

EXE TC LIMITED

Standard Terms & Conditions of the Sale of Goods and Provision of Services

1. Interpretation

1.1 In these Conditions:

"Buyer" means the person whose order for Goods and/or Services is accepted by the Seller.

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Seller.

"Contract" means the contract for the purchase and sale of Goods and/or supply of Services.

"Goods" means the goods which the Seller sells to the Buyer under these Conditions.

"Order Confirmation" means the acknowledgement of the Quotation provided by the Seller to the Buyer whether written or oral.

"Quotation" means the quotation for the Goods and Services provided to the Buyer by the Seller whether written or oral.

"Seller" means EXE TC Limited of 2 Omega Centre Bittern Road Exeter EX2 7LT, details of which are given in the Quotation and/or whose details have been provided to the Buyer either in writing or orally.

"Services" means any services provided to the Buyer (including all of them or any part of them) under a Contract.

1.2 The business of the Seller is the design, manufacture and sale high performance suspension and related products (the Goods), as well as installation, servicing and upgrading suspension systems (the Services)

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

1.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Making the Contract

2.1 Each Quotation will be deemed to be an offer by the Seller to sell the Goods and/or Services in accordance with these Conditions. The Contract is made when the Quotation is accepted by the Buyer, and by the issue to the Buyer of an Order Confirmation. The Contract will not be made until an Order Confirmation has been issued by the Seller

2.2 The Contract is subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions and all previous oral or written representations made by the Seller, but subject to the provisions of Condition 2.3.

2.3 No variation to these Conditions shall be binding unless agreed in writing between the

authorised representatives of the Buyer and Seller.

2.4 The Buyer must ensure that the terms of the Quotation and any applicable specification are complete and accurate. If the Buyer wishes to amend any aspect of the information the Buyer has given it must contact the Seller immediately.

Although the Seller will use reasonable endeavours to implement any such amendment which the Buyer requests, the Seller cannot guarantee that it will be able to do so after the Order Confirmation has been issued. If such amendment changes any other aspect of the Quotation (for example the price) and the Seller is able and willing to amend it, then the Seller will send the Buyer a new Order Confirmation.

2.5 All Quotations are, unless agreed otherwise in writing, 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.

2.6 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application, suitability or fitness for purpose for use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendations which is not so confirmed.

3. Provision of the Goods and Services

3.1 The quantity, quality and description of and any specification for the Goods and Services shall be those set out in the Quotation.

3.2 The Seller reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable legal or regulatory requirements (including but not limited to safety requirements) or which do not materially affect their quality or performance.

3.3 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damage charges and expenses incurred by the Seller as a result of cancellation.

3.4 Where a Quotation is based upon information supplied by the Buyer the Buyer is responsible for its accuracy and any increased costs of supply resulting in any inaccuracy are the Buyer's responsibility.

3.5 All intellectual property rights (including but not limited to copyright) arising from the creation of the Goods by the Seller shall remain the property of the Seller and the Buyer shall not copy or reproduce the Goods without the prior written consent of the Seller.

4. Price of the Goods

4.1 The price of the Goods and Services shall be the price set out in the Order Confirmation or, where the price is not referred to in the Order

Confirmation, as set out in the Quotation, or where no price has been quoted or a quoted price is no longer valid the price calculated by the Seller from its normal price list from time to time.

4.2 The Seller reserves the right to increase the price of the Goods and/or Services to cover:

4.2.1 any significant increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation currency regulation, alteration of duties, significant increases in the costs of labour, materials, or other costs of manufacture) arising from any delay caused by any instruction of the Buyer or failure of the Buyer to give the Seller adequate information or instructions;

4.2.2 any change in delivery dates quantities or specification of the Goods and Services which are requested by the Buyer;

4.2.4 the costs of additional work carried out by the Seller to be able to perform the Services Provided that the Buyer is given sufficient notice of such additional work;

4.2.5 to comply with any requirements referred to in Conditions 2.4.

4.3 except as otherwise expressly set out in the Contract all prices are given by the Seller inclusive of packaging and delivery of the Goods to the Buyer's premises, but exclusive of any applicable value added tax or other applicable sales tax or duty and such sums shall be added to the price.

5. Terms of Payment

5.1 Subject to any special terms agreed in writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods when they are ready for delivery, or when the Seller notifies the Buyer that the Goods are ready for collection, or immediately after performance of the Services

5.2 Subject to Condition 5.3 below the Buyer shall pay the price of the Goods and/or the Services within no more than 30 days of the date of the invoice notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be the essence of the Contract. Receipts for payment will only be issued on request by the Buyer.

5.3 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:-

5.3.1 cancel the Contract or suspend further deliveries of Goods and/or provision of Services to the Buyer, Provided that the Buyer shall be obliged to pay for the materials already ordered by the Seller, and all other costs incurred. In this case, the Buyer will indemnify the Seller against claims by third parties as a result of the cancellation of the Contract

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied

under any Contract between the Buyer and Seller) as the Seller think fit (not withstanding any purported appropriation by the Buyer); and **5.3.3** charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of four per cent per annum above NatWest Bank plc base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. Delivery

6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the Buyer.

Provision of the Services shall be made at the location to be agreed between the Seller and the Buyer at any time after the Seller has notified the Buyer that the Services are ready to be provided.

6.2 Any dates quoted for delivery of the Goods and/or provision of the Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods and/or provision of the Services howsoever caused. Time for delivery and/or provisions shall not be of the essence unless previously agreed in writing by both parties. The Goods may be delivered and/or the Services provided to the Buyer in advance of the quoted date upon giving reasonable notice to the Buyer.

6.3 If the Buyer fails to take delivery of the Goods or accept provision of the Services or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) than without prejudice to any other right or remedy available to the Seller the Seller may

6.3.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage or

6.3.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

6.4 The Seller may deliver the Goods by separate instalments and perform any Services in stages. Each separate instalment or stage will be invoiced and paid for in accordance with the provisions of this Contract.

6.5 Each instalment or stage will be a separate Contract and, unless specifically set out in these Conditions, no cancellation or termination of any one Contract relating to an instalment or stage will entitle the Buyer to repudiate or cancel any other Contract or instalment or stage.

6.6 The Seller is entitled to suspend any further order until the previous delivery is paid. Not accepting an order does not give the Buyer any basis for a claim for damages

7. Risk and Property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer when they leave the Seller's premises:-

7.1.1 in the case of Goods to be collected from the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 if the Buyer fails to take delivery of the Goods, from the time when the Seller has tendered delivery of the Goods.

7.2 Until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other Goods and Services for which payment is due from the Seller:-

7.2.1 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions ownership of the Goods shall not pass to the Buyer

7.2.2 Until such time as ownership of the Goods passes to the Buyer the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Seller's property.

7.2.3 The Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds properly stored protected and insured.

7.2.4 Until such time as ownership in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

7.2.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods 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.

8. WARRANTIES, LIABILITIES AND INDEMNITY

8.1 The Seller will within a period of 3 months from the date of delivery of Goods or from the date of provision of Services, ("Defects Period") in respect of Goods and/or Services which are proved to the reasonable satisfaction of both parties to be damaged or defective, or not to comply with the agreed specification due to defects in material, workmanship or design (other than a design made, furnished or specified by the Buyer) ("the Defects"), repair, or at its option replace, such Goods, or redo such Services, or at its option, refund the price of such Services. This obligation will not apply where:

8.1.1 the Buyer has improperly used the Goods in any way whatsoever, or the Goods have been

subjected to misuse, unauthorised repair, damage, negligence, adverse weather conditions and/or alteration; or

8.1.2 the Buyer has not complied with any instructions relating to the use or installation of the Goods; or

8.1.3 the Buyer has failed to notify the Seller of any problem or suspected problem within 2 days of the Buyer becoming aware of the Defects within the Defects Period.

8.2 Any repaired or replacement Goods or re-performed Services will be liable to repair or replacement (or re-provision or, at the Seller's option, refund) under the terms specified in Condition 8.1 for the unexpired portion of the Defects Period from the original date of delivery of the replaced Goods or from the original date of provision of the re-performed Services.

8.3 The above warranty does not extend to parts materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.4 The Seller accepts liability for personal injury or death caused by the negligence of the Seller or its employees (acting within the course of their employment or duties and the scope of their authority) and for any other matter for which it would be illegal to exclude or attempt to limit or exclude its liability.

8.5 Except as provided in Condition 8.4, the Seller will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any damage or for any direct, indirect or consequential loss (all three of which terms include, but are not limited to, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:

8.5.1 any breach by the Seller of any of the express or implied terms of the Contract;

8.5.2 any of the Goods and/or Services (including but not limited to any use made by the Buyer of any Goods, or of any product incorporating any of the Goods), or the manufacture or sale or supply, or failure or delay in supply, of the Goods and/or Services by the Seller or on the part of the Seller's employees, agents or sub-contractors;

8.5.3 any non-fraudulent oral statement made or not made, or advice given or not given, by or on behalf of the Seller.

8.6 Except as set out in Condition 8.4, the Seller hereby excludes to the fullest extent permissible in law, all express (other than those set out in the Contract) or implied, statutory, customary clauses, warranties and stipulations or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.

8.7 The Buyer acknowledges that the above provisions of this Condition 8 are reasonable and reflected in the price which may be higher

without those provisions, and the Buyer will accept such risk and/or insure accordingly.

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 Goods and/or Services 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 byelaws prohibition of measures 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 lockout or other industrial actions or trade disputes (whether involving employees of the Seller or 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

8.8.8 Default of suppliers or sub-contractors.

8.9 The Buyer agrees to indemnify, keep indemnified and hold harmless the Seller from and against all direct, indirect or consequential loss (all three of which terms include, but are not limited to, loss of profits, loss of business, depletion of goodwill and like loss), costs, expenses, liabilities, injuries, damages, claims, demands, proceedings or legal costs and judgements which the Seller incurs or suffers as a consequence of direct or indirect breach or negligent performance or failure in performance by the Buyer of any of the terms of the Contract.

9. Data Protection

By placing a Quotation, the Buyer allows the Seller to use the Buyer's personal details for the purposes of supplying the Goods and performing the Services (including passing the Buyer's details on to subcontractors) and for the marketing to it by the Seller. The Seller will not use the Buyer's details for other purposes without seeking the Buyer's consent.

10. General

10.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address may be at the relevant time have been notified pursuant to this provision giving the notice.

10.2 The Seller may transfer, assign, hold on trust, licence or sub-contract all or any part of its rights or obligations under any Contract.

10.3 Each and every Contract is personal to the Buyer and the Buyer may not transfer all or any of its rights or obligations under any Contract without the prior written consent of the Seller.

10.4 Neither party intends that any of the terms of any Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

10.5 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any provisions.

10.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

10.7 Any dispute arising under or in connection with these Conditions and any Contract shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

10.7 The Seller is not responsible for any damage by fire, theft or otherwise, of vehicles of customers which are being repaired, measured, fitted or stored on the Seller's premises for any other reason, unless through extreme negligence of the Seller or its employees.

11. English law will apply to the interpretation of these conditions, and all agreements, contracts and operations carried out by the Seller