

EUROPEAN EXHAUST & CATALYST LTD TERMS AND CONDITIONS OF SALE

1. Application

- (a) These terms and conditions apply to all sales of goods and supplies of services by European Exhausts & Catalyst Ltd (herein referred to as "the Seller")
- (b) Any contract made with the Seller for the sale of goods or the supply of services by the Seller ("Contract") is subject to these terms and conditions and any conflicting terms of business of the Purchaser shall have no effect. Acceptance of an order placed by the Purchaser for goods or services will constitute acceptance by the Purchaser of these Terms and Conditions.

2. Price

- (a) Prices stated in any quotation or in the Seller's catalogue or prices and parts list are subject to variation and the contract price payable by the Purchaser for the goods or services will be determined by reference to the Seller's catalogue and prices and parts list current at the date of despatch.
- (b) Value Added Tax will be chargeable to the Purchaser in addition to the price for goods and services supplied.

3. Exchange Units Surcharge

Where service exchange units are purchased, the Purchaser will be invoiced with a sum referred to as an "old unit surcharge" which is in respect of the old unit that the Purchaser may return to the Seller. If the old unit is returned within 7 days the Seller in respect of the "old unit surcharge" will issue a credit.

4. Carriage

- (a) Unless otherwise specified, prices quoted do not include carriage. No allowances will be credited for goods collected from the Seller's premises by the Purchaser.
- (b) For overseas destinations, unless otherwise agreed, all goods will be delivered F.O.B. (Incoterms 1990) at the U.K. Port named by the Seller. If the Seller agrees to deliver to a Port named by the Purchaser, the Seller reserves the right to charge for inland transport to such Port.

5. Delivery Dates

- (a) Stated dates or times for delivery are approximate only.
- (b) The Seller will not be liable for loss or damage of any kind whatsoever caused directly or indirectly by any delay in delivery not unless such delay exceeds (180) days will any delay entitle the Purchaser to cancel or suspend the Contract or any other instalments.

6. Damage, Shortage or Loss in Transit

- (a) In respect of goods other than goods sold for export from the United Kingdom, no claim for any damage, shortage or loss in transit will be entertained by the Seller unless the Purchaser has given written notice to the Seller and any carrier employed by the Seller and (if applicable) the carrier's conditions of carriage and claims notification procedure have been complied with by the Purchaser, such written notice to be given to the Seller and any such carrier within the following periods.
 - (1) In the case of partial damage or shortage or loss in the consignment in question to the Seller within seven days and to any carrier other than the Seller within three days from the date of receipt of the consignment in question.
 - (2) In the case of total loss of the consignment in question to both Seller and to any such carrier, within ten days of despatch of the consignment in question.
- (b) In the case of export goods for overseas destinations the Seller accepts no liability for damage or loss after the goods have been delivered F.O.B.UK Port although the Seller will arrange insurance in transit if instructed to do so by the Purchaser at the Purchaser's expense.

7. Payment

- (a) Credit Accounts may be opened by the Purchaser on providing the Seller with two trade references and a Bankers reference to the Seller. For all credit accounts the price is payable on delivery and payment is required by the 1st of the month following the receipt of a statement. Any alteration in these payment terms must be agreed by an exchange of letters. Where an account has been agreed the Seller may in its absolute discretion set and alters the Purchaser's credit limit and may withdraw the Purchaser's credit terms at any time. The Seller reserves the right not to deliver the goods or services ordered if the price increases the amount owed by the Purchaser to the Seller beyond the purchaser's credit limit.
- (b) The Purchaser shall not make any deductions from the invoice price of goods or services on account of any set off or claim unless an authorised representative of the Seller in writing thereof has admitted both the validity and the amount.
- (c) The Seller reserves the right to charge monthly interest on an overdue account for each month or part month when payment is overdue. An account becomes overdue on the 1st day of the month following the issuing of a statement. The rate of monthly interest shall be one twelfth of the percentage per annum which is five per cent higher than the highest National Westminster Bank base lending rate prevailing each month, or at the maximum statutory rate allowable under current legislation on the date at which the account becomes overdue. Such interest on all outstanding accounts is to be compounded from month to month until payment of the amount outstanding is received.

8. Termination

- (a) The Seller shall be entitled without prejudice to its other rights or remedies, either to terminate wholly or in part the Contract, or any or every other contract with the Purchaser, or to suspend any further deliveries under the Contract or any in any of the following events.
 - (1) If any debt due and payable by the Purchaser to the Seller is unpaid.
 - (2) If the Purchaser has failed to take delivery of any goods or services under the Contract or any other contract as aforesaid otherwise than in accordance with the Purchaser's contractual rights.
 - (3) If the purchaser has had a bankruptcy order made against him or has made an arrangement or composition with his creditors or otherwise taken benefit of any Act for the time being in force for the relief of insolvent debtors or (being a body corporate) has had convened a meeting of creditors (whether formal or informal) or has entered in liquidation (except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation) or has a receiver, manager, administrator or administrative receiver appointed of its undertaking or part thereof or a resolution has been passed or a petition presented to any Court for the winding up of the Purchaser or for the granting of an administration order in respect of the Purchaser or any proceedings have been commenced in relation to the insolvency or possible insolvency of the Purchaser.
- (b) On termination under the foregoing provisions, the price of all goods sold and delivered by the Seller to the Purchaser or to a carrier for delivery to the Purchaser and all other sums payable by the Purchaser to the Seller on any account whatsoever shall immediately become due and payable notwithstanding any credit period otherwise agreed.

9. Lien

The Seller will (without prejudice to any other remedy available to it) have in respect of all unpaid debts due from the Purchaser a general lien on all property of the Purchaser in the possession of the Seller for whatever purpose and whether worked upon or not and be entitled on the expiration of not less than 14 days notice in writing to the Purchaser to dispose of such property and to apply the proceeds towards the satisfaction of such debts.

10. Set Off

If the Purchaser shall become bankrupt or insolvent or compound with creditors or in the event of a resolution being passed or proceedings being commenced for the liquidation of the Purchaser, or if an administrative receiver or manager is appointed of all or any part of the assets or undertakings, the Seller shall be entitled to cancel this Contract in whole or in part, and also that the Seller shall reserve the right to

offset any monies owed to the Purchaser against any outstanding debt existing from the purchaser to the Seller.

11. Right of Resale

If the Purchaser defaults in accepting or paying for the goods the Seller reserves the right to re-sell the goods or any of them to a third party without giving notice to the Purchaser of the Seller's intention to re-sell.

12. Group Accounts

If the Purchaser shall be overdrawn or overdue from the stated terms of payment on any of its accounts with the Seller then:

- (a) The Seller may in its absolute discretion exercise all or any of the following rights:
 - (1) charge interest on the overdue sum
 - (2) charge interest on sums outstanding under an account hitherto described as "interest free"
- (b) All monies and liabilities under the Purchaser's accounts with the Seller shall immediately become due and owing and the Seller shall be entitled to immediately close all accounts or any account of the Purchaser with the Seller.
- (c) The Seller may appropriate any payment made by the Purchaser and apply it in total or partial satisfaction of any debt then due from the Purchaser to the Seller.
- (d) Where the amount paid by the Purchaser is less than the amount due to the Seller under the Contract to which it is appropriate, the Seller may appropriate the payment to any individual goods or items supplied under the Contract.

13. Cancellation

The Purchaser shall have no right under any circumstances to cancel the Contract or any instalment or order thereunder without prior consent of the Seller. If the Seller shall give such consent (and it shall be under no liability so to do) the Seller may make it a condition of such consent that the Purchaser shall pay such Compensation as the Seller may reasonably require but nothing in this clause shall be construed as implying that the Seller conducts business on a sale or return basis.

14. Risk and Title

- (a) Risk shall pass to the Purchaser so that the purchaser is responsible for all loss, damage or deterioration to the goods at the time when the goods or a consignment or other part thereof are placed at the disposal of the Purchaser at the premises of the Seller whether or not the Seller arranges transport.
- (b) Property (both legal and equitable) in the goods supplied by the Seller shall not pass to the Purchaser until the price of the goods and payment to the Seller of any monies which at the date of the Contract or may thereafter become due or owing from the Purchaser has been paid in full.
- (c) Until property in the goods has passed to the Purchaser or until delivery as permitted below, the Purchaser will hold the goods in a fiduciary capacity, will not obliterate any identifying mark on the goods or their packaging and will keep the goods separate from any other items.
- (d) Prior to the property in the goods passing to the Purchaser the seller permits the Purchaser to deliver the goods to a third party pursuant to a bona fide and arms length agreement to re-sell the goods and allows the Purchaser to convert or incorporate the goods into a or mix the goods with other items but such liberty will cease upon the termination of the contract.
- (e) Where the Seller is unable to determine whether any items are the goods supplied by the Seller, the Purchaser shall be deemed to have sold all items of the kind sold by the Seller to the Purchaser in the order in which they were invoiced to the Purchaser.
- (f) The Seller may at any time after payment of the goods become overdue, take possession of the goods (including stopping the goods in transit) and remove them and the Purchaser shall have deemed to have granted irrevocable authority to the Seller to enter upon the Purchaser's premises or other premises where the goods may be to take possession of the goods and, if necessary, to dismantle the goods from anything to which they are attached.
- (g) If the Seller re-sells the goods so recovered (and the Seller shall not be under any obligation to resell or if it does not resell, to sell at any particular price) any surplus proceeds of the sale after deduction of the

Seller's expenses (including legal expenses) in connection with the recovery and sale and of all sums due or owing from the Purchaser to the Seller shall be for the account of the Purchaser.

- (h) The Seller will have the right to maintain an action against the Purchaser for the price of the goods notwithstanding that property in the goods has not passed.
- (i) Nothing in the Contract will constitute the Purchaser the agent of the Seller in respect of any resale of the goods by the Purchaser so as to confer upon a third party, rights against the Seller.

15. Liability

- (a) The Seller will, free of charge, apart from carriage on returned items, during the warranty period, repair or at its option, replace or credit the invoice value of any goods which are proved to the reasonable satisfaction of the Seller to be defective in material or workmanship. For these purposes and in respect to the supply of catalytic converters and stainless steel front pipes, the guarantee period is twenty-four months or 24,000 miles (whichever occurs sooner) from the date of despatch of the goods. In respect to any other goods or services supplied, the guarantee period is three months from the date of despatch of the goods or completion of the services, as appropriate or such other guarantee period as the Seller may from time to time offer in writing on particular items. These obligations will not apply where:
 - (1) The goods (or Purchaser's items in connection with which services have been carried out) have been altered or subjected to misuse or unauthorised repair or modification or improperly installed or connected (unless carried out by the Seller); or
 - (2) The Purchaser has failed to notify the Seller of any defect or suspected defect within 14 days of the same coming to the knowledge of the purchaser; or
 - (3) The Purchaser is in breach of this or any other contract made with the Seller.
- (b) Where the Seller has custody of the items of the Purchaser for the purpose of carrying out services, the Seller shall reimburse the Purchaser the reasonable cost of repairing or at the Seller's option, replacing any such item which is damaged or lost whilst in the Seller's custody due to Seller's negligence. Any claim must be made in writing to the Seller within 7 days of the item being returned by the Seller to the Purchaser (in the case of a damage claim) or within 7 days of receiving notice of the loss (in the case of a loss claim). All costs must be agreed beforehand by the Seller.
- (c) **Nothing in these conditions shall affect the statutory rights of the consumer.**
- (d) **Save as provided elsewhere in this clause 8, The Seller hereby excludes all conditions, warranties and stipulations expressed or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Purchaser except that such exclusion will not apply to:**
 - (1) **Any applied condition that the Seller has or will have the right to sell the goods when the property is to pass; or**
 - (2) **When the Purchaser deals as a consumer (as defined in section 12 of the Unfair Contract Terms Act 1977) any implied term relating to the conformity of the goods with their description or sample or as their quality or fitness for a particular purpose.**
- (e) **Save as provided elsewhere in this clause 8. The Seller will be under no liability for any personal injury, death, loss or damage of any kind whatsoever whether consequential or otherwise whether in contract (other than death or personal injury resulting from the Seller's negligence) or tort or whether arising from an act or omission on the part of the Seller and whether arising out of the manufacture or supply of the goods and/or services or in connection with any statement given or made (or advise not given or made) other than fraudulent misrepresentation by or on behalf of the Seller.**

16. Force Majeure

The Seller shall not be under any liability to the Purchaser in respect of any failure to perform or delay in performing any of its contractual obligations to the Purchaser attributable to any cause of whatsoever nature beyond the Seller's reasonable control and no such failure or delay shall be deemed for any purpose of these conditions to constitute a breach of contract.

