

WALES AND WEST TRUCK AND BUS - TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:

"Customer" the person(s), firm or company whose order for the Products is accepted by the Company

"Company" Wales and West Truck and Bus

"Contract" any contract between the Company and the Customer for the sale and purchase of the Products or supply of the Services formed in accordance with Condition 2

"Delivery" delivery of Products as defined in Conditions 6.1 to 6.2

"Parts" any new or reconditioned part, component, lubricant, assembled unit, accessory, tool, or Service Exchange Part marketed by the Company or received by the Company from the Customer for the purposes of Performing Services

"Products" any Vehicles and/or Parts

"Sale" the sale, lease, hire or similar transaction regarding a Product or Service

"Service Exchange Parts" any parts subject to a surcharge where the original unit has not been returned to the company for refurbishment

"Services" any services which the Company provides to the Customer under a Contract, including but not limited to the adjustment, maintenance or repair of Products under the terms of the Warranty or otherwise and including but not limited to the supply of Parts during the course of the provision of any Service

"Terms and Conditions" the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Customer and the Company

"Vehicle" any truck, bus or truck or bus chassis sold to the Customer by the Company; or any motor vehicle received by the Company from the Customer for the purposes of performing Services

"Volvo" Volvo Truck Corporation or Volvo Bus Corporation as the case may be

"Volvo Product" any Volvo branded Product, and "Volvo Vehicle" and "Volvo Part" shall be interpreted accordingly

"Warranty" any warranty granted to the Customer by the Company or Volvo in writing

"Warranty Certificate" a certificate contained within the warranty and service booklet issued with each new Volvo Vehicle.

2. FORMATION AND INCORPORATION

2.1 Subject to any variation under Condition 13.6, the Contract will be upon these Terms and Conditions, to the exclusion of all other terms and conditions and all previous oral or written representations including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.

2.2 Each error or inaccuracy of a quotation for Products or Services will be deemed to be an offer by the Customer to purchase Products or Services upon these Terms and Conditions. In the case of Vehicles, the Contract is formed when the order is accepted by the Company by way of a written acknowledgement of order and no contract will come into existence until an order is accepted in writing.

2.3 The Company reserves the right to require payment of a deposit as a condition of acceptance of an order.

2.4 Unless otherwise specified in writing by the Company any quotation is valid for a maximum period of 30 days only from its date, provided the Company has not previously withdrawn it. The Company is not obliged to give a quotation before commencing any Service, unless previously requested by the Customer in writing to do so.

2.5 Subject to Condition 6.4, the Customer may not cancel the Contract unless a Regional Managing Director of the Company agrees to such cancellation in writing. The Company reserves the right to make such agreement conditional upon payment of a sum equal to all loss and/or damage suffered by the Company and to retain any deposit paid by the Customer. The Customer may cancel the Contract at any time prior to Delivery or performance.

3. DESCRIPTION AND SPECIFICATIONS

3.1 The quantity and description of the Products or Services will be as set out in the Company's acknowledgement of order. All samples, drawings, descriptive matter, specifications and advertising issued by the Company or Volvo and any descriptions or illustrations contained in the Company's or Volvo's catalogues or brochures or described on the Company's or Volvo's website are issued or published for the sole purpose of giving an approximate idea of the Products or Services represented by or described in them. Such materials will not form part of the Contract and this is not a sale by sample. Without prejudice to the generality of the foregoing the year attributed to any used Vehicle is the year of first registration and not necessarily the year of the manufacture.

3.2 The Company may make any change to the specification, design, materials or finishes of the Products or provision of the Services which are required to conform with any applicable safety, statutory or regulatory requirement or do not materially affect their quality or performance.

3.3 The Customer acknowledges that Volvo has a policy of continuous improvement of design, production and specification and that Volvo reserves the right to change the design or specification of any Volvo Product at any time without notice, and to fulfil existing orders for new Volvo Vehicles or new Volvo Parts (including orders which have been partially completed) with a Volvo Product of the changed design or specification, provided that the Volvo Product so changed meets the requirements of the original order.

3.4 The Company aims to inform the Customer as soon as practicable of any significant changes to design or specification of ordered but not delivered Volvo Products. In the event that the changed design or specification does not meet the requirements of the original order then the Customer shall have the right to cancel the order with the Company within seven days from Delivery. The Company shall not be liable for any losses, damages, costs or expenses whatsoever arising from such cancellation.

4. SERVICES

4.1 The Company will carry out Services on Vehicles only on components for which instructions have been given by the Customer, but reserves the right to carry out any Service on other components where the necessity of which only becomes apparent after dismantling parts of the Vehicle, and which would affect the safe operation of the Vehicle if not carried out. The Company will give the Customer an estimate of the likely cost of such additional Services but such estimates are not to be regarded as binding and the company reserves the right to perform the Service in the manner it thinks most suitable. The Customer agrees to pay for such additional Services.

4.2 If the Company supplies Service Exchange Parts to the Customer, the Customer must return the equivalent number and specification of failed parts to the Company within such period as may be agreed in writing by the parties or otherwise within a maximum period of 30 days of the date of Delivery of the Service Exchange Parts falling which the company shall be entitled to charge the customer for such non-charge.

4.3 It shall be the responsibility of the Customer when leaving any Product at the Company's premises or handing over the Product to any third party acting on behalf of the Company (including but not limited to any vehicle recovery organisation) for the purpose of receiving services to hand over the Product in a clean condition; in the case of a Vehicle to remove all belongings and any other goods which do not form part of the Vehicle; and to advise the company of any payload or any other factor which may affect the Servicing of the Vehicle.

4.4 Where in order to carry out Services the Company reasonably requires further instructions and/or information from the Customer, including but not limited to information about the construction, use and history of the Vehicle or Part being Serviced, and where the Customer does not provide such instructions and/or information as soon as reasonably practicable, then the agreed Delivery date shall be deemed delayed by a period equal to that which elapsed between the Company requesting the further instructions and/or information and the Company receiving such instructions and/or information.

4.5 If any Product received by the Company for Service is not removed from the company's premises by or on behalf of the Customer within 7 days of the Company notifying the Customer that the Product is ready for despatch, or where further instructions or authorisations are required to carry out the Service and the such instructions or authorisations are not given by the Customer within 7 days of the Company requesting such instructions or authorisations, the Company shall have the right to charge the Customer for storage at the Company's standard rates.

4.6 Where the Customer is in delay as described in Condition 4.5 above for 60 days or more, the Company shall give Customer notice of such fact and shall have the right to dispose of the Product in such manner as it thinks fit. The Company may deduct from the proceeds of such disposal all sums due to the Company from the Customer, whether in respect of the Service or otherwise (including the costs of storage and the costs incurred in making such disposal). Any remaining balance will be paid to the Customer.

4.7 When a Customer's Vehicle is received at the Company's premises for Service, then any of its payload or contents are received, driven, towed, transported or stored by the Company's employees or on behalf of the Company at the risk of the Customer. All Products in the possession of the Company for Service or otherwise are held by the Company at the Customer's risk as regards loss or damage whatsoever arising. The Customer's attention is drawn to the importance of ensuring that its own insurance arrangements provide the necessary cover.

4.8 Unless alternative written instructions are given to the company by the Customer prior to the company agreeing to undertake the service all materials or parts permanently removed from any Product will become the property of the Company.

5. PRICE AND PAYMENT

5.1 The price for Vehicles will be the price set out in the Company's written acknowledgement of order and the price for Parts and/or Services will be as agreed between the parties. The price is exclusive of any costs of packaging and carriage, VAT and any other applicable sales tax or duty which will be added to the sum in question. Any dispute concerning the dispatch or invoicing of any Product must be submitted to the Company within 7 days of receipt of the advice note or invoice. The Company may refuse to recognise a claim not made within such period.

5.2 Any packaging provided by the Company which is returnable, but not returned to the Company within 30 days of Delivery, will be charged to the Customer.

5.3 Unless otherwise agreed between the parties, payment for Vehicles is due before Delivery. Payment for Parts and/or Services is due in accordance with the credit terms agreed between the parties in writing. Time for payment is of the essence.

5.4 All payments to be made by the Customer under the Contract will be made in full in cash, cleared funds or by means of a valid credit card accepted by the Company at its sole discretion, without any set-off, restriction or condition and without any deduction for or on account of any counterclaim.

5.5 The Company may appropriate any payment made by the Customer to the Company to such of the invoices for the Products or Services as the company thinks fit, despite any purported appropriation by the company.

5.6 If any sum payable under the contract is not paid when due then, without prejudice to the company's other rights under the Contract that sum will bear interest from the due date until payment is made in full, both before and after any judgement, at 4% per cent per annum over Lloyds TSB plc base rate from time to time.

6. DELIVERY

6.1 Unless otherwise agreed with the Company in writing, Delivery of Vehicles shall take place at the Customer's premises and Delivery of Parts shall take place at the Company's premises. Performance of Services shall take place at the Company's premises.

6.2 Delivery may also be affected by releasing the Product to a collection service appointed by the Customer.

6.3 Delivery of Products shall be at a time and date agreed between the parties. If the Customer fails to take Delivery, or fails to provide any necessary documents, the Products will be deemed to have been Delivered and the Company, without prejudice to its other rights, may at its option store or arrange for storage of the Products until actual Delivery or sale to a third party, and charge the Customer for all related costs and expenses (including, without limitation, storage and insurance); and/or following written notice to the Customer, sell any of the Products at the best price reasonably obtainable in the circumstances and charge the Customer for any shortfall below the price under the Contract.

6.4 The Company will use reasonable endeavours to Deliver or perform as the case may be each of the Customer's orders for the Products and/or Services within the time agreed when the Customer places an order and, if no time is agreed, then within a reasonable time of Delivery or performance will not be of the essence. If, despite those endeavours, the Company is unable for any reason to fulfil any Delivery or performance on the specified date, the Company will be deemed not to be in breach of the contract, nor (for the avoidance of doubt) will the Company have any liability to the Customer for direct, indirect or consequential loss (all three of which terms includes, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) however caused (including as a result of negligence) by any delay or failure in Delivery or performance except as set out in this Condition. Any delay in Delivery or performance will not entitle the Customer to cancel the order

unless and until the Customer has given 14 days' written notice to the Company requiring the Delivery or performance to be made and the Company has not fulfilled the Delivery or performance within that period.

7. RISK/TITLE

7.1 Ownership of the Products will not pass to the Customer until the Company has received in full all sums due to it in respect of:

7.1.1 the Products; and

7.1.2 all other sums which are or which become due to the Company from the Customer on any account.

7.2 Until ownership of the Products has passed to the Customer, the Customer must hold the Products on a fiduciary basis as the Company's bailee; store the Products (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property; not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and maintain the Products in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company, and will whenever requested by the Company produce a copy of the policy of insurance.

7.3 Risk in the Products will pass to the Customer upon Delivery.

7.4 The Customer's right to possession will terminate immediately upon the occurrence of an event which would allow the Company to terminate the Contract under Condition 12.1 or where a sum payable under the Contract has not been paid when due.

7.5 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them, and agrees to procure access to any third party premises where such Products may be held.

7.6 If the Company provides a courtesy vehicle to the Customer then the Customer will insure such vehicle for the benefit of the Company for its full market value (including gap insurance) against all risks on a comprehensive policy without restriction or excess and the Customer shall indemnify, keep indemnified and hold harmless the Company for all costs, expenses, liabilities including negligence (other than death or personal injury arising out of the negligence of the Company), injuries, losses, damages, proceedings or legal costs (on a full indemnity basis) and judgements which the Company incurs or suffers and which arise in connection with or out of the use of such courtesy vehicle (including any accidents involving such vehicle).

8. WARRANTIES

8.1 Any new Product is sold by the Company subject, to any warranty. Which, may be in force at the time of Delivery given by the manufacturer of the Product. Any used Product is sold by the Company, subject to such warranty terms, if any, as specified in writing by the Company.

8.2 Where Volvo is the manufacturer of a Product, the Customer is advised that Volvo's Vehicle Warranty is printed in the Warranty Certificate contained within the Warranty and Service booklet issued with each new Volvo vehicle and Volvo's Parts Warranty is displayed at the Company's premises and that Volvo's Warranty is valid at each and every workshop authorised by Volvo or AB Volvo irrespective of location of the Vehicle or Part in the United Kingdom or overseas.

8.3 The Customer acknowledges that neither Volvo nor the Company offers any warranty that any Product complies with the regulations or requirements applicable in any jurisdiction other than in the case of Volvo Products only, those applicable to the United Kingdom.

9. INDEMNITY

The Customer shall indemnify and keep indemnified the Company against all costs, claims, damages, demands or loss (whenever caused wholly or partly by):

9.1 any breach of the customer's obligations under this Contract;

9.2 any modification or alteration to any Volvo Vehicle carried out without prior consent and approval of the Company by or on behalf of the Customer, including but not limited to the fitting of any equipment, accessories or replacement parts not expressly approved for use with such Volvo Vehicle, or not fully equivalent in specifications and quality to equipment or replacement parts so approved by Volvo; or

9.3 any defect in Products caused by any act or omission by third parties or by the Customer or its employees or agents.

10. LIMITATION OF LIABILITY

10.1 In the event of any breach of the Company's express obligations under Conditions 6.4 and 8.1 to 8.3 above the remedies of the Customer will be limited to damages.

10.2 The Company does not exclude its liability (if any) to the Customer:

10.2.1 for breach of the Company's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;

10.2.2 for personal injury or death resulting from the Company's negligence;

10.2.3 under section 2(3) Consumer Protection Act 1987;

10.2.4 for any matter which it would be illegal for the Company to exclude (or to attempt to exclude) its liability; or

10.2.5 for fraud.

10.3 Except as provided in Conditions 6.4, 8.1 to 8.3 and 10.1 to 10.2, the Company will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) however caused arising out of or in connection with:

10.3.1 any of the Products, or the manufacture or sale or supply, or failure or delay in supply, of the Products by the Company or on the part of the Company's employees, agents or sub-contractors;

10.3.2 any Service performed by the Company or the Company's employees, agents or sub-contractors;

10.3.3 any breach by the Company of any of the express or implied terms of the Contract;

10.3.4 any use made or resale by the Customer of any of the Products, or of any product incorporating any of the Products; or

10.3.5 any statement made or not made, or advice given or not given, by or on behalf of the Company or otherwise under the Contract.

10.4 For the avoidance of doubt and without prejudice to any other rights the Company may have under any Contract, the Company shall not be liable for any claim for any loss or damage arising from the Customer's failure to comply with Conditions 4.3 or 4.4 above.

10.5 Except as set out in Conditions 6.4, 8.1 to 8.3 and 10.1 to 10.2, the Company hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.

10.6 The Customer acknowledges that the above provisions of this Condition 10 are reasonable and reflected in the price which would be higher without those provisions, and the Customer will accept such risk and/or insure accordingly.

10.7 The Customer agrees to indemnify, keep indemnified and hold harmless the Company from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgements which the company incurs or suffers as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance by the Customer of the terms of the Contract.

11. FORCE MAJEURE

The Company will not be liable to the Customer for any failure or delay or for the consequences of any failure or delay in performance of the Contract, if it is due to any event beyond the reasonable control and contemplation of the Company including, without limitation, acts of God, war, industrial disputes, protests, fire, pest, explosion, an act of terrorism and national emergencies and the Company will be entitled to a reasonable extension of time for performing such obligations.

12. TERMINATION

12.1 The Company may by written notice terminate the Contract immediately if the Customer is in material breach of the Contract; enters into insolvency, bankruptcy, any arrangement with its creditors or any other arrangement or situation which has a like effect; or ceases to trade or appears in the reasonable opinion of the Company likely or is threatening to cease to trade

12.2 Failure to pay any sums due in accordance with Condition 5.3 is a material breach of the terms of the Contract which is not capable of remedy.

12.3 The termination of the Contract, however arising is without prejudice to the rights, duties and liability of either the Customer or the company accrued prior to termination. The Conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination.

13. GENERAL

13.1 No Contract shall constitute or effect any licence, transfer, sale or other disposal to the Customer or any third party of any intellectual property rights of Volvo or the Company or of any third party in any Product.

13.2 All new Vehicles and/or Parts are sold on condition that the Customer will neither resell the Vehicle and/or Part for commercial gain while new nor enter into a leasing contract involving a transfer of ownership or a purchase option prior to the expiry of the contract and which would allow the lessee to purchase the vehicle and/or Part at any time including when the Vehicle and/or Part is still new.

13.3 Time for performance of the Company's obligations shall not be of the essence.

13.4 Each right or remedy of the company under the contract is without prejudice to any other right or remedy of the company under the contract or otherwise.

13.5 No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.

13.6 Save as set out in the Contract, these Terms and Conditions may only be varied or amended in writing and signed by a Managing Director of the company.

13.7 The Company may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.

13.8 The Contract is personal to the Customer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the contract without the Company's prior written consent.

13.9 The Contract and the Warranty documents contain all the terms which the Company and the Customer have agreed in relation to the Products or Services and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Products or Services. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition 13.9 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

13.10 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

13.11 Nothing in this Contract shall commit the Company to any residual value underwrite or buyback obligation in relation to any Vehicle. Any such obligation may only be entered into and given by a Managing Director of the Company in writing.

13.12 Any notice in connection with the Contract will be in writing addressed to the other party at its registered office, or principal place of business and will be delivered by hand, or first class or special delivery post. The notice will be deemed to have been duly served, if delivered by hand, when left at the proper address for service or if made by pre-paid first class post or special delivery post, 48 hours after being posted.

13.13 The formation, existence, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by English law. The English courts will have non-exclusive jurisdiction to settle any dispute which may arise out of, or in connection with the Contract. The parties agree to submit to that jurisdiction.