

## TERMS AND CONDITIONS FOR SUPPLY OF SERVICES

### 1. Interpretation

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

#### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 14.

**Contract:** the Schedule of Equipment and these Conditions.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Customer:** the person or firm who purchases Services from the Supplier.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Force Majeure Event:** has the meaning given to it in clause 13.

**Location:** the location as specified in the Schedule of Equipment Agreement.

**Order:** the Customer's order for the supply of Services, as set out in the Customer's purchase order form.

**Schedule of Equipment:** the schedule of equipment as agreed between the parties setting out the services to be provided by the Supplier.

**Services:** the services supplied by the Supplier to the Customer as set out in the Schedule of Equipment Agreement.

**Service Specification:** the services specification as agreed between the parties in writing as set out in the Schedule of Equipment.

**Supplier:** Continental Automotive Trading UK Limited whose registered office is at 36 Gravelly Industrial Park, Birmingham, B24 8TA.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

### 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) 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.
- (d) 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.
- (e) A reference to **writing** or **written** includes email.

## 2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any illustrations or descriptions of the Services 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.

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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.

### 3. Supply of Services

3.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects. The Supplier shall supply the Services at the Location.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

3.3 The Supplier reserves the right to amend the Service Specification as 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.

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

3.5 All other warranties, representations, guarantees, and assurances, whether express or implied (including the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act) are expressly excluded from these Conditions.

3.6 In the event the Supplier carries out any necessary rectification work, such work shall not be included in the Services and shall be charged at the Supplier's then current rates for labour and visit fees.

3.7 For the avoidance of doubt the parties agree that the Services shall not include the following:

- (a) maintenance, repairs or replacement required in respect of any deterioration or damage to the Equipment caused by use otherwise in accordance with the Supplier's instructions;
- (b) the repair or replacement of limited life parts for example filters, probes, leads, oxygen sensors, nox sensors, gas, batteries, printers, monitors and/or any other consumables;

- (c) the supply of labour or materials required to change the original basic design specification whether at the Customer's request or to comply with changes in legislation or other legally enforceable requirements;
- (d) repair of any damage or additional work arising from changes or alterations to the Equipment which has not been carried out by the Supplier;
- (e) maintenance which is over and above normal maintenance as a result of changes or alterations to the Equipment, the Location or access thereto, or from any other cause outside the control of the Supplier;
- (f) the supply of labour or materials in respect of any attachments or associated equipment (whether or not supplied by the Supplier) which do not form part of the Equipment;
- (g) repair or damage arising from failure of or a surge of electrical power;
- (h) repair or replacement parts required as a result of wilful damage, negligence, accident, fire, flood, theft, act of God or any occurrence other than normal wear and tear when used in accordance with the Supplier's instructions;
- (i) materials or labour incurred in the re-gritting of brake testers;
- (j) products that are operated in combination with ancillary or peripheral equipment or software not supplied with the products supplied by the Supplier including batteries, chargers, adaptors, power supplies or third party software loaded to the system;
- (k) products that have failed to be maintained in accordance with the Supplier's maintenance guide or, if applicable, where a person other than the Supplier tests, adjusts, installs, maintains, alters, modifies or services the relevant Products in any way;
- (l) physical damage to the surface of the Products including scratches, cracks or other damage to the display screen or other externally exposed parts;
- (m) cables and pins that have been broken, bent or subject to excessive wear or tear;
- (n) products that have (a) serial or date tags that have been removed, altered or obliterated; (b) board serial numbers that do not match the housing; or (c) non-conforming housing or parts;
- (o) the cost of any transportation, accommodation and subsistence expenses and any other incidental costs incurred in servicing equipment at locations other than within the UK mainland.

## 4. Customer's obligations

### 4.1 The Customer shall:

- (a) grant the Supplier full access to the Equipment during normal working hours and to provide such assistance and facilities as the Supplier may reasonably require in order to perform the Services;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) 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;
- (d) use, keep and house the Equipment in accordance with the Supplier's instructions and ensure that only competent trained employees (or persons under their supervision) are using the Equipment;
- (e) not adjust, repair or maintain the Equipment and shall not request, permit or authorise anyone other than the Supplier to carry out any adjustments, repairs or maintenance on the Equipment;
- (f) not move the Equipment;
- (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (h) update the Supplier with any changes to the calibration date; and
- (i) comply with all applicable laws, including health and safety laws and shall ensure that the Supplier's personnel are at all times for the purposes of these Conditions accompanied by a member of staff of the Customer who is familiar with the Location and the applicable safety procedures.

### 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**):

- (a) 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;

- (b) 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
- (c) 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 In respect of the Services the Supplier shall charge the Customer the total annual premium as specified in the Schedule of Equipment (**Premium**) and any other sum as set out in these Conditions.
- 5.2 The Premium shall be paid either in advance or on a monthly direct debit basis.
- 5.3 The Supplier reserves the right to increase the Premium (where the Premium is paid on a direct debit basis) at any time by giving the Customer notice no later than 30 days prior to any anniversary of the Commencement Date.
- 5.4 Time for payment under these Conditions shall be of the essence.
- 5.5 All amounts payable by the Customer under these Conditions 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 or Goods at the same time as payment is due for the supply of the Services or Goods.
- 5.6 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 clause 11 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.75.6 will accrue each day in accordance with the "Late Payment of Commercial Debt Act 1998".
- 5.7 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. Data protection

- 6.1 Where applicable both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause **6**, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 6.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.
- 6.3 Without prejudice to the generality of clause 6.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.
- 6.4 Without prejudice to the generality of clause 6.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:
- (a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing

- and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
  - (d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
    - (ii) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
    - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
    - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
  - (e) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (f) notify the Customer without undue delay on becoming aware of a personal data breach;
  - (g) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 6 [and allow for audits by the Customer or the Customer's designated auditor] and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 6.5 Either party may, at any time on not less than 30 days' notice, revise this clause 6 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).



### 7. Change Request

- 7.1 The Customer shall notify the Supplier immediately if there is any change affecting the Customer's trading arrangements such as change of name, registered office and any other relevant details or there is any change affecting the Schedule of Equipment.
- 7.2 In the event of any change to the Schedule of Equipment the Supplier shall notify the Customer of any change to the Annual Premium and the Customer shall pay such change with effect from the date of notification.

### 8. Duration

- 8.1 The Contract shall last for the period as set out in the Schedule of Equipment unless terminated early in accordance with these Conditions.
- 8.2 In the event any services are required after the date of termination such services shall be charged at the Supplier's then current rates.

### 9. Confidentiality

- 9.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.29.2.
- 9.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 10. Liability

- 10.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) any other matter which cannot be excluded or limited as a result of law.
- 10.2 The Supplier shall not be liable, whether in contract, tort (including negligence), breach of statutory duty or otherwise for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, loss of use or corruption of software, data or information, indirect or consequential damage to Equipment or property (whether such Equipment or property is in the Supplier's care, custody or control) any indirect or consequential loss.
- 10.3 The Supplier shall not be liable, whether in contract, tort (including negligence), breach of statutory duty or otherwise for any losses, claims, demands, costs, expenses whatsoever resulting from any failure of the Supplier in performing the Services which arise as a result of the Customer failing to provide access and facilities in accordance with clause 4.1.
- 10.4 Subject to clause 10.2 and 10.5, the Supplier's total liability to the Customer whether in contract, tort (including negligence), breach of statutory duty or otherwise shall not exceed £250,000 for any one event or connected series of events and £500,000 in the aggregate.
- 10.5 Subject to clause 10.2, the Supplier's total liability to the Customer whether in contract, tort (including negligence), breach of statutory duty or otherwise in respect of direct loss or damage to the Equipment shall be limited to and shall not exceed the Annual Premium paid by the Customer in the twelve month period in which the claim arises.
- 10.6 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 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 10.7 This clause 10 shall survive termination of the Contract.

## 11. Termination

- 11.1 The Contract may be terminated by the Supplier without any liability by giving not less than 3 months' notice in writing.
- 11.2 Without affecting any other right or remedy available to it, the Supplier may also terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) at any time any monies remain unpaid by the Customer under the Contract or any other contract that the Supplier has with the Customer for more than 30 days after such sums become due
  - (b) the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
  - (c) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (d) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (e) the Customer's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 11.2(c) to clause 11.2(e), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 12. Consequences of termination

On termination of the Contract the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services

carried out but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.

- 12.1 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 12.2 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

### 13. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).

### 14. General

#### 14.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

#### 14.2 Notices.

Any notices, requests or demands shall be in writing and sent by registered post or delivered personally or by email by one party to the other at the most recently specified address. Notices sent by registered post shall be deemed to have been received on the second business day after posting.

This clause 14.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**14.3 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 **14.3** shall not affect the validity and enforceability of the rest of the Contract.

**14.4 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.

**14.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**14.6 Entire agreement.**

- (a) 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.
- (b) 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 based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**14.7 Third party rights.**

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Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

- 14.8 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 14.9 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 England and Wales.
- 14.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales 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.