

ACORN TRUCK SALES LIMITED

CONDITIONS OF BUSINESS

DEFINITIONS

- (1) "The Company" means Acorn Truck Sales Ltd, or any subsidiary or associated company in the context required.
"The Customer" means the person, firm or company to be supplied with the Goods by the Seller.
"Goods" means the vehicles, plant equipment, materials, goods and/or other items and/or (where applicable) services to be supplied pursuant to the Contract (including goods or materials which have been affixed to or form part of any vehicle or structure).
"The Contract" means the Contract for sale by the Company and purchase by the Customer of the Goods made between the Company and the Customer, to which these Conditions apply and which shall include any related orders that have been issued.
"Vehicle" means any mechanically propelled vehicle or any machine.

ESTABLISHMENT OF CONTRACT

- (2) Quotations by the Company do not constitute an offer and the Company reserves the right to withdraw or amend the same at any time prior to the acceptance in writing by the Company of the Customer's order pursuant to any such quotation.
- (3) (a) Unless otherwise agreed in writing by a director of the Company, these Conditions (which supersede any earlier sets of Conditions appearing in the Company's catalogue, brochures or elsewhere) apply to all Contracts and shall override any terms or conditions stipulated, incorporated or referred to by the Customer whether related to in the Customer's order or in any negotiations or correspondence elsewhere. Acceptance of Goods by or on behalf of the Customer shall be conclusive evidence that these Conditions are accepted by the Customer and that they apply to the Contract. If the Customer does not accept these Conditions or any of them he must return the Goods forthwith.
(b) Nothing contained in these Conditions is intended to affect the statutory rights of a Customer who deals with the Company as a Consumer.
(c) Subject as herein provided as guarantees, warranties and conditions (including any conditions as to quality or fitness for any particular purpose) whether expressed or implied by statute common law or otherwise, are excluded and hereby disregarded.
(d) Where the Company provides the Customer with credit facilities, any terms and conditions imposed by the Company from time to time in respect of such credit facilities, shall be deemed to be incorporated in these Conditions as if the same were set out herein.

SPECIFICATION AND DRAWINGS

- (4) (a) All descriptive matter, drawings, particulars of dimensions, sizes, weights, performances, finished colours and illustrations submitted by the Company or contained in the Company's or the manufacturer's catalogues, brochures, price lists and other advertising matter are intended merely to present a general idea of the Goods and none of these shall form part of the Contract nor shall the Company be liable for any representations made therein.
(b) The Customer shall accept the Goods in fulfillment of the Contract notwithstanding variations in construction, specification, colour or size, which are reasonable within the limitations which are imposed by availability of materials and components and by the production techniques.
(c) Notwithstanding that the Goods are stated in the Contract to be produced by a particular manufacturer and/or the contract price is taken from the price list of a particular manufacturer the Company reserves the right to supply alternative goods of the same or similar specification produced by a different manufacturer and reserves the right to charge the contract price notwithstanding that the manufacturer's list price for such alternative goods is different from the contract price.
(d) If the manufacturer of the Goods adopts any changes or modifications in construction, design or specification of the Goods (including alteration of the external appearance thereof) the Customer shall accept the Goods so changed or modified in fulfillment of the Contract, provided that overall the Goods perform their function in a manner which is not materially less effective as a result

VARIATION, CANCELLATION AND SUSPENSION

- (5) (a) Should the Company incur any extra cost owing to the Customer's delay or refusal to accept delivery or the suspension of work by the Customer's instructions or lack of instructions or interruptions, delays, mistakes or work for which the Company is not responsible, such extra cost (including a reasonable profit element) shall be added to the Contract price and paid for accordingly. The Customer shall not instruct the employees of the Company or its sub-contractor's employees to carry out any alterations or additions without the same being agreed in writing and such alterations and additions shall be the subject of a reasonable extra charge.
(b) In the event of the Customer returning or failing or refusing to accept any of the Goods in accordance with the Contract, the Company shall be entitled at its option either to deliver and invoice the Customer for the goods or any balance of the Goods then remaining undelivered, or to suspend or cancel that and any further deliveries under the Contract, or the Company may at its discretion (and so long as its storage facilities permit) store the Goods and take all reasonable steps to prevent their deterioration until their actual delivery, and the Customer shall be liable to the Company for the reasonable costs incurred including transport, administration and insurance of it so doing, but without prejudice to the Company's right at any time to exercise its right to deliver and/or cancel in accordance with the foregoing provisions of this sub-clause. This provision shall be in addition to and not in substitution for any other payment or damages for which the Customer may become liable in respect of its failure to take delivery at the appropriate date.

LIABILITY FOR DELAY AND/OR INABILITY TO SUPPLY

- (6) (a) Delivery dates mentioned in the Contract or any quotation order or acceptance form or elsewhere are approximate only and the Company shall not be under any liability to the Customer in respect of any delay in delivery howsoever arising, and the Company shall not be liable to make good any damage or loss (whether arising directly or indirectly out of delay) in delivery. In the event of total failure to deliver any Goods, the liability of the Company shall be limited to the value of such Goods referred to in the relevant order.
(b) Subject to 6(a) above, delivery shall be taken by the Customer within the period (if any) named in the Contract and such full details as may be necessary or required by the Company to enable the Company to complete delivery within such a period shall be supplied by the Customer in writing.

DAMAGE OR LOSS IN TRANSIT

- (7) (a) Where the Contract provides that the Company will deliver the Goods to a named place or destination, no claim for damage in transit, shortage of delivery or loss of Goods will be entertained unless a notice in writing is recorded on the delivery documentation and is signed by an authorized signatory of the Customer and this is given to the carrier or driver concerned at the time of delivery and the Company is notified in writing within three working days of the delivery of the Goods and such written notice and notification is followed by a complete claim in writing received by the Company within seven working days of the date of delivery.
(b) The Purchaser must examine all Goods at the place and time of delivery as aforesaid and no claim will be entertained in respect of Goods which have not been checked and examined by the Purchaser at the time of delivery. In respect of time limits specified in clause 7, time shall be of the essence.

PART EXCHANGE

- (8) Where the Company agrees to accept a vehicle in part exchange.
(a) If such a vehicle is not delivered to the Company in the same condition (including mileage) as at the time of appraisal of the vehicle by the Company, a reasonable deduction shall be made from the allowance agreed in respect of such vehicle; where no appraisal has been carried out at the time when such allowance was agreed, such allowance will have been calculated on the basis that the vehicle is in good condition and of average mileage (being not more than 12,000 miles per annum) having regard to the age of the vehicle, and in the event that this proves not to be the case at the time of delivery a reasonable deduction shall be made from the allowance previously agreed.
(b) Unless otherwise stated, the Customer warrants that such a vehicle is its own property free of any charge or encumbrance and that the mileage of the vehicle is accurately recorded on the milometer and that any information given to the Company by the Customer in respect of the vehicle is true and accurate.
(c) Subject to sub-clause 8(b) above if the Company agrees to accept a vehicle which is the subject of a hire purchase agreement or subject to any charge or encumbrance, the Contract will be subject to the consent of the owner or person having an interest in such a vehicle; the Company shall, unless otherwise agreed, be entitled to deduct from the agreed allowance in respect of such vehicle any sum paid to such owner or other person in settlement of their title or interest provided that the Company may terminate the Contract forthwith by written notice in the event of such sum being in excess of such agreed allowance, but without prejudice to the Company's right to damages or any other remedy.
(d) Risk in such vehicle will pass on delivery to the Company and delivery shall be deemed to take place at the Company's premises in all cases.

RISK AND DELIVERY

- (9) Risk in the Goods shall pass on delivery and, unless otherwise agreed in writing, delivery shall take place at the Company's premises.

DEFECTS AND LIABILITY

- (10) (a) Where Goods are not of the Company's own manufacture, whether incorporated in other Goods or not, then:
(i) In the case of new Goods the Company will pass on to the Customer (insofar as he is able) the benefit of any guarantee or warranty afforded by the manufacturer of such Goods and
(ii) In the case of used Goods, where the Contract so provides, the Company will procure for the Customer the benefit of a mechanical warranty in respect of such Goods otherwise (so far as the law allows); the Company excludes and hereby negates all guarantees, warranties and conditions (including any conditions as to the quality and fitness for any Purpose) whether express or implied by statute common law or otherwise in respect of such Goods and the Customer is deemed to purchase with full knowledge of the terms and conditions of any such warranty or mechanical warranty and shall observe the same at all times.
(b) Where the Customer requests that work be carried out or parts supplied under the terms of such warranty or mechanical warranty as referred to in sub-clause 10(a) above prior to the written approval of the person authorized to give such approval under the terms of the warranty being received by the Company, the Company reserves the right to change the normal contract price for such work or Goods pending acceptance of such warranty claim by the manufacturer or administrator of the relevant scheme and in any event the Company's normal contract price will be payable if such claim is not accepted.
(c) Where the Company agrees to carry out inspection, servicing, repairs to or other work on any Goods, vehicle or other item then except where such inspection, servicing, repairs or work are subject to the terms of a manufacturer's or other warranty. In operation from time to time the Company agrees to rectify free of charge any fault arising from bad workmanship on the part of the employees of the Company within a period of 3 months or where appropriate 3000 miles from when the same was carried out (whichever is the earlier), provided that such fault is brought to the attention of the Service Manager of the Company within one week of it arising, and provided that the Customer ceases using the vehicle both before and if so required by the Service Manager after notifying the Service Manager of the fault as aforesaid.
(d) Any estimate, whether oral or in writing, submitted by the Company to the Customer in respect of repairs or other work to be carried out on a vehicle or other item shall not be binding on the Company and the Company shall be entitled to carry out and (subject to the terms of any warranty in operation from time to time) to charge the Customer for all repairs or other works carried out by this Company in respect of the vehicle which in the Company's opinion are necessary in order to complete such repairs or other works PROVIDED THAT the company shall only carry out repairs or other works not contained in the estimate with the prior consent of the Customer if in the Company's opinion they are substantial divergence from those contained in the estimate.
(e) The Customer is liable for the price of any test or inspection or repairs or other works carried out on the instructions of the

Customer's insurers in the event that such insurers fail or refuse to meet such price.

- (f) Where the Company agrees to carry out any inspection, service or test recommended by the manufacturer of a vehicle the Company shall not be liable to carry out work other than is prescribed from time to time by such manufacturer in respect of such inspection, service or test provided that the Company shall not be liable for any accidental omission of any part of such inspection service or test by any employee, agent or sub-contractor of the company.
(g) The Company, its servants, agents and sub-contractors are expressly authorized by the Customer to use any vehicle left with the Company by the Customer and any fuel in the vehicle on the highway and elsewhere for all purposes in connection with the inspection, service, repairs or other work to be carried out by the Company in relation to the vehicle.
(h) Any articles left in the vehicle are left at the Customer's risk and the Company shall in no circumstances incur any liability in respect of loss or theft of and damage to such articles.
(i) The Company shall not be liable in respect of any loss or damage suffered by the Customer or any third party arising directly or indirectly as a result of any inaccurate statement or opinion expressed by any employee, agent or sub-contractor of the Company in respect of any fault or discrepancy in any Goods or vehicle or any failure on the part of such employee, agent or sub-contractor to identify or detect such fault or discrepancy on such Goods or vehicle.
(j) The Goods must be operated, used, serviced, maintained, repaired and stored by the Customer in the manner and under the Conditions recommended by the Company and/or the manufacturer from time to time and liability will not be accepted by the Company for goods represented by the Customer to be defective insofar as such defect is due to the fact that they have not been so operated, used, serviced, maintained, repaired and/or stored (and the Customer shall be deemed to purchase the Goods with full knowledge of such recommendations) or that they have been altered or reconstructed.

PRICES AND TERMS OF PAYMENT

- (11) (a) All quotations by the Company are exclusive of Value Added Tax or any similar taxes and all levies, duties or taxes applicable to the Goods and are subject to adjustments to take into account such items at the appropriate date of shipment or delivery.
(b) The Contract price for the Goods may be increased by the Company in accordance with market conditions at the date of actual supply and the Customer shall pay such additions in addition to the Contract or quoted price. Without prejudice to the generality of the foregoing "market conditions" shall include any increase in manufacturer's prices and/or in the cost of labour and/or materials and/or operations and/or transport taxes levies or duties and any variation in currency exchange rates and/or any liability to obtain or difficulty in obtaining Goods from a particular supplier.
(c) The Company reserves the right at its option to require payment in part or in full for the Goods prior to manufacture, carrying out of work, services or dispatch and reserves the right to withhold manufacture supply, services or delivery of the Goods until such payment is received, notwithstanding the fact that the Company has previously agreed to provide credit facilities to the Customer. Subject as aforesaid and unless otherwise agreed the contract price for inspection, servicing, repairs or other work carried out on a vehicle or other item must be paid before the same is removed by the Customer from the Company's premises.
(d) All sums due from the Customer to the Company shall become immediately due if the Purchaser is in breach of any of his obligations under the Contract or these Conditions.
(e) Where the Company agrees to give a discount, the Company reserves the right to cancel such discount if the Customer breaches all or any of the terms of the Contract and the contract price plus the amount discounted will become payable.
(f) Interest shall be payable by the Customer on any amount outstanding after the due date at the rate of 2% per month (calculated on a day to day basis) to run from the date on which such amount was due until receipt by the Company of the full amount due (whether before or after any judgement).
(g) The Customer shall indemnify the Company in respect of all legal, administrative and other costs and expenses resulting from any breach by the Customer of the terms of these Conditions or the Contract.
(h) A cheque given by the Customer shall not be regarded as payment until it has cleared.
(i) Unless the Customer has a credit account authorized by the Company, the terms are cash in full upon completion of the work and before delivery. Payment for authorized credit accounts is due on the 20th day of the month following the date of the goods or notification to the Customer of completion of the repairs. The Company strictly enforces this rule and retains the right to charge 2% per month interest on accounts not settled by the due date as set by the date of delivery of goods or completion of repairs.

RETENTION OF TITLE

- (12) (a) If delivery of the Goods or any part of them has been made before payment of all sums due to the Company from the Customer under the Contract, the goods delivered shall (irrespective of whether they have become affixed to any vehicle machine or structure) remain the property of the Company until such payment under the Contract has been effected. The Customer shall give the Company every assistance in taking any measures required to protect the Company's right of property or such other right as aforesaid.
(b) Until payment of all sums due to the Company by the Customer under the Contract, the Customer shall store the Goods in such way as they are clearly the property of the Company.
(c) If any payment under the Contract is overdue or there is any breach by the Customer of any of the provisions of the Contract the Company reserves the right to repossess any of the Goods (irrespective of whether they have become fixtures) and thereafter to re-sell the same and for this purpose the Customer's premises with or without vehicles during normal business hours and this right shall continue to subsist notwithstanding the termination of the Contract through the happening of any of the events specified in these Conditions or otherwise and without prejudice to any accrued rights of the Company under the Contract.
(d) If notwithstanding the preceding sub-clauses the Customer, or any person acting through him or on his behalf, purports to re-sell the Goods or any part of them, prior to payment of all sums due to the Company from the Customer, under the Contract the Customer shall hold the proceeds of the sale of the Goods or such part of them as aforesaid in trust for the Company and shall be accountable to the Company for such proceeds.
(e) In the event of the Goods or any part thereof being constructed, erected or incorporated in any part of the vehicle or other goods or structure prior to payment of all sums due to the Company from the Customer, under the Contract the Customer shall in the event of sale of such vehicle, goods or structure hold that part of the proceeds of sale thereof as is attributable to the Goods (or such part of the Goods as are contained in or affixed to the said vehicle or goods or structure) in trust for the Company and will account to the Company for the part of the said proceeds of the sale as are attributable to the Goods.
(f) In the event of the Company repossessing any of the Goods and reselling the same, it will hold the proceeds of the sale of such Goods as trustee for the Customer to the extent that those proceeds of the sale exceed that total of all monies owed by the Customer to the Company under the Contract and any costs incurred by the Company in connection with such resale.
(g) If the Company becomes entitled to repossess any Goods by virtue of these conditions then if the Goods are not clearly identifiable as the property of the Company
(i) It shall be irrefutably presumed that the Customer has used or sold Goods which belong to the Customer before Goods which belong to the Company and
(ii) The Company shall be entitled to exercise its license under sub-clause 12(c) above to repossess any Goods which are similar to the Goods belonging to the Company and it shall be irrefutably presumed that the Goods which the Company shall repossess belong to the Company.
(h) The Company is entitled to a Lien on all Goods of the Customer in the Company's repossession for all sums due to the Company from the Customer on any account howsoever arising.

PURCHASER'S DEFAULT

- (13) (a) If in the case of a Contract or any order involving more than one delivery default is made in payment on the due date the Company shall have the right to suspend all or any further deliveries pending payment but without prejudice to its right to terminate the Contract in its entirety under sub-clause 13(b) below.
(b) If the Customer shall make, default or commit any breach of any of his obligations to the Company, or if any distress or execution shall be levied upon the Customer, his property or assets or if the Customer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or if any bankruptcy petition shall be presented or made against him or if the Customer shall be a limited company and any resolution or petition to wind up the business of such company shall be passed or presented otherwise for reconstruction or amalgamation or if a receiver or administrative receiver or such company's undertaking property or assets or any part thereof shall be appointed or a petition for an administrative order shall be presented to the Customer, shall be deemed to be in breach of Contract and the Company shall have the right forthwith to determine any Contract then subsisting and, upon written notice of such determination being posted by it to the Customer's last known address, any subsisting Contract shall be deemed to have been determined without prejudice to any claim or right the Company might otherwise make or exercise.

FORCE MAJEURE

- (14) All Contracts (including for the avoidance of doubt obligations under these conditions) may be cancelled by the Company or suspended by the Company for such period or periods as the Company in its absolute discretion shall elect (and the Company shall have the right to cancel after a period or periods of suspension) without liability on the Company's part in the event of the Company being unable to fulfil or being delayed or interrupted in the fulfilment of any of its obligations under a Contract by reason of strikes, lockouts, trade disputes, breakdowns, accidents, statutes, rules, regulations, orders, restrictions prohibitions, recommendations, requisitions or other act of national or local government, war, invasion, act of foreign enemy hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, shortage of raw materials or inability to secure materials, labour, transport or licence contingencies beyond its control and the Customer shall be obliged to pay for that part of the Contract which is actually carried out by the Company on a pro rata basis in relation to the Contract price as a whole.

SET-OFF

- (15) The Customer shall not be entitled to withhold payment of any sums after they have become due by reason of any right of set-off or counter claim which the Customer may have or allege or for any reason whatsoever.

LEGAL CONSTRUCTION

- (16) These Conditions and the Contract shall be governed by, construed and interpreted in accordance with the Laws of England and for the purpose of settlement of any disputes arising out of or in connection with these Conditions or the Contract the parties hereby submit themselves to the sole jurisdiction of the English Courts.

GENERAL

- (17) (a) The Company reserves the right to sub-contract the performance and/or fulfilment of the Contract or any part thereof.
(b) The failure on the part of either party to the Contract to exercise or enforce any right conferred by the Contract shall neither be deemed to be a waiver of any such rights nor to operate so as to bar the exercise of enforcement thereof at any time thereafter.
(c) Any notice required to be given in writing shall be deemed to have been duly given if hand delivered or sent by prepaid post, first class or fax addressed to the party concerned at its principal place of business or last known address and in the case of a notice sent by prepaid post shall be deemed to be served at the time of actual delivery or 48 hours after posting (whichever is the earlier).
(d) In the event that any one or more of the provisions contained in these Conditions shall be invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

HEADINGS

- (18) The paragraph headings of these Conditions are for convenience only and shall in no way form part thereof.