

CARLYLE BUS & COACH LIMITED

Conditions of Sale

1 DEFINITIONS

In these conditions:

"Seller"	means the seller supplying the goods or services, i.e. Carlyle Bus & Coach Limited.
"Buyer"	means the individual, company or other party with whom the Seller contracts.
"Contract"	means the contract or order for the purchase and sale of goods or services.
"Services"	means services the subject of any order placed with the Seller.
"Goods"	means Goods the subject of any order placed with the Seller.

2 BASIS OF SALE

- 2.1 Quotations are given and orders are accepted by the Seller only on its standard conditions. The Seller shall sell and Buyer shall purchase the Goods or Services in accordance with any written quotation of the Seller which is accepted by the Buyer or any written order by the Buyer which is accepted by the Seller subject in either case to these conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Buyer.
- 2.2 Any statement (whether written or oral), description, drawing, photograph, illustration, diagram, or specification concerning the Goods made before the Contract are for the purpose of information and guidance only.
- 2.3 Where Goods are sold by reference to a description in a catalogue or web site, the Goods are sold subject to tolerances and variations expressed or implied in the catalogue.
- 2.4 Any typographical, clerical or other error or omission in any document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.5 Any advice or recommendation given by the Seller for the storage, installation, application or use of the Goods shall not constitute any warranty or guarantee and storage, application, installation and use of the Goods (or the use of the Goods to store other items) shall be entirely at the Buyer's own risk. The Seller shall not be liable for any such advice or recommendation and the Buyer shall ensure that the Goods are properly installed and fitted and thereafter used by a suitably competent and where necessary qualified person.
- 2.6 The Seller's employees or agents are not authorised to make any recommendations concerning the Goods or Services unless confirmed by the Seller in writing and in entering into the Contract the Buyer acknowledges that it does not rely on any such representation which are not so confirmed.
- 2.7 References to clauses are to clauses of these conditions and references to sub-clauses are to sub-clauses of the clause in which the reference appears.
- 2.8 All of these conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3 ORDER AND SPECIFICATIONS

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.2 No order shall be binding on the Seller unless or until such order is accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.
- 3.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.
- 3.4 If any of the Goods are found not to be in accordance with the specification agreed between the Seller and the Buyer, the Buyer shall notify the Seller within three (3) days of delivery and the Seller reserves the right for its representative to visit the Buyer's premises to examine the relevant Goods and if any are found in the sole discretion of the Seller not to so conform the Seller may at its sole option either:

- (a) At its own expense replace the Goods found not to be in accordance with such specification, or
 - (b) Reduce the contract price by an amount equivalent to that proportion of the price payable in respect of the Goods found not to conform with the agreed specification.
- 3.5 Save for where clause 8.10 applies, the Goods are non-returnable and the price paid for the Goods is non-refundable. If the Seller decides at its discretion to accept the return of the Goods, it will refund 75% of the price for the Goods to the Buyer subject to the return of the Goods in a re-saleable condition and will retain 25% of the price paid for the Goods to cover the costs, including but not limited to, the cost of transport and returning the Goods to the Seller's stock.
- 3.6 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all losses, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, trademark or other industrial or intellectual property rights of any person which results from the Seller's use of the Buyer's specification.

4 PRICES

- 4.1 All prices quoted are exclusive of any applicable Value Added Tax. The Buyer is required to pay any tax, duty or other government charge levied.
- 4.2 Quotations are only valid for 30 (thirty) days, or until earlier acceptance by the Buyer.
- 4.3 The Seller reserves the right to vary prices of Goods and Services in certain circumstances, including additional costs arising from exchange rate and currency movements, and additional costs in packing or transport. The Seller reserves the right to increase prices to recover any additional costs arising from any variation or delay caused by the Buyer's instructions or failure of the Buyer to give the Seller adequate information or instruction. The Seller reserves the right to impose a minimum order quantity or handling/delivery charge for any Goods or Services supplied.
- 4.4 The Seller reserves the right to recover costs due to the failure of the Buyer to take or accept delivery or to give adequate delivery instructions. Any special delivery requirements must have been notified by the Buyer to the Seller at the time of placing the order.
- 4.5 The price for the Goods or Services shall (subject to clause 4.7) be that stated on the Seller's quotation or where no price has been quoted or a quoted price is no longer valid the price shall be the price ruling in the Seller's price list.
- 4.6 Unless otherwise expressly notified by the Seller, the price for Goods shall be ex the Seller's works. Where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packing and insurance.
- 4.7 The Seller's price list for Goods is subject to revision without any notice and any Contract entered into by the Seller is on the understanding that Goods will be supplied at the prices ruling at the date when the Goods are ready for despatch to the Buyer.
- 4.8 Unless otherwise specifically stated on the Seller's quotation, any estimate of the price for the supply of Goods or Services given by the Seller is subject to any additional cost of labour or materials or of any additional work which may be found by the Seller to be necessary which were unforeseen by the Seller at the date of the estimate given.
- 4.9 Unless previously instructed to the contrary in writing, the Seller will notify the Buyer of any substantial estimated increase in price pursuant to sub-clause 4.8 and will not proceed with the supply of any Goods or Services unless and until notified by the Buyer that the Buyer will pay such increased price. However, if the Buyer does not accept any increase in price within 5 (five) working days then the Seller reserves the right to cancel the Contract.

5 PAYMENT

- 5.1 The Seller reserves the right to invoice the Buyer prior to the delivery.
- 5.2 Payment shall not be withheld pending the settlement of any dispute.
- 5.3 If the Buyer has an approved account with the Seller, payment of the price (including without limitation the costs of transport, packaging and insurance referred to in clause 4.6) shall be made in full and in cash or by cleared funds not later than 30 (thirty) days following the date of invoice.

- 5.4 In all other cases, the Seller shall be entitled to invoice the Buyer and payment of the price (including without limitation the costs of transport, packaging and insurance referred to in clause 4.6) shall be made in full in cash at the time when the Goods or Services are ready to be supplied to the Buyer.
- 5.5 Without prejudice to the Seller's right to prompt payment, if the Buyer fails to make any payment on the due date, then the Seller shall be entitled to suspend all or any further deliveries to the Buyer of Goods or the provision of all or any Services (in which event the Buyer shall not be released from its obligations to the Seller or cancel the Contract or claim damages for breach of Contract) and the Buyer shall pay interest at the rate of 2% (two percent) per month on the balance of any invoice or other sum remaining unpaid from the due date of payment of the same and on the day of actual payment and shall in addition reimburse to the Seller all reasonable costs and expenses (including legal costs) incurred in the collection of any overdue balance or account.
- 5.6 Time for payment is of the essence of any Contract between the Seller and the Buyer.
- 5.7 All amounts due under the Contract must be paid by the Buyer in full and any right to assert any credit, set-off or counterclaim against the Seller are excluded.
- 5.8 The Seller reserves the right to set-off any amount owed to it by the Buyer against any amount payable by the Seller to the Buyer.

6 DELIVERY

- 6.1 The Seller undertakes to use its reasonable endeavours to deliver by specified delivery dates. However, any dates quoted for delivery of the Goods and Services are approximate only, and the Seller shall not be liable for any delay in delivery. Time of delivery shall not be of the essence unless previously agreed by the Seller in writing. The Buyer shall not be entitled to cancel, delay or refuse payment should delivery be made after the established delivery date.
- 6.2 The Seller shall not be liable to the Buyer in any way for the loss or damage whatsoever arising due to the delivery or despatch of Goods or supply of Services at a date later than quoted unless the Seller has specifically agreed in writing with the Buyer an agreed sum as liquidated damages and to despatch, deliver or supply at a specified date, which date is stated by the Seller to be of the essence, nor shall the Buyer be entitled to cancel with the Seller in consequence thereof.
- 6.3 Delivery of Goods shall be deemed to be made immediately upon collection of the Goods by the Buyer from the Seller's premises or where the Seller agrees to deliver the Goods otherwise than at the Seller's premises immediately upon arrival of such Goods at the Buyer's premises (or such other address notified to the Seller and agreed for the delivery) prior to unloading or unpacking and upon delivery risk in the Goods shall pass to the Buyer. The Seller does not accept any responsibility for any loss or damage to Goods arising during unloading or unpacking.
- 6.4 The Seller shall be entitled to make delivery of the Goods in instalments and the Buyer shall be obliged to pay for each instalment in accordance with the Seller's usual terms. Every delivery shall constitute a separate Contract, and failure by the Seller to deliver any one or more of its instalments in accordance with these conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated. Further the Seller may invoice for the provision of Goods or Services on a regular basis regardless of whether the total Goods or Services to be provided have been completed.
- 6.5 If the Buyer fails to accept delivery within 3 (three) days of notice in writing that the Goods are ready for delivery, the Buyer shall be liable for all storage and other charges. After a further period of 10 (ten) working days if the Buyer still fails to accept delivery the Seller shall be entitled, without prejudice to its other rights, to resell or otherwise dispose of the Goods.
- 6.6 The Buyer shall ensure the prompt turn around of any delivery vehicles and is to indemnify and keep indemnified the Seller or any agent against any loss or liability whatsoever arising from any delay.
- 6.7 The Buyer must notify the Seller within 3 (three) days of receipt in respect of shortages, or damage to the Goods failing which proper delivery shall be conclusively presumed to have been made. In the case of total loss the Buyer must notify the Seller within 3 (three) days of receipt of the invoice or other notification of despatch.

7 RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer as soon as delivery is taken by the Buyer whether that be at the Buyer's premises or at the Seller's premises should the Buyer collect the Goods from the Seller's premises.
- 7.2 The Goods shall remain the property of the Seller until the Buyer has paid in full the price of the Goods. Notwithstanding the passing of risk in the Goods at delivery or any other provision of these conditions

the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of:

- 7.2.1 the Goods; and
- 7.2.2 all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in 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, (at no cost to the Seller) protected, insured, and readily identified as the Seller's property at the Buyer's premises.
- 7.4 The Buyer shall be entitled to re-sell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of the sale or otherwise of the Goods.
- 7.5 Until such time as the property in the Goods passes to the Buyer (and provided that 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.
- 7.6 So as to recover any Goods, the Seller may dismember with reasonable care any item into which such Goods have been incorporated and shall be under no liability whatsoever for damage thereby occasioned.
- 7.7 All worn or damaged materials replaced by the Seller in the course of its supply of any Goods or Services to the Buyer shall, upon the Buyer's default in payment to the Seller in respect of such supply, become the property of the Seller and may be freely disposed of by the Seller.
- 7.8 The Buyer shall not be entitled to pledge in any way or charge by way of security for 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. The Seller shall be entitled to recover payment for the Goods, notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 7.9 Until the ownership of the Goods has passed to the Buyer, the Buyer shall:-
 - 7.9.1 Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 7.9.2 Maintain the Goods in satisfactory condition.

8 WARRANTY AND LIABILITY

THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 8.

- 8.1 The Seller will not be liable under the Contract or by reason of any representation or any implied warranty, condition or other term or any duty at common law for any consequential loss or damage of any kind whatsoever which arises out of or in connection with the supply of the Goods and/or Services, including but not limited to loss of profits, costs, expenses or any claims for compensation whatsoever. The entire liability of the Seller under or in connection with the Contract shall not exceed the price of the relevant Goods and/or Services, except as expressly provided in these conditions.
- 8.2 No warranty is given that the Goods are suitable for any particular or special purposes or for use in connection with any equipment or other product or item unless expressly given in writing by the Seller and in particular where the Goods are incorporated or form part of another product or contain or hold other products or substances the Seller shall not be liable for any loss or damage to such other product or substance arising out of any defect or fault in the Goods.
- 8.3 The Buyer is responsible for ensuring that Goods returned to the Seller are free from hazard, including biological, chemical or radioactive. The Seller reserves the right to refuse to accept Goods which in its view present a hazard or may infringe any legislation, or is without a signed declaration that the Goods are free from any contamination or infection.
- 8.4 Where the Seller is the manufacturer of the Goods, the Seller will (where applicable) provide the Buyer with the benefit of the Seller's standard warranty, as set out in clause 8.13, in respect of the Goods and Services supplied, such warranty being varied by the Seller from time to time.
- 8.5 Payment for any alleged defective Goods or Services shall not be withheld by the Buyer pending investigations by the Seller of the applicability of the warranty provided (if any).
- 8.6 The warranty referred to in clause 8.4 is given by the Seller subject to the following:-

- 8.6.1 The Seller shall not be under any liability in respect of any failure or defect arising from any design or specification supplied by the Buyer;
- 8.6.2 The Seller shall not be under any liability in respect of any defect or failure arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse or alteration or repair of the Goods without the Seller's approval;
- 8.6.3 If the total price has not been paid by the due date, the Seller shall not be under any liability until the total price has been paid; and
- 8.6.4 Such warranty does not extend to parts, materials or equipment not manufactured by the Seller.
- 8.7 Where the Seller is not the manufacturer of the Goods, the Seller will use reasonable endeavours to make over to the Buyer the benefit of any warranty or guarantee given by the manufacturer.
- 8.8 Nothing in these conditions shall exclude or limit the Seller's liability for death or personal injury caused by the Seller's negligence.
- 8.9 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or any failure to exercise reasonable care and skill shall, whether or not delivery is refused by the Buyer, be notified to the Seller within 3 (three) days from the date of delivery or, where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery and in any event within 7 (seven) days of discovery. If delivery is not refused and the Buyer does not so notify the Seller, the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Contract had been performed in accordance with its terms.
- 8.10 Where any valid claim, which is based on any defect in the quality or condition of the Goods or any failure to exercise reasonable care and skill, is notified to the Seller in accordance with the conditions, the Seller shall be entitled to repair or replace the Goods (or the part in question) or to re-perform the Services or, at the Seller's sole discretion, refund to the Buyer the price (or a proportion of part of the price) but the Seller shall have no further liability to the Buyer.
- 8.11 Subject expressly provided in these conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.12 The Buyer shall hold harmless and keep the Seller indemnified against all claims of whatsoever nature made against the Seller by any third party pursuant to the Seller's provision of Goods or Services under this Agreement, save insofar as the same have arisen pursuant to this clause 8.
- 8.13 The Goods supplied will be free from material defects in design, material and workmanship and will conform to their description.

9 DUTY OF CARE

The Buyer has a responsibility to ensure all Goods supplied, (especially hazardous substances) are stored and where appropriate installed and thereafter used responsibly and in accordance with all the appropriate legislation, requirements and recommendations. The Buyer shall take all appropriate precautions to ensure the safe and suitable installation, handling and use of the Goods. The Buyer is responsible for taking all steps necessary to eliminate or reduce the risk to health and/or safety arising out of the installation, possession and use of the Goods.

10 INDEMNITY

The Buyer shall not use or deal with the Goods or the Seller's catalogues, brochures, leaflets, or lists so as to infringe, interfere with or weaken any rights of the Seller under or in respect of any patents, processes, proprietary information, trademarks, registered designs, logos, artwork, copyright or other intellectual property rights for or in connection with the Goods. The Seller shall have no liability for the infringement of any rights of any third party arising from the manufacture, supply or use of the Goods, in combination with or pursuant to other goods, trademarks, specifications or processes not supplied by the Seller. The Seller reserves the right to suspend performance of the Contract until a licence is obtained from the owner of any relevant third party intellectual property rights to permit their use.

11 EXPORT TERMS

- 11.1 In these conditions "Incoterms" means the international rules for interpretation of trade terms of the International Chamber of Commerce as in force at the date of when the Contract is made. If there is any conflict between the definition or particular meaning given to a term or expression by the Incoterms and the meaning given to the same term or expression under these conditions, the latter shall prevail.

- 11.2 Where the Goods are supplied for export from the United Kingdom the provision of this clause shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of this Contract.
- 11.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 11.4 Unless otherwise agreed in writing between the Buyer and the Seller the Goods shall be priced and delivered ex works the Seller's premises at Great Bridge Street, Swan Village, West Bromwich, West Midlands, B70 0XA, Incoterms 2010, and the Seller shall be under no obligation to give notice under Section 32 (3) of the Sale of Goods Act 1979.
- 11.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment the Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during shipment.
- 11.6 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank acceptable to the Seller or if the Seller has agreed in writing on or before acceptance of the Buyer's order to waive this requirement by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn by the Buyer payable sixty days after sight of the order of the Seller at such a branch of HSBC Bank or Bank of England as may be specified in the Bill of Exchange.

12 BUYER DEFAULT

If the Buyer defaults in paying any sum due under any Contract with the Seller as and when such sum becomes due or commits any breach of any of its obligations to the Seller or if distress or execution is levied on any of the Buyer's Goods or if the Buyer makes any arrangements with its creditors or commits any act of bankruptcy or goes into, threatens liquidation or if a receiver or manager or administrator is appointed of the whole or any part of its assets, the Seller may forthwith suspend all further supplies of Goods or Services until the default has been made good or adequate compensation furnished or may determine its contract with the Buyer so far as any Goods or Services remain to be delivered without liability but without prejudice to any claim which the Seller might otherwise have for breach of Contract and/or for the price of Goods or Services already supplied.

13 GENERAL

- 13.1 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 by any person.
- 13.2 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.
- 13.3 Any dispute arising under or in connection with these conditions for the sale of Goods and Services shall be referred to arbitration by a single arbitrator appointed with the agreement of both parties, or in the absence of such agreement, by an arbitrator appointed on the application of either party to The Society of Motor Manufacturers and Traders to request that an arbitrator be nominated.
- 13.4 The formation, interpretation and operation of this Contract will be subject to English Law and the Buyer agrees to the exclusive jurisdiction of the English Courts.
- 13.5 The Seller shall be at liberty to sub-contract the supply of any Goods or Services which it has contracted with the Buyer to supply.
- 13.6 All drawings, descriptive matter, dimensions, photographs or specifications submitted with a quotation of the Seller and the descriptions and illustrations contained in the Seller's catalogues, price lists and all other advertising matter of whatsoever nature are intended to be an approximate guide only giving a general idea of the Goods or Services described therein and none of them shall form part of any Contract.
- 13.7 The Buyer shall indemnify the Seller against all liabilities incurred by the Seller by reason of any proceedings, claims or demands which may be brought or made against the Seller (including all damages, losses and expenses awarded against or incurred by the Seller) alleging infringement of any patent or other intellectual property of any third party by reason of anything done by the Seller pursuant to designs, specifications or instructions, explicit or implied, furnished by the Buyer to the Seller.
- 13.8 Where the Buyer delivers to the Seller property of a person other than the Buyer for the Seller to supply Services in respect of such property, the Buyer shall be deemed to be the agent of the owner of the property and to contract on the owner's behalf.

- 13.9 **THE SELLER'S PRICES FOR THE SUPPLY OF GOODS OR SERVICES ARE CALCULATED ON THE BASIS THAT THE SAME ARE SUPPLIED ON THESE CONDITIONS OF BUSINESS, INCLUDING ALL EXCLUSIONS OR RESTRICTIONS OF THE SELLER'S LIABILITY CONTAINED HEREIN AND THE BUYER RECOGNISES THAT BY CONTRACTING ON THESE CONDITIONS, IT IS THEREBY OBTAINING THE BENEFIT OF PRICES CALCULATED.**
- 13.10 The conditions shall constitute the entire agreement in relation to the subject matter and no modification or waiver thereof shall be valid unless made in writing expressly for the purpose and signed by an authorised officer of the Seller and of the Buyer provided that nothing in these conditions shall exclude or limit liability for fraud.
- 13.11 Unless expressly provided in these conditions, no term of the Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

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