

STANDARD TERMS AND CONDITIONS OF SALE

1. **INTERPRETATION**
In these conditions:
"Buyer" means the person, firm, body or company who buys the goods under the Contract
"Goods" means the goods (including any instalment of the goods or any parts for them) which the Seller is to under the Contract
"Seller" means Kel-Berg Trailers and Trucks Ltd (Company number 2657061)
"Conditions" means the standard terms and conditions of sale set out in this document
"Contract" means the contract for the purchase and sales of the Goods
"Working Day" means the hours between 0900hours and 1700hours on any day of the week excluding Saturdays, Sundays and public holidays
"Writing" includes facsimile transmission
2. **ORDERS AND SALES**
2.1 The Seller shall sell the Goods to the Buyer in accordance with the sales agreement overleaf.
2.2 Where the sales agreement is not signed by an authorised officer of the Seller, the Seller reserves the right to cancel the Contract within two Working Days of such signature
2.3 These Conditions shall govern the Contract to the exclusion of any other terms or conditions.
Any variation to these Conditions must be agreed in writing between the Buyer and the Seller.
2.4 Any representation of the Seller will not be binding unless confirmed by the Seller in writing. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Nothing in this shall exclude or limit the Seller's liability for fraudulent misrepresentation
2.5 In accepting a quote or placing an order for the Goods the Buyer acknowledges that all information and specifications relating to the Goods and any material produced by the Seller are approximate only and this is not a sale by example
2.6 Any error in any order form, quote, sales literature, sales agreement or other document issued by the Seller may be corrected without any liability to the Seller
2.7 All orders submitted by the Buyer must be accurate and made in good time to allow the Seller to perform its obligations under the Contract
2.8 The Seller may make any changes in the specification of the Goods (a) to conform with any statutory or European Union requirements or (b) Goods are to be supplied to the Seller's specification, where such changes do not materially affect the quality or performance of the Goods
3. **PRICE AND PAYMENT TERMS**
3.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price no longer valid), the price listed in the Seller's correct price list on the date of acceptance of the order. The price for the Goods is exclusive of Valued Added Tax, which the Buyer shall also pay to the Seller. Subject to clause 3.2 all quotes are valid for 10 Working Days only, after which time they may be altered by the Seller without giving notice to the Buyer
3.2 The Seller may by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of supplying the Goods which is due to any factor beyond the control of the Seller
3.3 The price of the Goods does not, unless otherwise agreed or quoted, include delivery and accordingly all prices are ex works the Seller's premises. The Buyer will pay the Seller's charges for transport, packaging and insurance
3.4 The Seller may invoice the Buyer for all sums due under the Contract after the Seller has notified the Buyer that the Goods are ready for collection
3.5 If the Buyer cancels any Contract prior to notification by the Seller that the Goods are ready for collection, the Buyer shall become immediately due to pay the Seller a sum equal to 10% of the price for the Goods cancelled. The parties agree that this sum is a genuine pre-estimate of the losses which would be incurred by the Seller in such an event
3.6 The Buyer shall pay the Seller's invoices in full without deduction of set-off in cash or by bankers draft or cleared cheque within 14 days of the date of invoice and, in any event prior to collection of the Goods. Time for payment shall be the essence of the Contract.
3.7 If the Buyer fails to pay on the due date then the Seller (notwithstanding what delivery may not have taken place and that the title of the Goods shall not have passed to the Buyer) may:-
3.7.1 sue the Buyer to recover the sums due to it;
3.7.2 terminate the Contract;
3.7.3 suspend any further deliveries to the Buyer until all debts are paid in full;
3.7.4 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3% per year above the base lending rate for the time being of Barclays Bank Plc; and
3.7.5 by the Seller giving notice in Writing to the Buyer, cancel any other contract between the Buyer and the Seller
3.8 The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998
4. **DELIVERY**
4.1 Delivery shall be made by the Buyer collecting the Goods from the Seller's premises
4.2 Any dates for delivery are approximate only and the Seller shall not be liable for the consequences of any delay in delivery. Time for delivery shall not be of the essence
4.3 If for any reason the Buyer fails to accept delivery of any Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisation:
4.3.1 the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) or storage; and
4.3.2 the Goods shall be deemed to have been delivered; and
4.3.3 the Goods shall pass to the Buyer (including loss or damage caused by the Seller's negligence)
5. **RISK**
Risk of damage or loss of the Goods shall pass to the Buyer on the deemed date of delivery which will be the date two Working Days after the Seller advises the Buyer that the Goods are available for collection or the date on which the Goods are collected, whichever is the earlier
6. **RETENTION OF TITLE**
6.1 Title of the Goods shall be retained by the Seller until all sums due on any account from the Buyer to the Seller have been received in full in cleared funds by the Seller
6.2 If any indebtedness on any running account between the Seller and the Buyer is reduced to nil, title shall not pass in any Goods still held by the Buyer at the time of any later default in payment by the Buyer
6.3 Until ownership in the Goods passes to the Buyer:-
6.3.1 the Seller may require the Buyer to deliver the Goods to the Seller and, if the Buyer fails to do so immediately, the Seller may enter an premises where the Goods are reasonably thought to be stored and repossess the Goods in accordance with clause 6.4;
6.3.2 store the Goods (at no cost to the Seller) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property; and
6.3.3 maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller
6.4 The Buyer grants the Seller, its agents and employees and irrevocable licence at any time to enter the premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them
6.5 On termination of the Contract, for whatever reason, the Seller's (but not the Buyer's) rights contained in this clause 6 shall remain in effect
7. **INTELLECTUAL PROPERTY**
All intellectual property and other proprietary rights (including, but not limited to, copyright and trademarks) and all technical, business, or similar information (including, but not limited to all designs, documents and other materials relating to the Goods) created by the Seller during the course of the Contract shall be, and shall remain, the property of the Seller only
8. **WARRANTY**
8.1 Nothing in this clause 8 shall exclude the Seller's liability for death or personal injury caused by its negligence
8.2 Subject to provision of these Terms and Conditions:
8.2.1 in the case of new Goods only, the Seller warrants that the Goods are satisfactory quality, are reasonably fit for any particular purpose specified by the Buyer and correspond with any description given by the Seller in Writing
8.2.2 in the case of the new Goods only, where the Seller is not the manufacturer of the goods, the Seller shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller by the manufacturer and otherwise the Seller warrants that the Goods are satisfactory quality, are reasonably fit for any particular purpose specified by the Buyer and correspond with any description given by the Seller in Writing
8.2.3 in the case of second hand or used Goods, the Buyer agrees to take the Goods on their current state, having satisfied itself by inspection as to their quality and fitness for the purpose for which the Buyer requires them. The Seller gives no warranties in relation to the quality of any second hand or used Goods or their suitability for any purpose
8.3 If the Seller is in breach of the warranty contained in clause 8.2.1 the Buyer shall advise the Seller in Writing immediately and in any case not later than 10 Working Days from the date of discovery of the defect. On receiving a notice under this clause 8.3 the Seller may, at its sole option and either at his own premises or at those of a repairer of his own choice, repair the Goods, replace all or any part of the defective Goods, or refund the price of those Goods which are defective
8.4 If the manufacturer of the Goods is in breach of its warranty the Seller shall use its reasonable endeavours to ensure the manufacturer complies with its obligations under the warranty and the Buyer shall exhaust its warranty claim against the manufacturer prior to bringing any claim against the Seller
8.5 The warranty and undertaking contained in clause 8.2 shall be the extent for the Seller's liability for defective Goods
8.6 Save as expressly provided in these Conditions, all implied warranties or conditions are excluded to the fullest extent permitted by law and the Seller will not be liable to the Buyer for any loss of any kind whatsoever which arise out of the breach of implied warranties or conditions or breach of any other duty of any kind imposed on the Seller by operation of law
8.7 The Seller will not be liable for any of the following losses which may arise by reason of any breach of the Contract or any implied warranty, condition or other term, any representation or any duty of any kind imposed on the Seller by operation of law:
8.7.1 any loss of anticipated profits or expected future business;
8.7.2 damage to reputation or goodwill;
8.7.3 any damages costs or expenses payable by the Buyer to any third party;
8.7.4 loss of any order or contract; or
8.7.5 any consequential loss of any kind
8.8 Unless otherwise provided in these Conditions, and subject to clause 8.5, the liability of the Seller for breach of any expenses or implied term of this Agreement shall be limited to the reasonable cost of remedying any defect in the Goods or other matter constituting a breach and in no circumstances shall the Seller's liability exceed the total amount paid by the Buyer to the Seller under the Contract
8.9 If notwithstanding the provisions of the clause 8, liability attached to the Seller in no circumstances shall the Seller's liability to the Buyer for a breach of any expenses or implied or in relation to the Contract exceed £* in respect of any one claim and £5,000,000.00 in respect of the Seller's total liability in respect of claims made under or in relation to the Contract
8.10 Without prejudice to any provision of this clause 8, the Seller will not be in breach of the terms of the Contract for any delay in performing, or failure to perform. Its obligations under the Contract if that delay or failure was due to any cause or circumstances beyond the Seller's reasonable control
8.11 If the Buyer intends to use the Goods at work, the Buyer undertakes to ensure so far as reasonably practicable, that second hand or used Goods will be safe and without risks to health when properly used and that, prior to delivery, the Buyer will sign and return the written undertaking attached hereto as annex A
9. **INDEMNITY**
The Buyer shall indemnify the Seller against any loss, damage costs and expenses suffered by the Seller as a result of any claim or proceeding brought against the Seller by any third party for or in relation to (a) any loss, injury or damage caused by the Goods or their use, and (b) any loss, injury or damage in any way connected with this Contract or any breach by the Buyer of this Contract, provided that this clause 9 will not require the Buyer to indemnify the Seller against any liability for the Seller's own negligence
10. **EXPORT TERMS**
10.1 In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms of the International Chambers of Commerce in force on the date when the Contract is made. Unless the context otherwise requires, any expression which is defined in incoterms shall have the same meaning in these Conditions, these conditions shall prevail
10.2 Where the Goods are supplied for export from the United Kingdom, if the provisions of this clause 10 are inconsistent with any other provision of these Conditions, the provisions of this clause 10 shall prevail
10.3 The Buyer shall be responsible for complying with any legislation or governing the importation of the Goods into the country of destination and for the payment of any duties
10.4 The Buyer shall where applicable:
10.4.1 not either directly or indirectly export the Goods or any product incorporating the Goods without first obtaining a licence to export or re-export from the United Kingdom Government and/or the United States Office of Export Administration (the 'OEA')
10.4.2 comply with the export regulations of the United Kingdom Government and/or the OEA
10.5 The Goods shall be delivered ex works the Seller's premises and the Seller shall be under no obligation to give notice under section 32(3) of the Sales of Goods Act 1979
10.6 The Buyer shall be responsible for inspecting and testing the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim made after shipment for any defect in the Goods which would be apparent on inspection, or for any damage during transit
11. **PART EXCHANGE**
11.1 Where the Seller agrees to purchase a vehicle from the Buyer in part exchange for the Goods (an 'exchange vehicle') the following conditions shall apply:
11.1.1 the Buyer warrants that the exchanged vehicle is free and unencumbered by any debt, lien or charge whatsoever
11.1.2 the Buyer warrants that the engine, gear box, and rear axle assembly are free from defects and fit for purpose for which the Seller wishes to use them
11.1.3 the Buyer shall deliver to the Seller any registration and other documentation relating to the exchanged vehicle before delivery of the Goods
11.1.4 the price of the part exchange shall be the price stated on the sale agreement and shall not be subjected to any increase
11.1.5 the price of the part exchange vehicle shall include delivery to the Seller's premises
11.1.6 title of the part exchange vehicle shall pass on delivery to the Seller#
11.2 The Conditions set out in clause 11.1 above constitute part of the Conditions under this Contract and breach of any of the said conditions shall give right of termination of the Contract in accordance with clause 12.1 below
11.3 The Seller shall be under no obligation to purchase the exchange vehicle if the Buyer is in breach of any of these Conditions or if the Contract is terminated for any reason whatsoever
12. **TERMINATION**
12.1 The Seller may terminate this Contract or any other contract between the parties and may cancel or suspend future deliveries (under this Contract or any other contract) if the Buyer:-
12.1.1 is in breach of these Conditions or any other contract between the parties; or
12.1.2 has a petition presented for its winding up or for an administration order to be made in respect of it, has a receiver or administrative receiver appointed over it or any of its assets; resolves to wind itself up (other than for a solvent organisation); has a bankruptcy order made against it or any of its partners; or enters, or proposes to enter into a composition or voluntary arrangement with its creditors
12.2 On termination, the Buyer shall pay to the Seller all costs, expenses (including legal and other fees incurred), arrears, charges or other payments arising in respect of the Goods under the Contract
12.3 Termination shall not affect either party's accrued rights under the Contract
13. **GENERAL**
13.1 Any notice required under these Conditions shall be in Writing addressed to the other party at its registered office or principal place of business or any other address notified by the receiving party to the party giving the notice
13.2 If any of these Conditions is held by any competent authority to be unlawful, invalid or unenforceable in whole or in part then the validity of other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law
13.3 The Contract and these conditions shall be under English law and the parties submit to the exclusive jurisdiction of the English Courts if there are any disputes between them of any kind
13.4 The Buyer shall not transfer, assign or sub-contract its obligations under the Contract without the Seller's consent in Writing
13.5 Failure or neglect by the Seller to enforce at any time any of these Conditions shall not be a waiver of the Seller's rights and it shall not affect the validity of the whole or any part of these Conditions or prejudice the Seller's right to take subsequent action