

1. **DEFINITIONS AND INTERPRETATION**

In these standard terms and conditions:

1.1 the following words and expressions shall have the following meanings unless the context otherwise requires:

"Business Day" a day other than a Saturday or Sunday or a day which is a public or bank holiday in England and/or Wales

"Company" I M Kelly Automotive Limited

"Confidential Information" all information in respect of the business of the Company including know-how and other matters connected with the Goods and/or Services, information concerning the Company's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Company and of such persons and any other information which, if disclosed, will be liable to cause harm to the Company

"Contract" the contract between the Company and the Seller for the sale and purchase of the Goods and/or supply of the Services formed in accordance with **Condition 2**

"Goods" any goods or Tools which the Seller supplies to the Company (including any of them or any part of them) under a Contract

"Insolvent" the Seller is Insolvent where it:

- (a) proposes or passes a resolution for its winding up or in the case of a limited liability partnership proposes or determines that it will be wound up;
- (b) is subject to an application to or order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off;
- (c) enters administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court;
- (d) proposes, makes or is subject to, a company voluntary arrangement or a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement under Part 26 Companies Act 2006;
- (e) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income;
- (f) ceases to trade or appears, in the reasonable opinion of the Company, to be likely to cease to trade;
- (g) is unable to pay its debts within the meaning of section 123 Insolvency Act 1986; or
- (h) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction

"Intellectual Property Rights" all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions

"Order" any purchase order of the Company for the Goods and/or Services incorporating these Terms and Conditions

"Order Schedule" any schedule annexed to the Order

"Prices" the prices set out in the Order

"Quality Suppliers Requirements Manual" the manual setting out the quality standards to be achieved by the Seller

"Seller" the person from whom the Company orders the Goods and/or Services

"Services" any services which the Company receives from the Seller (including any of them or any part of them) under a Contract

"Specification" in relation to the Tools, the technical specifications of those Tools including, without limitation, all preparatory, design and development materials which relate to

the Tools; all information of any description which explains the structure, design, operation, functionality of the Tools; all information of any description which relates to the maintenance and/or support of the Tools

"Tools" all tools created from a Specification provided to the Seller from the Company

"Terms and Conditions" these standard terms and conditions of purchase together with any special terms agreed in writing between the Seller and the Company as specified on the front of the Order.

1.2 all headings are for ease of reference only and shall not affect the construction or interpretation of the Terms and Conditions;

1.3 unless the context otherwise requires:

1.3.1 references to the singular include the plural and vice versa and references to any gender include every gender;

1.3.2 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);

1.4 references to any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force as at the date of the Contract; and

1.5 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.

FORMATION AND INCORPORATION

2. Subject to any variation under **Condition 2.6**, the Contract will be upon the Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Seller purports to apply under any acknowledgement or confirmation of order, quotation, specification, delivery note, invoice or similar document, whether or not such document is referred to in the Contract.

2.2 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Seller in accordance with these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of:

- 2.3.1 the Seller issuing written acceptance of the Order; or
- 2.3.2 any act by the Seller consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence

2.4 Delivery of the Goods or commencement of performance of the Services will be deemed conclusive evidence of the Seller's acceptance of the Terms and Conditions.

2.5 The Seller may not cancel the Contract. Any order which the Seller has accepted may only be cancelled by the Company if a notice of cancellation is received by the Seller not less than 14 days before the agreed delivery date in which event the Company's sole liability will be to pay to the Seller fair and reasonable compensation for work undertaken in accordance with the Order Schedule, if applicable, or if no Order Schedule has been provided to the Seller, for work-in-progress at the time of cancellation, but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.

2.6 Save as otherwise expressly provided in the Contract, no variation to the Terms and Conditions shall be effective unless it is in writing and signed by a duly authorised representative on behalf of the Company.

THE GOODS AND SERVICES

3.1 The quantity and description of the Goods and/or Services will be as set out in the Order and/or the Order Schedule, as applicable, supplied or advised by the Company to the Seller with or before the Order.

3.2 The Seller will comply with all applicable standards, regulations and other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and/or provision of the Services.

3.3 The Company will have the right to inspect and test the Goods at any time prior to delivery. The Seller will not unreasonably refuse any request by the Company to carry out such inspection and testing and will provide the Company with all facilities reasonably required.

3.4 If as the result of such inspection or testing the Company is not satisfied that the Goods will comply in all respects with the Contract and the Company so informs the Seller within 30 days of inspection or testing, the Seller will take all steps necessary to ensure compliance. Without prejudice to any other rights of the Company under the Contract, any failure of this obligation by the Seller will be deemed to

	be a material breach which is not capable of remedy entitling the Company to terminate the Contract under Condition 12.1.1 .		or remedies which the Company may have against the Seller including the right to recover any amount overpaid or wrongfully paid to the Seller.
3.5	Notwithstanding any such inspection or testing, the Seller will remain fully responsible for the Goods and any such inspection or testing will not diminish or otherwise affect the Seller's obligations under the Contract.	6.	INSTALMENTS
3.6	The Seller acknowledges that precise conformity of the Goods and Services with the Contract is of the essence of the Contract and the Company will be entitled to reject the Goods or terminate the Contract under Condition 12.1.1 if the Goods or Services are not in conformance with the Contract, however slight the breach may be. Any breach of this condition is deemed to be a material breach which is not capable of remedy.	6.1	The Seller may not deliver the Goods by separate instalments or perform the Services in stages or invoice the Price for an instalment separately unless agreed in writing by the Company. If the Company does agree, the Contract will be construed as a separate Contract in respect of each instalment or stage, and without prejudice to any other right or remedy, the Company will have the right, but not the obligation, to:
3.7	The Company may at any time make changes in writing relating to the Order, including changes in the drawings or specifications, method of shipment, quantities, packing or time or place of delivery. If such changes result in an increase in cost of, or time required for, performance of the Contract an equitable adjustment will be made to the price, delivery schedule or both. Any such claim or adjustment must be approved by the Company in writing before the Seller proceeds with such changes.	6.2	treat all the Contracts for the total Order as repudiated if the Seller fails to deliver or perform any instalment or stage; and
3.8	In respect of the Goods and Services the Seller will maintain and observe quality control and supplier quality assurance standards in accordance with the requirements of the Company, its customs, relevant British Standards and statutory and regulatory bodies.	6.3	reject any or all of the instalments for the total Order if the Company is entitled to reject any one instalment.
3.9	The Seller will maintain detailed quality control and manufacturing records for the period of at least 6 years from the date of supply of Goods and/or performance of the Services.	7.	DELIVERY
4.	PRICE	7.1	The Goods will be delivered to the address stated on the Order and/or Order Schedule, as applicable. The Seller will off-load the Goods at its own risk as directed by the Company. The Services will be provided at the address stated on the Order and/or Order Schedule, as applicable.
4.1	Subject to Condition 4.2 , the only monies to be paid by the Company in connection with the supply of the Goods and the performance of the Services are the Prices which shall be inclusive of all costs and expenses incurred by the Seller including all packaging, insurance, carriage and delivery costs.	7.2	The Goods and/or Services will be delivered and/or performed during the Company's normal office hours on the date or within the period specified in the Order and/or Order Schedule, as applicable, or if no such period is specified then on the next Business Day after the date of the Contract. Time for delivery and/or performance will be of the essence.
4.2	Any sum payable under the Contract is exclusive of value added tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which shall be payable in addition to that sum in the manner and at the rate prescribed by law from time to time, subject to receipt by the paying party of a valid value added tax invoice.	7.3	The Seller will ensure that:
4.3	The Seller shall not be entitled to increase the Prices in any circumstances.	7.3.1	the Goods are marked in accordance with the Company's instructions and any applicable regulations or requirements of the carrier and properly packed and stored so as to reach their destination in an undamaged condition;
5.	PAYMENT	7.3.2	each delivery is accompanied by a prominently displayed delivery note which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered; and
5.1	Subject to the Seller performing its obligations in accordance with the terms of the Contract, the Company shall pay the Prices to the Seller in accordance with this Condition 5 .	7.3.3	the Company is supplied on delivery of the Goods with all operating and safety instructions, warning notices clearly displayed and other information as may be necessary for their proper use, maintenance and repair for the Company to accept delivery of the Goods.
5.2	The Seller shall invoice the Company for the Prices for the Goods following delivery of the Goods in accordance with Condition 7.1 .	7.4	No Goods or Services supplied under the Contract earlier than the date for delivery or performance, will be accepted or paid for unless the Company notifies the Seller in writing of its intention to accept and pay for the same.
5.3	The Seller shall invoice the Company for the Prices for the Services following performance of the Services.	7.5	Without prejudice to the Company's other rights under the Contract, if the Goods are delivered to the Company in excess of the quantities ordered, the Company will be entitled to retain but will not be bound to pay for the excess.
5.4	Each invoice shall be a valid value added tax invoice and shall be sent to the Company in accordance with Condition 16 (or such other address and/or individual as may be notified by the Company to the Seller from time to time):	7.6	The Company will not be deemed to have accepted the Goods until it has had 30 days to inspect them following delivery. The Company will also have the right to reject the Goods as though they had not been accepted for 30 days after any latent defect in the Goods has become apparent.
5.5	Subject to Condition 5.7 , each invoice shall be payable by the Company within 37 days following the month in which the invoice is received by the Company. All payments shall be made in pounds sterling in cleared funds by BACS (Bank Automated Clearing System) transfer to the bank account nominated by the Seller from time to time.	7.7	If the Seller requires the Company to return any packaging materials for the Goods to the Seller, any such packaging materials shall only be returned to the Seller at the cost of the Seller.
5.6	Notwithstanding any purported contrary appropriation by the Seller, the Company shall be entitled, by giving written notice to the Seller, to appropriate any payment by the Company to any invoice issued by the Seller.	8.	RISK / OWNERSHIP
5.7	The Company shall be entitled to set-off any liability which the Seller has to it against any liability which it has to the Seller, whether such liability is present or future, liquidated or unliquidated, under the Contract or any other contract between the parties or other cause of action.	9.	Risk in and ownership of the Goods will pass to the Company on delivery.
5.8	Subject to Condition 5.7 , if any sum payable under the Contract is not paid on or before the due date for payment the Seller shall be entitled to charge the Company interest on that sum at 4% per annum above the base lending rate from time to time of National Westminster Bank Plc from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis. The parties agree that this Condition 5.6 is a substantial remedy for late payment of any sum payable under the Contract, for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.	9.1	THE COMPANY'S PROPERTY
5.9	No payment made by the Company shall constitute acceptance by the Company of the Goods or otherwise prejudice any rights	9.1.1	All materials, equipment, dies and moulds supplied by the Company to the Seller, and all Tools, will at all times:
		9.1.2	be and remain the exclusive property of the Company;
		9.1.3	be held by the Seller in safe custody at its own risk;
		9.1.4	be maintained and kept in good condition by the Seller until returned to the Company;
		9.1.5	not be disposed of other than in accordance with the Company's written instructions; and
		9.2	not be used otherwise than as authorised by the Company in writing.
		9.3	Where the Seller manufactures Tools all Intellectual Property created shall from the time it arises be the property of the Company. The Seller assigns with full title guarantee to the Company all Tools created and Intellectual Property and all statutory or common law rights attaching to them.
		9.4	The Seller undertakes that it will, at the Company's cost, execute such further documents and do such acts as may be necessary for securing, confirming or vesting absolutely the Company's full rights, title and

interest in the Tools and Intellectual Property in the Company and for conferring on the Company all rights of action in respect of any claim for infringement by third parties.

10. INTELLECTUAL PROPERTY

10.1 The Seller warrants that neither the Goods, nor their use, resale or importation, infringes the Intellectual Property Rights of any person except to the extent that any infringements arise from any specifications, drawings, samples or descriptions provided by the Company.

11. WARRANTY INDEMNITY AND CANCELLATION

11.1 The Seller warrants, represents and undertakes to the Company that the Goods and Services:

11.1.1 will be of satisfactory quality within the meaning of the Sale of Goods Act 1979, and fit for any purpose held out by the Seller or made known to the Seller either in writing or orally at or prior to the Contract being formed;

11.1.2 will be free from defects in design, material and workmanship;

11.1.3 will correspond in every respect with any specifications, drawings, samples or descriptions provided by the Company;

11.1.4 will correspond in every respect with any standard specifications, drawings, samples or descriptions of the Seller, save to the extent inconsistent with condition 11.1.3;

11.1.5 will comply with all statutory requirements, regulations and voluntary codes of conduct relating to the Goods and/or Services and their sale and supply and performance;

11.1.6 will be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health;

11.1.7 will comply in all respects with the Quality Suppliers Requirements Manual and/or such other quality standards as are communicated from the Company to the Seller from time to time;

11.1.8 will be performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with the Contract; and

11.1.9 will be performed to such standards of quality generally observed in the industry for similar services.

11.2 Without prejudice to any other rights or remedies of the Company (whether express or implied), if the Seller breaches any terms of the Contract (including a failure or delay in delivery) or the Company terminates the Contract in accordance with **Condition 12** then the Company may (but will not be obliged) to, whether or not the Goods have been accepted:

11.2.1 cancel any or all remaining instalments or stages if the Contract has not already been terminated;

11.2.2 refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Seller attempts to make;

11.2.3 recover from the Seller any additional expenditure reasonably incurred by the Company in obtaining the Goods and/or Services in substitution from another supplier;

11.2.4 claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Seller's breach of the Contract or failure to deliver the Goods and/or perform the Services on the due date or at all; and/or

11.2.5 for a period of 60 months from the date of delivery (or such other period as is specified by the Company in the Order and/or Order Schedule), in respect of Goods which do not conform with the provisions of **Condition 11.1**, oblige the Seller, at the Company's option, forthwith to replace or repair such Goods free of charge and any repaired or replaced Goods will be guaranteed on the terms of this condition for the unexpired portion of the 60 month period.

11.3 These conditions shall extend to any substituted or remedial Services and/or repaired or replacement Goods supplied by the Seller.

11.4 The Seller will indemnify, keep indemnified and hold harmless the Company from and against all costs (including the cost of enforcement), expenses, liabilities (including any tax liability)

injuries, direct, indirect and consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and legal costs (on a full indemnity basis) and judgments which the Company incurs or suffers as a consequence of any direct or indirect breach or negligent performance by the Seller or failure or delay in performance of the terms of the Contract.

11.5 For the duration of the Contract the Seller shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Company's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12. TERMINATION

12.1 If the Seller:

12.1.1 commits a material breach of the Contract which cannot be remedied;

12.1.2 commits a breach of clauses 11.1 or 7.2 which can be remedied but fails to remedy that breach in accordance with the recovery plan provided to the Seller from the Company;

12.1.3 commits a material breach of the Contract which can be remedied but fails to remedy that breach within 14 days of a written notice setting out the breach and requiring it to be remedied being given by the Company,

the Company may terminate the Contract immediately by giving written notice to that effect to the Seller.

12.2 The Company may terminate the Contract immediately by giving written notice to that effect to the Seller if the Seller becomes Insolvent.

12.3 On expiry or termination of this Contract the Seller will return promptly to the Company all Company property, Specifications and Tools in its possession relating to the Goods.

12.4 Following expiry or termination of the Contract:

12.4.1 **Conditions 10, 11 and 13** shall continue in force, together with any other Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract; and

12.4.2 all other rights and obligations shall immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.

13. CONFIDENTIALITY

13.1 The Seller will keep confidential any and all Confidential Information that it may acquire.

13.2 The Seller will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Seller will ensure that its officers and employees comply with the provisions of this **Condition 13**.

13.3 The obligations on the Seller set out in **Conditions 13.1** and **13.2** will not apply to any information which:

13.3.1 is publicly available or becomes publicly available through no act or omission of the Seller; or

13.3.2 the Seller is required to disclose by order of a court or regulatory body of competent jurisdiction.

14. GENERAL

14.1 Time shall be of the essence in respect of all dates, periods and timescales with which the Seller is required to comply under the Contract and any dates, periods and timescales which may be substituted for them by the agreement in writing of the parties. Time shall not be of the essence in respect of any obligation with which the Company is required to comply under the Contract.

14.2 The Company's rights and remedies set out in the Terms and Conditions are in addition to and not exclusive of any rights and remedies provided by law.

14.3 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term shall be deemed to be severed from the Contract and this shall not affect the remainder of the Contract which shall continue in full force and effect.

14.4 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract shall not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor shall the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default shall only be valid if it is writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and shall not constitute a waiver of any other right, remedy, breach or default.

- 14.5 The Seller shall not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under the Contract or to sub-contract any of its obligations under the Contract.
- 14.6 The Company shall be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under the Contract and to sub-contract any of its obligations under the Contract.
- 14.7 The parties do not intend that any term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.
- 14.8 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of *its* subject matter and:
- 14.8.1 neither party has entered into the Contract in reliance upon, and it shall have no remedy in respect of, any representation or statement which is not expressly set out in the Contract; and
- 14.8.2 nothing in this **Condition 14.8** shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.
15. **NOTICE**
- 15.1 Subject to **Condition 15.4** any notice or other communication given under or in connection with the Contract shall be in writing and:
- 15.1.1 delivered by hand;
- 15.1.2 sent by pre-paid first class post; or
- 15.1.3 sent by facsimile
- to the Company at the address or facsimile number and marked for the attention of the individual detailed below and to the Seller at the address or facsimile number detailed in any quotation, acknowledgement of order or other document received by the Company from the Seller (or such other address, facsimile number or, in the case of the Company, individual, as may be notified by the relevant party to the other party from time to time in accordance with this **Condition 15**):
- The Company
Orion Way, Kettering Business Park, Kettering
Northants, NN15 6NL
FAX: 0845 460 92 92
For the attention of: The Finance Manager
- 15.2 Any notice or communication given in accordance with **Condition 15.1** shall be deemed to have been served:
- 15.2.1 if delivered by hand, at the time of delivery;
- 15.2.2 if sent by pre-paid first class post at 9.00 a.m. on the second Business Day after the date of posting; and
- 15.2.3 if sent by facsimile at the time of confirmation of completion of transmission by way of a transmission report;
- provided that if a notice or communication is deemed to be served before 9.00am on a Business Day it shall be deemed to be served at 9.00am on that Business Day and if it is deemed to be served on a day which is not a Business Day or after 5.00pm on a Business Day it shall be deemed to be served at 9.00am on the immediately following Business Day.
- 15.3 To prove service of a notice or communication it shall be sufficient to prove that the provisions of **Condition 15.1** were complied with.
- 15.4 This **Condition 15** shall not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.
16. **GOVERNING LAW AND JURISDICTION**
- 16.1 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by English law.
- 16.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the determination of any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations) save that any party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.