

## Terms and Conditions

Document No 0712, Issue 1

### 1 INTERPRETATION

**1.1** In these Conditions the following words have the following meanings:

#### **Word Meaning**

"Buyer" the person(s), firm or company who purchases the Goods and/or the Services from Swindon Powertrain Ltd;

"Buyer Materials" any documents or other materials, and any data or other information provided by the Buyer to Swindon Powertrain Ltd relating to the Goods and/or the Services;

"Swindon Powertrain Ltd Materials" any documents or other materials, and any data or other information provided by Swindon Powertrain Ltd to the Buyer relating to the Goods and/or the Services;

"Swindon Powertrain Ltd" Swindon Powertrain Limited;

"Contract" any contract between Swindon Powertrain Ltd and the Buyer for the sale and purchase of the Goods and/or the supply and purchase of the Services, whether written or oral;

"Goods" any goods agreed in the Contract to be supplied to the Buyer by Swindon Powertrain Ltd (including any part or parts of them);

"Intellectual Property Rights" all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Services" any works or services agreed in the Contract to be supplied to the Buyer by Swindon Powertrain Ltd (including any part or parts of them);

**1.2** In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

**1.3** In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

**1.4** In these Conditions headings shall not affect the construction of these Conditions.

**1.5** References to any English legal term for any tax, right, action, remedy, court or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English legal term.

### 2 APPLICATION OF TERMS

**2.1** Subject to any variation under Condition 2.2, the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document). No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

**2.2** Any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a duly authorised representative of Swindon Powertrain Ltd.

**2.3** The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Swindon Powertrain Ltd which is not set out in the Contract. Nothing in this Condition shall exclude or limit Swindon Powertrain Ltd's liability for fraudulent misrepresentation.

**2.4** Each order for Goods and/or Services by the Buyer from Swindon Powertrain Ltd shall be deemed to be an offer by the Buyer to purchase Goods and/or Services subject to these Conditions.

**2.5** No order placed by the Buyer shall be deemed to be accepted by Swindon Powertrain Ltd until Swindon Powertrain Ltd issues a written acknowledgement of order or (if earlier) Swindon Powertrain Ltd delivers the Goods and/or provides the Services to the Buyer.

**2.6** The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

**2.7** Any quotation is given on the basis that no Contract shall come into existence until Swindon Powertrain Ltd despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date (provided that Swindon Powertrain Ltd has not withdrawn it), unless Swindon Powertrain Ltd and the Buyer agree otherwise.

**2.8** No order which has been accepted by Swindon Powertrain Ltd may be cancelled by the Buyer except with the prior consent in writing of Swindon Powertrain Ltd and provided that the Buyer indemnifies Swindon Powertrain Ltd in full against all losses, costs, damages, charges and expenses incurred by Swindon Powertrain Ltd as a result of the cancellation.

### **3 DESCRIPTION**

**3.1** Subject to Condition 7.1, the description of the Goods and/or the Services supplied by Swindon Powertrain Ltd under the Contract shall be as set out in Swindon Powertrain Ltd's quotation or as otherwise specified by Swindon Powertrain Ltd to the Buyer prior to the Buyer placing an order.

**3.2** All samples, drawings, descriptive matter, specifications and advertising issued by Swindon Powertrain Ltd and any descriptions or illustrations contained in Swindon Powertrain Ltd's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or the Services described in them and shall not form part of the Contract.

### **4 DELIVERY OF GOODS AND PERFORMANCE OF SERVICES**

**4.1** Unless otherwise agreed in writing by Swindon Powertrain Ltd, delivery of the Goods and/or performance of the Services shall take place at Swindon Powertrain Ltd's place of business.

**4.2** The Buyer shall take delivery of the Goods within 14 days of Swindon Powertrain Ltd giving notice that the Goods are ready for delivery.

**4.3** The Services supplied under the Contract shall be performed by Swindon Powertrain Ltd in accordance with Swindon Powertrain Ltd's acknowledgement of order.

**4.4** Any dates specified by Swindon Powertrain Ltd for delivery of the Goods and/or performance of the Services are intended to be an estimate and time for delivery and/or performance shall not be of the essence. If no dates are so specified, delivery and/or performance shall be within a reasonable time.

**4.5** Subject to the other provisions of these Conditions. Swindon Powertrain Ltd shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or performance of the Services (even if caused by Swindon Powertrain Ltd's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

**4.6** If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or Swindon Powertrain Ltd is unable to deliver the Goods on time for any reason due to the Buyer:

4.6.1 risk in the Goods shall pass to the Buyer;

4.6.2 the Goods shall be deemed to have been delivered; and

4.6.3 Swindon Powertrain Ltd may store the Goods until delivery, and the Buyer shall be liable for all related costs and expenses (including without limitation storage and insurance).

**4.7** If Swindon Powertrain Ltd delivers to the Buyer a quantity of Goods of up to 2% more or less than the quantity ordered by the Buyer, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.

**4.8** The quantity of any consignment of Goods as notified by Swindon Powertrain Ltd to the Buyer as being ready for delivery at Swindon Powertrain Ltd's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

**4.9** Swindon Powertrain Ltd may deliver the Goods and/or perform the Services in separate instalments. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

**4.10** Swindon Powertrain Ltd shall not be liable for any non-delivery of Goods and/or non-performance of the Services (even if caused by Swindon Powertrain Ltd's negligence) unless the Buyer gives written notice to Swindon Powertrain Ltd within 7 days of the date when the Goods and/or Services would in the ordinary course of events have been delivered/performed that Swindon Powertrain Ltd did not make the Goods ready for delivery or did not perform the Services.

**4.11** Any liability of Swindon Powertrain Ltd for non-delivery of the Goods and/or non-performance of the Services shall be limited to replacing the Goods and/or performing the Services within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods and/or Services.

## **5 RISK/TITLE IN GOODS**

**5.1** The Goods are at the risk of the Buyer from the time of delivery.

**5.2** Ownership of the Goods shall not pass to the Buyer until Swindon Powertrain Ltd has received in full (in cash or cleared funds) all sums due to it in respect of:

5.2.1 the Goods; and

5.2.2 all other sums which are or which become due to Swindon Powertrain Ltd from the Buyer on any account.

**5.3** Until ownership of the Goods has passed to the Buyer, the Buyer must:

5.3.1 hold the Goods on a fiduciary basis as Swindon Powertrain Ltd's bailee;

5.3.2 store the Goods (at no cost to Swindon Powertrain Ltd) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as Swindon Powertrain Ltd's property;

5.3.3 maintain the Goods in satisfactory condition insured on Swindon Powertrain Ltd's behalf for their full price against all risks to the reasonable satisfaction of Swindon Powertrain Ltd. On request the Buyer shall produce the policy of insurance to Swindon Powertrain Ltd; and

5.3.4 hold any proceeds of the insurance referred to in Condition 5.3.3 on trust for Swindon Powertrain Ltd and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

**5.4** The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

5.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value;

5.4.2 any such sale shall be a sale of Swindon Powertrain Ltd's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale; and

5.4.3 the Buyer shall hold any proceeds of any such sale on trust for Swindon Powertrain Ltd and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

**5.5** The Buyer's right to possession of the Goods shall terminate immediately if:

5.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

5.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between Swindon Powertrain Ltd and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

5.5.3 the Buyer encumbers or in any way charges any of the Goods.

**5.6** Swindon Powertrain Ltd shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Swindon Powertrain Ltd.

**5.7** The Buyer grants Swindon Powertrain Ltd, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

**5.8** Where Swindon Powertrain Ltd is unable to determine whether any Goods are the Goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by Swindon Powertrain Ltd to the Buyer in the order in which they were invoiced to the Buyer.

**5.9** On termination of the Contract, howsoever caused, Swindon Powertrain Ltd's (but not the Buyer's) rights contained in this Condition 5 shall remain in effect.

## **6 INTELLECTUAL PROPERTY RIGHTS**

**6.1** The Intellectual Property Rights in any Swindon Powertrain Ltd Materials shall, unless otherwise agreed in writing between the Buyer and Swindon Powertrain Ltd, belong to Swindon Powertrain Ltd, subject only to a licence in favour of the Buyer to use any Swindon Powertrain Ltd Materials necessary for the purposes of receiving the Services.

**6.2** The Intellectual Property Rights in any Buyer Materials shall, unless otherwise agreed in writing between the Buyer and Swindon Powertrain Ltd, belong to the Buyer. The Buyer warrants that any Buyer Materials and their use by Swindon Powertrain Ltd for the purpose of providing the Goods and/or Services shall not infringe the Intellectual Property Rights of any third party and the Buyer shall indemnify Swindon Powertrain Ltd against any loss, damages, costs, expenses or other claims arising from any such infringements.

**6.3** The Buyer shall obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the use of Buyer Material in all cases before the date on which Swindon Powertrain Ltd is to supply the Goods and/or Services.

**6.4** If Swindon Powertrain Ltd manufactures the Goods, or applies any process to the Goods, or provides the Services in accordance with a specification provided to Swindon Powertrain Ltd by the Buyer for those purposes, the Buyer shall indemnify Swindon Powertrain Ltd against all loss, damage costs and expenses awarded against or incurred by Swindon Powertrain Ltd in connection with or paid or agreed to be paid by Swindon Powertrain Ltd in settlement of any claim for infringement of any Intellectual Property Rights of any other person which results from Swindon Powertrain Ltd's use of the Buyer's specification.

## **7 PRICE**

**7.1** Unless otherwise agreed by Swindon Powertrain Ltd in writing, the price for the Goods and/or the Services shall be the price set out in Swindon Powertrain Ltd's quotation, valid on the date of delivery, deemed delivery or performance.

**7.2** Swindon Powertrain Ltd reserves the right to impose a minimum order charge.

**7.3** The price for the Goods and/or the Services shall be exclusive of any value added tax and all costs or charges in relation to loading and unloading, and, if applicable, any carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods and/or the Services.

## **8 PAYMENT**

**8.1** Unless otherwise agreed in writing, payment shall be made by the Buyer in cash in Pounds Sterling prior to delivery of the Goods or performance of the Services.

**8.2** Time for payment shall be of the essence.

**8.3** No payment shall be deemed to have been received until Swindon Powertrain Ltd has received cleared funds.

**8.4** All payments payable to Swindon Powertrain Ltd under the Contract shall become due immediately upon termination of the Contract.

**8.5** The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Swindon Powertrain Ltd to the Buyer.

**8.6** If the Buyer fails to pay Swindon Powertrain Ltd any sum due under the Contract, the Buyer shall be liable to pay interest to Swindon Powertrain Ltd on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of HSBC plc, accruing on a daily basis until payment is made, whether before or after any judgment. Swindon Powertrain Ltd reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

**8.7** Swindon Powertrain Ltd shall have a lien on any of the Buyer's equipment or goods in Swindon Powertrain Ltd's possession for any unpaid balance which the Buyer may owe to Swindon Powertrain Ltd.

## **9 QUALITY**

**9.1** Swindon Powertrain Ltd warrants that (subject to the other provisions of these Conditions) upon delivery, and for a period of 12 months from the date of delivery, the Goods shall:

9.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

9.1.2 be reasonably fit for use as component parts for automotive, aviation, marine, general power or locomotion applications, as the case may be; and

9.1.3 be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to Swindon Powertrain Ltd

in writing and Swindon Powertrain Ltd has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of Swindon Powertrain Ltd.

**9.2** Swindon Powertrain Ltd shall not be liable for a breach of any of the warranties in Condition 9.1 unless:

9.2.1 the Buyer gives written notice of the defect to Swindon Powertrain Ltd within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and  
9.2.2 Swindon Powertrain Ltd is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by Swindon Powertrain Ltd) returns such Goods to Swindon Powertrain Ltd's place of business at the Buyer's cost for the examination to take place there.

**9.3** Swindon Powertrain Ltd shall not be liable for a breach of any of the warranties in Condition 9.1 if:

9.3.1 the Buyer makes any further use of such Goods after giving notice pursuant to Condition 9.2.1; or  
9.3.2 the defect arises because the Buyer failed to follow Swindon Powertrain Ltd's oral or written instructions as to the storage, installation, use or maintenance of the Goods or (if there are none) good trade practice; or  
9.3.3 the Buyer alters or repairs such Goods without the written consent of Swindon Powertrain Ltd.

**9.4** Subject to Conditions 9.2 and 9.3, if any of the Goods do not conform with any of the warranties in Condition 9.1 Swindon Powertrain Ltd shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if Swindon Powertrain Ltd so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to Swindon Powertrain Ltd.

**9.5** If Swindon Powertrain Ltd complies with Condition 9.4 it shall have no further liability for a breach of any of the warranties in Condition 9.1 in respect of such Goods.

**9.6** Any Goods replaced shall belong to Swindon Powertrain Ltd and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12-month period.

**9.7** Swindon Powertrain Ltd warrants that (subject to the other provisions of these Conditions) the Services shall be performed using reasonable care and skill.

**9.8** If any of the Services do not conform with the warranty in Condition 9.7 Swindon Powertrain Ltd shall at its option re-perform such Services (or the defective part) or refund the price of such Services at the pro rata Contract rate.

**9.9** If Swindon Powertrain Ltd complies with Condition 9.8 it shall have no further liability for a breach of the warranty in Condition 9.7 in respect of such Services.

## **10 LIMITATION OF LIABILITY**

**10.1** Subject to Conditions 4 and 9, the following provisions set out the entire financial liability of Swindon Powertrain Ltd (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

10.1.1 any breach of these Conditions;  
10.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and  
10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

**10.2** All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

**10.3** Nothing in these Conditions excludes or limits the liability of Swindon Powertrain Ltd for

10.3.1 death or personal injury caused by Swindon Powertrain Ltd's negligence; or

10.3.2 any matter which it would be illegal for Swindon Powertrain Ltd to exclude or attempt to exclude its liability; or

10.3.3 fraud or fraudulent misrepresentation.

**10.4** Swindon Powertrain Ltd shall have no liability to the Buyer for any loss, damage, costs, expenses or other claims for compensation arising from any Buyer Materials or instructions provided by the Buyer relating to the Services which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late arrival or non-arrival, or any other fault of the Buyer.

**10.5** Subject to Conditions 10.2, 10.3 and 10.4:

10.5.1 Swindon Powertrain Ltd's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total value of the Goods and/or Services supplied under the Contract; and

10.5.2 Swindon Powertrain Ltd shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## **11 ASSIGNMENT**

**11.1** The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of Swindon Powertrain Ltd.

**11.2** Swindon Powertrain Ltd may assign the Contract or any part of it to any person, firm or company.

## **12 FORCE MAJEURE**

**12.1** Swindon Powertrain Ltd reserves the right to defer the date of delivery and/or performance or to cancel the Contract or reduce the volume of the Goods and/or Services ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Swindon Powertrain Ltd including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to Swindon Powertrain Ltd to terminate the Contract.

## **13 GENERAL**

**13.1** Each right or remedy of Swindon Powertrain Ltd under the Contract is without prejudice to any other right or remedy of Swindon Powertrain Ltd whether under the Contract or not.

**13.2** If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

**13.3** Failure or delay by Swindon Powertrain Ltd in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

**13.4** Any waiver by Swindon Powertrain Ltd of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

**13.5** No term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

**13.6** The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

#### **14 COMMUNICATIONS**

**14.1** All communications between the parties about the Contract shall be in English and in writing, and shall be given by delivery by hand at, or sent by prepaid registered first class post (airmail if to an address outside the country of posting) to Swindon Powertrain Ltd at: Swindon Powertrain Limited, Crampton Road , Swindon SN3 3JJ United Kingdom and to the Buyer at its registered office (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as either party may notify to the other from time to time.

**14.2** Communications given in accordance with Condition 14.1 shall be deemed to have been received:

14.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

14.2.2 if delivered by hand, on the day of delivery.