

AQUILA TRUCK CENTRES - TERMS OF SALE

General

1 These terms and conditions are the sole terms and conditions upon which the Company contracts with the Customer to the exclusion of any other terms and conditions. Except as set out expressly in these conditions the Company does not accept to agree to any other conditions, warranties or other items whether express of implied and whether as to conformity with description or sample, quality or fitness for purpose or otherwise.

Prices

- 2.1 All prices quoted by the Company for parts and labour are based on the prices current at the time of preparing the estimate and the Company reserves the right to increase such prices to the Customer. All estimates for work to be done are valid for 14 days from the date of despatch or notification of the estimate to the Customer.
- 2.2 Unless otherwise stated all prices are given exclusive of VAT.
- 2.3 Where the Customer does not hold a credit account with the Company payment for parts and labour must be made in advance.
- 2.4 Where the Customer holds a credit account with the Company payment is due on the 20th of the month following the month of invoice.
- 2.5 Interest at the rate of 1.5% per month or part thereof will accrue on overdue accounts from the date of invoice or payment.

Warranty

- 3 Unless the Company gives a specific guarantee to the Customer in substitution for other guarantees and warranties, the Company will use its reasonable endeavours to make over to the Customer the benefit of any warranty or guarantee given by the manufacturer or supplier of any parts supplied to the Customer, and within a period of three months from the completion of any services or repairs provided by the Company to the Customer then the Company will rectify or replace free of charge all parts and workmanship which are proved to the satisfaction of the Company to have been defective. Where the customer deals as a consumer within section 12 of the Unfair Contract Terms Act 1977 these guarantees are given in addition to the Customer's statutory rights.
- 4 Save as provided in Clause 3 the Company will be under no liability for any personal injury, death, loss and damage of any kind whatsoever (other than death or personal injury caused by the Company's negligence) whether consequential or otherwise including but not limited to loss of profits and the Company hereby excludes all conditions, warranties and stipulations express of implied, statutory, customary or otherwise which but for such exclusion would or might subsist in favour of the Customer except that such exclusion will not apply to:
- 4.1 any implied conditions that the Company has or will have the right to sell new parts when the property is to pass or
- 4.2 when the Customer deals as a consumer (as defined in Section 12 of the Unfair Contract Terms Act 1977) any implied term relating to the description merchantability, quality, fitness or sample
- 5 In no circumstances will the Company or its servants, agents or sub-contractors be liable for any loss or damage of any kind whatsoever (except arising from death or personal injury) whether consequential or otherwise caused directly by any negligence on the part of the Company or on the part of any of its servants, agents or sub-contractors in connection with or arising out of the provision of services or supply of parts in connection with any advice or statement given or made by on behalf of the Company.

Title and Risk

- 6 The Customer's vehicle, its contents and accessories shall at all times remain at the Customer's entire risk whilst in the possession of the Company.
- 7.1 The property in any part supplied will not pass to the Customer until all sums due from the Customer to the Company (whether under this contract or otherwise) have been paid in full and until such payment the Customer shall hold the parts in a fiduciary capacity as bailee for the Company.
- 7.2 Without prejudice to any of the Company's other rights, the Company may at any time after any sum payable by the Customer to the Company (whether under this contract or otherwise) has become due and remains unpaid rescind the Contract and/or recover any parts which are still the Company's property and may enter on the Customer's premises itself or through its servants or agents for that purpose.
- 7.3 Whether or not any sum has become due from the Customer under the Contract such sum will be deemed to be due from the Customer immediately on the Customer committing any act of bankruptcy or making any arrangements or composition with its creditors or his taking the benefit of any Act for the time being in force the relief of insolvent debtors or his suffering or allowing any execution whether legal or equitable to be levied on his property or to be obtained against him (or being a body corporate) its having convened a meeting of creditors (whether formal or informal) or it having entered into liquidation (whether voluntary or compulsory) or an administrative receiver or administrator being appointed over its undertaking or any part thereof or its having a resolution passed or a petition presented to any Court for the winding up of the Customer or there being any proceedings commenced relation to insolvency or possible insolvency of the Customer.
- 7.4 Notwithstanding the foregoing provisions the risk in any parts supplied shall pass on delivery to the Customer.

Notification

- 8 Where the Customer requests the Company to investigate any fault or complaint with the Customer's vehicle the Company will endeavour to contact the Customer before proceeding with any work or repairs found to be necessary and shall be under no obligation so to do and the Company is hereby authorised to carry out all work and supply such parts as it deems necessary to rectify the fault or complaint notified by the Customer.

Parts

- 9 Claims for shortage or discrepancy will not be accepted unless made within 48 hours of receipt of the parts in question.
- 10 Claims for loss or damage in transit will not be accepted unless notified to the Company and its carriers within 48 hours of receipt of package and confirmed in writing with 7 days thereafter and unless packing material and damaged goods are retained for examination.
- 11 Returns for credit will not be accepted unless the Company's previous consent has been obtained and either (a) a claim under manufacturer's warranty is involved or (b) parts proved incorrect and not to order or (c) the Company expressly agrees to accept the returns for credit subject to a handling charge of 17.5% of the net price.
- 12 Used units for credit must be returned within 14 days quoting the invoice number.
- 13 Returnable packing cases and pallets will be credited if returned in good conditions carriage paid within 30 days of receipt and quoting our Invoice Number.
- 14 Quoted prices for ordered parts are liable to change without notification if altered by the manufacturer or supplier.
- 15.1 The Company will endeavour to deliver parts ordered within the time agreed and if no time is agreed within a reasonable time but in no circumstances will the Company be liable for loss or damage of any kind whatsoever caused directly or indirectly by any delay in the delivery of any parts nor will any such delay entitle the Customer to cancel or rescind the contract.
- 15.2 The Company will be entitled to make delivery of orders for parts by instalments.
- 15.3 Unless otherwise agreed, delivery will be made at the Company's premises and the contract price is calculated on that basis
- 16 No drawings, descriptive matter, weights, dimensions or specifications issued by the Company or the manufacturer of the parts nor the descriptions or illustrations contained in the Company's or manufacturer's catalogues, price lists or other advertising matter shall be deemed to form part of the contract nor be regarded as a warrant or representation relating to the parts.
- 17 If the Customer defaults in accepting delivery of or paying for the parts ordered the Company reserves the right to re-sell the parts to a third party without giving notice to the Customer of the Company's intention to re-sell.
- 18 Parts supplied to the Customer special order will not be accepted for credit unless they are defective.
- 19 Any surcharges in the price of a part because the Customer's old unit is not available for exchange at the time of sale will only be credited/refunded if an old unit conforming with re-conditioning requirement is returned to the Company within 28 days of the supply of that part.

Service and Repair

- 20 The customer should remove all personal items from the vehicle when bringing it and the Company shall have no responsibility for loss of or damage to such items except in consumer transactions and then only when this is caused by lack of reasonable care on our part. Where a vehicle is being repaired following recovery, the Company shall have no liability for any loss or damage to the load whilst the vehicle is under our control.
- 21 While carrying out the work requested by the Customer, the Company may discover that in the interest of safety and satisfactory completion of the work requested, additional repair work appears necessary. In such cases the Company will promptly contact the customer to obtain approval for carrying out the additional work and thus save the Customer possible extra costs by reason of possible subsequent further dismantling and re-assembly at a later date. All work done and parts/materials supplied will be charged on completion.
- 22 Unless credit facilities have been arranged previously (and the terms of credit are being observed) release of the Customer's vehicle after completion of repairs will be subject to our charges having been paid in full by cash or by cheque guaranteed by a bank card. Where evidence of such acceptance is displayed payment may also be made by credit or charge card.
- 23 Without prejudice to Clause 3 above the Company agrees to give the Customer the benefit of any manufacturer's warranty as far as the company is able. The company will progress claims on behalf of the Customer with the manufacturer concerned, but in the event of claims being rejected in whole or in part, the Customer undertakes to pay to the Company that part of the claim the manufacturer fails to meet. Where claims are submitted to the manufacturer for work to be treated as being of a warranty nature, although strictly outside the warranty period, payment in full for the work carried out will be required on or before collecting the vehicle on the understanding that should the manufacturer subsequently accept the claim in full or part, the Company will as appropriate, either reimburse or credit the Customer's account with the amount credited to us by the manufacturer for any purpose whatever.
- 24 The Company does not accept responsibility for any delay in completion of works carried out by the Company caused by circumstances beyond its immediate control.
- 25.1 If the Customer does not collect a vehicle within 2 days of being notified that it is ready for collection or fails to authorise repairs without removing the relevant vehicle from the Company's premises within 14 days of being given a quotation then the Company reserves the right to levy storage charges at its current rate.
- 25.2 Any vehicle which is not collected by the customer in respect of which payment for repairs carried out has not been made within three calendar months of the Customer having been advised of the completion of the work may be sold by the Company and the cost of the repairs and any storage charges may be deducted by the Company from the net proceeds of the sale of the vehicle. However before proceeding to sell the vehicle, the Company shall first give to the Customer 7 days written notice of its intention so to do which notice shall be sent by prepaid first class post to the address of the Customer last known to us and shall be deemed to have been received by the Customer on the day following the date of posting or if that shall be a Sunday or public holiday then the first working day thereafter. Any sale of the vehicle under this clause shall be by Public Auction and the Company shall after discharging the costs of the sale, the repairs and the storage charges, in its absolute discretion either retain the balance for the benefit of the Customer or forward the same to the Customer at the Customer's last known address.
- 26 In the event of a defect arising following the completion of the work described overleaf and which, in the Customer's opinion is due to be sub-standard workmanship, the Company will carry out the necessary corrective work free of charge subject to
- a) the Customer returning the vehicle to the Company promptly for examination and the Company's agreement that the defect was the result of sub-standard workmanship
- b) no alteration, or repair has been effected by the Company; and
- c) the defect occurring within 3 months or three thousand miles (whichever first occurs) from the date of completion of the work described overleaf. If the Company is not contacted as soon as reasonably practicable after the alleged defect arising, the Company reserves the right to reject any subsequent claim in respect of a defect which is alleged was due wholly or partly to the Company's workmanship.
- 27 The Company reserves the right to sub-contract all or any of the work.
- 28 The Company will use its best endeavours to carry out the work within the time specified but time shall not be of the essence and no liability is accepted by the Company for any delays.
- 29 All parts replaced during service or repair, except those that have to be returned to manufacturers or suppliers under warranty or service exchange arrangements and those which the Customer expressly or by implication asks to be replaced, will be retained by the Company for the Customer until the time when the vehicle is collected by the Customer. If the Customer does not specifically ask to take possession of such replaced part when collecting the vehicle then they will become the property of the Company to dispose of as it deems fit.
- 30 The Company shall have a general lien over all vehicles left with it by the Customer in respect of all money due to the Company from the Customer or owners of the vehicle under this or any other contract.

Data Protection Act

The information you give us about yourself, the details of this Agreement and the history of business conducted between us, will be retained by us in our records. This will help us to make future credit and other commercial decisions about you. It will also enable us to tell you about any products and services which we think may be of interest to you. You may elect not to receive such information. We may also disclose some or all of the above information to our associate companies for any purpose connected with our business.