

Ecodrive Transmissions Ltd Standard Terms and Conditions of Trade

("the Conditions")

All Previous Conditions of Trade Are Hereby Cancelled

1. Interpretation

1.1 In these Conditions

'ORDER FORM'	means the order form to which these conditions annexed.
'CUSTOMER'	means the person who accepts a quotation of the company for the sale of goods or whose order for the goods is accepted by the company.
'GOODS'	means the Goods (including any instalment of the Goods or any parts for them) which the Company is to supply in accordance with these conditions.
'COMPANY'	means Ecodrive Transmissions Ltd
'CONDITIONS'	means the standard Terms and Conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company.
'CONTRACT'	means the contract for the purchase and sale of the Goods
'WRITING'	includes telex, cable, facsimile transmission and comparable means of communication.

1.2 Any reference in that provision as to these conditions to any provision of a statute shall be construed as a reference to amended, re-enacted or extended at the relevant time.

1.3 The headings in these conditions are for convenience only and shall not affect their interpretation.

2. Basis of Sale

2.1 The company shall sell and the customer shall purchase the Goods in accordance with the provisions of the Order Form or any written quotation of the Company which is accepted by the Customer or any written order of the customer which is accepted by the Company whichever shall apply subject to these Conditions, which shall govern the Contract to the exclusion of any other Terms and Conditions subject to which the Company's quotation is accepted or purported to be accepted, or the Customer's order is made or purported to be made or by any previous dealings between the Company and the Customer.

2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and the Company

2.3 The Company's employees or agents are not authorised to make any representations concerning the goods unless confirmed by the Company in writing in entering into the Contract the Customer acknowledges that it does not rely on and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical clerical or other error or omission in the Order Form or any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the company shall be subject to correction without any liability on the part of the Company.

3. Orders and Specifications

3.1 No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative.

3.2 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any

order (including any applicable specification) submitted by the customer and for giving the Company any necessary information relating to the goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

- 3.3 The quantity and description of any specification for the Goods shall be those set out in the Order Form or the Company's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Company) whichever shall apply.
- 3.4 The Company reserves the right to make any changes in the specification of the goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- 3.5 No order which has been accepted by the Company nor any quotation which has been accepted by the customer may be cancelled by the customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

4. Price of Goods

- 4.1 The price of the goods shall be the Company's quoted price at the date of acceptance of the order. All prices quoted are valid for the day of the quotation only after which time they may be altered by the Company without giving notice to the Customer.
- 4.2 The Company reserves the right to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (Such as , without limitation, any foreign exchange or London Metal Exchange fluctuation, currency regulation , alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in writing between the Customer and the Company, all prices are given by the Company on an ex-works basis, and where the Company agrees to deliver the Goods otherwise than at the company's premises, the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable Value Added Tax, which the Customer shall be additionally liable to pay to the Company
- 4.5 All payments shall be made in sterling.

5. Terms of Payment

- 5.1 Subject to any special terms agreed in writing between the Customer and the Company. The Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer, in which event the Company shall be entitled to invoice the customer for the price at any time after the company has notified the Customer that the goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods
- 5.2 The Customer shall pay the price of the goods by the last day of the calendar month following the date of the Company's invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the customer. The time of payment of the price shall be of the essence of the contract. Receipts for payment will be issued only upon request.
- 5.3 If the customer fails to make any payment on the due date then without prejudice to any other right or remedy available to the company. The Company shall be entitled to :
- 5.3.1 cancel the contract or suspend any further deliveries to the Customer :
 - 5.3.2 appropriate any payment made by the customer to such of the Goods (or the Goods supplied under any other contract between the customer and the Company) as the Company may fit (notwithstanding any purported appropriation by the customer); and

- 5.3.3 charge the Customer interest (both before and after any judgment) on the amount unpaid at the rate of four percent per annum above Natwest Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

6. Delivery

- 6.1 Delivery of the Goods shall be made by the customer collecting the goods at the Company's premises at any time after the Company has notified the Customer that the goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Customer in writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the customer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.4 If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Customer's fault and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- If the Customer fails to take delivery of the Goods or (if some other place for delivery has been agreed by the Company) fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then without prejudice to any other right or remedy available to the Company, the Company may :
- 6.5
- 6.5.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
- 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

7. Risk and Property

- 7.1 Risk of damage to or loss of the goods shall pass to the Customer
- 7.1.1 In the case of the Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection: or
- 7.1.2 In the case of Goods to be delivered otherwise than at the company
- 7.2 Notwithstanding delivery and the passing in the goods or any other provision of the Conditions, the property in the Goods shall not pass to the customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Customer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and property stored, protected and insured and identified as the Company's property. Until that time the Customer shall be entitled to resell or use Goods in the ordinary course of business but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds and shall keep all such proceeds separate from any moneys or property of the Customer and third parties and in the case of tangible proceeds, property stored, protected and insured.
- 7.4 Until such time as the property in the goods passes to the customer (and provided the Goods are still in

existence and have not been resold), the Company shall be entitled at any time to require the Customer to deliver the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

8. Warranties and Liability

8.1 Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification and will be free from defects in material and workmanship at the time of delivery.

8.2 The above warranty is given by the Company subject to the following conditions

8.2.1 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), or misuse of the Goods without the Company's approval:

8.2.2 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.

8.3 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transaction (Restrictions or Statements) Order 1976) the statutory rights of the Customer are not affected by these conditions

8.5 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such a defect or failure and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.6 No claim for damage in transit, shortage of delivery or loss of Goods will be entertained unless in the case of damage in transit or shortage of delivery, a separate notice in writing is given to the carrier concerned and to the Company within 3 days of the receipt of Goods, followed by a complete claim in writing within 5 days of receipt of Goods and in the case of loss of Goods, notice in writing is given to the carrier concerned and to the Company and a complete claim in writing made within 10 days of the date of consignment. Where goods are accepted from the carrier concerned without being checked, the delivery book of the carrier concerned must be signed "Not Examined"

8.7

Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract. for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by negligence of the Company, it's employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Customer, except as expressly provided in these Conditions.

8.8 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of the Company's obligations in relation to the Goods, if the delay or failure was due to cause beyond the Company's reasonable control.

9. Insolvency of Customer

9.1 This clause applies if:

- 9.1.1. the Customer makes a voluntary arrangement with it's creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction): or
- 9.1.2 an encumberancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer: or
- 9.1.3 the Customer ceases or threatens to cease , to carry on business; or
- 9.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

9.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary..

10. General

10.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

10.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.3 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the provision of the Conditions and the remainder of the provision in question shall not be affected hereby.

- 10.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society who shall act as an expert and whose decision shall be final and binding.
- 10.5 The Contract shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.