

## **GINETTA CARS LIMITED**

### **TERMS AND CONDITIONS OF SALE AND SUPPLY**

#### **1. GENERAL**

GINETTA CARS LIMITED ("the Supplier") sells its Goods and provides its Services (as defined below) in accordance with the following terms and conditions which shall apply to every such sale and supply, except to the extent stated and/or as varied in writing by a Director of the Supplier, and to the exclusion of any conflicting terms and conditions submitted by the Client (as defined below).

#### **2. DEFINITIONS**

2.1. Within these Terms and Conditions the following expressions shall have the following meanings:

2.1.1. **'The Client'** shall mean the person firm or company who has requested the Supplier to provide Goods or Services or with whom the Supplier contracts for the provision of Goods and/or Services.

2.1.2. **'The Goods'** shall mean the vehicles, component parts, materials, equipment or services (including any part thereof, any instalment of the Goods or any parts for them), which the Supplier agrees to supply to or to the order of the Client.

2.1.3. **'Intellectual Property Rights'** shall mean patents, registered and unregistered designs, copyright, trade marks, database rights and all other intellectual property protection wherever in the world enforceable.

2.1.4. **'Know-how'** shall mean all inventions, discoveries, improvements and processes (whether patentable or non-patentable), copyright works (including without limitation computer programs), designs (whether or not registered or registrable) and all other technical information of whatever nature.

2.1.5. **'The Supplier'** shall mean Ginetta Cars Limited.

2.1.6. **'Services'** shall mean the services which the Supplier agrees to supply to or to the order of the Client.

2.1.7. **'Terms'** shall mean these Terms and Conditions of Sale and Supply.

#### **3. WARRANTY LIABILITY AND INDEMNITY**

3.1. All Goods manufactured by the Supplier are carefully examined and tested before leaving its works. The Supplier, therefore, gives the following warranty ("the Warranty") which (to the fullest extent permitted by law) supersedes and is in substitution for any conditions or warranty implied by statute, common law or otherwise in relation to the quality, condition or specification of the Goods, or any remedy for their breach:

3.1.1. If, within twelve months from the date of the supply of the Goods, any defect or fault is discovered in any Goods manufactured by the Supplier, due, in the Supplier's sole opinion (acting reasonably), to faulty material or sub-standard workmanship, the Supplier warrants to the Client that it will make good the defect by, at its discretion, repair or replacement, without charge to the Client PROVIDED that notice is given to the Supplier by the Client immediately on the Client's discovery of any defect and the defective Goods or parts thereof are forwarded to the Supplier, carriage paid and suitably packed. Where the Supplier complies with its warranty under this clause the Supplier shall have no further liability to the Client in respect of the defect or defects concerned.

3.2. The Warranty does not apply to defects arising from ordinary wear and tear, misuse, neglect, failure to follow the Supplier's instructions (whether oral or in writing), alteration or repair of the Goods without the Supplier's approval, abnormal working conditions, or wilful damage, or from circumstances over which the Supplier has no control, or from any drawing, design or specification supplied by the Client.

3.3. The Supplier's responsibility in the case of any defect is limited to the cost of making good such defect in its workshops, or, at its discretion replacing the affected Goods or parts thereof, in accordance with the terms of the Warranty.

3.4. In the case of Goods which are not of the Supplier's manufacture, it will pass on only those terms of warranty or guarantee passed to it by the manufacturer of such Goods, if any.

3.5. It is a condition of the Warranty that the Goods shall have been serviced in accordance with the manufacturer's/Supplier's recommendations.

3.6. The Supplier shall be under no liability under the Warranty (or any other warranty, condition or guarantee) if the total price for the Goods and/or Services has not been paid by the due date for payment.

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

3.8. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Client are not affected by these Terms.

3.9. Except in respect of death or personal injury caused by the Supplier's negligence, or liability for defective products under the Consumer Protection Act 1987, the Supplier shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for loss of profit, loss of opportunity, loss of contract or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Supplier, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or Services (including any delay in supplying or any failure to supply the Goods and/or Services in accordance with the contract or at all) or their use or resale by the Client, and the entire liability of the Supplier under or in connection with the contract for the supply of the Goods/Services (whether in contract, tort or otherwise) shall not exceed the price of the Goods and Services the subject of the contract, except as expressly provided in these Terms. The maximum liability of the Supplier for damage to property arising directly from the Supplier's negligence (or that of its employees, agents or sub-contractors) in relation to the contract for the supply of the Goods and/or Services shall be £1,000,000.00, where the other provisions of this clause 3.9 do not, or are held not to apply to limit such liability.

3.10. The Supplier shall not be liable to the Client or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the Supplier's reasonable control or the Client's failure to supply delivery or other necessary instructions, or other fault of the Client. Without limiting the foregoing, the following shall be regarded as causes beyond the Supplier's reasonable control:

3.10.1. Act of God, explosion, flood, tempest, fire or accident;

3.10.2. war or threat of war, act of terrorism, sabotage, insurrection, civil disturbance or requisition;

3.10.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

3.10.4. import or export regulations or embargoes;

3.10.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a third party);

3.10.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;

3.10.7. power failure or breakdown in machinery;

3.10.8. exhaustion of stock.

3.11. Nothing in these Terms shall be taken to exclude or limit or purport to exclude or limit any liability of the Supplier for death or personal injury caused by the Supplier's negligence or for fraudulent misrepresentation of the Supplier nor protect a director or servant or agent of the Supplier in respect of any willful or malicious act or omission.

3.11.1. The Client accepts that in so far as this clause 3.11. is concerned the Supplier contracts for and on behalf of itself and its directors, servants or agents all of whom shall have the benefit of this clause 3.11. and shall be under no liability greater than or in addition to that of the Supplier.

3.11.2. The Client agrees that he and any person authorised by him to drive will drive any car which is the subject of any contract to which these terms apply at his own risk and will not in any event make any claim against the Supplier or any director, servant or agent thereof in respect of any injury (including death) loss or damage which he may suffer as a result of driving or using the said car whether the same be caused or contributed to by negligence or

any breach of contract or any other unlawful act or omission on the part of the Supplier or any director, servant or agent thereof or otherwise howsoever.

3.11.3. The Client further agrees that if any third party (including, without prejudice to the generality of the foregoing, any relative or dependent of the Client) should suffer any injury (including death) loss or damage as a result of the driving or use of the said car by the Client or anyone else the Client will indemnify the Supplier against any claim which such third party may establish against the Supplier.

3.11.4. In the event of such third party establishing a claim against any director, servant or agent of the Supplier the Client will pay the Supplier such sum as will enable the Supplier to indemnify the director, servant or agent against the claim.

#### **4. CARRIAGE AND PACKING**

4.1. The Client shall be liable to pay the Supplier's charges for transport, packaging and insurance.

4.2. All orders will normally be consigned by road or rail carriage paid at goods rates for a three day delivery.

4.3. When Goods are despatched by passenger-train, Securicor, or special carrier at the Client's request, or in accordance with any other special instructions of the Client, any costs of such carriage incurred by the Supplier will be charged on invoice to the Client. The Supplier will use its best endeavours to meet any special request for early special delivery but accepts no liability whatsoever in this respect.

4.4. Notwithstanding any other provision of this clause 4, where the Goods are for export, the costs of packing, carriage and insurance shall be payable in accordance with the terms agreed between the Supplier and the Client, and otherwise subject to and in accordance with these Terms.

4.5. The Supplier is free to use the most economical means of delivering the goods. For goods valued at £20 or less the Supplier may use the Royal Mail for which no proof of delivery will be available.

#### **5. EXPORT TERMS**

5.1. Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 5 shall (subject to any special terms agreed in writing between the Client and the Supplier) apply notwithstanding any other provision of these Terms.

5.2. The Client shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

5.3. Unless otherwise agreed in writing between the Client and the Supplier, the Goods shall be supplied on an ex works basis and the Supplier shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

5.4. The Client shall be responsible for arranging for testing and inspection of the Goods at the Supplier's premises before shipment. The Supplier shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

5.5. Payment of all amounts due to the Supplier shall be made by irrevocable letter of credit opened by the Client in favour of the Supplier and confirmed by a UK bank acceptable to the Supplier or, if the Supplier has agreed in Writing on or before acceptance of the Client's order to waive this requirement, by acceptance by the Client and delivery to the Supplier of a bill of exchange drawn on the Client payable 60 days after sight to the order of the Supplier at such branch of Yorkshire Bank plc in England as may be specified in the bill of exchange.

#### **6. PRICES**

6.1. The Supplier's prices for Goods/Services are subject to change without notice. Subject to clause 6.3, the actual price to be paid for the Goods will be as the current list price ruling at the time of despatch (plus the charges for carriage, packing and insurance which are payable in accordance with clause 4).

6.2. All prices and other charges payable hereunder are exclusive of Value Added Tax, which shall be payable by the Client at the applicable rate.

6.3. The Supplier reserves the right, by giving written notice to the Client at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (such as, without limitation, any

change in relevant legislation, foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give the Supplier adequate information or instructions.

## **7. CREDIT**

7.1. Any Client order is accepted subject to the Client's credit and/or that of its key personnel, representatives, or individual partners ("Key Individuals") as determined by the Supplier being approved by the Supplier. The Supplier may transfer personal information provided by or on behalf of the Client about it or any Key Individual, to the Supplier's bankers/financiers and credit reference agencies, for the following purposes:

- 7.1.1. obtaining credit insurance;
- 7.1.2. making credit reference agency searches;
- 7.1.3. credit control;
- 7.1.4. assessment and analysis (including credit scoring, market, product and statistical analysis);
- 7.1.5. securitisation;
- 7.1.6. protecting the Supplier's interests.

The Supplier shall provide the Client and/or the Key Individual concerned with details of the Supplier's bankers/financiers and those of any credit reference agencies used by the Supplier in relation to the Client or that Key Individual, upon request. The Supplier will also process the personal data referred to above for the purposes of generally running the Client's account and providing the Goods and/or Services.

7.2. The Supplier may in its absolute discretion at any time prior to delivery require payment of the price in whole or in part before making delivery to the Client. In all other cases the Supplier shall invoice the Client for the price of the Goods/Services on or at any time after their delivery, unless the Client wrongfully fails to take delivery, in which event the Supplier shall be entitled to invoice the Client at any time after the Supplier has tendered delivery.

7.3. The Supplier shall only deliver Goods and Services to the Client after satisfactory credit approval has been received by the Supplier or pro-forma payment has been received in cash or cleared funds.

## **8. PAYMENT**

8.1. Unless otherwise stated in writing by the Supplier, the Client shall pay for any Goods or Services supplied within thirty days from the date of invoice therefor. Payment of the Supplier's charges shall be made without any other deduction or set off whatsoever. The Supplier shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Client. The time of payment of the price shall be of the essence of the contract.

8.2. Should prompt payment not be made the Supplier reserves the right (without prejudice to any other rights and remedies it may have) to charge the Client interest (both before and after any judgment) on all overdue monies at four per cent per annum over Yorkshire Bank plc Base Lending Rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). The Supplier reserves the right to charge the Client for any costs in obtaining payment of monies overdue, which may include but are not limited to professional fees, solicitors fees, court costs, employment of a collection agency, bailiffs etc. Interest shall also apply in accordance with the foregoing to the cost to the Supplier of collection of the monies due.

8.3. At the discretion of and upon request by the Supplier, the Client shall pay the amount requested by the Supplier on pro-forma invoice prior to the issue of Goods or Services to the Client.

8.4. Where the Supplier is engaged to carry out work or Services over a period exceeding four weeks it may, at its discretion, instead of VAT invoices, issue applications for payment to the Client at periodic intervals which shall fall due for payment thirty days from the date of application, subject to clause 8.6, but which otherwise shall be subject to all of the payment terms in these Terms.

8.5. Upon its receipt of an application for payment from the Supplier, the Client shall:

8.5.1. pay the charges the subject of the application including the VAT payable in respect thereof within 30 days of the date of the application; or

8.5.2. forthwith provide a payment certificate in respect of the charges (including the VAT element) to the Supplier. In this event the Supplier shall issue a VAT invoice to the Client in respect of such charges, which the Client shall pay in full within 30 days of the date of the invoice, to the extent it has not already paid such charges; or

8.5.3. pay the amount of the charges the subject of the application exclusive of VAT within 30 days of the date of the application. In this event the Supplier shall issue a VAT invoice in respect of the charges and the Client shall pay the VAT the subject of the VAT invoice to the Supplier within 30 days of the date of the invoice.

8.6. The Supplier agrees to sign and return any payment certificate issued to it by the Client, provided it has received payment in full of the charges including VAT the subject of the payment certificate and the Supplier has not issued or does not intend to issue a VAT invoice in respect of such charges. The Supplier will receipt paid VAT invoices upon request.

#### **9. SUSPENSION OR CANCELLATION OF DELIVERY**

9.1. The Supplier reserves the right to suspend delay or cancel the delivery of some or all the Goods/Services or require advance payment for them if the Client is or reasonably appears unable to pay its debts and in those circumstances the Supplier shall also retain any other rights it has against the Client. The Supplier shall further be entitled to cancel the Client's order by notice to the Client and without liability to the Client in the event of any change (after acceptance by the Supplier of such order) to any instrument or measures referred to in clause 3.10.3, which affects the Supplier's ability to perform the contract in accordance with the order and these Terms (including without limitation where the change results in increased costs to the Supplier).

9.2. The Supplier shall be entitled to postpone any Services until full payment for the relevant Goods and Services has been received by the Supplier, in accordance with these Terms.

9.3. The Supplier shall be entitled to postpone the issue of any certification, manuals, drawings or the like until full payment has been received by the Supplier, in accordance with these Terms.

9.4. If the Client fails to make any payment on the due date then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel the contract or suspend any further supplies or deliveries to the Client.

9.5. Cancellation of any contract by the Client shall be permitted by express agreement of the Supplier only. In the event of any such cancellation the Client shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

9.6. Should the Client as a result of actions set out in Clauses 9.1 to 9.5 incur penalties or damages through any subsequent third party arrangements or agreements, the Supplier shall not be held responsible or liable nor shall the Supplier accept any charges resulting from any such penalties or damages.

#### **10. FITNESS FOR PURPOSE**

10.1. The Client must satisfy itself that the Goods supplied are fit for its purpose, as this is not guaranteed by the Supplier, and all warranties save those expressly set out in these Terms are hereby excluded to the fullest extent permitted by law.

#### **11. PASSING OF PROPERTY AND RISK**

11.1. All Goods supplied by the Supplier shall remain the Supplier's absolute property until all amounts owing to the Supplier for the relevant Goods and any other Goods and/or Services agreed to be supplied by the Supplier to the Client, have been paid in full in cash or cleared funds.

11.2. Risk in the Goods passes to the Client on delivery, or where the Client wrongfully fails to take delivery of the Goods, upon the Supplier's tendering delivery.

11.3. Should the Client resell the Goods without having paid all amounts outstanding to the Supplier then the Client agrees to hold any proceeds of sale or sufficient part thereof to pay all amounts outstanding to the Supplier as Trustee for the Supplier.

11.4. Until such time as the property in the Goods passes to the Client, the Client shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate

from those of the Client and third parties and properly stored, protected and insured and identified as the Supplier's property, but the Client may resell or use the Goods in the ordinary course of its business.

11.5. The Supplier shall be entitled at any time to repossession and to enter upon the Client's premises or where the Goods and products may be with such transport as may be necessary and to repossess any Goods or products which remain the Supplier's property.

11.6. Nothing in these Terms shall confer any right upon the Client to return any Goods sold or to refuse or delay payment therefor unless otherwise agreed by the Supplier.

11.7. Where Goods or products in which the Supplier has property are attached to or stored within any premises other than the Client's premises the Client will secure from the owners or occupiers of such premises the Client's right of entry to such premises and preserve notwithstanding termination of the Client's right of entry to such premises, the Supplier's right to enter those premises for the purpose of repossession of the Goods and products still in the Supplier's ownership.

## **12. TIME OF DESPATCH**

12.1. Orders will be executed as expeditiously as possible but where a date for delivery despatch or the provision of Services is quoted time shall not be deemed to be of the essence of the contract and no liability will be accepted by the Supplier for any loss including economic or consequential loss or damages arising from delay in delivery or failure to supply or deliver by a quoted date.

## **13. DELIVERY**

13.1. Delivery of Goods shall be made to the address stated within the purchase order and the point of delivery shall be the nearest suitable and reasonable off load point for any heavy goods vehicle.

13.2. If the Supplier fails to deliver the Goods (or any instalment) or any of the Services for any reason other than any cause beyond the Supplier's reasonable control or the Client's fault, and the Supplier is accordingly liable to the Client, the Supplier's liability shall be limited to the excess (if any) of the cost to the Client (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

## **14. INSPECTION**

14.1. Although there would normally be permission for the Client's representative to visit the Supplier's premises, such permission is not automatic.

## **15. STATUTORY REQUIREMENTS AND INTELLECTUAL PROPERTY**

15.1. Whilst every effort is made by the Supplier not to infringe any patents or trade marks or other intellectual property rights belonging to any third party, and whilst the Supplier is not aware that the supply to the Client of the Goods, or the possession or intended use by the Client of the Goods, would infringe any patent, trade mark, trade name, registered design or other intellectual property right of a third party, the Supplier takes no responsibility for the existence of such third party rights which may be so infringed and the Client must assume the risk of infringement of the same. The Supplier reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable statutory or E.U. requirements or, where the Goods are to be supplied to the Supplier's specification, which do not materially affect their quality or performance.

15.2. The Client acknowledges that all of the Intellectual Property Rights subsisting in or relating in any way to: (a) any drawings, reports, specifications and other similar documents ("the Documents") provided or prepared by the Supplier in connection with the sale and supply of the Goods and/or the Services, whether in hard copy or electronic form; and (b) the Goods, and all Know-how embodied in, or used in connection with, any of the foregoing are and shall remain vested in and the sole property of the Supplier or its licensors and that the Client shall acquire no further interest in the same than is expressly granted by these Terms.

15.3. Know-how and Intellectual Property Rights evolved, generated from or arising in the performance of, or as a result of the supply of the Goods and/or Services to or to the order of the Client, shall (to the extent that they are not already vested in the Supplier) vest in and be the absolute property of the Supplier.

15.4. Each of the Supplier and the Client shall keep confidential and shall not without the other's prior written consent disclose to any third party any information (whether of a

commercial or technical nature) concerning the business or affairs of the other which was acquired from the other pursuant to or as a result of the contract of sale between them.

#### **16. CONDITIONS OF CLIENT'S ORDERS**

16.1. The Supplier shall only accept the Client's order subject to these Terms, except as otherwise agreed in writing by an authorised person or director of the Supplier. For contractual purposes, you consent to receive communications from us electronically and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

16.2. Acceptance of an order shall be by means of any written acknowledgment by an authorized representative of the Supplier, or delivery of the Goods/Services. No order submitted by the Client shall be deemed to be accepted by the Supplier otherwise than in accordance with this clause

16.3. The Client shall be responsible to the Supplier for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Client, and for giving the Supplier any necessary information relating to the Goods/Services within a sufficient time to enable the Supplier to perform the contract in accordance with its terms.

#### **17. DESIGN**

If the Goods are to be manufactured or any process is to be applied to the Goods by the Supplier in accordance with a specification submitted by the Client, the Client shall indemnify the Supplier against all loss, damages, costs and expenses awarded against or incurred by the Supplier in connection with, or paid or agreed to be paid by the Supplier in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Supplier's use of the Client's specification.

#### **18. THIRD PARTY**

18.1. The Supplier shall not be responsible for nor shall it accept any penalties, costs or damages as a result of any undertakings from a third party.

18.2. The Supplier shall not accept or be required to accept any undertakings or conditions offered to the Client by or from any third party.

#### **19. NON-SOLICITATION**

19.1. The Client shall not during the continuance of the contract for the supply of Goods/Services or of the provision by, on behalf of, or (directly or indirectly) through the Supplier of any engineering, maintenance or servicing services in relation to the Goods ("the Maintenance Services"), or in each case within 6 months thereafter, whether by itself or with or through any third party and whether for its own account or for any third party, directly or indirectly either:

19.1.1. solicit, approach or canvass away from the Supplier; or

19.1.2. engage,

any employee or contractor of the Supplier which in the previous 6 months had been engaged by the Supplier in the supply of the Goods/Services or any of the Maintenance Services, with a view to the specific knowledge or skills of any such employee or contractor which were utilised in such supply being used by or for the benefit of the Client or any party in competition with the Supplier, nor shall the Client suffer or permit any third party to do any of the above acts.

#### **20. SET OFF**

The Client shall not be entitled to set off any amounts due from the Supplier against any one contract or against any other contract made with the Supplier.

#### **21. HEADINGS**

The headings in these Terms are for guidance only and shall not be used in any way in the interpretation of their meanings.

#### **22. PROPER LAW**

These Terms and any contract of which they form part shall be governed and construed in accordance with English Law and the Client and the Supplier submit to the non exclusive jurisdiction of the English Courts.

#### **23. ERRORS – OMISSIONS**

In the event that any quotation by the Supplier is found to contain an error or omission then the Supplier reserves the right to amend the same without any liability.

**24. WAIVER**

No waiver by the Supplier of any breach of the contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.

**25. SEVERABILITY**

If any provision of the contract between the Supplier and the Client is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the contract and the remainder of the provision in question shall not be affected.

**26. THIRD PARTY RIGHTS**

No party who is not a party to the contract between the Supplier and the Client shall be entitled by virtue of the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of these Terms/the Contract.