contract free of any charge within 30 days of receiving the notice of cancellation and such notice shall also have the effect of cancelling any related credit agreement.
    - 10.5 On cancellation, the Buyer shall be under a duty to return the Goods to the Seller in the same condition in which they were originally received from the Seller.
  - 11. Warranty**
    - 11.1 The Seller warrants the Goods against defects in design, material and workmanship which render the Goods of unmerchantable quality and which become apparent within the Warranty Period.
    - 11.2 The Warranty Period shall be 12 months from the date of sale of the Goods and subject to Condition 11.3 below.
    - 11.3 Notwithstanding the foregoing where it is apparent from the Contract or any specification or other documents supplied by the Seller to the Buyer prior to the date of the Contract that any item or component was not manufactured by the Seller or any associated company of the Seller, the Warranty Period shall in relation to such item or component expire at the end of the period of the express warranty given to the Seller in respect thereof by the relevant supplier.
    - 11.4 The Seller's obligation under this warranty is limited to repairing and/or replacing on an exchange basis any defective Goods or part or parts thereof or at the Seller's option to refunding the purchase price paid by the Buyer against return of the Goods.
    - 11.5 In the event of the Buyer becoming aware of a defect in the Goods during the Warranty Period the Buyer shall promptly supply the Seller with written particulars of such defect and shall afford the Seller and/or its agents full and proper access facilities information and assistance to enable them to verify the notified particulars ascertain the nature and cause of the defect and make good the same.
    - 11.6 The Seller shall be entitled to require the Buyer to return the Goods to the Seller at the Buyer's expense for inspection under the Warranty claim procedure. The return of Goods to the Seller for inspection does not indicate the acceptance of the warranty claim by the Seller. (See 11.7.)
    - 11.7 The Seller shall inspect and test any Goods returned under warranty and is the sole arbiter of liability for warranty claims from the Buyer or any other party.
  - 11.8 The Seller shall be entitled to require the Buyer by notice in writing to cease forthwith the operation of any Goods in respect of which any defect has been notified to the Seller and if the Buyer fails to comply with such requirement the Seller shall be under no liability to the Buyer either under this condition or otherwise in relation to such Goods. Where for any reason no such notice has been given by the Seller the Seller shall not be liable for any loss or damage whatsoever suffered by the Buyer to the extent that it is caused by the continued operation of the Goods after a defect became apparent.
  - 11.9 The above warranty shall not apply to any defect in the Goods where such defect is caused in whole or in part by the installation operation or use of the Goods in an improper or abnormal manner or the modification of the Goods without the express permission in writing of the Seller.
  - 11.10 The Seller shall be under no liability whatsoever for any loss or damage which results from or is caused by erroneous information supplied by the Buyer as to the Buyer's requirements in relation to the specification or use of the Goods or which results from defects or deterioration caused by wear and tear, accidents, neglect, misuse, dampness, abnormal conditions or circumstances beyond the Seller's control as stipulated in Condition 14 below.
  - 11.11 When any defective parts are replaced upon an exchange basis or defective parts are repaired the provisions of this Condition 11 shall apply to the replacement or repaired parts as they apply to the Goods save that the Warranty Period shall remain from the date the original Goods were supplied.
  - 11.12 All liability under this Condition 11 ceases at the expiration of the Warranty Period.
- 12. Exclusions and Insurance**
    - 12.1 The Warranty contained in Condition 11 above is given in lieu of and replaces, excludes and extinguishes all and every condition or warranty and any other obligation or liability of the Seller or right or remedy of the Buyer whatsoever whether express or implied and whether in contract or in tort or otherwise howsoever in respect of quality or fitness for purpose, merchantability, description of the Goods or otherwise.
    - 12.2 Without prejudice to the foregoing the Seller shall have no liability to the Buyer for any damage to physical property or any economic loss including (without limitation) any loss of anticipated profits or receipts or any expenses incurred or any indirect or consequential loss whatsoever.
    - 12.3 Notwithstanding anything to the contrary contained in these conditions nothing in Conditions 11, 12 and 13 shall exclude or restrict the Seller's obligations under Section 12 of the Sale of Goods Act 1979, the Consumer Protection Act 1987 or the Seller's liability for any death or personal injury caused by negligence.
    - 12.4 The Buyer agrees that it is best able to estimate the extent and nature of the insurance cover suitable for its business and can effect at more economic rates than the Seller appropriate insurance cover. The Buyer agrees that insofar as it may require any insurance cover whether for damage to physical property or for economic loss of otherwise the Buyer shall effect the same and acknowledges and accepts that it is reasonable for the Seller to limit its liability as set out in this Agreement and fix the price for the Goods on the basis of the exclusions and limitations of liability set out in the Contract.
  - 13. Indemnity**

The Seller shall indemnify and keep indemnified the Seller against any loss damage cost claims and expenses incurred by the Seller in respect of any liability of the Seller towards any third party rising out of or in connection with the Goods or their operation or use.
  - 14. Force Majeure**

The Seller shall not be under any liability whatsoever to the Buyer if and to the extent to which the fulfilment of the Seller's obligations is prevented or delayed directly or indirectly as a consequence of an Act of God, out-break of hostilities (whether or not war is declared), insurrection, riot, civil disturbance, Government act or regulation, fire, flood, explosion, accident, theft, climatic conditions, shortage of material, shortage of transport facilities, failure in whole or in part of power supplies, failure of a delay by suppliers, strike, lockout or trade dispute (whether of the employees of the Seller or of other parties) or caused by or resulting from any other event or circumstances whatsoever (whether or not of the same or similar kind to those enumerated) beyond the Seller's control.
  - 15. Payment and Financial Risk**
    - 15.1 Unless otherwise agreed or specified by the Seller in writing, the Buyer shall make payment of the purchase price within 30 days after the date of invoice issued by the Seller after the ex-works delivery of the Goods to the carrier.
    - 15.2 Time shall be of the essence of the Contract in relation to the payment of the purchase price.
    - 15.3 The Seller shall be entitled to charge interest at the rate of 3 per cent per annum above the rate for the time being of Barclays Bank on any unpaid sums due under the Contract from the due date for payment thereof, such interest to accrue from day to day until receipt by the Seller of the full amount whether before or after judgement.
    - 15.4 If at any time the financial circumstances of the Buyer do not in the Seller's opinion justify the terms of payment specified in the Contract the Seller shall at its option, exercisable by notice in writing to the Buyer be entitled to require payment of the purchase price before further Goods are despatched.
    - 15.5 Without prejudice to any other rights or remedies the Seller may have, the Seller shall be entitled to terminate the Contract by notice in writing in the event that the Buyer is or becomes insolvent or fails to make any payment in full by the due date for payment and in such event shall be entitled to keep any deposit.
  - 16. Accuracy**
    - 16.1 All Goods sold by the Seller shall be subject to reasonable commercial variation other than where specifically agreed to the contrary by the Seller in writing.
    - 16.2 All performance guarantees and commitments shall be subject to a tolerance equal to 5% of applicable performance data and the Buyer shall not be liable for any failure of the Goods to meet any performance data specified provided the Goods perform within the above tolerances.
  - 17. Changes**

The Seller shall have the right to make any alteration or improvement in the design of any item without notice to the Buyer provided that the Goods are not being manufactured to the Buyer's specification.
  - 18. Designs**
    - 18.1 Where the Goods are manufactured to designs, drawings or specifications of the Buyer, the Buyer will indemnify the Seller against any damages, claims, costs, charges or expenses arising from any infringement of letters, patent, copyright, registered designs or other industrial property rights in respect of the use of such designs, drawings or specifications by the Seller.
    - 18.2 Where the Goods design will be or was designed by the Seller or the Seller's employees pursuant to a commission from the Buyer (whether in consideration of the Buyer's order or otherwise) then unless otherwise agreed, the Buyer assigns or agrees to assign the design right in that design to the Seller.
  - 19. Health & Safety**

The Buyer agrees to pay due regard to any information supplied by the Seller and relating to the use for which the Goods are designed or have been tested and to any conditions necessary to ensure that they will be safe and without risks to health at all times when they are being set, used, cleaned or maintained by any person at work and the Buyer undertakes to take such steps as may be specified by the above information to ensure that so far as reasonably practicable the Goods will be safe and without risk to health at all times as are mentioned above. The cost of complying with the requirements as regards Health and Safety in the location where the Goods are used shall be for the account of the Buyer.
  - 20. Complaints**

Any complaints of the Buyer relating to the conditions of the contract or performance thereof by the Seller shall be addressed to the Seller in writing and delivered to Unit 3 Great Western Business Park, McKenzie Way, Tolladine Road, Worcester, WR4 9PT and any such complaint received shall be reviewed and considered by the Seller.
  - 21. Assignment**

Any or all of the Seller's rights or obligations under the Contract may be assigned by the Seller and the Buyer shall not assert against an assignee any defence (other than actual payment) set off or counterclaim which the Buyer may have against the Seller. The Buyer shall not be entitled to assign its rights or obligations hereunder without the written consent of the Seller.
  - 22. Waiver**

Any waiver of any of these conditions or any breach thereof shall not prejudice or affect the Seller's rights and remedies in respect of any other or continued breach by the Buyer and in particular the acceptance by the Seller of any payment after the specified due date thereof shall not constitute a waiver of the Buyer's obligations to make future payments on the specified dates.
  - 23. Set Off**

The Buyer undertakes to make any payment due hereunder in full without any deduction, off-set or counterclaim whatsoever.
  - 24. Separability**

Each delivery or part delivery of an order is to be considered a separate contract and failure on the part of the Seller to make any delivery or part delivery shall not affect or vitiate the Contract as to other deliveries.
  - 25. Headings**

The headings of these conditions do not form part thereof and shall not affect the interpretation of the Contract.
  - 26. Governing Law**

The Contract shall be governed by and construed in accordance with English law and the English courts shall have exclusive jurisdiction in respect of all disputes or all disputes or other matters which may arise under or in connection with the Contract and/or the Goods save that having regard to the fact that this Condition conferring jurisdiction is for the benefit of the Seller only, the Seller shall retain the right to bring proceedings against the Buyer in any other court which has jurisdiction.
  - 27. Notices**

Any notice hereunder shall be deemed to have been given if delivered by hand or sent by prepaid first class post or facsimile (confirmed by telephone and followed by notice by post) to the party concerned at its last known address, and deemed to have been received on the date of despatch, if delivered by hand or sent by facsimile, and on the third day after posting, if sent by post.