

Sell USA Terms & Conditions

1. INTERPRETATION

1.1. Definitions:

Business: an entity that purchases Vehicle for business use.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.3.

Consumer: a person who purchases Vehicle and services for personal use.

Contract: the contract between the Dealer and the Customer for the sale and purchase of the Vehicle in accordance with these Conditions.

Customer: the person or firm who purchases the Vehicle from the Dealer.

Delivery: this encompasses collection from the Dealer's site, or, if agreed, delivery to the customer's address.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

Order: the Customer's order for the Vehicle, as set out in the Customer's purchase order form.

Vehicle: this means all cars, vans, minibuses, caravans, trailers, lorries, motorbikes, anything motor driven, and their components and accessories.

Dealer: Sell USA - The Home of Big Boys Toys Un Limited

1.2. Interpretation

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.

2. BASIS OF CONTRACT

2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2. The Order constitutes an offer by the Customer to purchase the Vehicle in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

- 2.3. The Order shall only be deemed to be accepted when the Dealer issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5. Any descriptive matter or advertising produced by the Dealer and any descriptions contained in the Dealer's catalogues or brochures or website are produced for the sole purpose of giving an approximate idea of the Vehicle referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6. A quotation for the Vehicle given by the Dealer shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. VEHICLE

- 3.1. The Vehicle are described in the Dealer's catalogue or website as the Specification.
- 3.2. The Dealer reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1. The Dealer shall ensure that:
 - (a) The delivery of the Vehicle is accompanied by a sales invoice/delivery note that shows the date of the Order, the contract number, the type of the Vehicle (including the registration number and current displayed mileage of the Vehicle, where applicable); and
- 4.2. The Customer shall collect the Vehicle from the Dealer's premises at or such other location as may be advised by the Dealer prior to delivery (**Delivery Location**) within seven Business Days of the Dealer notifying the Customer that the Vehicle is ready.
- 4.3. Delivery is completed on the completion of collecting the Vehicle at the Delivery Location.
- 4.4. If the customer requests delivery to their agreed address consideration to the request will be given, but they do not run an organised Distance selling Scheme and any delivery cost is non-refundable and it is the Customer's responsibility, and cost, to return the vehicle.
- 4.5. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Dealer shall not be liable for any delay in delivery of the Vehicle that is caused by a Force Majeure Event or the Customer's failure to provide the Dealer with adequate delivery instructions or any other instructions that are relevant to the supply of the Vehicle.
- 4.6. If the Dealer fails to deliver the Vehicle, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining a replacement Vehicle of similar description and quality in the cheapest market available, less the price of the Vehicle. The Dealer shall have no liability for any failure to deliver the Vehicle to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Dealer with adequate delivery instructions or any other instructions that are relevant to the supply of the Vehicle.

- 4.7. If the Customer fails to take delivery of the Vehicle within seven Business Days of the Dealer notifying the Customer that the Vehicle is ready, then, except where such failure or delay is caused by a Force Majeure Event or the Dealer's failure to comply with its obligations under the Contract:
- (a) the Dealer shall store the Vehicle until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
 - (b) The Dealer shall be able to make a deduction from the non-refundable deposit paid for the expenses incurred.
- 4.8. If 14 Business Days after the day on which the Dealer notified the Customer that the Vehicle were ready for delivery the Customer has not accepted actual delivery of them, the Dealer may resell or otherwise dispose of the Vehicle.

5. QUALITY

- 5.1. The Dealer warrants that on the date of delivery, the Vehicle shall:
- (a) conform in all material respects with the Specification;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be of satisfactory quality (within the meaning of the Sale of Vehicle Act 1979 and the Consumer Rights Act 2015); and
 - (d) be fit for any purpose held out by the Dealer.
- 5.2. Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to the Dealer during the warranty period within a reasonable time of discovery that some or all of the Vehicle do not comply with the warranty set out in clause 5.1;
 - (b) the Dealer is given a reasonable opportunity of examining such Vehicle; and
 - (c) the Customer (if asked to do so by the Dealer) returns such Vehicle to the Dealer place of business at the Customer's cost,

the Dealer shall, at its option, repair or replace the defective Vehicle, or refund the price of the defective Vehicle in full.

- 5.3. The Dealer shall not be liable for the Vehicle' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Vehicle after giving notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow the Dealer's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Vehicle or (if there are none) good practice regarding the same;
 - (c) the Customer alters or repairs such Vehicle without the written consent of the Dealer;
 - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (e) the Vehicle differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4. This does not affect the customer's statutory rights.

6. TITLE AND RISK

6.1. The risk in the Vehicle shall pass to the Customer on completion of delivery.

6.2. Title to the Vehicle shall not pass to the Customer until the Dealer receives payment in full (in cash or cleared funds) for the Vehicle.

6.3. Until title to the Vehicle has passed to the Customer, the Customer shall:

- (a) maintain the Vehicle in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (b) notify the Dealer immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and

7. PRICE AND PAYMENT

7.1. The price of the Vehicle shall be the price set out in the Order.

7.2. The Dealer may, by giving notice to the Customer at any time before delivery, increase the price of the Vehicle to reflect any increase in the cost of the Vehicle that is due to:

- (a) any factor beyond the Dealer's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Vehicle ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Dealer adequate or accurate information or instructions.

7.3. The price of the Vehicle:

- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Dealer at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of transport of the Vehicle, which shall be invoiced to the Customer

7.4. The Customer shall pay each invoice submitted by the Dealer:

- (a) Before the Vehicle are taken from the Dealer's premises; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Dealer, and
- (c) time for payment shall be of the essence of the Contract, and
- (d) Any payment received prior to an invoice being issued, regardless of payment description, will be considered payment on account and will be applied towards a subsequent purchase. Where a purchase does not take place a refund or credit note may be issued at the discretion of the Dealer.
- (e) In the case of an external finance facility whether in connection with the Dealer or independent, any payments received will be allocated as part-payments to cover

additional administration as required. These payments are not refundable unless confirmed in writing beforehand.

8. LIMITATION OF LIABILITY

- 8.1. The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2. Nothing in in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by the Sale of Vehicle Act 1979 or the Consumer Rights Act 2015; or
 - (d) defective products under the Consumer Protection Act 1987.
- 8.3. Subject to clause 8.3, the Dealer's total liability to the Customer shall not exceed £5.
- 8.4. Subject to clause 8.3, the following types of loss are wholly excluded:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 8.5. This clause 8 shall survive termination of the Contract.

9. TERMINATION

- 9.1. Without limiting its other rights or remedies, the Dealer may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 of that party being notified in writing to do so;
 - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

- (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

- 9.2. Without limiting its other rights or remedies, the Dealer may suspend provision of the Vehicle under the Contract or any other contract between the Customer and the Dealer if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or the Dealer reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3. Without limiting its other rights or remedies, the Dealer may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4. On termination of the Contract for any reason the Customer shall immediately pay to the Dealer all of the Dealer's outstanding unpaid invoices and interest.
- 9.5. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for two months, the party not affected may terminate this Contract by giving 7 days' written notice to the affected party.

11. GENERAL

11.1. Assignment and other dealings.

- (a) The Dealer may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Dealer.

11.2. Entire agreement.

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is

not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

- 11.3. **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.4. **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.5. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this clause 11.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.6. **Notices.**
- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receptor at the time the notice is left at the proper address;
 - (ii) if sent by [pre-paid first-class post or other] next working day delivery service, at 9:00 am on the two Business Day after posting [or at the time recorded by the delivery service] unless received during a period of vacation; and
 - (iii) if sent by fax, email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.6(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
 - (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution except during a noted period of vacation.
- 11.7. **Third party rights.**
- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
 - (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.8. **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.9. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

11.10. **Repairs and Rejections:** It is the Customer's responsibility to return the Vehicle to the Dealer, at their own cost, in the event that a repair or rejection is required.

12. DISTANCE SELLING

12.1. We do not run an organised Distance Selling scheme, but we rely on our Distance Selling terms in the event that the sale of a vehicle is caught under the legislation that governs off premises sales.

12.2. If you buy as a consumer and the Consumer Contracts Regulations 2013 apply, you will have the right to cancel this contract within 14 days subject to the below.

12.3. The cancellation period will expire after 14 days from the day on which you, or a third party on your behalf, collect or take delivery of your vehicle.

12.4. To exercise the right to cancel, you must inform us of your decision to cancel this contract by a clear statement sent by post or email to our address. If required, you can request a template cancellation notice from us, but it is not obligatory to use this specific template.

12.5. To meet the cancellation deadline, it is sufficient for you to send your clear statement or form confirming your exercise of the right to cancel before the cancellation period has expired.

12.6. Effects of cancellation

12.7. If you cancel this contract, we will reimburse to you payments received from you, including the cost of delivering the goods to you (except for the supplementary costs arising if you chose delivery over collection or a type of delivery other than the least expensive type of standard delivery offered by us). This reimbursement is subject to the following conditions:

- We may make a deduction from the reimbursement for loss in value of any goods supplied if the loss is the result of unnecessary handling by you. Anything over and above a standard test drive will be considered unnecessary handling and will lead to a deduction of £2 for each mile driven over 20 miles. In addition, we will also be entitled to make a deduction for any damage or excess wear.
- We will make the reimbursement without undue delay, and not later than 14 days after the day we receive back from you the vehicle and all documents which were supplied including, but not limited to, service histories and the V5 documentation. We reserve the right to register the vehicle with the DVLA only on the first business day following expiry of your 14 day cancellation period.
- We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise. In any event, you will not incur any fees as a result of the reimbursement. This may include handing back any part exchange vehicle if still available and/or seeking payment from you to cover any negative equity.
- We will withhold the reimbursement until we have received the goods and all paperwork back in good order.

- It is your responsibility to return the vehicle without undue delay and in any event not later than 14 days from the day on which you communicate your cancellation of this contract to us. The vehicle must not be driven from the date you notify us of your cancellation, other than to drive it back to us.
- You will remain liable for the vehicle and so for its tax, insurance, and any fines, charges or penalties until it has been accepted back to our premises.
- You will have to bear the direct cost of returning the goods and take full responsibility for the safe return of the vehicle.
- You are only liable for any diminished value of the goods resulting from the handling other than which is necessary to establish the nature, characteristics and functioning of the goods according to the previous reference to test drives.

13. PART EXCHANGE

- 13.1. We are not obliged to take a vehicle in part exchange, nor are you obliged to go through with the part exchange even if an offer has been made.
- 13.2. Any vehicle taken in part exchange must be available to examine before any value can be pleased upon the vehicle. Any estimated valuation prior to inspection is not a binding offer and cannot be relied upon.
- 13.3. We are entitled to reject any part exchange vehicle after an offer is made, when it is delivered, if:
- (a) It has been involved in an accident.
 - (b) There is a discrepancy in the mileage.
 - (c) The condition of the vehicle has changed since the inspection.
 - (d) Any issue is identified by way of a HPI check or similar, including outstanding finance or incumbrances.
 - (e) It is not your property to sell.
 - (f) The V5 document is not in your name or is damaged or missing.
- 13.4. Any vehicle taken in part exchange must come with:
- (a) All keys and accessories
 - (b) The V5 registration document.

14. INSPECTION OF THE VEHICLE

- 14.1. It is the customer's responsibility to inspect the vehicle carefully prior to purchase and adequate time will be given. The Dealer cannot be held responsible for a customer's failure to adequately inspect the vehicle.

15. LOSS OR DAMAGE

- 15.1. The Dealer shall not be responsible for any loss or damage to the Customer's vehicle, unless caused by the negligence of the Dealer's employees, servants or agents. The Customer is encouraged to remove all personal items from the vehicle.

16. STORAGE CHARGES

- 16.1. The Dealer reserves the right to levy a daily charge for storage of the customer's property if left onsite without reason.

17. DISPUTE RESOLUTION

- 17.1. We are not part of a Dispute Resolution Scheme.
- 17.2. In the event of a dispute, if the matter cannot be easily resolved between the Dealer and the Customer, then the matter will be arbitrated with the assistance of our very capable partner:
- (a) Lawgistics Ltd - The legal experts for the motor trade.