



## DENIS WELCH MOTORS LIMITED

# TERMS & CONDITIONS OF SUPPLY OF GOODS & SERVICES

### OUR TERMS

#### 1. DEFINITIONS

- 1.1 When the following words with capital letters are used in these Terms, this is what they will mean:
- Bespoke Goods:** goods which We create especially for you;
- Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
- Catalogue:** Our mail order catalogue or brochure which sets out the Goods, Products and Services available from time to time, whether in print format, on the Website or provided to you electronically;
- Consumer:** an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession;
- Contract:** the contract between you and Us for the supply of Goods, Product and/or Services in accordance with the Order Confirmation and these Terms;
- Event Outside Our Control:** is defined in clause 12.2;
- Goods:** the goods that We are selling to you as set out in the Order;
- Liability:** liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;
- Order:** your order for the Goods and/or Services using the Order Form delivered to Us by hand, or sent to Us by post or by email or through the Website, or transmitted to Us by telephone;
- Order Confirmation:** Our confirmation of the Order;
- Order Form:** Our form for ordering Goods, Products and/or Services, as set out on the Website and/or in the Catalogue;
- Product:** the product We create for you as a result of the Services and/or incorporating the Goods as set out in the Order, and the phrase **Products** shall be interpreted accordingly;
- Services:** the services that We are providing to you as set out in the Order;
- Specification:** the specification provided and/or chosen by you in respect of the Goods, Services and/or Product;
- Terms:** the terms and conditions set out in this document;
- Vehicle:** your vehicle, in relation to which the Goods, Product and/or Services are supplied by Us;
- Website:** Our websites at [www.bighealey.co.uk](http://www.bighealey.co.uk); and [cncporting.co.uk](http://cncporting.co.uk) and/or [healeyendurance.com](http://healeyendurance.com);
- We/Our/Us:** Denis Welch Motors Limited, Company Number 01314890, Registered Office address, Sudbury Road, Yoxall, Burton on Trent, Staffordshire, DE13 8NA;
- you/your:** the person or firm who purchases Goods, Products and/or Services from Us.

- 1.2 When We use the words "writing" or "written" in these Terms, this will include e-mail unless We state otherwise in writing

#### 2. OUR CONTRACT WITH YOU

- 2.1 These are the terms and conditions on which We supply Goods, Products and/or Services, to you.
- 2.2 Please ensure that you read these Terms carefully, and check that the details on the Order and these Terms are complete and accurate, before you sign and/or submit the Order. If you think that there is a mistake or require any changes, please contact Us to discuss. We will confirm any changes in writing to avoid any confusion between you and Us.
- 2.3 Despite clause 2.2, the Contract constitutes the entire agreement between the parties. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on Our behalf which is not set out in the Contract.
- 2.4 When you sign and submit the Order to Us, this does not mean We have accepted your order for Goods, Product and/or Services. Our acceptance of the Order will take place as described in clause 2.5. If We are unable to supply you with the Goods and/or Services, We will inform you of this in writing and We will not process the Order.
- 2.5 These Terms will become binding on you and Us when We issue you with a written Order Confirmation, at which point a Contract will come into existence between you and Us.
- 2.6 We shall assign an order number to the Order and inform you of it in the Order Confirmation. Please quote the order number in all subsequent correspondence with Us relating to the Order.
- 2.7 The images of the Goods and/or Product on the Website and in the Catalogue are for illustrative purposes only. Although We have made every effort to display the colours accurately, We cannot guarantee that the printed pictures accurately reflect the colour or sizes of the Goods and/or Product. Your Goods and/or Product may vary slightly from those images. \*They shall not form part of the Contract or have any contractual force.
- 2.8 Nothing in these Terms shall exclude or limit any of your statutory rights if they may not be excluded or limited due to you acting as a Consumer. Where you are acting as a Consumer any provision which is marked with an asterisk (\*) may, subject to determination by the Courts or any applicable legislation, have no force or effect. If any provision is, under the applicable law or these Terms or the Contract between us, unenforceable in whole or in part or has no force or effect, the Contract shall be deemed not to include such provisions. This shall not, however, affect the enforceability of the remainder of the Contract. For further information about your statutory rights contact your local authority, Trading Standards Department or Citizens Advice Bureau.

#### 3. CHANGES TO ORDER OR TERMS

- 3.1 We may revise these Terms from time to time to reflect the following circumstances, changes in relevant laws and regulatory requirements.
- 3.2 If We have to revise these Terms under clause 3.1, We will set out the revised Terms on the Website, and give you one month's notice before they take effect. You can choose to cancel the Contract in accordance with clause 13.6(c)6(c).
- 3.3 You may make a change to the Order for Goods and/or Services at any time before We despatch the Goods or the start date for the Services by contacting Us, except in the case of Bespoke Goods. Where this means a change in the total price of the Goods and/or Services, We will notify you of the amended price in writing. You can choose to cancel the Order in accordance with clause 13 in these circumstances.
- 3.4 If you are a Consumer and you wish to cancel an Order before it has been fulfilled, please see your right to do so in clause 13. In the case of Bespoke Goods, and/or the Product unfortunately, because We make these Goods and/or the Product to your specific requirements, you will not be able to cancel an Order once it is made.

#### 4. YOUR OBLIGATIONS AND MEASUREMENTS

- 4.1 You shall:
- (a) ensure that the terms of the Order and, if submitted by you, the Specification is complete and accurate;
- (b) provide Us, Our employees, agents, consultants and subcontractors, with access to your Vehicle as reasonably required by Us to provide the Services;
- (c) provide us with such information and materials as We may reasonably require to supply the Services, and ensure that such information is accurate in all material respects; and
- (d) obtain and maintain all necessary licences, insurances, permissions and consents which We, in Our sole discretion, may deem necessary from time to time for provision of the Services.
- 4.2 We may make an estimate of the Goods required for the Vehicle, based upon information you provide to Us. We have no Liability for any Goods provided to you on the basis of such information to the extent that such information was incorrect.
- 4.3 Please make sure any and/or all information provided in accordance with clause 4.2 above is correct and accurate. If such information is incorrect, or inaccurate We may have to revise Our prices for the Goods and/or Services. However, this will not affect your legal rights as a Consumer in relation to Services and/or Goods that are faulty or not as described. Advice about your legal rights is available at your local Citizen's Advice Bureau or Trading Standards office.

#### 5. DELIVERY OF GOODS

- 5.1 We will contact you with an estimated delivery date, which will be within 30 days after the day on which we send you the Order Confirmation. Occasionally Our delivery to you may be affected by an Event Outside Our Control. See clause 12 for Our responsibilities when this happens.
- 5.2 If you have asked to collect any of the Goods from Our premises, you can collect the Goods from Us at any time during Our working hours of 08.30 to 17.00 on weekdays and on Saturdays only with Our prior written consent.
- 5.3 If you are a Consumer, and no one is available at your address to take delivery, We will leave you a note that the Goods have been returned to Our premises, in which case, please contact us to rearrange delivery.
- 5.4 \*If We are not able to deliver the whole of the Order at one time due to operational reasons or shortage of stock, We will deliver the Order in instalments. We will charge you extra delivery costs for this.
- 5.5 If you are a Consumer, if We miss the 30 day delivery deadline for any Goods then you may cancel your Order straight away if any of the following apply:
- (a) We have refused to deliver the Goods;
- (b) delivery within the delivery deadline was essential (taking into account all the relevant circumstances); or
- (c) you told Us before we accepted your order that delivery within the delivery deadline was essential.
- 5.6 If you do not wish to cancel your order straight away, or do not have the right to do so under clause 5.5, you can give Us a new deadline for delivery, which must be reasonable, and you can cancel your Order if We do not meet the new deadline.
- 5.7 If you do choose to cancel your Order for late delivery under clause 5.5 or clause 5.6, you can do so for just some of the Goods or all of them, unless splitting them up would significantly reduce their value. If the Goods have been delivered to you, you will have to return them to Us or allow Us to collect them, and We will pay the costs of this. After you cancel your Order We will refund any sums you have paid to Us for the cancelled Goods and their delivery.
- 5.8 Delivery of an Order shall be completed when We deliver the Goods to the address you gave Us, or you, or a carrier organised by you collect them from Us, and the Goods will be your responsibility from that time.
- 5.9 You own the Goods once We have received payment in full.

#### 6. IF THE GOODS OR PRODUCT ARE FAULTY

- 6.1 If you are a Consumer, you have legal rights in relation to Goods and/or Product that are faulty or not as described. We are under a legal duty to supply Goods that are in conformity with this Contract. Advice about your legal rights is available

from your local Citizens' Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.

## 7. OUR GUARANTEE OF GOODS AND PRODUCT

7.1 We guarantee that on delivery and for a period of twelve (12) months from delivery, the Goods and/or Product shall be free from material defects. However, this guarantee does not apply in the circumstances described in clause 7.3.

7.2 Subject to clause 7.3, if:

- (a) \*you give notice in writing during the guarantee period within a reasonable time of discovery that some or all of the Goods and/or Product do not comply with the guarantee set out in clause 7.1;
- (b) \*We are given a reasonable opportunity of examining such Goods and/or Product;
- (c) \*you (if asked to do so by Us) return such Goods and/or Product to Our place of business at your cost; and
- (d) you (if asked to do so by Us) return all Goods and/or Product that do not comply with the guarantee set out in clause 7.1, to Our place of business at Our cost;

We shall, at our option, repair or replace the defective Goods and/or Product, or refund the price of the defective Goods and/or Product in full.

7.3 This guarantee does not apply to any defect in the Goods and/or Product arising from:

- (a) fair wear and tear;
- (b) wilful damage, abnormal storage or working conditions, accident, negligence by you or by any third party;
- (c) if you fail to operate or use the Goods and/or Product in accordance with the user instructions;
- (d) any installation by a third party who is not Us;
- (e) any alteration or repair by you or by a third party who is not Us or one of Our authorised repairers;
- (f) any Specification provided by you; and/or
- (g) use of the Goods, Product and/or Vehicle on a race-track or for rallying or competition purposes.

7.4 You shall give Us a reasonable opportunity to remedy any matter for which We are liable before you incur any costs and/or expenses in remedying the matter yourself. If you do not do so We shall have no Liability to you.

7.5 If you are a Consumer and consider the Goods and/or Product to be defective, you must notify Us, so that We can agree a method for returning the Goods and/or Product.

7.6 If you are based outside the United Kingdom, and/or the Goods and/or Product were delivered to an address outside the United Kingdom, you must notify Us prior to returning the Goods and/or Product to Us, so that you and We can ensure that the customs declaration and any related paperwork is completed correctly. If you do not comply with this clause 7.6, We shall charge a reasonable administration fee to cover Our resulting increase in administration costs.

7.7 If you are a Consumer the guarantee in this section 7 is in addition to, and does not affect, your legal rights in relation to the Goods and/or Product that are faulty or not as described. We are under a legal duty to supply Goods and/or Product that are in conformity with this Contract. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

7.8 \*Subject to clause 7.3, We shall have no liability to you in respect of any failure by the Goods and/or Product to comply with the guarantee set out in clause 7.1.

## 8. PROVIDING SERVICES

8.1 We will supply the Services to you on the date agreed between Us and set out in the Order Confirmation, until the estimated completion date set out in the Order Confirmation.

8.2 We will make every effort to complete the Services on time. However, there may be delays due to an Event Outside Our Control. See clause 12 for Our responsibilities when an Event Outside Our Control happens. \*We shall use all reasonable endeavours to meet any performance dates for the Services that we have agreed with you in writing, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

8.3 We will need certain information from you and/or require you to take certain action that is necessary for Us to provide the Services, for example, provision to Us of the Vehicle. We will contact you in writing about this. If you do not, after being asked by Us, provide Us with this information, and/or take the specified action or you provide Us with incomplete or incorrect information, We may make an additional charge of a reasonable sum to cover any extra work that is required. We will notify you of any such additional charge in advance, or We may terminate provision of the Services by giving you written notice. We will not be liable for any delay or non-performance where you have not provided this information to Us after We have asked, or where you do not agree to pay any such reasonable additional charges. If We terminate provision of the Services under this clause 8.3, this does not affect your obligation to pay any invoices We have already sent you.

8.4 We may have to change the scope of the Services from time to time and will seek your approval in advance of any such changes. For instance, We may have to deal with technical problems, or make improvements to the Vehicle from time to time. We will contact you regularly to let you know about the Services that We deem necessary.

8.5 If you do not pay Us for the Services when you are supposed to as set out in clause 10.8, We may suspend the Services with immediate effect until you have paid Us the outstanding amounts (except where you dispute an invoice under clause 10.11). We will contact you to tell you this. This does not affect Our right to charge you interest under clause 10.7.

## 9. IF THERE IS A PROBLEM WITH THE SERVICES

9.1 If you are a Consumer, in the unlikely event that there is any defect with the Services:

- (a) please contact Us and tell Us as soon as reasonably possible;
- (b) please give Us a reasonable opportunity to repair or fix any defect; and

(c) We will use every effort to repair or fix the defect as soon as reasonably practicable

You will not have to pay for Us to repair or fix a defect with the Services under this clause 9.1.

9.2 If you are a Consumer, you have legal rights in relation to Services not carried out with reasonable skill and care, or if the materials We use are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.

## 10. PRICE AND PAYMENT

10.1 The price of the Goods, Product and/or the Services will be set out in the Order Confirmation. Our prices may change at any time, but price changes will not affect Orders that you have already placed, unless agreed otherwise.

10.2 The charges for workshop Services shall either be on a fixed or time and materials basis as specified by Us on the Order Confirmation. Where the charges are on a time and materials basis:

(a) the charges shall be calculated in accordance with Our standard hourly fee rates, from time to time, as agreed with Us, as displayed in the reception of Our registered office, and/or as set out on the Website. Currently the hourly fee rate is £60.00 plus VAT;

(b) Our standard hourly fee rates for each individual person are calculated on the basis of each working day being from 8.30 am to 5.00 pm worked on Business Days;

(c) We shall be entitled to charge an overtime rate of 150 per cent of the standard hourly fee rate on a pro-rata basis for each part day or for any time worked by individuals engaged on the Services outside the hours referred to in clause 10.2(b);

(d) We shall be entitled to charge you for any expenses reasonably incurred by the individuals whom We engage in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Us for the performance of the Services, and for the cost of any materials; and

(e) \*All amounts payable by you under the Contract are exclusive of amounts in respect of VAT chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by Us to you, you shall, on receipt of a valid VAT invoice from Us, pay Us such additional amounts in respect of VAT as are chargeable on the supply of the Services, Goods and/or Product at the same time as payment is due for the supply of the Services, Goods and/or Product.

10.3 If you are a Consumer, Our Order Confirmation prices include VAT where applicable. However, if the rate of VAT changes between the date of the Order and the date of delivery or performance, We will adjust the rate of VAT that you pay, unless you have already paid for the Goods and/or Services in full before the change in the rate of VAT takes effect.

10.4 The prices for the Goods and/or Product exclude delivery costs, which will be added to the total amount due.

10.5 It is always possible that, despite Our best efforts, some of the Goods and/or Product We sell and/or Services we provide may be incorrectly priced. We will normally check prices as part of Our despatch procedures so that, where the Goods' correct price is less than Our stated price, We will charge the lower amount when dispatching the Goods to you. If the Goods' correct price is higher than the price stated in the Catalogue and/or on the Website, We will contact you to tell you and for your instructions. If the pricing error is obvious and unmistakable and could have reasonably been recognised by you as a mispricing, We do not have to provide the Goods to you at the incorrect (lower) price.

10.6 We reserve the right to:

(a) increase Our standard hourly fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. We will give You written notice of any such increase 2 months before the proposed date of the increase. If such increase is not acceptable to You, You shall notify Us in writing within 2 weeks of the date of notice and We shall have the right without limiting Our other rights or remedies to terminate the Contract by giving 2 weeks' written notice to You; and

(b) increase the price of the Goods, Services and/or Product, by giving notice to You at any time before delivery, to reflect any increase in the cost of the Goods, Services and/or Product to Us that is due to:

(i) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(ii) any request by you to change the delivery date(s), quantities or types of Goods, Services and/or Product ordered, any measurements you have provided, or the Specification; or

(iii) any delay caused by any of your instructions in respect of the Goods, Services and/or Product or failure by you to give Us adequate or accurate information or instructions in respect of the Goods, Services and/or Product.

10.7 In respect of Goods, Product and/or Services We shall invoice you on or at any time prior to delivery of the Goods, Product and/or Services.

10.8 You shall pay each invoice submitted by Us:

(a) within 30 days of the date of the invoice; and

(b) in full and in cleared funds to a bank account nominated in writing by Us.

10.9 \*Time for payment shall be of the essence of the Contract.

10.10 \*If you do not make any payment due to Us by the due date for payment, We may charge interest to you on the overdue amount at the rate of 3% per annum above the base lending rate of HSBC Bank plc from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay Us interest together with any overdue amount.

10.11 However, if you are a Consumer, if you dispute an invoice in good faith and contact Us to let Us know promptly after you have received an invoice that you dispute it, clause 10.10 will not apply for the period of the dispute.



- 10.12 \*You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. We may, without limiting Our other rights or remedies, set off any amount owing to Us by you against any amount payable by Us to you.
- 10.13 We will have, in addition to any other right or remedy available to Us, a lien and power of sale over the Vehicle and any and/or all other Goods and/or Product in Our possession belonging to you for all fees, costs and expenses charged under or in connection with the Contract. If any such sum remains unpaid (in full or in part) more than three months after it becomes due, We are entitled to:
- retain such Vehicle, Goods and/or Product in Our possession until full payment is made; and
  - dispose of the Vehicle, Goods and/or Product in such manner and at such price as We think fit on the expiry of 21 days' notice to You. Such notice must:
    - be given in writing;
    - be given in person or sent by first-class post to your last known address;
    - state the amount due; and
    - state Our intention to dispose of the Vehicle, Goods and/or Product unless the amount due is paid in full by the expiry of the notice period.
 Any notice given in person is deemed received at the time of delivery. Any notice sent by first-class post is deemed received on the second Business Day after posting to your last known address.
- 10.14 We will apply the proceeds of any disposal under clause 10.13(b) in the following order:
- payment of disposal costs;
  - payment of outstanding fees, costs and expenses charged under or in connection with this agreement;
  - payment of any other costs and expenses, including the cost of storage of and insurance for the storage of the Vehicle, Goods and/or Product during its retention pending disposal; and
  - payment of any remainder to Us.
- 10.15 You irrevocably appoint Us as your attorney to sign, execute and deliver on your behalf all deeds and documents and to do all acts and things necessary to enable the registration of Us as owner of the Vehicle, Goods and/or Product in exercise of the power of sale in clause 10.13.
- 11. OUR LIABILITY TO YOU: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 11.1 If you are a Consumer, if We fail to comply with these Terms, We are responsible for loss or damage you suffer that is a foreseeable result of Our breach of the Terms or Our negligence but We are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if it is an obvious consequence of Our breach or if it was contemplated by you and Us at the time we entered into this Contract.
- 11.2 If you are a Consumer, if We are installing the Goods or Product and/or providing Services to the Vehicle, We will make good any damage to the Vehicle caused by Us in the course of installation or performance. However, We are not responsible for the cost of repairing any pre-existing faults or damage to the Vehicle that We discover in the course of installation and/or performance by Us.
- 11.3 If you are a Consumer, We only supply the Goods and/or Services or Product for domestic and private use. You agree not to use the Goods and/or Services or Product for any commercial, business or re-sale purpose, and We have no Liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 11.4 We shall have no Liability to you if, without just cause, any monies due in respect of the Goods and/or Services have not been paid in full by the due date for payment
- 11.5 We shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by your continued use of defective Goods and/or Product after a defect has become apparent or suspected or should reasonably have become apparent to you.
- 11.6 \*We shall have no Liability for:
- any loss in value of the Vehicle and/or other damage suffered by you as a result of any delay in performance of the Services; or
  - the completion of performance of the Services occurring later than any race dates which you have notified to Us in respect of the Vehicle; or
  - any loss suffered by you as a result of any Event Outside Our Control, as defined in clause 12.2 below.
- 11.7 \*We shall have no Liability to you to the extent that you are covered by any policy of insurance arranged as a result of the Contract and you shall ensure that your insurers waive any and all rights of subrogation they may have against Us.
- 11.8 Subject to clause 11.11 below, We shall have no Liability to you for any of the following losses (whether direct or indirect):-
- \*consequential losses (including loss of profits and/or damage to goodwill);
  - economic and/or other similar losses;
  - special damages, compensation paid and/or payable and/or indirect losses; and/or
  - business interruption, loss of business, contracts and/or opportunity.
- 11.9 Our total Liability to you under and/or arising in relation to any Contract shall not exceed the amount paid by you to Us under the Contract.
- 11.10 If you are a Consumer, Our total Liability to you under and/or arising in relation to any Contract shall not exceed the amount paid by you to Us under the Contract.
- 11.11 We do not exclude or limit in any way Our liability for:
- death or personal injury caused by Our negligence or the negligence of Our employees, agents or subcontractors;
  - fraud or fraudulent misrepresentation;
  - breach of the terms implied by section 12 of the Sale of Goods Act 1979 and by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) as amended by the Consumer Contracts Act 2015, if applicable;
- breach of the terms implied by sections 13, 14 and 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 (description, satisfactory quality, fitness for purpose and samples) as amended by the Consumer Contracts Act 2015, if applicable; and
  - defective products under the Consumer Protection Act 1987.
- 11.12 \*Subject to clause 11.11, Our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid by you to Us under the Contract.
- 11.13 \*The terms implied by Sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by Sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.14 \*You shall indemnify Us against all Liability, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all and other reasonable professional costs and expenses) suffered or incurred by Us arising out of or in connection with any actual or alleged infringement by you of Our Intellectual Property Rights in the Goods and/or Products. In particular, you may not, without Our prior written consent:
- use Our name or logo in any way and/or in relation to your business and/or products;
  - advertise that you are re-selling our Goods and/or Products;
  - use any instructions enclosed with our Goods and/or Products in relation to any other products; or
  - modify any Goods and/or Products in any way prior to re-selling them. For the avoidance of doubt, you must not remove any instructions from the Goods and/or Products.
- 11.15 For the purposes of this section 11, Intellectual Property Rights means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 11.16 This clause 11 shall survive termination of the Contract.
- 12. EVENTS OUTSIDE OUR CONTROL**
- 12.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under these Terms that is caused by an Event Outside Our Control.
- 12.2 An Event Outside Our Control means any act or event beyond Our reasonable control including without limitation strikes, lock-outs or other industrial action by suppliers or other third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.
- 12.3 If an Event Outside Our Control takes place that affects the performance of Our obligations under these Terms:
- We will contact you as soon as reasonably possible to notify you; and
  - Our obligations under these Terms will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects Our delivery of Goods to you, We will arrange a new delivery date with you after the Event Outside Our Control is over. Where the Event Outside Our Control affects Our performance of Services to you, We will restart the Services as soon as reasonably possible after the Event Outside Our Control is over.
- 12.4 You may cancel the Contract if an Event Outside Our Control takes place and you no longer wish Us to provide the Goods and/or Services. Please see your cancellation rights under clause 13. We will only cancel the Contract if the Event Outside Our Control continues for longer than 4 weeks in accordance with Our cancellation rights in clause 13.
- 13. YOUR RIGHTS TO CANCEL AND APPLICABLE REFUND**
- 13.1 If you are a Consumer:
- before We begin to provide the Services or the Goods are delivered, you have the following rights to cancel an Order for Goods (other than Bespoke Goods and/or Products) and/or Services, including where you choose to cancel because We are affected by an Event Outside Our Control or if We change these Terms under clause 3.1 to your material disadvantage:
    - you may cancel any Order for Goods and/or Services at any time before We despatch the Goods or order the Goods from Our supplier, or the start date for the Services by contacting Us. We will confirm your cancellation in writing to you;
    - if you cancel an Order under clause 13.1(a) and you have made any payment in advance for Services that have not been provided to you, or Goods that have not been delivered to you, We will refund these amounts and any delivery charges to you;
    - however, if you cancel an Order for Services under clause 13.1(a) and We have already started work on your Order by that time, you will pay Us any costs We reasonably incurred in starting to fulfil the Order, and this charge will be deducted from any refund that is due to you or, if no refund is due to you, invoiced to you. We will tell you what these costs are when you contact Us. However, where you have cancelled an Order because of Our failure to comply with these Terms (except where We have been affected by an Event Outside Our Control), you do not have to make any payment to Us;
    - unfortunately, if you cancel an Order for Goods under clause 13.1(a) and We have already despatched your Goods to you, We will not be able to cancel your

Order until it is delivered or collected. In this case, if you return the Goods to Us, We will have to charge you the cost of collection or you will have to pay the cost of returning the Goods back to Us. This will not affect your refund for the Goods themselves, but we will not refund any charges for delivery and any charge for collection will be deducted from the refund that is due to you;

- (b) you have a legal right to change your mind within 14 days of receipt of the Goods, and you will receive a refund of the price you paid for the Goods and the cheapest cost of delivery that was available to you, provided that you return the Goods to Us. You will have to pay for the costs of returning the Goods to Us.

13.2 We may, at Our sole discretion, accept cancellation by you of an Order for Goods:

- (a) If you are a Consumer, after the 14 day period set out in clause 13.1(b) above; or
- (b) If you are a business at any time; provided that you return the Goods to Us and pay Us a handling charge of 15% of the price paid for the Goods.

13.3 If you cancel an Order for Goods, We are entitled to deduct Our handling charge from any refund that is due to you under this Contract. Any refunds that are payable to you will be based, if applicable, upon the exchange rate provided to Us by HSBC Bank plc from time to time.

13.4 Unfortunately, as the Product is made to your Specification and/or requirements, you will not be able to cancel your Order once the Product is made (but this will not affect your legal rights as a Consumer, if applicable, in relation to a Product that is faulty or not as described).

13.5 Once We have begun to provide the Services to you, you may cancel the Contract for the Services at any time by providing Us with at least 30 calendar days' notice in writing. Any advance payment you have made for Services that have not been provided will be refunded to you.

13.6 Once We have begun to provide the Services to you, you may cancel the Contract for Services with immediate effect by giving Us written notice if:

- (a) We break this contract in any material way and We do not correct or fix the situation within 60 days of you asking Us to in writing;
- (b) We go into liquidation or a receiver or an administrator is appointed over Our assets;
- (c) We change these Terms under clause 3.1 to your material disadvantage;
- (d) We are affected by an Event Outside Our Control.

#### 14. OUR RIGHTS TO CANCEL AND APPLICABLE REFUND

14.1 We may have to cancel an Order before the start date for the Services or before the Goods are delivered, due to an Event Outside Our Control or the unavailability of the Goods or (in the case of Services) key personnel or key materials without which We cannot provide the Services. If this happens:

- (a) We will promptly contact you to let you know;
- (b) if you have made any payment in advance for Services that have not been provided to you, or Goods that have not been delivered to you, We will refund these amounts to you;
- (c) where We have already started work on your Order for Services or Bespoke Goods, We will not charge you anything and you will not have to make any payment to Us.

14.2 Once We have begun to provide the Services to you, We may cancel the Contract for the Services at any time by providing you with at least 30 calendar days' notice in writing. If you have made any payment in advance for Services that have not been provided to you, We will refund these amounts to you.

14.3 We may cancel the Contract for Services at any time with immediate effect by giving you written notice if:

- (a) you do not pay Us when you are supposed to as set out in clause 10.8. This does not affect Our right to charge you interest under clause 10.10; or
- (b) you break the Contract in any other material way and you do not correct or fix the situation within 30 days of Us asking you to in writing.

14.4 \*Without limiting Our other rights or remedies, We may terminate the Contract with immediate effect by giving written notice to you if:

- (a) you commit a material breach of your obligations under this Contract and (if such breach is remediable) fail to remedy that breach within 14 days after receipt of notice in writing to do so;
- (b) you suspend, or threaten to suspend, payment of your debts or are unable to pay your debts as they fall due or admit inability to pay your debts or (being a company or limited liability partnership) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) have any partner to whom any of the foregoing apply;
- (c) you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors other than (where a company) for the sole purpose of a scheme for your solvent amalgamation with one or more other companies, or your solvent reconstruction;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up (being a company) other than for the sole purpose of a scheme for your solvent amalgamation with one or more other companies or your solvent reconstruction;
- (e) you (being an individual) are the subject of a bankruptcy petition or order;
- (f) your creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over you (being a company);
- (h) the holder of a qualifying charge over your assets (being a company) has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;

(j) any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.4(b) to clause 14.4(i) (inclusive);

(k) you suspend, threaten to suspend, cease or threaten to cease to carry on, all or substantially the whole of your business;

(l) your financial position deteriorates to such an extent that in Our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy; or

(m) you (being an individual) die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing your own affairs or become a patient under any mental health legislation.

14.5 Without limiting Our other rights or remedies, We may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under this Contract on the due date for payment.

14.6 \*Without limiting Our other rights or remedies, We may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between you and Us if you fail to pay any amount due under this Contract on the due date for payment, or if you become subject to any of the events listed in clause 14.4(b) to clause 14.4(m), or if We reasonably believe that you are about to become subject to any of them.

14.7 On termination of the Contract for any reason:

- (a) \*you shall immediately pay to Us all of Our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, We shall submit an invoice, which shall be payable by you immediately on receipt;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

#### 15. INFORMATION ABOUT US AND HOW TO CONTACT US

15.1 We are a company registered in England and Wales. Our company registration number is 01314890 and Our registered office is at The Garage, Sudbury Road, Yoxall, Burton on Trent, DE13 8NA.

15.2 If you have any questions or if you have any complaints, please contact Us. You can contact Us by telephoning Our customer service team at 01543 472214 or by e-mailing Us at [sales@bighealey.co.uk](mailto:sales@bighealey.co.uk).

15.3 If you wish to contact Us in writing, or if any clause in these Terms requires you to give Us notice in writing (for example, to cancel the contract for services which We have started to provide), you can send this to Us by e-mail, by hand, or by pre-paid post to Denis Welch Motors Ltd at Sudbury Road, Yoxall, Burton on Trent, Staffordshire, DE13 8NA or [sales@bighealey.co.uk](mailto:sales@bighealey.co.uk). We will confirm receipt of this by contacting you in writing. If We have to contact you or give you notice in writing, We will do so by e-mail, by hand, or by pre-paid post to the address you provide to Us in the Order.

#### 16. HOW WE MAY USE YOUR PERSONAL INFORMATION

16.1 We will use the personal information you provide to Us to:

- (a) provide the Goods, Product and/or Services;
- (b) process your payment for such Goods, Product and/or Services; and
- (c) inform you about similar products or services that We provide, but you may stop receiving these at any time by contacting Us.

16.2 You agree that We may pass your personal information to credit reference agencies and that they and We may keep a record of any search that they do.

16.3 We will not give your personal data to any other third party.

#### 17. OTHER IMPORTANT TERMS

17.1 We may transfer Our rights and obligations under these Terms to another organisation, and We will always notify you in writing if this happens, but this will not affect your rights or Our obligations under these Terms.

17.2 You may not transfer the benefit of the guarantee in clause 7 to any purchaser of your Goods and/or Product. You may only transfer your rights or your obligations under these Terms to another person if We agree in writing.

17.3 This Contract is between you and Us. No other person shall have any rights to enforce any of its terms.

17.4 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

17.5 If We fail to insist that you perform any of your obligations under these Terms, or if We do not enforce Our rights against you, or if We delay in doing so, that will not mean that We have waived Our rights against you and will not mean that you do not have to comply with those obligations. If We do waive a default by you, We will only do so in writing, and that will not mean that We will automatically waive any later default by you.

17.6 These Terms are governed by English law. You and We both agree to submit to the non-exclusive jurisdiction of the English courts. However, if you are a Consumer and are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are a Consumer and are a resident of Scotland, you may also bring proceedings in Scotland.

17.7 Alternative dispute resolution is a process where an independent body considers the facts of a dispute and seeks to resolve it, without you having to go to court. If you are a Consumer and are not happy with how we have handled any complaint, you may want to contact the alternative dispute resolution provider We use. You can submit a complaint to the National Conciliation Service via their website at <https://nationalconciliationservice.co.uk/>. In addition, please note that disputes may be submitted for online resolution to the European Commission Online Dispute Resolution platform.