



## TERMS AND CONDITIONS

### 1. Definitions

In these Terms and Conditions (“Terms”) the following words and expressions shall have the following meanings:

- “the Buyer” The person firm, company or organisation who purchases the goods from the Company;
- “the Company” Métisse Motorcycles Limited, or its successors in title, or any body or entity to whom it has assigned any or all of its rights under these terms and conditions;
- “Contract” the contract between the Company and the Buyer which shall be deemed to incorporate these Terms;
- “Goods” any goods, agreed in the Contract to be supplied by the Company to the Buyer;
- “Place of Delivery” the place to which the Goods are to be delivered;
- “Insolvency Event” shall mean:

(where the Buyer is a Company)

the Buyer convenes a meeting of its creditors, or a proposal is made for a Voluntary Arrangement and within Part 1 of the Insolvency Act 1986, or a proposal is made for a composition, scheme or assignment with (or assignment for the benefit of) its creditors, or if the Buyer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or a Trustee, Receiver, Administrative Receiver, or a similar officer is appointed in respect of all, or a part of the business, or assets of the Buyer, or a Petition is presented, or a meeting is convened for the purpose of considering a resolution, or other steps are taken for the winding-up of the Buyer, or for the making of an Administration Order;

(where the Buyer is an individual or Partnership)

The Buyer (or in the case of a Partnership any of the Partners) dies, or is made bankrupt, or is unable to pay his or her debts within the meaning of Section 123 of the Insolvency Act 1986, or a proposal is made for a composition scheme, or an arrangement is made with (or an assignment for the benefit of) his or her creditors.

In these Terms reference to any statute or statutory provision shall be construed as a reference to such statutory provision as amended, modified, re-enacted or replaced from time to time.



## **2. The Contract**

- 2.1 The Contract shall be governed by these Terms to the exclusion of all other conditions, including any such terms and conditions that are purported to be incorporated or applied by the Buyer.
- 2.2 No terms and conditions contained in the confirmation of order, purchase order, or other document of the Buyer shall form part of the Contract.
- 2.3 Only additional or alternative conditions agreed or stated in writing by the Company shall apply.
- 2.4 These conditions shall be incorporated into each and every Contract made between the Company and the Buyer and
  - 2.4.1 shall apply to the exclusion of any terms or conditions put forward by or on behalf of the Buyer; and
  - 2.4.2 shall not create any agency or partnership between the Company and the Buyer or any third party.
- 2.5 No variation, or waiver of, or addition to these conditions, whether written or oral, shall have effect unless and until authorised in writing by a manager of the Company.
- 2.6 Quotations and estimates, whether written or oral, submitted by the Company shall be deemed to be an invitation to treat and not an offer.
- 2.7 For the purposes of The Contracts (Rights of Third Parties) Act 1999, these conditions do not create any right or remedy enforceable by any person other than the Buyer and the Company. This condition does not affect any right or remedy of a third party that exists or is available apart from that Act.

## **3. Delivery**

- 3.1 Delivery of goods to the Buyer and any associated costs are not included in the price.
- 3.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate only. If no date is specified for delivery of Goods, delivery shall be within a reasonable time.
- 3.3 Unless otherwise agreed in writing, the Place of Delivery shall be the Company's premises and the Buyer shall take delivery within 5 days of the Company notifying the Buyer that the Goods are ready for delivery.
- 3.4 Subject to the other provisions of the Terms, the Company shall not be liable for any loss, whether direct or consequential, (economic, loss of profits, or otherwise) arising directly or indirectly out of any delay in the delivery of the Goods. Nor will any delay entitle the Buyer to terminate or rescind the Contract unless the delay exceeds 6 months.



#### **4. Risk In and Ownership of the Goods**

- 4.1 Risk in the Goods shall pass to the Buyer, when the goods are dispatched by the Company to, or collected by, the Buyer or its agent.
- 4.2 Ownership in the Goods shall not pass to the Buyer until the Company has received in full, in cleared funds, all sums due to the Company in respect of the Goods and all other sums which are or may become due to the Company from the Buyer on any account.
- 4.3 Notwithstanding the passing of risk under condition 4.1, unless and until payment shall have been made to the Company of all sums due to it under the Contract and/or under any other Contract between the Buyer and the Company, on any account whatsoever, property in and beneficial title of the Goods shall remain in the Company; and
- 4.4 The Buyer shall store the Goods separately from all other goods and products and in such a way that they can be readily identified as being the property of the Company; and
- 4.5 Subject to the conditions above the Buyer shall be free to sell the Goods in the ordinary course of its business on the basis that the proceeds of sale shall be transferable to the Company and pending such transfer shall be held in trust for the Company and the Buyer shall account therefore to the Company on demand for monies outstanding under the Contract; and
- 4.6 The Buyer shall collect the Goods from the Company's premises. Where it is agreed that the Company shall deliver or procure delivery of the Goods, when ready, it shall do so at the risk and cost of the Buyer to such address in the United Kingdom as the Buyer may specify or, if no such address is specified, to any address of the Buyer to which correspondence and/or Goods may previously have been sent under the Contract. The manner of delivery shall be such as the Company in its sole discretion shall deem appropriate; and
- 4.7 The Company may at any time revoke the Buyer's power of sale referred to above by written notice to the Buyer, if the Buyer shall for 7 days or more be in default in the payment of any sum whatsoever due to the Company (whether in respect of the Goods or any other goods supplied by the Company or services rendered, whether or not under the Contract by the Company or for any other reason whatsoever), or immediately if any cheque or other negotiable instrument drawn or accepted by the Buyer in favour of the Company shall on presentation for payment be dishonoured or in 7 days the Company in good faith shall have doubts as to the solvency of the Buyer; and
- 4.8 The Buyer's power of sale referred to above shall automatically cease if an Insolvency Event occurs; and
- 4.9 The Buyer undertakes to provide its reasonable assistance to the Company in respect of any action the Company deems necessary in respect of the above and in executing the same.



## **5. Loss or Damage in Transit**

- 5.1 The Buyer is under a duty wherever possible to examine the Goods on delivery or on collection (as the case may be).
- 5.2 Where the Goods cannot be examined the carrier's note or such other note (as the case may be) shall be marked by the Buyer at the time of delivery "not examined".
- 5.3 The Company shall be under no liability whatsoever for any defects or shortages as aforesaid unless notified in writing of the details within seven days following despatch.
- 5.4 In all cases where defects or shortages are complained of, the Company shall be under no liability to the Buyer in respect thereof unless a reasonable opportunity to inspect the Goods is provided to the Company by giving at least 48 hours notice in writing before any use is made thereof or any alteration or modification is made thereto by the Buyer.
- 5.5 The Company shall make good any defects or shortages in compliance with the terms of this condition but otherwise shall be under no liability whatsoever, whensoever or howsoever arising, whether by way of negligence or otherwise, for such defects or shortages (save for death or personal injury caused by the Company's negligence).

## **6. Price**

The price for the Goods shall, unless otherwise agreed, be the price set out on the date of delivery in the Company's price list. The price for the Goods shall be exclusive of all costs of carriage and insurance and applicable VAT, tax or duties, which the Buyer shall pay in addition.

## **7. Deposit**

- 7.1 The Buyer shall pay such deposit as the Company shall direct. Unless otherwise agreed the deposit shall be a minimum of 25% of the total cost.
- 7.2 Confirmation of reservation will not be made until the Company has received the deposit in full in cleared funds.

## **8. Payment**

- 8.1 All payments shall be in the currency invoiced.
- 8.2 The Company shall not be bound to deliver the Goods until the Buyer has paid for them.
- 8.3 Payment shall not be deemed to have taken place until the receipt of cleared funds by the Company.



## **9. Cancellation**

- 9.1 The Buyer shall give the Company written notification of their wish to cancel.
- 9.2 Cancellation is without charge to the Buyer until one week after confirmation of payment of deposit.
- 9.3 Cancellation later than one week after confirmation of payment of deposit shall incur a charge equal to 25% of the total cost or the total cost to date, whichever is of greater value.
- 9.4 The Company reserves the right to refuse to accept any cancellation after one week after confirmation of payment of deposit (in its sole discretion) and no cancellation of the whole or any part of any order, whether it is an order by instalment or otherwise, by the Buyer is permitted except where agreed in writing in advance by a Manager of the Company.
- 9.5 Goods, once delivered, may not be returned unless authorisation has been given as specified above and provided that the following conditions are satisfied: -
- 9.5.1 Goods will only be accepted if they are in brand new and unused condition;
- 9.5.2 Packaged items will only be accepted if the package remains unbroken and in reasonable condition;
- 9.5.3 Goods will only be accepted if returned within three weeks of the date of collection or delivery.

## **10. Warranties**

- 10.1 The Company warrants that the Goods are of satisfactory quality.
- 10.2 If the Buyer wishes to make a claim under this warranty the Buyer shall give written notice to the Company within 30 days of the discovery of the defect and give the Company a reasonable opportunity to inspect the Goods in question.
- 10.3 The Company shall have no liability under any Contract or otherwise in respect of any defect in Goods arising from competition use.
- 10.4 The Company shall have no liability under any Contract or otherwise in respect of any defect in Goods arising from fair wear and tear or misuse (either on its own or in combination with other equipment) or alteration or repair of the Goods without the Company's approval.
- 10.5 The Company's liability under the warranty shall be limited to repairing or replacing the Goods in question or refunding the price of such goods.

## **11. Limitation of Liability**

The Company's liability in contract, tort or otherwise arising out of the subject matter of the Contract shall not exceed the total cost of the Goods and the Company shall under no circumstances be liable to the Buyer for any consequential indirect or economic loss or damages.



## **12. Termination and Suspension**

Without prejudice to any rights and remedies available to it, whether under the Contract or otherwise, the Company shall be entitled in its absolute discretion and upon giving to the Buyer written notice of its intention to do so, either to terminate wholly or in part the Contract and/or any other contract with the Buyer or to withhold, vary or suspend performance of all or any of its obligations under the Contract or any other Contract in any one or more of the following events:-

- a. If any sum owing to the Company from the Buyer on any account whatsoever shall be unpaid after the due date for payment;
- b. If the Buyer shall refuse to take delivery or collect any of the Goods in accordance with the terms of the Contract;
- c. If an Insolvency Event occurs;
- d. If the Buyer shall commit any breach of any Contract with the Company, in the Company's sole discretion;
- e. If the Company in good faith shall have doubts as to the solvency of the Buyer;
- f. Where it is necessary to make alternative arrangements to deal with supply shortages. In such circumstances, the Buyer's obligation to purchase Goods hereunder shall remain binding to the extent that the Company meets the Buyer's order.

## **13. Force Majeure**

If either party is subject to an event of Force Majeure that is circumstances outside its reasonable control including but not limited to war, fire, industrial disputes or civil commotion it shall notify the other and the first party's obligations under these Terms shall be suspended until it notifies the other party of the end of such event of Force Majeure.

## **14. Notices**

Any notice required to be given in writing under the Contract shall be given either by email or by facsimile transmission or by first class post addressed to the registered office or last known correspondence/residential address for the party for which it is intended.

## **15. General**

- 15.1 If any part of these Terms is found to be void or unenforceable by any Court of competent jurisdiction, such part shall be severed from these Terms which will otherwise remain in full force and effect.
- 15.2 These Terms shall be governed by and interpreted according to the Law of England and Wales and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.