



BRITISH MOTOR HERITAGE

CONDITIONS OF SALE

CUSTOMER PLEASE RETAIN
FOR YOUR INFORMATION

BRITISH MOTOR HERITAGE LTD
General Terms and Conditions of Sale

1. INTERPRETATION

In these Conditions:

- 1.1 "the Buyer" means the person, company, firm, partnership or legal entity who agrees to purchase the Products from the Seller subject to these Conditions whose details may be set out overleaf.
- 1.2 "these Conditions" means the terms and conditions of sale set out in this document and (unless the context requires otherwise) includes any special terms and terms agreed in writing between the Buyer and Seller.
- 1.3 "the Contract" means the agreement between the Seller and the Buyer for the sale and purchase of the Products.
- 1.4 "the Estimated Delivery Date" means the date on which the Seller estimates that the Products will be delivered which may be set out overleaf.
- 1.5 "the Products" means the goods (including any Instalment of the goods or any parts for them) which the Seller is to supply to the Buyer in accordance with these Conditions and which may be listed overleaf.
- 1.6 "the Seller" means British Motor Heritage Limited whose principal place of business is at Range Road, Cotswold Business Park, Witney, Oxfordshire, OX29 0YB, UK. ("the Seller's premises").

2. BASIS OF SALE

- 2.1 These Conditions apply to all contracts for the sale of goods entered into by the Seller with the Buyer and shall prevail over any and all terms and conditions referred to in the Buyer's order, or in any correspondence or elsewhere, unless otherwise agreed in writing between the Seller and the Buyer.
- 2.2 No order received by the Seller from the Buyer shall be binding on the Seller, unless it is received in writing from the Buyer and acknowledged in writing by the Seller.
- 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 by a Director of both the Buyer and the Seller.
- 2.4 The Seller's employees or agents are not authorised to make any representations concerning the Products, unless confirmed by the Seller in writing and signed by a Director of the Seller. 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 typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of 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.
- 2.6 No assurance given or terms discussed before the Contract or arising from a previous course of conduct between the parties shall take effect as part of the Contract or as a collateral warranty or contract, nor shall they bind the Seller in any other way, unless repeated in the Seller's quotation. Provided that this provision shall not prevent these Conditions being incorporated into any contract between the parties by virtue of any course of dealing between them.

3. SALE AND PURCHASE

- 3.1 The Buyer shall not be entitled to cancel, in whole or in part, any order which the Seller has accepted or any quotation of the Seller which the Buyer has accepted in either case, whether orally or in writing.

4. DELIVERY

- 4.1 Delivery of the Products shall be made by:
 - 4.1.1 the Buyer collecting the Products at the Seller's Premises at any time after the Seller has notified the Buyer that the Products are ready for collection, or
 - 4.1.2 if some other place for delivery is agreed by the Seller, by the Seller delivering the Products, at the Buyer's cost, to that place.
- 4.2 The Seller shall use its reasonable efforts to deliver the Product on or around the Estimated Delivery Date, but time of delivery shall not be of the essence.

- 4.3 Any dates quoted for delivery are approximate only and the Seller shall not be liable for any delay in delivery of the Products, however caused. The Products may be delivered by the Seller in advance of the Estimated Delivery Date upon giving reasonable notice to the Buyer.
- 4.4 Where the contract is for the supply of substantial quantities of components, whether against schedules under a contract or not, the Seller reserves the right to supply quantities which may be marginally and reasonably in excess of, or less than, scheduled quantities and to charge prices that may be reasonable in all the circumstances when related to these varied quantities.
- 4.5 The Seller shall be entitled to deliver the Products in instalments, in which case each instalment shall be treated as an entirely separate contract and any default or breach by the Seller or any claim by the Buyer in respect of any such instalment shall not entitle the Buyer to cancel any other instalment or treat the Contract as a whole as repudiated.
- 4.6 If the Products are damaged on delivery, or less than the correct amount of the Products is delivered, then unless the Buyer notifies the Seller, and in the case of delivery at a place other than the Seller's Premises, the carrier (otherwise than by a note on the delivery note) within 72 hours of delivery, no claim against the Seller may be made in respect of damage to, or short-delivery of, such Products.
- 4.7 If the Products have not been delivered, despite receipt by the Buyer of the invoice from the Seller relating to them, then unless the Buyer notifies the Seller within 10 working days after the date of such invoice no claim against the Seller may be made in respect of non-delivery of those Products.
- 4.8 The Buyer shall be deemed to have accepted the Products on delivery, notwithstanding the fact that the date of delivery is after the Estimated Delivery Date.
- 4.9 If the Buyer fails to take delivery of the Products or, if appropriate, fails to give the Seller adequate delivery instructions before the Estimated Delivery Date, then without prejudice to any other right or remedy available to the Seller, the Seller may:
- 4.9.1 store the Products until actual collection or delivery is made and charge the Buyer for the costs (including insurance) of storage, and/or
- 4.9.2 sell the Products at the best price readily obtainable and (after deducting all storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract,
- and in either case shall be entitled to charge interest (both before and after any judgement) on the price payable for the Products under the Contract at 5% over the base rate from time to time of Lloyds TSB Bank plc from the Estimated Delivery Date to the date of actual order.

5. TECHNICAL ADVICE

The Seller is prepared to offer the Buyer technical advice about its Products and their possible application. However, the Seller accepts no liability for any performance deficiencies of its Products where the Buyer uses them either for applications not known to, or recommended by, the Seller or applications outside the scope of any technical advice given by the Seller.

6. PRICES AND PAYMENT

- 6.1 The price of the Products shall be the price set out overleaf or, if not specified, the price quoted by the Seller or, if not specified and no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of the Contract. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 6.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Products to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller, any change in delivery dates, quantities or specifications for the Products which is requested by the Buyer to give the Seller adequate information or instructions.
- 6.3 Unless stated otherwise under the terms of any quotation or in any price list of the Seller or agreed in writing between the Buyer and Seller, the following terms shall apply:
- 6.3.1 United Kingdom: the Buyer shall be liable to pay the Seller's charges for transfer, packaging and insurance for delivery to the Buyer's premises.
- 6.3.2 Overseas: the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance, together with any additional expenses incurred by the Seller for delivery to the Buyer's United Kingdom

nominated freight forwarder.

- 6.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- 6.5 The Seller shall be entitled to invoice the Buyer for all amounts due under the Contract on, or at any time after, delivery of the Products. If the Buyer wrongly fails to take delivery of the Products, then the Seller shall be entitled to invoice the Buyer at any time after the Seller has notified the Buyer that the products are ready for collection or (as the case may be) the Seller has tendered delivery of the Products.
- 6.6 The Buyer shall make payment to the Seller in respect of all invoices in full and without any deduction or set off (whether in relation to such invoice or otherwise) before delivery, unless it has been agreed in writing by the Seller that the Buyer shall be given the benefit of a credit facility with the Seller, in which case payment shall be due in full and without any deduction or set off (whether in relation to such invoice or otherwise) within the agreed terms of the credit facility. Time of payment shall be of essence.
- 6.7 All payments shall be applied to invoices and to Products listed in such invoices in the order determined in its discretion by the Seller.
- 6.8 If full payment is not received by the Seller by the due date as specified in 6.6 above then, without prejudice to any other rights it may have, the Seller shall be entitled:
- 6.8.1 to sue for the entire price, and/or
- 6.8.2 to charge interest (both before and after any judgement) at the rate of 5% over the base rate from time to time of Lloyds TSB Bank plc on the outstanding balance, and/or
- 6.8.3 to require the immediate return to the Seller of all Products 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 11 below and the Buyer hereby agrees to reimburse to the Seller upon demand the Seller's costs or expense in recovering such Products.

7. MANUFACTURING VARIABLES

- 7.1 Products are sold in accordance with the Seller's current Product specification and any advance samples shall be regarded only as an average representation of the specification concerned. Where the Buyer has specified that the Products should possess certain characteristics (for example, colour), such characteristics shall be subject to reasonable commercial tolerance.
- 7.2 As work to improve the quality and performance of the Products and the economics of manufacture is continuously in progress, the Seller reserves the right to alter without notice the formulation of the Products. Such alteration shall not be deemed to change the description of the Products ordered, provided that the characteristics of the Products supplied conform to the Seller's current Product Specification.

8. WARRANTY AND LIABILITY

- 8.1 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's Instructions (whether oral or in writing), misuse or alteration or repair of the Products without the Seller's approval.
- 8.2 The Buyer is only entitled to have the benefit of such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.3 The Seller shall be under no liability for loss, damage or injury incurred by any person and resulting directly or indirectly from incorrect processing.
- 8.4 Subject as expressly provided in the Conditions, and except where the Products are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fuller extent permitted by law.
- 8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Products, or their failure to correspond with specification, shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Products and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Products had been delivered in accordance with the contract.
- 8.6 Where any valid claim in respect of the Products which is based on any defect in the quality or condition of

the Products, or their failure to meet specification, is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Products (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Products (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

- 8.7 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reasons of any representation, or any implied warranty, condition, or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss or profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arises out of, or in connection with, the supply of the Products or their use or resale by the Buyer, except as expressly provided in these Conditions.
- 8.8 The Seller shall not be liable to the Buyer, or be deemed to be in breach of the Contract, by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Products if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 8.8.1 Act of God, explosion, flood, tempest, fire or accident,
- 8.8.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition,
- 8.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measure of any kind on the part of any governmental, parliamentary or local authority,
- 8.8.4 import or export regulations or embargoes,
- 8.8.5 strikes, lock-outs or other industrial actions or trade disputes whether involving employees of the Seller or of a third party),
- 8.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery,
- 8.8.7 power failure or breakdown in machinery.

9. INDEMNITY

The Buyer shall indemnify the Seller against all claims in respect of any loss, injury or damage arising directly or indirectly from the use of the Products by the Buyer or others, unless the Seller's Liability results from its negligence in the production and/or supply of Products to the Buyer and the loss, injury or damage for which the Seller has had, or will have, to pay compensation has not been caused, or contributed to, by the negligence of the Buyer or its agents. The Buyer shall also indemnify the Seller against all claims for royalties or other payment in respect of patents, registered designs or other rights which may be claimed as a result of the Products having been made to a design or specification supplied by the Buyer, and the Buyer shall indemnify the Seller against all claims and costs in connection with any infringement or alleged infringement of any patent, registered design or other intellectual property right in the manufacture of the Products to such design or specification.

10. THIRD PARTY RIGHTS

- 10.1 The Seller shall, at its own option and expense, defend any action against the Buyer and pay all damages and costs awarded against the Buyer (except to the extent that the Buyer is entitled to recover such sums under any policy of insurance) based on a claim that any of the Products constitute an infringement of any patent or copyright or other intellectual property rights of the United Kingdom or misuse any confidential information belonging to any third party ("a Claim") PROVIDED THAT:
- 10.1.1 the Seller shall be notified promptly in writing by the Buyer of any notice of a Claim, and
- 10.1.2 the Seller shall have the sole control of the defence of any action on a Claim and all negotiations for settlement or compromise, and
- 10.1.3 the Buyer shall allow its name to be used in proceedings if necessary and provide all reasonable assistance in defending a claim, and
- 10.1.4 the Buyer shall take all steps reasonably possible to mitigate or reduce any damages and costs which may be awarded against it as a result of a Claim.
- 10.2 If a Claim is successful, or the Seller considers that it is likely to be successful, the Seller may, at its option, or as part of a settlement or compromise, procure for the Buyer the right to continue using the Products, modify the Products so that they are non-infringing or terminate the Contract in so far as it applies to those

Products subject to the Claim, in which latter case the Seller shall refund to the Buyer the price paid for any such Products, less depreciation on a straight line basis over the life of the Products as determined by the Seller.

10.3 In no event shall the Seller have any liability under this clause with respect to any claim based on the use of the Products in combination with any other product or equipment not supplied by the Seller.

10.4 This clause states the entire obligation and liability of the Seller with respect to Claim.

11. RISK AND TITLE

11.1 Risk of damage to, or loss of, the Products shall pass to the Buyer:

11.1.1 in the case of Products to be delivered at the Seller's Premises, at the time where the Seller notifies the Buyer that the Products are available for collection, or

11.1.2 in the case of Products to be delivered otherwise than at the Seller's Premises at the time of delivery, or

11.1.3 if the Buyer wrongfully fails to take delivery of the Products the time when the Seller has tendered delivery of the Products.

11.2 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 cash or cleared funds, payment in full of the price of the Products and of all sums due in connection with the supply of all goods and services to the Buyer by the Seller at any time.

11.3 Until such time as the property in the Products passes to the Buyer, the Buyer shall hold all goods owned by the Seller as the Seller's fiduciary agent and bailee, shall store them in such a way that they are clearly identifiable as the Seller's property and shall keep them properly stored, protected and insured. 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, and shall keep all such proceeds separate from any other monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly identified, stored, protected and insured. The Buyer shall maintain records of the persons to whom it sells or disposes of such goods and of the payment 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.

11.4 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 if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or of 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, provided that, in the case of composite or mixed goods, title to which vest in the Seller as a result of the incorporation of any title of the Products, the Seller shall account to the Buyer (subject to any set off to which the Seller is entitled) for any excess of amount received in respect of such goods over the amount due to the Seller up to the amount of the direct costs or expenses incurred by the Buyer in connection with the production of such goods but shall itself retain any balance. 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.

11.5 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.

12. TERMINATION

12.1 The Seller shall be entitled to terminate the Contract forthwith by notice in writing to the Buyer

12.1.1 If the Buyer commits a breach of the Contract or of these conditions, or

12.1.2 If the Buyer makes any voluntary arrangement with its creditors, or becomes subject to 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 the Buyer ceases, or threatens to cease, to carry on business, or if the Seller reasonably apprehends that any of those such events is about to occur in relation to the Buyer and notifies the Buyer accordingly.

12.2 In the event of termination by the Seller pursuant to clause 12.1 above then, without prejudice to any other

right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under it without any liability to the Buyer and, if the Products have already been delivered 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 Lloyds TSB Bank plc from the time of such cancellation or suspension until the Seller receives payment.

13. REMEDIES

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.

14. WAIVER

The failure of the Seller to enforce or to exercise, at any time or for any period of time, any term of any right arising pursuant to the Contract or these Conditions 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.

15. SEVERABILITY

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.

16. NOTICES

Any notice required or permitted to be given under the Contract shall be delivered by hand or sent by recorded delivery mail or facsimile to the Seller at its address set out above or to the Buyer at its last address known to the Seller and shall be deemed to have been given when actually received or, if recorded delivery mail is returned marked 'gone away' or like effect, on return of such recorded delivery mail.

17. ASSIGNMENT

The Contract is personal to the Buyer and the Buyer may not assign, transfer, subcontract or otherwise part with the Contract or any right or obligation under it without the Seller's prior written consent.

18. STATUTES

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

19. HEADINGS

Clause headings are purely for ease of reference and do not form part of or affect the interpretation of the Contract or these Conditions.

20. STATUTORY REQUIREMENTS

20.1 The Buyer undertakes with the Seller:

20.1.1 That he will acquaint himself with the requirement of all relevant Governments, or statutory or other authorities, bodies or corporations relating to the Products and to the applications to which the Products are put;

20.1.2 That at all times whilst the Products are in his possession or under his control he will comply with such requirements.

20.2 The Buyer undertakes that he will comply with the Seller's instructions relating to the Products.

21. LAW AND JURISDICTION

The construction, validity and performance of the Contract and these Conditions shall be governed by the laws of England and the parties agree that, unless the Seller decides otherwise, the English courts shall have exclusive jurisdiction in respect thereof.