

## **Emerald Truck & Van Limited General Terms and Conditions of Sale**

### **1. Interpretation**

In these Conditions the following definitions apply:

**'Business Day'** means a day, other than Saturday, Sunday and public holidays, when banks generally are open for non-automated business in Northern Ireland

**'Customer'** means the person or firm purchasing the Products and/or Services from the Company for use in their trade or business;

**'Conditions'** means the terms and conditions set out in this document;

**'Contract'** means the agreement between the Company and the Customer for the sale and purchase of Products and/or Services incorporating these Conditions;

**'Company'** means Emerald Truck & Van, Registered Company No: 524922, registered address: Block 526, Grants Hill, Greenogue Business Park, Rathcoole, Co. Dublin.

**'Delivery Location'** means the address for delivery of the Products and/or Services as set out in the Order;

**'Group Company'** means any company which belongs to the "group of companies" as defined in section 7 of the Companies Act 2014 in which the Company is a subsidiary company and 'Group Company' means one of the Group Companies;

**'Product Description'** means the latest product description, howsoever described, applicable to the Products published by the manufacturer and/or the Company at the date of acceptance of the relevant Order

**'Products'** means the products and related accessories, spare parts and documentation set out in the Order and to be supplied by the Company to the Customer;

**'Order'** means an order for the Products and/or Services from the Company accepted by the Company on the Company's order documentation prevailing at the time of acceptance and shall include job cards;

**'Service(s)'** means the work specified in the Order and any additional work authorised by the Customer to be carried out by or on behalf of the Company;

### **2. Application of these terms and conditions**

These terms and conditions apply and form part of the Contract between the Company and the Customer. They supersede any previously issued terms and conditions of supply. No variation of these Conditions or to an Order, or to a quotation from the Company will be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Company. No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract.

### **3. Price**

The price for the Products and/or Services will be as set out in the Order or in default of such provision will be calculated in accordance with the Company's price list published on the date of delivery or deemed delivery. The price does not include VAT or any other similar sale or fiscal tax applying to the sale of the Products and/or Services which shall be charged at the rate applicable at the date of delivery. The Company will make a surcharge for Products provided to the Buyer via the manufacturer aid emergency service.

### **4. Product Supply**

All Products are supplied by reference only to their Product Description. Any other descriptive material provided by the Company to the Customer is provided to assist the Customer and does not form part of any contract and the Company is not legally responsible for its contents. The Customer is responsible for selecting Products to achieve its required results.

### **5. Payment**

**5.1** Subject to clauses 5.2 and 5.3, the Customer will pay all invoices from the Company for the Products and/or Services to the Company in full, without deduction or set-off other than as required by law, in cleared funds and within the earlier of 30 days of the invoice date or on delivery of the Products and/or Services.

**5.2** Vehicles are to be paid for in full in cleared funds, without deduction or set-off other than as required by law, prior to delivery.

**5.3** If the Company has authorised a credit account for the Customer for the purchase of parts and/or Services, the Customer will pay all invoices from the Company for the parts and Services to the Company in full, without deduction or set-off other than as required by law, in cleared funds and within 30 days of delivery. The Company may withdraw a credit account or vary the credit terms at its sole discretion upon the provision of notice to the Customer.

**5.4** Time of payment is of the essence. Where sums due hereunder are not paid in full by the due date the Company may, without limiting its other rights, charge interest on such sums at 8% p.a. above the European Central Bank's reference rate from time to time in force and interest will accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

### **6. Delivery**

**6.1** The Products will be deemed delivered by or for the Company on arrival of the Products and/or Services at the Delivery Location where the Order provides for delivery to a Delivery Location and otherwise if collected by or on behalf of the Customer.

**6.2** The Company will use its reasonable endeavours to meet delivery dates and any periods for performance specified on orders but such dates are approximate only, and time of delivery or performance is not of the essence and shall not be

made of the essence by notice. If no delivery date or period for performance is specified in the order, delivery or performance will be within a reasonable time. The Products may be delivered by instalments. Any delay in delivery or defect in an instalment will not entitle the Customer to cancel any other instalment. The Company will not be liable for any delay in or failure of delivery caused by the Customer's failure to make the Delivery Location available, to provide the Company with adequate instructions for delivery or to collect the Products and/or any vehicles in relation to which Services have been provided from the Company's premises, or by an event of force majeure.

**6.3** If the Customer fails to accept delivery of the Products or fails to collect any vehicle in relation to which Services have been provided, on the date specified in the Order or notified by the Company to the Customer, the Company will store and may (but shall be under no obligation to) insure the Products and/or any vehicles in relation to which Services have been provided pending delivery, and the Customer will pay to the Company storage and any insurance charges at the daily rate specified in the Company's tariff of charges.

**6.4** If, 10 Business Days after the date specified in the Order or notified by the Company to the Customer for delivery or collection of Products, the Customer has not taken delivery of or collected the Products, the Company may, at its sole discretion, resell or otherwise dispose of the Products. The Company will invoice the Customer for, and the Customer shall pay, any shortfall of the resale price below the price due to be paid by the Customer for the Products.

#### **7 Title and risk**

**7.1** Risk in the Products and/or any vehicles in relation to which Services have been provided will pass to the Customer on collection or the earlier to occur of: (i) delivery; and (ii) transfer to a carrier for delivery.

**7.2** Title to the Products will pass to the Customer once the Company has paid the manufacturer in full for the Products and the Company has received payment in full for the products from the Customer and no payment shall be deemed to have been received from the Customer until the Company has received cash or cleared funds.

**7.3** Until title to the Products has passed to the Customer, the Customer will: **7.3.1** hold the Products as bailee for the Company; **7.3.2** store the Products separately from all other material in the Customer's possession; **7.3.3** take all reasonable care of the Products and keep them in reasonable condition; **7.3.4** insure the Products with a reputable insurer from the date of delivery against all risks for an amount at least equal to the price noting the Company's interest on the policy; **7.3.5** ensure that the Products are clearly identifiable as belonging to the Company; **7.3.6** not remove or alter any mark on or packaging of the Products; **7.3.7** inform the Company as soon as possible if it becomes subject to any of the events set out in clause 10.1; **7.3.8** provide the Company with such information concerning the Products as the Company may request from time to time; and **7.3.9** redeliver the Products to the Company at the Customer's expense and, if the Customer fails to do so promptly, grant the Company irrevocable right and licence to enter any premises where the Products are stored and repossess them. This Clause 7.3 shall be binding on the Customer, its staff, agents and any receiver, liquidator or examiner or such other person as may be appointed by the Courts in relation to the Customer.

**7.4** Notwithstanding clause 7.3, the Customer may use the Products before ownership has passed in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clause 10.1 has occurred, is to occur or is likely to occur.

**7.5** Notwithstanding clause 7.3, the Customer may resell the Products before ownership has passed where the sale is at full market value in the ordinary course of the Customer's business on the Customer's own behalf dealing as principal until such time as it becomes aware or ought reasonably to have become aware that an event specified in clause 10.1 is or is likely to occur and where the Products have been re-sold the Customer shall hold such part of the proceeds of sale as represents the amount owed by the Customer to the Company for the relevant Products separately (in a bank account that does not contain any third party monies and is not overdrawn) on trust on behalf of the Company and the Customer shall promptly account to the Company on such sale.

**7.6** If, at any time before title to the Products has passed to the Customer, the Customer informs the Company, or the Company reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clause 10.1, the Company may require the Customer at the Customer's expense to redeliver the Products to the Company and, if the Customer fails to do so promptly, the Company or its agents may enter any premises where the Products are stored and repossess them.

#### **8. Warranties and Limit of Liability**

**8.1** Subject to clauses 8.2 and 8.3 the Company gives no warranty in relation to the Products and/or Services. There shall be no warranty or assurance by the Company that any particular Product is fit for any specific purpose or application unless the Company shall have given such assurance to the Customer in writing.

**8.2** The Customer shall, in relation to Products, only be entitled to the benefit of any such warranties as are given by the manufacturer to the Company and/or the Customer.

**8.3** Unless otherwise agreed in writing by the Company, all used Products are sold "as is" and without any warranty (save in relation to any applicable manufacturer's warranty).

**8.4** The Company shall be under no liability in respect of any defect or failure arising from or related to any fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to comply with the manufacturer's or the Company's instructions or with good practice, the Company following any design or specification or requirement of the Customer and/or the Customer repairing or altering any Products without the Company's prior written agreement or misuse.

**8.5** The Company may, at its own option, repair, replace or refund the price of defective Products and/or at its own option, rectify any defective Services, and if the Company so requests, the Customer shall give the Company a reasonable opportunity to examine the defective Products and/or Services and return the defective Products and/or any vehicle in relation to which defective Services have been provided to the Company for repair. These Conditions will apply to any Products repaired or replaced and/or any Services rectified under this clause 8.5.

**8.6** The Company'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 cost of replacing or repairing defective Products and/or Services.

**8.7** The Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

**8.8** The Customer shall indemnify the Company from and against all loss, damage or liability suffered or incurred by the Company or any third person for or arising out of the negligence, breach of statutory duty, breach of contract or other duty of the Customer or its officers, employees, agents or contractors, in each case in the course of performance of or otherwise in any way arising out of or in connection with the Contract.

**8.9** The Company will not be liable if delayed in or prevented from performing its obligations due to Force Majeure.

**8.10** 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 and Supply of Services Acts 1893 and 1980) are, to the fullest extent permitted by law, excluded from the Contract. Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by its negligence, for fraud or fraudulent misrepresentation or for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.

**8.11** The Company shall not be liable in respect of any misrepresentation made by the Company its servants or agents unless the representation is made and confirmed in writing by the Company and/or is fraudulent.

## **9. Services**

The Company will provide the Services to the Customer in accordance with the Job Card and any additional authority provided by the Customer subject to the Company's entitlement (without obligation) to make any changes to the Services as are needed to comply with applicable law or safety requirements, or which do not materially affect the quality or nature of the Services.

## **10. Termination**

**10.1** The Contract may be terminated forthwith at any time by the Company on written notice to the Customer if: **10.1.1** the Customer commits a material breach, or series of breaches resulting in a material breach, of the Contract and such breach is not remediable or is not remedied within 10 days of written notice to do so; **10.1.2** the Customer suspends or threatens to suspend payment of its debts, or is unable to pay its debts as they fall due; **10.1.3** the Customer (a) negotiates with its creditors for rescheduling of its debts, (b) makes a proposal to or compounds with its creditors in respect of its debts, or (c) makes an application to court for protection from its creditors generally; **10.1.4** the Customer passes a resolution for winding-up or for the appointment of an examiner, or a liquidator or receiver is appointed in relation to the Customer, or a winding-up order is made in relation to the Customer; **10.1.5** a receiver or examiner may be or is appointed in relation to the Customer or any of its assets; **10.1.6** any creditor of the Customer attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of the Customer's assets, and such attachment or process is not discharged within 14 days; **10.1.7** the Customer takes or suffers any action similar to any of the above in any jurisdiction; **10.1.8** there is a material change in the management, ownership or control of the Customer; **10.1.9** the Customer suspends trading, ceases to carry on business, or threatens to do either; or, **10.1.10** the Customer, (being an individual) dies or ceases to be capable of managing his own affairs.

**10.2** In addition to its rights under clause 10.3 the Company may terminate this Contract at any time immediately on written notice to the Customer if the Customer has failed to pay any amount due under the Contract on the due date;

**10.3** On termination of the Contract for any reason: **10.3.1** the Customer will immediately pay all invoices of the Company then outstanding and not disputed in good faith; **10.3.2** the Company will invoice the Customer for all Products and/or Services delivered or provided but not yet invoiced and the Customer will pay such invoice within a further 10 Business Days (unless the invoice is disputed in good faith); **10.3.3** the Customer will forthwith return any Products of the Company then in its possession or control; if it fails to do so, the Company may enter onto any premises owned by or under the control of the and take possession of them; **10.3.4** the accrued rights and liabilities of the parties will not be affected; and, **10.3.5** any clauses which expressly or by implication are to survive termination will do so.

## **11. Courtesies Vehicles**

Customers borrowing courtesy vehicles must ensure the driver holds a current valid UK or Irish driving licence and must arrange full comprehensive motor insurance for the period of use. The Customer will maintain the vehicle and return it in the same condition as when taken. The Customer will return the vehicle promptly on the earlier of the agreed return date or the Company's request. If the Customer delays the return of the vehicle the Company may charge £50 per day or part thereof for unauthorised use together with (where appropriate) a storage charge of £15 per day or part thereof for the vehicle left on the Company's premises.

## **12. Cancellation**

The Company may cancel the Contract and any Order by giving written notice to the Customer at any time before the products are delivered or Service carried out. On giving such notice the Company shall repay to the Customer all sums due to the Customer and all sums due to the Company from the Customer shall become immediately payable by the Customer without set off or deduction.

## **13. Assignment**

The Customer may not assign the Contract without the written consent of the Company. The Company may assign or sub-contract the Contract or any part of it to any person, firm or company. Subject to this clause 13, a person who is not a party to the Contract has no rights to enforce or entitlement to enjoy the benefit of any term of this Contract.

## **14. Data Protection**

**14.1** The Company is committed to the fair and proper processing of all personal data held about customers. In the course of the Company's dealings with customers, customers may provide the Company with personal data (which may be used to identify the Customer), such as name, address and contact details. This clause 14 sets out the basis on which the Customer's personal data will be held and processed by the Company.

**14.2** The Company, or its appointed representatives, will use the Customer's personal data in the following ways: **14.2.1** to provide the products, services and/or information that the Customer has requested from the Company; **14.2.2** to send the Customer important safety information (for example if there is a problem with a vehicle); **14.2.3** to ask for the Customer's opinion about the Company's products and/or services and to help improve the Company's products and services, including by contacting the Customer to ask the Customer to complete customer satisfaction surveys; **14.2.4** to provide the Customer with information about other products and services that the Company believes may be of interest to the Customer where the Customer has consented to the Company contacting the Customer for these purposes; **14.2.5** to prevent and detect fraud and money laundering; **14.2.6** to collect debts owed by the Customer to the Company; and **14.2.7** for customer analysis, profiling and research purposes.

**14.3** The Company may share the Customer's personal data in the following ways: **14.3.1** with Iveco Limited ("Iveco") and Iveco's group of companies to enable Iveco to contact the Customer to carry out customer satisfaction surveys, and, where the Customer has consented, to send the Customer information about products and services that Iveco believes the Customer may be interested in; **14.3.2** with Group companies offering commercial vehicle products and services (e.g. Star Rentals Limited and TVC Parts Limited) to enable those Group companies, where the Customer has consented, to send the Customer information about products and services that the relevant Group Company believes the Customer may be interested in; **14.3.3** with a purchaser of one of the businesses of the Group Companies; **14.3.4** with any third party to whom the Company assigns its rights under any agreement the Company has with the Customer to enable them to exercise those rights; **14.3.5** where the Company is required to disclose information for legal or regulatory purposes; and **14.3.6** in connection with legal proceedings or in the course of exercising the Company's legal rights.

**14.4** The Company may use service providers or other third parties (including our Group Companies) to process the Customer's personal data on its behalf and this may involve transferring the Customer's personal data to locations outside the European Economic Area, where data protection laws may not be as strict as they are within Europe. If the Company does this, it will always do so in a manner that is consistent with all appropriate rules and regulations and seeks to ensure the safety and security of the Customer's data.

**14.5** With the Customer's consent, the Company, Group Companies offering commercial vehicle products and services (e.g. Star Rentals Limited and TVC Parts Limited) and Iveco would like to use the Customer's personal data to contact the Customer (either directly or via our selected third parties) for marketing purposes in relation to products or services the Company, a Group Company offering commercial vehicle products and services or Iveco think may be of interest to the Customer. The Customer is invited to indicate their consent to the Company, Group Companies offering commercial vehicle products and services (e.g. Star Rentals Limited and TVC Parts Limited) and Iveco contacting the Customer for marketing purposes, by advising the Company of their preferred method of contact: post, email, telephone and/or text message.

**14.6** The Customer has the following rights in relation to the Customer's personal data held by the Company: **14.6.1** the right to ask the Company not to process the Customer's personal data for marketing purposes; and **14.6.2** the right to access information held about the Customer. To exercise either of these rights, the Customer must write to Emerald Truck & Van Limited, Block 526 Grants Hill, Greenogue Business Park, Rathcoole, Co. Dublin or email [enquiries@emtv.ie](mailto:enquiries@emtv.ie) with the subject "Privacy". Any access request may be subject to a fee of £10 to meet the Company's costs in providing details of the information held. If the Customer has any questions about how the Company uses personal data please contact the Company at [enquiries@emtv.ie](mailto:enquiries@emtv.ie).

## **15. Mediation**

If any dispute arises in connection with the Contract, the parties will attempt to settle it by mediation. Unless otherwise agreed between the parties, the mediator will be nominated by the Law Society of Ireland. Notice in writing ("mediation request") must be given by one party to the other party to the dispute requesting a mediation. The mediation will start not later than 30 days after the date of the mediation request. No party will commence court proceedings in relation to any dispute arising out of the Contract until it has attempted to settle the dispute by mediation.

## **16. General**

**16.1** All payments by the Customer will be made without set-off or counterclaim, free and clear of and without deduction for any tax, levy, duty, charge, or withholdings of any kind now or in the future, imposed in any jurisdiction unless the Customer is compelled by law to deduct or withhold any such amounts, in which case it will pay to the Company such additional amount as will ensure that the Company is paid the full amount it would have received but for such deduction or withholding.

**16.2** If any part of these Conditions is found by a court, tribunal or other administrative body of competent jurisdiction to be unenforceable or invalid for any reason, that provision is to be severed from the Conditions and the remaining provisions of the Conditions will otherwise remain in full force.

**16.3** Subject to clause 14.5 and the Company's right to give notice of a date for delivery or availability for collection by telephone, notices under this Contract shall be in writing and sent to the persons and addresses set out in the Order and will be deemed received 2 business days after posting if sent by first class post.

**16.4** No delay, act or omission by the Company in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

**16.5** The terms of the Conditions prevail over those of the Order (if any). The Contract constitutes the entire agreement between the parties in relation to its subject matter. No other terms apply.

**16.6** These General Terms and Conditions of Sale shall apply to any repaired or replacement Products supplied by the Company.

**16.7** This Contract will be governed by the law of Ireland and disputes will be submitted to the exclusive jurisdiction of the courts of Ireland.