

## Terms and Conditions of Sale

### Definitions

- 1.1 "The Dealer", the person designed overleaf who is the vendor of the goods to the customer.
- 1.2 "The Customer", the person designed overleaf, contracting for goods and services to be supplied by the Dealer.
- 1.3 "Goods" means all vehicles as defined, or other things to be sold by the Dealer to the Customer.
- 1.4 "Vehicle" includes any car, lorry, van, trailer, caravan, invalid carriage, motor cycle and generally each and every accessory to and component thereof.

### 2. Whole Contract

2.1 These terms shall represent the whole contract between the Dealer and the Customer. They may be varied only by written agreement between the parties.

### 3. Interpretation

3.1 The singular shall include the plural and the male shall include the female or business entity as may be appropriate.

### 4. Enforceability

4.1 In the event of any one or more of these terms and conditions being declared unenforceable, the remaining terms and conditions shall nonetheless remain in full force and effect.

### 5. Written Confirmation

5.1 This order and any allowance in respect of a Vehicle offered by the Customer are Subject to acceptance and confirmation in writing by the Dealer.

### 6. Time Not of the Essence

- 6.1 Unless specifically agreed the date for delivery of the goods is not known at time of sale. Any date provided is an estimate only. The Dealer will use its best endeavours to secure delivery of the Goods by the estimated delivery date (if any) but does not guarantee the time of delivery and shall not be liable for any damages or claims of any kind in respect of delay in delivery. The Dealer shall not be obliged to fulfil orders in the sequence in which they are placed.
- 6.2 If the Dealer shall fail to deliver the Goods within 21 days of the estimated date of delivery stated in this contract, the Customer may by notice in writing to the Dealer require delivery of the Goods within 7 days of receipt of such notice. If the Goods shall not be delivered to the Customer within the said 7 days the contract shall be cancelled.
- 6.2 Unless specifically agreed the dealer is not responsible for any delays caused by issues outside of their control, including any import or export delays.

### 7. New Goods

If the Goods to be supplied by the Dealer are new, the following provisions shall have effect:

- 7.1 this Agreement *and* the delivery of the Goods shall be subject to any terms and conditions which the manufacturer or concessionaire may from time to time lawfully attach to the supply of the Goods or the resale of such Goods by the Dealer, and the Dealer shall not be liable for any failure to deliver the Goods occasioned by his inability to obtain them from the manufacturer or concessionaire or by his compliance with such terms and conditions. A copy of the terms and conditions currently so attached by the manufacturer or concessionaire may be inspected at the Dealer's office.
- 7.2 the Dealer undertakes that they will ensure that the pre-delivery work specified by the manufacturer or concessionaire is performed and that they will use their best endeavours to obtain for the Customer from the manufacturer or concessionaire the benefit of any warranty or guarantee given by them to the Dealer or to the Customer in respect of the Goods **and**, save in the case of consumer sales (as defined by Legislation) all statements, conditions or warranties expressed or implied by law or otherwise, are hereby expressly excluded.
- 7.3 notwithstanding the sum for Car Tax, import duties (or similar taxes or levies), or surcharge imposed by the vehicle manufacturer specified in the order, the sum payable by the Customer in respect thereof, shall be such sum as the Dealer has legally had to pay or become legally bound to pay for Tax in respect of the Goods. Notwithstanding also the sum for Value Added Tax specified in the order, the sum payable by the Customer in respect thereof shall be the sum for which the Dealer becomes legally liable at the time the taxable supply occurs.
- 7.4 if after the date of this order and before delivery of the Goods to the Customer, the manufacturer or concessionaires recommended price for any of the Goods shall be altered, the Dealer shall give notice of any such alteration to the Customer, and
- 7.4.1 in the event of the manufacturer's or concessionaries recommended price for the Goods being increased, the amount of such increase which the Dealer intends to pass to the Customer shall be notified to the Customer. The Customer shall have the right to cancel the contract within 14 days of the receipt of such notice. If the customer does not give such notice as aforesaid, the increase in the price shall be added to become part of the contract price.
- 7.4.2 in the event of the recommended price being reduced, the amount of such reduction, if any, which the Dealer intends to allow to the Customer shall be notified to the Customer. If the amount allowed is not the same as the reduction of the recommended price the Customer shall have the right to cancel the contract within 14 days of the receipt of such notice.
- 7.5 in the event of the manufacturer of the Goods described in the order ceasing to make the Goods of that type, the Dealer may (whether the estimated delivery date has arrived or not) by notice in writing to the Customer, cancel the contract.
- 7.6 Save in the case of customer sales (as defined) all statements, conditions, or warranties as to the quality of the Goods or their fitness for any purpose whether express or implied by law or otherwise are hereby expressly excluded.

### 8. Used Goods

8.1 if the goods to be supplied by the Dealer are used, the vehicle is supplied as roadworthy at the date of delivery and, in the case of consumer sales (as defined by the Sale of Goods Legislation).

- 8.1.1 is sold subject to any conditions or warranties that are implied by the Sale of Goods Legislation or any amending statutes.
- 8.1.2 Prior to signing this order form, the Customer shall examine the Vehicle and items set out in the Customer's Certificate of Examination overleaf and the purchaser is reminded that the conditions of satisfactory quality and fitness for purpose implied by the Sale of Goods Legislation do not operate in relation to such defects which the examination ought to reveal. Should the Goods be sold also subject to defects notified by the Seller to the Customer before signing the agreement, the implied conditions of satisfactory quality and fitness for purpose do not operate in relation to those defects.
- 8.2 Save in the case of customer sales (as defined) all statements, conditions, or warranties as to the quality of the Goods or their fitness for any purpose whether express or implied by law or otherwise are hereby expressly excluded.

### 9 Variation

9.1 Any variation agreed between the Dealer and the Customer regarding the Goods to be supplied shall be deemed to be an amendment to this Contract and shall not constitute a new contract.

### 10. Delivery and Payment

10.1 The Customer shall be liable to pay for the Goods immediately upon notification by the Dealer that they are available for delivery. The Dealer may, in its discretion, demand a deposit at the time when the order for Goods is placed by the Customer and shall not be obliged to progress the order or otherwise implement the contract until the deposit is paid in full.

### 11. Place of Delivery

11.1 Unless otherwise agreed in writing delivery of the Goods shall take place at the Dealer's premises.

### 12. Repudiation by Customer

- 12.1 If you do not pay for and take delivery of your vehicle within 14 days of notification that the vehicle is available for delivery, we shall be at liberty to treat the contract as cancelled. If this happens, or if you cancel the contract for any other reason not permitted by this contract, we will sell the vehicle to another person. We will refund your deposit but before we do so, we are entitled to recover from the deposit the additional costs we incur in re selling the vehicle plus any reduction in the sales price achieved. We will keep the deposit whilst we display and advertise the vehicle as being for sale. If it is not sold within a reasonable time we will sell it at auction.
- 12.2 Once we have sold the vehicle, we will notify you within 7 days as to how much we have lost as a result of having to re sell. If this amount is less than your deposit, then we will refund the balance of your deposit with the notification. If the claimable amount is more than the deposit, then we will include a statement showing how much you owe us to make good our loss. We will provide copies of any receipts if you request them.
- 12.3 The Dealer reserves the right to make a reasonable daily charge for the storage of the vehicle or vehicles.

### 13. Loss or Damage

13.1 The Dealer shall be responsible for the loss of or damage to any vehicle or its contents only if caused by negligence of the Dealer or its employees. The Customer is strongly advised to remove any items of value not related to the Vehicle and in respect of any loss or damage not the responsibility of the Dealer, must rely upon his own Insurance.

### 14. Return of Deposit

14.1 If the contract is cancelled under the provisions of clauses 6 or 7 above the deposit shall be returned to the Customer and the Dealer shall be under no further liability.

### 15. Retention of Title and Risk

- 15.1 Risk of damage to or loss of the Goods are at the risk of the Customer as soon as they are delivered by the Dealer to the Customer. Delivery shall take place at the premises of the Dealer unless the parties otherwise agree in writing.
- 15.2 Goods shall remain the sole and absolute property of the Dealer as legal owner until such time as the Customer shall have paid to the Dealer the full price together with all storage charges and interest that may be due to the Dealer under this contract. Until payment in full as aforesaid has been made the Customer acknowledges that they are in possession of the goods solely as agent of the Dealer.
- 15.3 Until the Customer becomes owner of the Goods, they will store them separately from his own goods or those of any other person and in a manner which makes them readily identifiable as the goods of the Dealer.
- 15.4 The Customer's right to possession shall cease if they, not being a company, become bankrupt or if they, being a company, does anything or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to present a petition for winding-up. The Dealer may for the purposes of recovery of the goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess them.
- 15.5 The Customer shall be at liberty to agree to sell on the Goods or any product produced from or with the Goods subject to the express condition that such an agreement to sell shall take place as agents (save that the Customer shall not hold himself out as such) for the Dealer, whether the Customer sells on his own account or not and that the entire proceeds thereof are held in trust for the Dealer and are not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Dealer's monies.

### 16. Right of Lien

16.1 The Dealer shall have a general lien on any property of the Customer in its possession for all monies owing to the Dealer by the Customer on any account whatsoever.

### 17. Part Exchange

17.1 Where the Dealer agrees to allow part of the price of the Goods to be discharged by the customer delivering a used Vehicle to the Dealer, in consideration of such allowance it is hereby agreed to be given and received and such used Vehicle is hereby agreed to be delivered and accepted, as part of the sale and purchase of the Goods and upon the following further conditions.

17.1.1 that the Dealer accepts the used vehicle in reliance of the warranties granted by the Customer overleaf.

AND

17.1.2 that such used Vehicle is the absolute property of the Customer and is free from all encumbrances.

OR

17.1.3 that such used vehicle is the subject of a hire purchase or agreement or other encumbrance capable of cash settlement by the Dealer, in which case the allowance shall be reduced by the amount required to be paid by the Dealer in settlement thereof.

17.2 that if the Dealer has examined the said used vehicle prior to his confirmation and acceptance of this order, the used vehicle shall be delivered to them in the same condition at the date of such examination (fair wear and tear excepted)

17.3 that such used Vehicle shall be delivered to the Dealer on or before delivery of the Goods to be supplied by them hereunder, and the property in the said used Vehicle shall thereupon pass to the Dealer absolutely.

17.4 That without prejudice to 17.3 above, such used vehicle shall be delivered to the Dealer within 14 days of notification to the customer that the Goods to be supplied by the Dealer are available for Delivery.

17.5 if the goods to be delivered by the Dealer, through no default on the part of the Dealer, shall not be delivered to the Customer within 30 days after the date of this order or the estimated delivery date, where that is later, the allowance on the said used vehicle shall be subject to a reduction by an amount not exceeding 2.5% for each completed period of 30 days from the date of the expiry of the first mentioned 30 days, to the date of delivery to the Customer of the Goods.

In the event of the non-fulfilment of any of the foregoing conditions, other than 17.5 the Dealer shall be discharged from any obligations to accept the said used Vehicle or to make any allowance in respect thereof, and the Customer shall discharge in cash the full price of the Goods to be supplied by the Dealer.

#### **18. Authority to Contract**

18.1 Goods supplied by the order of any person in the Customer's employment or by any person reasonably believed by the Dealer to be the Customer's agent or by any person to whom the Dealer is entitled to make delivery of the vehicle shall be paid for by the Customer.

#### **19. Authority to Uplift**

19.1 Where a person who, so far as the Dealer is aware, has authority to uplift Goods or Vehicles and does so, the Dealer shall have no liability to the Customer for any loss or damage resulting on any grounds whatsoever. It shall not be obligatory upon the Dealer to confirm the authority of any person reasonably believed to be the agent, or to have been at some time, connected with the Customer.

#### **20. Authority to Drive**

20.1 In connection with the supply of a Vehicle or an inspection or testing or the preparation of any estimate in connection therewith, the Dealer shall be entitled to drive the vehicle on the road or elsewhere as it shall deem necessary. These provisions shall apply also to any Vehicle offered by the Customer in part-exchange in terms of clause 17.

#### **21. Finance**

21.1 Notwithstanding the provisions of this agreement the Customer shall be at liberty before the expiry of 7 days after notification to him that the Goods have been completed for delivery to arrange for a finance company to purchase the Goods from the Dealer at the price payable hereunder. Upon the purchase of the Goods by such finance company, the proceeding clauses of this agreement except 7.2 shall cease to have effect but any used Vehicle for which an allowance was there under agreed to be made to the Customer shall be bought by the Dealer at the price equal to such allowance, upon the conditions set forth in clause 17 above (save that in 17.3, 17.4 and 17.5 thereof all reference to 'delivery' or 'delivered' in relation to the 'Goods' shall be construed as meaning delivery or delivered by the Dealer to or to the order of the finance company) and the Dealer shall be accountable to the finance company on behalf of the Customer for the said price and any deposit paid by him under this agreement.

#### **22. Notices**

22.1 all written notices given by the Dealer to the Customer shall take effect 24 hours after being despatched by the Dealer in the normal course of post to the Customer's address shown overleaf.

#### **23. Export Outside EU**

23.1 The Dealer reserves the right to cancel this order if it believes that;

23.1.1 The Customer intends to resell the Goods outside the European Union (Contract Territory) for commercial gain within a period of 12 months; or

23.1.2 where the Customer is a corporation its place of business is not within the European Union ; or

23.1.3 where the Customer is a finance company, that the Goods are not being purchased on behalf of an end user and such end user is not resident nor has its place of business within the European Union.

23.2 The Customer shall indemnify the Dealer and keep the Dealer indemnified from all and any liability and direct losses (to include but not limited to any service commission paid to the manufacturer and any debit back of profit margin from the manufacturer), damages, costs or expenses which the Dealer sustains or incurs as a result of the Customer exporting or selling (whether directly or indirectly through any third party) the Goods outside the European Union.

#### **24. Distance Selling**

24.1 If, and only if, the Customer has acted as an individual (including sole traders) acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession and this Agreement has been completed without any face to face contact between us and you, or anyone acting on your or our respective behalf, you may give notice to cancel this Agreement within 14 days without giving any reason.

24.2 This cancellation period will expire 14 days after the day on which you, or a third party on your behalf, takes delivery or otherwise acquires physical possession of the Goods. To exercise this right to cancel, you must inform us of your decision to cancel this Agreement in writing by clear statement (e.g. a letter sent by post, fax or email) to our address as set out overleaf. You may use the attached model cancellation form if you wish.

24.3 To meet the cancellation deadline, it is sufficient for you to send your communication confirming your exercise of the right to cancel before the cancellation period has expired.

24.4 If you cancel this Agreement, we will reimburse to you all payments received from you under this Agreement, without undue delay, and not later than:-

- a) 14 days after the day on which we receive the Goods back; or
- b) (if earlier) 14 days after the day you provide evidence that you have returned the Goods; or
- c) If there were no Goods supplied, 14 days after the day on which we are informed about your decision to cancel this Agreement.

24.5 We will make the reimbursement using the same means of payment as you have used for the initial transaction, unless you have expressly agreed otherwise, but in any event you will not incur any fees as a result of the reimbursement.

24.6 We may withhold reimbursement until we have received the Goods back or you have sent evidence of having sent back the Goods to us, whichever is the earliest. You should send back the Goods or deliver them back to us at the address shown overleaf, without undue delay and in any event not later than 14 days after the day on which you communicate your cancellation of this Agreement to us.

24.7 This deadline is met if you send back the Goods before the period of 14 days has expired. We will require that you bear the cost of returning the Goods to us.

24.8 You must take reasonable care of the Goods and will be responsible for any loss or damage from when they are delivered to you until when they are returned to us.

24.9 You are liable for any diminished value of the Goods resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the Goods.

#### **25. Storage Charges**

25.1 The Dealer reserves the right to make a reasonable daily charge for the storage of the customer's vehicle or vehicles.

#### **26. Data Protection**

26.1 The Company will hold the information overleaf for sales, service and warranty purposes as Data Controllers. This information will be used to perform our obligations to you and to regulatory authorities may be passed to other carefully selected third party organizations. Any data provided will be used in line with our data and privacy policies which are available on request.

26.2 All the agreements between the Company and the Customer are personal to the Customer. The Customer may not assign his rights or liabilities to any third party by any means."

#### **27. Dispute resolution/ Jurisdiction**

27.1 This Purchase Order and Contract shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.

27.2 In the event of a dispute the parties agree to attend Alternative Dispute Resolution process, details to be provided upon request.

**Model Cancellation Form**

To: Walter E Sturgess & Sons Ltd  
75 Cropston Road  
Anstey  
Leicester  
LE7 7BP

Dear Walter E Sturgess & Sons Ltd

**Re:** [INSERT PRODUCT DESCRIPTION]  
**Ordered on:** [INSERT DATE HERE]  
**From:** [INSERT PURCHASING BRANCH HERE]  
**received on:** [INSERT DATE HERE]

[I/We] hereby give notice that [I/We] cancel [my/our] contract of sale of the [goods /service] above

Name of consumer(s): .....

Address of consumer(s): .....

Signature of consumer(s): .....

[\*] Delete as appropriate)