

# CAPRICORN AUTOMOTIVE LTD TERMS AND CONDITIONS OF SALE - 2022/2023

The customer's attention is drawn in particular to the provisions of clause 14.

## 1. Interpretation

### 1.1 Definitions:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 16.4.

**Contract:** the contract between CAPRICORN AUTOMOTIVE LTD and the Customer for the sale and purchase of the Goods in accordance with these

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 16.4.

**Customer:** the person or firm who purchases the Goods from CAPRICORN AUTOMOTIVE LIMITED.

**CAPRICORN AUTOMOTIVE LIMITED:** CAPRICORN AUTOMOTIVE LIMITED (registered in England and Wales with company number 02685331).

**Force Majeure Event:** an event or circumstance beyond a party's reasonable control.

**Goods:** the goods (or any part of them) set out in the Order.

**Online Order:** the Customer's order for the Goods, placed through CAPRICORN AUTOMOTIVE LIMITED's website at [www.capricornauto.co.uk](http://www.capricornauto.co.uk)

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form or the Customer's written acceptance of CAPRICORN AUTOMOTIVE LIMITED quotation as the case may be.

**Specification:** any specification for the Goods, including any related plans and drawings, that is agreed by the Customer and CAPRICORN AUTOMOTIVE LIMITED.

### 1.2 Interpretation:

(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(b) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(c) a reference to **writing** or **written** includes emails.

## 2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, unless either agreed to in writing and signed on behalf of CAPRICORN AUTOMOTIVE LIMITED or where exclusion of liability is rendered impossible by virtue of the Unfair Contract Terms Act 1977. In particular, no term or condition in any

Order given by the Customer which is inconsistent with these Conditions will apply.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 Where Goods are manufactured by CAPRICORN AUTOMOTIVE LIMITED in accordance with the Specification provided by the Customer, the Customer shall accept a quantity which may vary within a tolerance of 5% from the quantity actually ordered and in any event of any such variation CAPRICORN AUTOMOTIVE LIMITED may adjust the price accordingly.

2.4 The Customer accepts that Specifications as to performance shall be subject to usual tolerances and rejection limits.

2.5 The Order shall only be deemed to be accepted when CAPRICORN AUTOMOTIVE LIMITED issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.7 Any samples, drawings, descriptive matter or advertising produced by CAPRICORN AUTOMOTIVE LIMITED and any descriptions or illustrations contained in CAPRICORN AUTOMOTIVE LIMITED's catalogues, brochures, manuals and other like material are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. Nothing contained therein nor any representation of whatever kind shall be binding upon CAPRICORN AUTOMOTIVE LIMITED unless expressly incorporated in the Contract, and they shall not form part of the Contract nor have any contractual force. Specifications of weight and dimensions in such materials are approximate only, unless expressed to be an essential term of the Contract.

2.8 A quotation for the Goods given by CAPRICORN AUTOMOTIVE LIMITED shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

### **3. Orders**

3.1 Orders may be either by direct order at the prices stated in CAPRICORN AUTOMOTIVE LIMITED's current price list or, where CAPRICORN AUTOMOTIVE LIMITED has given a written quotation, on the basis of such quotation.

3.2 Prices stated in CAPRICORN AUTOMOTIVE LIMITED's current price list are exclusive of the cost of packing, carriage, insurance and VAT. Orders placed in accordance with this clause 3 are subject to CAPRICORN AUTOMOTIVE LIMITED's current minimum charge of £40.00. For the avoidance of doubt, this minimum charge does not apply to Online Orders.

3.3 All prices and quotations are tendered without commitment and are subject to withdrawal or variation at any time prior to an Order being accepted by CAPRICORN AUTOMOTIVE LIMITED.

3.4 In the case of price fluctuations of imported goods or raw materials or energy or sub-contract processes CAPRICORN AUTOMOTIVE LIMITED reserves the right to adjust sale prices to the Customer between the date of the Contract and the date of delivery.

3.5 All quotations are made on the understanding that the whole of the quantity quoted will be ordered; otherwise, CAPRICORN AUTOMOTIVE LIMITED reserves the right to revise the quotation.

3.6 In the event that Goods are ordered which have been produced according to a bespoke Customer specification, CAPRICORN AUTOMOTIVE LIMITED shall not accept any cancellation and/or return of such Goods by the Customer.

3.7 Subject to clause 3.8, in the event that Goods are ordered which have been produced according to CAPRICORN AUTOMOTIVE LIMITED standard specification, the Customer may cancel and/or return such

Goods provided always that:

- (a) the Goods remain unopened in their original packaging; and
- (b) CAPRICORN AUTOMOTIVE LIMITED will issue to the Customer a handling charge of 25% of the agreed price.

3.8 In the event that Goods are ordered on terms that they shall be called-off and delivered to the Customer at a future date or dates then all such Goods which shall not have been called-off by the Customer shall be despatched to the Customer on the final date for delivery stated in the Order or (in the absence of such final date for delivery) the expiry of six months following the date of the Order. If the Customer shall wish to cancel the Order in whole or in part before the said date of final delivery, CAPRICORN AUTOMOTIVE LIMITED will assess whether the remaining Goods set aside to meet the Order can be accepted into CAPRICORN AUTOMOTIVE LIMITED's main stock: if so, CAPRICORN AUTOMOTIVE LIMITED will issue to the Customer a handling charge of 25% of the agreed price; if not, CAPRICORN AUTOMOTIVE LIMITED will deliver the Goods in accordance with this clause and the Customer will make payment in full.

3.9 Due to the custom nature of our goods, we reserve the right to over / undersupply by 3 pieces or 5% (whichever is greater) with an appropriate price alteration.

#### **4. Placing an Order online and its acceptance**

4.1 A Customer wishing to place an Online Order should follow the onscreen prompts to place the Online Order. Each Online Order is an offer by the Customer to purchase the Goods specified in the Online Order subject to these Conditions.

4.2 CAPRICORN AUTOMOTIVE LIMITED's order process allows the Customer to check and amend any errors before submitting the Online Order to CAPRICORN AUTOMOTIVE LIMITED. The Customer should check the Online Order carefully before confirming it. The Customer is responsible for ensuring that the Online Order and any Specification submitted by the Customer is complete and accurate.

4.3 After placing an Online Order, the Customer will receive an email from CAPRICORN AUTOMOTIVE LIMITED acknowledging receipt of it and, subject only to clause 4.4, the Customer should note that this means that the Customer's Online Order has been accepted and the Contract has come into existence. The Customer may, in addition request if necessary an electronic confirmation order which CAPRICORN AUTOMOTIVE LIMITED shall provide as soon as possible following such request. This will only occur if the customer's account is not blocked or on hold.

4.4 If CAPRICORN AUTOMOTIVE LIMITED is unable to supply the Customer with the Goods for any reason, CAPRICORN AUTOMOTIVE LIMITED will inform the Customer of this by email and will not process the Customer's order. If the Customer has already paid for the Goods, CAPRICORN AUTOMOTIVE LIMITED will refund to the Customer the full amount including any delivery costs charged as soon as reasonably practicable.

4.5 Online Orders for Goods cannot be delivered to addresses outside the United Kingdom. An Online Order for Goods can be placed from outside the United Kingdom, but must be for delivery to an address within the United Kingdom. A Customer wishing to order Goods online for delivery outside the United Kingdom should refer to the local sales company in the relevant country.

#### **5. Goods**

5.1 The Goods are described in CAPRICORN AUTOMOTIVE LIMITED's catalogue as modified by any applicable Specification.

5.2 The Customer shall indemnify CAPRICORN AUTOMOTIVE LIMITED against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by CAPRICORN AUTOMOTIVE LIMITED in connection with any claim made against CAPRICORN AUTOMOTIVE LIMITED for actual or alleged infringement of a third party's intellectual property rights arising out of or in

connection with CAPRICORN AUTOMOTIVE LIMITED 's use of the Specification. This clause 5.2 shall survive termination of the Contract.

5.3 CAPRICORN AUTOMOTIVE LIMITED reserves the right to amend the Specification if required by any applicable statutory, regulatory or technical requirements.

## **6. Delivery and carriage charges**

6.1 CAPRICORN AUTOMOTIVE LIMITED shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note that shows any relevant Customer and Supplier reference numbers, and the type and quantity of the Goods (including the code number of the Goods, where applicable); and

(b) if CAPRICORN AUTOMOTIVE LIMITED requires the Customer to return any packaging materials to CAPRICORN AUTOMOTIVE LIMITED, that fact is clearly communicated to the Customer. The Customer shall make any such packaging materials available for collection at such times as CAPRICORN AUTOMOTIVE LIMITED shall reasonably request. Returns of packaging materials shall be at CAPRICORN AUTOMOTIVE LIMITED's expense.

6.2 CAPRICORN AUTOMOTIVE LIMITED shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after CAPRICORN AUTOMOTIVE LIMITED notifies the Customer that the Goods are ready.

6.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

6.4 CAPRICORN AUTOMOTIVE LIMITED does not give any warranty as to the date or time of delivery and no mention of a date or time of delivery in any Order, quotation or acceptance is binding on CAPRICORN AUTOMOTIVE LIMITED. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. CAPRICORN AUTOMOTIVE LIMITED shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide CAPRICORN AUTOMOTIVE LIMITED with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.5 If CAPRICORN AUTOMOTIVE LIMITED fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. CAPRICORN AUTOMOTIVE LIMITED shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide CAPRICORN AUTOMOTIVE LIMITED with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.6 If the Customer fails to accept delivery of the Goods within five Business Days of CAPRICORN AUTOMOTIVE LIMITED notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or CAPRICORN AUTOMOTIVE LIMITED's failure to comply with its obligations under the Contract, CAPRICORN AUTOMOTIVE LIMITED reserves the right to rely on the following clauses:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day after the day on which CAPRICORN AUTOMOTIVE LIMITED notified the Customer that the Goods were ready; and

(b) CAPRICORN AUTOMOTIVE LIMITED shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

6.7 If six Business Days after the day on which CAPRICORN AUTOMOTIVE LIMITED notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, CAPRICORN AUTOMOTIVE LIMITED may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

6.8 If CAPRICORN AUTOMOTIVE LIMITED delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.

6.9 Unless delivery in one consignment is specifically requested and recorded in the Contract, CAPRICORN AUTOMOTIVE LIMITED may deliver the Goods by instalments as they become available, and each part delivery shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6.10 CAPRICORN AUTOMOTIVE LIMITED will not accept responsibility for loss from a package, damage, wrong delivery, discrepancies or short shipments unless a written complaint is made to CAPRICORN AUTOMOTIVE LIMITED within five Business Days of delivery of the consignment and unless CAPRICORN AUTOMOTIVE LIMITED is given an opportunity of inspection.

6.11 CAPRICORN AUTOMOTIVE LIMITED will not accept responsibility for loss of a whole consignment or any separate package forming part of a consignment unless a complaint is made to CAPRICORN AUTOMOTIVE LIMITED within 10 Business Days after the date of the invoice relating to such consignment.

## 7. Quality

7.1 Every effort is made to ensure sound materials and good workmanship but CAPRICORN AUTOMOTIVE LIMITED gives no warranty, express or implied, of materials, workmanship, or fitness of Goods for any particular purpose whether such purpose be known to CAPRICORN AUTOMOTIVE LIMITED or not.

7.2 Where materials or workmanship are proved defective to the satisfaction of CAPRICORN AUTOMOTIVE LIMITED and the Goods were manufactured by CAPRICORN AUTOMOTIVE LIMITED, the Goods will be repaired or replaced free of charge provided that CAPRICORN AUTOMOTIVE LIMITED shall have been notified in writing of the defects within twelve calendar months of the date of the delivery.

7.3 CAPRICORN AUTOMOTIVE LIMITED shall not be liable for defects when the Customer fails to provide CAPRICORN AUTOMOTIVE LIMITED with sufficient time and the opportunity to carry out repairs and/or to deliver alternative Goods. In urgent or exceptional cases, CAPRICORN AUTOMOTIVE LIMITED may authorise the Customer to repair the goods himself or have them repaired by a third party and to claim reimbursement of the expenses involved therein. Such authorisation will only be effective if given in writing.

7.4 CAPRICORN AUTOMOTIVE LIMITED shall assume no liability for losses or damages in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 7.2;
- (b) the defect arises because the Customer failed to follow CAPRICORN AUTOMOTIVE LIMITED's oral or written instructions as to the storage, commissioning, assembly, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of CAPRICORN AUTOMOTIVE LIMITED following any drawing, design or Specification supplied by the Customer;
- (d) the defect arises as a result of any technical advice given by CAPRICORN AUTOMOTIVE LIMITED other than in writing;
- (e) the Customer alters, modifies or repairs such Goods without the prior written consent of CAPRICORN AUTOMOTIVE LIMITED;
- (f) the defect arises because of assembly work carried out by unqualified staff;
- (g) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;

(h) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;

(i) the defect arises because of natural wear and tear, incorrect or careless treatment, or unsuitable operation techniques;

(j) the defect arises because of goods or components which were not manufactured by CAPRICORN AUTOMOTIVE LIMITED;

(k) the defect arises because of corrosion, or penetration of dust or moisture to the Goods; and

(l) the defect arises as a result of factors beyond CAPRICORN AUTOMOTIVE LIMITED's control.

7.5 Except as provided in this clause 7, CAPRICORN AUTOMOTIVE LIMITED shall have no liability to the Customer in respect of the Goods' failure to comply with the Contract.

7.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

7.7 These Conditions shall apply to any repaired or replacement Goods supplied by CAPRICORN AUTOMOTIVE LIMITED.

7.8 The Ni-SiC plating process requires immersion processing. CAPRICORN AUTOMOTIVE LIMITED will try to minimise the impact of this however some degradation/dicolouration must be expected to areas other than the bore surfaces themselves.

## **8. Title and risk**

8.1 The risk in the Goods shall pass to the Customer on completion of delivery.

8.2 Title to the Goods shall not pass to the Customer until the earlier of:

(a) CAPRICORN AUTOMOTIVE LIMITED receives payment in full (in cash or cleared funds) for the Goods and any other goods that CAPRICORN AUTOMOTIVE LIMITED has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

(b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 8.4.

8.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as CAPRICORN AUTOMOTIVE LIMITED's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify CAPRICORN AUTOMOTIVE LIMITED immediately if it becomes subject to any of the events listed in clause 13.1; and

(e) give CAPRICORN AUTOMOTIVE LIMITED such information relating to the Goods as CAPRICORN AUTOMOTIVE LIMITED may require from time to time.

8.4 Subject to clause 8.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before CAPRICORN AUTOMOTIVE LIMITED receives payment for the Goods. However, if the

Customer resells the Goods before that time:

- (a) it does so as principal and not as CAPRICORN AUTOMOTIVE LIMITED's agent; and
- (b) title to the Goods shall pass from CAPRICORN AUTOMOTIVE LIMITED to the Customer immediately before the time at which resale by the Customer occurs.

8.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1, then, without limiting any other right or remedy CAPRICORN AUTOMOTIVE LIMITED may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) CAPRICORN AUTOMOTIVE LIMITED may at any time:
  - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
  - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **9. Price and payment**

9.1 The price of the Goods shall be the price set out in the Order, once accepted or adjusted by CAPRICORN AUTOMOTIVE LIMITED in accordance with these Conditions (including Condition 9.2) or, if no price is quoted, the price set out in CAPRICORN AUTOMOTIVE LIMITED's published price list in force as at the date of delivery.

9.2 CAPRICORN AUTOMOTIVE LIMITED may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond CAPRICORN AUTOMOTIVE LIMITED's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give CAPRICORN AUTOMOTIVE LIMITED adequate or accurate information or instructions.

### **9.3 The price of the Goods:**

- (a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to CAPRICORN AUTOMOTIVE LIMITED at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

9.4 CAPRICORN AUTOMOTIVE LIMITED will invoice the Customer for the Goods or any consignment of them on the date of despatch.

9.5 The Customer shall pay the invoice in full and in cleared funds within 30 calendar days of the end of month in which the invoice is dated. Payment shall be made to the bank account nominated in writing by CAPRICORN AUTOMOTIVE LIMITED. Time for payment is of the essence.

9.6 If the Customer fails to make any payment due to CAPRICORN AUTOMOTIVE LIMITED under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per month. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.7 CAPRICORN AUTOMOTIVE LIMITED shall be entitled to full reimbursement of all legal fees and costs incurred in the collection of moneys owing in the event that the Customer fails to make payment in accordance with clause 8.5 provided that such legal fees and costs have been reasonably incurred and are reasonable in amount.

9.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). CAPRICORN AUTOMOTIVE LIMITED may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by CAPRICORN AUTOMOTIVE LIMITED to the Customer.

9.9 If the Customer commits an act of bankruptcy or, being a company, goes into liquidation (otherwise than a voluntary liquidation for the purposes of reconstruction or amalgamation) or has a Receiver appointed, CAPRICORN AUTOMOTIVE LIMITED may (without prejudice to the terms of this clause 8) suspend deliveries and/or determine the Contract.

9.10 In the event of the determination of the Contract for any reason the Customer will be liable to pay forthwith for all work done and materials supplied and may also be liable for damages as for a wrongful repudiation.

9.11 If any Goods are returned through no fault of CAPRICORN AUTOMOTIVE LIMITED, CAPRICORN AUTOMOTIVE LIMITED will apply a handling charge in accordance with clause 3.6.

## **10. Copyright, Patents, etc.**

10.1 CAPRICORN AUTOMOTIVE LIMITED retains all copyrights, patents and the right of legal protection on registered designs in its drawing, diagrams, software, documents and equipment. Drawings, specifications, documents, etc. appended to quotations or forwarded to the Customer are for the Customer's personal use only. They may be neither copied in whole or in part, nor made accessible to third parties without CAPRICORN AUTOMOTIVE LIMITED's written consent.

## **11. Health and Safety at Work**

The Customer will ensure that the Goods are properly and safely installed in accordance with any instructions that shall have been supplied by CAPRICORN AUTOMOTIVE LIMITED and with good trade practice and that they will be safe and without risk to health or safety when used.

## **12. Installation and Commissioning**

12.1 These Conditions shall apply where appropriate to the installation and commissioning of any equipment by CAPRICORN AUTOMOTIVE LIMITED.

12.2 The cost of installation and commissioning shall in each case be charged for in addition to the cost of any Goods supplied. Unless otherwise agreed in writing by CAPRICORN AUTOMOTIVE LIMITED such work shall be charged at the hourly rate applicable to personnel engaged. The Customer shall reimburse CAPRICORN AUTOMOTIVE LIMITED at cost for all material and expenses. Such charges may be levied in all cases where through no fault of CAPRICORN AUTOMOTIVE LIMITED it shall prove impossible to carry out the work on time or in accordance with the agreed standards or Specification or the work required exceeds that anticipated by the parties.

12.3 The hours engaged in such installation and commissioning work shall be recorded by CAPRICORN AUTOMOTIVE LIMITED's personnel and verified by the Customer at intervals of no more than one week. If the Customer shall fail to verify the records, then CAPRICORN AUTOMOTIVE LIMITED shall submit an invoice on the basis of the records as drawn.

12.4 The Customer shall ensure that adequate accommodation and facilities are available for such installation and commissioning work and that all equipment is ready and available and in a fit state and condition. If the Customer shall fail to comply with those requirements it shall compensate CAPRICORN AUTOMOTIVE LIMITED for all time wasted by CAPRICORN AUTOMOTIVE LIMITED's personnel.

### 13. Termination

13.1 Without limiting its other rights or remedies, CAPRICORN AUTOMOTIVE LIMITED may terminate this Contract with immediate effect by giving written notice to the Customer if:

(a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;

(b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the Customer's financial position deteriorates to such an extent that in CAPRICORN AUTOMOTIVE LIMITED's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.2 Without limiting its other rights or remedies, CAPRICORN AUTOMOTIVE LIMITED may suspend provision of the Goods under the Contract or any other contract between the Customer and CAPRICORN AUTOMOTIVE LIMITED if the Customer becomes subject to any of the events listed in clause 13.1(a) to clause 13.1(d), or CAPRICORN AUTOMOTIVE LIMITED reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

13.3 Without limiting its other rights or remedies, CAPRICORN AUTOMOTIVE LIMITED may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

13.4 On termination of the Contract for any reason the Customer shall immediately pay to CAPRICORN AUTOMOTIVE LIMITED all of CAPRICORN AUTOMOTIVE LIMITED's outstanding unpaid invoices and interest.

13.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

13.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

### 14. Limitation of liability

14.1 Nothing in these Conditions shall limit or exclude CAPRICORN AUTOMOTIVE LIMITED's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

(d) any matter in respect of which it would be unlawful for CAPRICORN AUTOMOTIVE LIMITED to exclude or restrict liability.

14.2 Subject to clause 14.1:

(a) CAPRICORN AUTOMOTIVE LIMITED shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any

indirect or consequential loss arising under or in connection with the Contract; and

(b) CAPRICORN AUTOMOTIVE LIMITED's total liability to the Customer 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 price of the Goods (or propitiate price of the Goods); and

(c) Except in respect of death or personal injury caused by the CAPRICORN AUTOMOTIVE LIMITED's negligence the Customer hereby undertakes to indemnify and hold harmless CAPRICORN AUTOMOTIVE LIMITED from and against any and all such losses costs liabilities and expenses including special or consequential loss or damages arising out of and in connection with any and all liabilities and obligations of the CAPRICORN AUTOMOTIVE LIMITED expressly or impliedly assumed by the Customer and any and all actions suits proceedings claims demands assessments and judgments in respect of any of the liabilities and obligations referred to in this Contract.

## **15. Force majeure**

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for eight weeks, the party not affected may terminate this Contract by giving four weeks written notice to the affected party.

## **16. General**

### **16.1 Assignment and other dealings.**

(a) CAPRICORN AUTOMOTIVE LIMITED may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of CAPRICORN AUTOMOTIVE LIMITED.

### **16.2 Confidentiality.**

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 16.2(b). For the purposes of this clause, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 16.2; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

### **16.3 Entire agreement.**

(a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it

shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

16.4 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.5 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16.7 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.7(a); if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

16.8 Third party rights. No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

16.9 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

16.10 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

16.11 Use of product: Nickel silicon carbide bore coating. The use of compatible rings, piston skirt coating, correct fitting clearance and bedding in procedure are beyond our responsibility. The Customer is responsible for requesting the written technical documentation from CAPRICORN AUTOMOTIVE LTD for further details of suggested practice.

16.12. Block machining: Removal of deck face material and work-holding from crank centre-line

16.12.1 The Customer must supply to CAPRICORN AUTOMOTIVE LTD main caps and fixings to enable work-holding off the crank-bore for the pre-plate machining.

16.12.2 Due to non-flatness or geometry errors CAPRICORN AUTOMOTIVE LTD may require up to 0.2mm of material to be machined from the top face.

16.13. Block plating: Additional conditions

16.13.1 CAPRICORN AUTOMOTIVE LTD must receive the block in good condition free of all fixings and ancillaries. Furthermore, bore condition must be free of damage, and porosity such that clean up through boring will be achieved with a 0.15mm (diameter) boring operation over the required stated size.

16.13.2 Goods supplied by the customer to CAPRICORN AUTOMOTIVE LTD must be free of oil, grease, or other contamination. Should goods be unsuitable for processing CAPRICORN AUTOMOTIVE LTD reserves the right to charge the customer in full for any remedial work.

16.13.3 CAPRICORN AUTOMOTIVE LTD are not liable for any damage that is discovered on customer goods after cleaning or processing.

16.13.4 The required bore size must be supplied to tolerance given.

16.13.5 If block clean-up via boring is not achieved due to pre-existing damage/porosity and it is not, therefore, possible to plate, CAPRICORN AUTOMOTIVE LTD reserves the right to charge the customer £250 plus VAT to cover the work incurred.

16.14 Risk and property: If the Customer supplies products ('the Products') to CAPRICORN AUTOMOTIVE LTD for the performance of the Services the following provisions shall apply:-

16.14.2. The Customer shall ensure that the Products are sent to CAPRICORN AUTOMOTIVE LTD properly packed and in an undamaged condition:

16.14.2. The Customer shall notify CAPRICORN AUTOMOTIVE LTD in Writing if the products have special finishes or are vulnerable to certain conditions;

16.14.3. The Customer shall notify CAPRICORN AUTOMOTIVE LTD in Writing if the Products are dangerous or potentially hazardous.

16.14.4. The Customer shall notify us in Writing if the Products are of high value and shall reimburse CAPRICORN AUTOMOTIVE LTD for any additional insurance premium which may be required to insure the Products while on our premises. Unless such requirements are met CAPRICORN AUTOMOTIVE LTD shall not be responsible for insuring the Products while in CAPRICORN AUTOMOTIVE LTD's custody and control nor shall CAPRICORN AUTOMOTIVE LTD be liable to the customer in respect of the Products for a total in excess of £25,000;

16.14.5. CAPRICORN AUTOMOTIVE LTD shall be entitled to general lien over the products while they are in CAPRICORN AUTOMOTIVE LTD's custody and control for the unpaid price of all goods and/or services supplied by CAPRICORN AUTOMOTIVE LTD to the Customer under this contract or any other contract.

16.15. Any jigs and tooling provided by CAPRICORN AUTOMOTIVE LTD in connection with the Goods or Services shall remain CAPRICORN AUTOMOTIVE LTD's property at all times but will remain at CAPRICORN AUTOMOTIVE LTD's premises until scrapped or replaced, at which time it will be disposed of by CAPRICORN AUTOMOTIVE LTD.