

# W BRINDLEY GARAGES GROUP TERMS AND CONDITIONS FOR SALE OF MOTOR VEHICLES

## 1. Definitions

- 1.1 "Dealer", W Brindley Garages Group and all subsidiaries who are the vendor of the goods to the customer.
- 1.2 "Customer", the person contracting for goods and services to be supplied by the Dealer
- 1.3 "Consumer", a Customer, being an individual who, for the purposes of the purchase, is acting wholly or mainly outside of their trade, business, craft or profession
- 1.4 "Goods", means all vehicles as defined, or other things to be sold by the Dealer to the Customer
- 1.5 "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. Enforceability

- 3.1 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.

## 4. Delivery/ Time Not of the Essence

- 4.1 Unless specifically agreed in writing, time for delivery is *not* essential.
- 4.2 Where the date for delivery of the goods is not known at time of sale, any date provided is an estimate only and is dependent on the provision of the Goods to the Dealer by the Supplier/ Manufacturer. 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. The Dealer shall not be obliged to fulfil orders in the sequence in which they are placed.

## 5. New Goods

- 5.1 If the Goods to be supplied by the Dealer are new, the following provisions shall have effect:
- 5.2 this Agreement *and* the delivery of the Goods shall be subject to any terms and conditions which the manufacturer 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 by his compliance with such terms and conditions.
- 5.3 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 the benefit of any warranty or guarantee given by them to the Dealer or to the Customer in respect of the Goods **and**, save where the Customer is acting as a consumer (as defined by Legislation) all statements, conditions or warranties expressed or implied by law or otherwise, are hereby expressly excluded.
- 5.4 Any figure provided within the contract for Road Fund Licence, First Registration Fee or other Fees and Charges required to be levied by the licensing authorities is provided as guidance only. Notwithstanding the sum for Road Fund Licence, First Registration Fee or other Fees and Charges required to be levied by the licensing 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 becomes legally bound to pay in respect of the Goods.
- 5.5 Any figure provided within the contract for Value Added Tax is provided as guidance only. 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.
- 5.6 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 on the grounds of frustration.
- 5.7 Save in the case of consumer 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.

## 6. Used Goods

- 6.1 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 Consumer Rights Act 2015).
- 6.2 is sold subject to any conditions or warranties that are implied by the Consumer Rights Act 2015 or any amending statutes.

## 7. Variation

- 7.1 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.

## 8. Delivery and Payment

- 8.1 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.

## 9. Place of Delivery

- 9.1 Unless otherwise agreed in writing delivery of the Goods shall take place at the Dealer's premises.
- 9.2 In the event of cancellation, for any reason, the customer agrees to return the Goods to the dealer's premises.

## 10. Repudiation by Customer

- 10.1 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.

10.2 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.

**10.3** The Dealer reserves the right to make a reasonable daily charge for the storage of the vehicle or vehicles.

**11. Return of Deposit**

11.1 If the contract is cancelled under the provisions of clauses 4 or 5 above the deposit shall be returned to the Customer and the Dealer shall be under no further liability.

**12. Retention of Title and Risk**

12.1 Risk of damage to or loss of the Goods are at the risk of the Customer as soon as they are delivered into the physical possession of the Customer or their nominated representative.

12.2 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.

12.3 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

12.4 The Customer's right to possession shall cease if they, not being a company, become bankrupt or if they, being a company, do anything, or fail 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.

12.5 Should the Customer's right of possession cease they will notify the Dealer and immediately make the goods available for collection. 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.

**13. Right of Lien**

13.1 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.

**14. Part Exchange**

14.1 Where the Dealer agrees to allow part of the price of the Goods to be discharged by the customer delivering a used Vehicle in part exchange to the Dealer, in consideration of such allowance, it is hereby agreed that the following further conditions will apply.

14.1.1 that the Dealer accepts the used vehicle in reliance of the warranties granted by the Customer, including but not limited to the age, mileage and condition of the vehicle AND

14.1.2 that such used vehicle is the absolute property of the Customer and is free from all encumbrances OR

14.1.3 that if such used vehicle is the subject of a finance agreement or any other encumbrance capable of cash settlement by the Dealer, the allowance shall be reduced by the amount required to be paid by the Dealer in settlement thereof.

14.2 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).

14.3 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.

14.4 That without prejudice to 14.3 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.

14.5 In the event of the non-fulfilment of any of the foregoing conditions 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.

**15. Authority to Contract**

15.1 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.

**16. Authority to Uplift**

16.1 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.

**17. Authority to Drive**

17.1 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 14.

**18. Notices**

18.1 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 or email to the Customer's address/email address.

## **19. Distance Selling**

- 19.1 If, and only if, the Customer has acted as a Consumer, where this Agreement has been completed away from our business premises and/or 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.
- 19.2 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.
- 19.3 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.
- 19.4 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: -
- 19.5 14 days after the day on which we receive the Goods back; or
- 19.6 (if earlier) 14 days after the day you provide evidence that you have returned the Goods; or
- 19.7 If there were no Goods supplied, 14 days after the day on which we are informed about your decision to cancel this Agreement.
- 19.8 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.
- 19.9 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.
- 19.10 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.
- 19.11 You must take reasonable care of the Goods whilst they are in your possession. You will be responsible for any loss or damage from when they are delivered to you until when they are returned to us.
- 19.12 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.

## **20. Storage Charges**

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

## **21. Dispute resolution/ Jurisdiction**

- 21.1 In the event of a complaint or dispute of any kind our complaints handling procedure can be found on our website at [www.brindley.co.uk](http://www.brindley.co.uk) and is also available from us on request.
- 21.2 Where any dispute cannot be resolved, 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.

## **22. Data Protection**

- 22.1 The Company will process data in accordance with their Privacy Notice which can be found at [www.brindley.co.uk/privacy](http://www.brindley.co.uk/privacy)
- 22.2 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.