

ISN Europe Limited

Terms and Conditions for the Sale of Goods and Services

Introduction

These terms and conditions are in a modular format, so that they can be applied to all trading brands of ISN Europe Limited. The table below indicates which special conditions apply in addition to the Conditions.

Please contact us at marketing@isn-europe.co.uk if you have any queries.

The Contract comprises

The Conditions

and

Special Conditions A – (Applicable to ToolTruck, a trading name of ISN Europe Limited)

Special Conditions B – (Applicable to Tyre Bay Direct a trading name of ISN Europe Limited)

In the event of any conflict or inconsistency, the **Special Conditions** will prevail.

Conditions

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Affiliate means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;

Applicable Law means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national or international in any relevant jurisdiction;

Bribery Laws means the Bribery Act 2010 and all Applicable Laws in connection with bribery or anti-corruption;

Business Day means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;

Conditions means the Supplier's terms and conditions of sale set out in this document;

Confidential Information means any commercial, financial or technical information, information relating to the Deliverables, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by the Customer in performing its obligations under, or otherwise pursuant to the Contract;

Contract	means this agreement between the Supplier and the Customer for the sale and purchase of the Deliverables incorporating these Conditions and the Order, Order Acknowledgement and including all their schedules, attachments and annexures and statements of work;
Control	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and Controls, Controlled and under common Control shall be construed accordingly;
Controller	shall have the meaning given in applicable Data Protection Laws from time to time;
Customer	means the named party in the Contract which has agreed to purchase the Deliverables from the Supplier and whose details are set out in the Order;
Data Protection Laws	means, as binding on either party or the Deliverables: <ul style="list-style-type: none"> (a) the GDPR; (b) the Data Protection Act 2018; (c) any laws which implement any such laws; and (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
Data Protection Supervisory Authority	means any regulator, authority or body responsible for administering Data Protection Laws;
Data Subject	shall have the meaning in applicable Data Protection Laws from time to time;
Deliverables	means the Goods or Services or both as the case may be;
Documentation	means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Deliverables;
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake, ash cloud, or other natural disaster, epidemic or pandemic, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

GDPR	means the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time);
Goods	means the goods (and related accessories, spare parts and Documentation) and other physical material set out in the Order Acknowledgement and to be supplied by the Supplier to the Customer in accordance with the Contract;
IPR Claim	has the meaning given in clause 14.1;
Location	means the address or addresses for delivery of the Goods and performance of the Services as set out in the Order Acknowledgement or such other address or addresses as notified by the Supplier to the Customer at least 2 Business Days prior to delivery or performance;
Order	means the Customer's order for the Deliverables;
Order Acknowledgement	means the written acknowledgement of the Customer's Order
Personal Data	has the meaning given in the applicable Data Protection Laws from time to time;
Personal Data Breach	has the meaning given in the applicable Data Protection Laws from time to time;
Price	has the meaning given in clause 3.1;
processing	has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including process, processed, and processes shall be construed accordingly);
Processor	has the meaning given to it in applicable Data Protection Laws from time to time;
Protected Data	means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under the Contract;
Services	means the services set out in the Order Acknowledgement and to be supplied by the Supplier to the Customer in accordance with the Contract;
Specification	means the description or Documentation provided for the Deliverables set out or referred to in the Contract;
Sub-Processor	means any agent, subcontractor or other third party (excluding its employees) engaged by the Supplier for carrying out any processing activities on behalf of the Customer in respect of the Protected Data;

Supplier	means ISN Europe Limited, Company Reg No. 04469528. Registered office: Unit 5 Lotus Court, Harvard Industrial Estate Harvard Way, Kimbolton, Huntingdon, Cambridgeshire, PE28 0NJ. VAT number: GB 595 2031 40. And any of the names it trades under, Including ISN Garage Assist, Tyre Bay Direct, ToolTruck and Tooltopia UK.
Supplier Personnel	all employees, officers, staff, other workers, agents and consultants of the Supplier, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time;
VAT	means value added tax under the Value Added Tax Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables; and
Warranty Period	has the meaning given in clause 0.

1.2 In these Conditions, unless the context otherwise requires:

a reference to the Contract includes these Conditions, the applicable Special Conditions the Order, the Order Acknowledgement and their respective schedules, appendices and annexes (if any); the Order Acknowledgement takes precedence over the Order; any clause, schedule or other headings are included for convenience only and shall not affect their interpretation; a reference to a 'party' means either the Supplier or the Customer and includes that party's personal representatives, successors and permitted assigns; a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality); a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established; a reference to a gender includes each other gender; words in the singular include the plural and the opposite applies; any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words; a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form including email; a reference to legislation includes all secondary legislation made under it and is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that it would increase or alter the liability of a party under the Contract and a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, Order, confirmation of order, specification or other document shall form part of the Contract.
- 2.3 No variation of these Conditions or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Customer and the Supplier respectively.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase the Deliverables subject to the Contract including these Conditions.
- 2.5 If the Supplier is unable to accept an Order, it shall notify the Customer by telephone and email as soon as reasonably practicable.

- 2.6 The offer constituted by an Order shall remain in effect and capable of being accepted by the Supplier for [15] Business Days from the date on which the Customer submitted the Order, after which time it shall automatically lapse and be withdrawn.
- 2.7 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:
- 2.7.1 the Supplier's written acceptance of the Order by an Order Acknowledgement; or
 - 2.7.2 the Supplier delivering or performing the Deliverables or notifying the Customer that they are ready to be delivered or performed (as the case may be).
- 2.8 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.9 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Deliverables and are incapable of being accepted by the Customer.
- 2.10 A Contract can only be cancelled by the Customer with the prior written consent of a board director of the Supplier. Should such director, in his absolute discretion, consent to a variation or cancellation then, without prejudice to any other rights or remedies, the Customer shall indemnify the Supplier against all costs, expense, loss and damage, whether direct or indirect, that the Supplier suffers or incurs as a result of or in connection with such variation or cancellation.
- 2.11 Marketing and other advertising or promotional material, catalogues and other publications relating to the Deliverables are illustrative only, do not amount to representations and do not form part of the Contract.
- 2.12 The Supplier reserves the right to alter the Specification or design of any Goods or to discontinue any lines of Goods without prior notice.

3 Price

- 3.1 The price for the Deliverables shall be as set out in the Order Acknowledgement or, where no such provision is set out, shall be calculated in accordance with the Supplier's price list or scale of charges in force from time to time (the **Price**).
- 3.2 The Prices are exclusive of:
- 3.2.1 packaging, delivery, insurance, shipping carriage, and all other related charges or taxes which shall be charged in addition at the Supplier's standard rates, unless otherwise stated and
 - 3.2.2 VAT.
- 3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.4 The Supplier may increase the Prices at any time by giving the Customer not less than 15 Business Days' notice in writing.
- 3.5 Notwithstanding clause 3.4, the Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Deliverables which is due to any factor beyond the control of the Supplier, including but not limited to raw material costs or currency exchange rates.

4 Payment

- 4.1 The Supplier shall invoice the Customer for the Deliverables, partially or in full, at any time following acceptance of an Order.
- 4.2 The Customer shall pay all invoices:

- 4.2.1 in full without deduction or set-off, in cleared funds within 30 days of the date of each invoice (or otherwise in accordance with any credit terms agreed with the Supplier); and
 - 4.2.2 to the bank account nominated by the Supplier.
- 4.3 While the Company uses commercially available security software for any card transactions, the Company does not accept any liability or responsibility for any loss, damage, cost, expense or liability, whether direct or indirect, suffered or incurred by a Customer whose debit or credit card is used fraudulently or in an unauthorised manner.
- 4.4 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
- 4.4.1 the Supplier may, without limiting its other rights, charge interest on such sums at 5% a year above the base rate of the Bank of England from time to time in force, and
 - 4.4.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

5 Credit limit

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

6 Delivery and performance

- 6.1 The Goods shall be delivered by the Supplier, or its nominated carrier, to the Location on the date(s) specified in the Order Acknowledgement.
- 6.2 The Goods shall be deemed delivered on completion of unloading of the Goods at the Location by the Supplier or its nominated carrier (as the case may be).
- 6.3 The Services shall be performed by the Supplier at the Location on the date(s) specified in the Order Acknowledgement.
- 6.4 The Services shall be deemed delivered by the Supplier only on completion of the performance of the Services at the Location.
- 6.5 The Customer shall be entitled to reject a delivery of the Goods where an incorrect volume of the Goods has been supplied where such delivery is outside the tolerances set out in the Order Acknowledgement (or in default of any being specified: +/- 5%)
- 6.6 The Supplier may deliver the Goods or perform the Services in instalments (which may be invoiced separately and must then be paid for separately). Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment or the Contract.
- 6.7 Time is not of the essence in relation to the performance or delivery of the Deliverables. The Supplier shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are indicative only.
- 6.8 The Supplier shall not be liable for any delay in or failure of performance caused by:
 - 6.8.1 the Customer's failure to make the Location available;
 - 6.8.2 the Customer's failure to prepare the Location to receive the Deliverables (including, but not limited to groundworks, or the supply of appropriate electrical or pneumatic services);
 - 6.8.3 the Customer's failure to provide the Supplier with adequate instructions for performance or delivery; or
 - 6.8.4 Force Majeure.

- 6.9 If the Customer fails to accept delivery of the Goods the Supplier shall store and insure the Goods pending collection by the Customer or, at the Supplier's option, re-delivery, and the Customer shall pay all storage, insurance and additional delivery charges at the Supplier's then-applicable rates.
- 6.10 If 10 Business Days following the due date for delivery or collection of the Goods, the Customer has not taken delivery of or collected them, the Supplier may resell or otherwise dispose of the Goods without any obligation or liability to the Customer, except as provided for in clauses 6.10.1 and 6.10.2. The Supplier shall:
 - 6.10.1 deduct all storage charges at the Supplier's then-applicable rates and reasonable costs of resale; and
 - 6.10.2 account to the Customer for any excess of the resale price over, or invoice the Customer for any shortfall of the resale price below, the Price paid by the Customer for the Goods.

7 Risk

Risk in the Goods shall pass to the Customer on delivery.

8 Title

- 8.1 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.
- 8.2 Until title to the Goods has passed to the Customer, the Customer shall:
 - 8.2.1 hold the Goods on a fiduciary basis the Supplier's as bailee for the Supplier;
 - 8.2.2 store the Goods separately from all other material in the Customer's possession;
 - 8.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
 - 8.2.4 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;
 - 8.2.5 ensure that the Goods are clearly identifiable as belonging to the Supplier;
 - 8.2.6 not remove or alter any mark on or packaging of the Goods;
 - 8.2.7 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 18.1.1 to 18.1.4 or 18.2.1 to 18.2.14; and
 - 8.2.8 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.
- 8.3 Notwithstanding clause 8.2, the Customer may use or resell the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses 18.1.1 to 18.1.4 or 18.2.1 to 18.2.14 has occurred or is likely to occur.
- 8.4 If the Customer resells the Goods in accordance with clause 8.3, title to the Goods shall pass to the Customer immediately prior to the resale.
- 8.5 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 18.1.1 to 18.1.4 or 18.2.1 to 18.2.14, the Supplier may:
 - 8.5.1 require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and
 - 8.5.2 if the Customer fails to do so promptly, enter any premises or vehicles where the Goods are stored and repossess them.

9 Warranty

9.1 Goods provided by The Supplier are covered by different levels of warranty, over different periods of time, which are clearly explained on our websites. Please see:

ISN Europe:

<https://www.isn-europe.co.uk/>

ISN Garage Assist:

<https://www.garage-assist.com/>

Hofmann Megaplan:

<https://www.hofmann-megaplan.co.uk/>

Tool Truck:

<https://www.tooltruck-uk.com/>

Tyre Bay Direct:

<https://www.tyrebaydirect.com/>

The Supplier warrants that, at the time of delivery of the Goods or at completion of the performance of the Services, the Deliverables shall:

- 9.1.1 conform in all material respects to any sample, their description and to the Specification;
- 9.1.2 be free from material defects in design, material and workmanship;
- 9.1.3 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 9.1.4 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13.

9.2 The Customer warrants that it has provided the Supplier with all relevant, full and accurate information as to the Customer's business and needs.

9.3 As the Customer's sole and exclusive remedy, the Supplier shall, at its option, correct, repair, remedy, re-perform or refund the Deliverables that do not comply with clause 9, subject to a total limit of liability of the Price paid for the Deliverables, provided that the Customer:

- 9.3.1 serves a written notice on Supplier not later than five Business Days from delivery or performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from delivery or performance in the case of latent defects;
- 9.3.2 such notice specifies that some or all of the Deliverables do not comply with clause 9 and identifying in sufficient detail the nature and extent of the defects; and
- 9.3.3 gives the Supplier a reasonable opportunity to examine the claim of the defective Deliverables.

9.4 The provisions of these Conditions shall apply to any Deliverables that are corrected, repaired, remedied or re-performed with effect from delivery or performance of those Deliverables.

9.5 The Supplier shall not be liable for any failure of the Goods to comply with clause 9:

- 9.5.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
- 9.5.2 to the extent caused by the Customer's failure to comply with the Supplier's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
- 9.5.3 to the extent caused by the Supplier following any specification, instruction or requirement of or given by the Customer in relation to the Goods;

- 9.5.4 where the Customer modifies any Goods without the Supplier's prior written consent or, having received such consent, modifies but not in accordance with the Supplier's instructions; or
 - 9.5.5 where the Customer uses any of the Goods after notifying the Supplier that they do not comply with clause 0.
- 9.6 Except as set out in this clause 9:
- 9.6.1 the Supplier gives no warranty and makes no representations in relation to the Deliverables; and
 - 9.6.2 shall have no liability for their failure to comply with the warranty in clause 0,
- and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

10 Anti-bribery

- 10.1 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that all of that party's personnel, all others associated with that party and all of that party's subcontractors involved in the contract so comply.

11 Anti-slavery

- 11.1 Both parties shall comply with the Modern Slavery Act 2015.
- 11.2 Any breach of clauses 10.1 or 11.1 by the Customer shall be deemed a material breach of the Contract and shall entitle the Supplier to terminate the Contract with immediate effect.

12 Indemnity and insurance

- 12.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.
- 12.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

13 Limitation of liability

- 13.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 13.
- 13.2 Subject to clauses 13.5 and 13.6, the Supplier's liability for non-delivery of the Goods shall be limited to the cost and expense incurred by the Customer in obtaining replacement goods of a similar description and quality in the cheapest market available, less the price of the Goods. The Supplier's liability for all other loss, damage, cost and expense shall be subject to a limit per claim (or series of related claims) of £1,000,000 and an aggregate limit for all and any claims in any 12 month rolling period of £2,000,000.
- 13.3 Subject to clauses 13.5 and 13.6, the Supplier shall not be liable for consequential, indirect or special loss or damage.
- 13.4 Subject to clauses 13.5 and 13.6, the Supplier shall not be liable for any of the following (whether direct or indirect):
 - 13.4.1 loss of profit;
 - 13.4.2 loss or corruption of data;

- 13.4.3 loss of use;
- 13.4.4 loss of production;
- 13.4.5 loss of contract;
- 13.4.6 loss of opportunity;
- 13.4.7 loss of savings, discount or rebate (whether actual or anticipated);
- 13.4.8 harm to reputation or loss of goodwill; or
- 13.4.9 loss or damage caused by an event of Force Majeure, by the Customer's failure to perform its obligations or the Customer's choice of the Goods to meet its purpose or proposed use (if not one specified by the Supplier).

- 13.5 The limitations of liability set out in this Contract shall not apply in respect of any indemnities given by either party under the Contract.
- 13.6 Notwithstanding any other provision of the Contract, the liability of each party shall not be limited in any way in respect of the following:
 - 13.6.1 death or personal injury caused by that party's negligence;
 - 13.6.2 fraud or fraudulent misrepresentation; or
 - 13.6.3 any other losses which cannot be excluded or limited by Applicable Law.

14 Intellectual property

- 14.1 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that use of the Deliverables infringes the Intellectual Property Rights of any third party (**IPR Claim**), provided that the Supplier shall have no such liability if the Customer:
 - 14.1.1 does not notify the Supplier in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
 - 14.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;
 - 14.1.3 does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
 - 14.1.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
 - 14.1.5 does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer;
 - 14.1.6 uses the Deliverables in combination with any other goods or services, which without such combination, no IPR Claim could or would have been made.
- 14.2 If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:
 - 14.2.1 procure for the Customer the right to continue receiving the benefit of the relevant Deliverables; or
 - 14.2.2 modify or replace the infringing part of the Deliverables so as to avoid the infringement or alleged infringement, provided the Deliverables remain in material conformance to their Specification.

- 14.3 The Supplier's obligations under clause 14.1 shall not apply to Deliverables modified or used by the Customer other than in accordance with the Contract or the Supplier's instructions. The Customer shall indemnify the Supplier against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use.
- 14.4 The IPR in all drawings, catalogues, part numbers and Price lists remain the property of the Company (or its licensor) at all times. These may not be copied, in whole or in part, with the prior written permission of the Company on each occasion.

15 Confidentiality and announcements

- 15.1 The Customer shall keep confidential all Confidential Information of the Supplier and of any Affiliate of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
 - 15.1.1 any information which was in the public domain at the date of the Contract;
 - 15.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
 - 15.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier or by any Affiliate of the Supplier; or
 - 15.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- except that the provisions of clauses 15.1.1 to 15.1.3 shall not apply to information to which clause 15.4 relates.

- 15.2 This clause shall remain in force for a period of five years from the date of the Contract.
- 15.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 15.4 To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use is in compliance with and does not conflict with any provisions of clause 16.

16 Processing of personal data

- 16.1 The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Supplier and the Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to the Supplier in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with Data Protection Laws.
- 16.2 The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.
- 16.3 The Customer shall indemnify and keep indemnified the Supplier against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Data Protection Supervisory Authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 16.
- 16.4 The Supplier shall:
 - 16.4.1 only process (and shall ensure Supplier Personnel only process) the Protected Data in accordance with this Contract or for its legitimate purposes.
- 16.5 The Supplier shall implement and maintain appropriate technical and organisational measures to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

- 16.6 The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to any country or territory outside the United Kingdom or the European Union or to any International Organisation without the prior written authorisation of the Customer.
- 16.7 On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, the Supplier shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Supplier to store such Protected Data. This clause 16 shall survive termination or expiry of the Contract.

17 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 90 days, either party may terminate the Contract by written notice to the other party.

18 Termination

- 18.1 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if:
- 18.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;
 - 18.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
 - 18.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 10 days after the Supplier has given notification that the payment is overdue; or
 - 18.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 18.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 18.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 18.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
 - 18.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 18.2.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
 - 18.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
 - 18.2.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
 - 18.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 18.2.8 has a resolution passed for its winding up;
 - 18.2.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 18.2.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;

- 18.2.11 has a freezing order made against it;
- 18.2.12 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
- 18.2.13 is subject to any events or circumstances analogous to those in clauses 18.2.1 to 18.2.12 in any jurisdiction; or
- 18.2.14 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 18.2.1 to 18.2.13 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.

- 18.3 The Supplier may terminate the Contract at any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control.
- 18.4 The right of the Supplier to terminate the Contract pursuant to clause 18.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.
- 18.5 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 18, it shall immediately notify the Supplier in writing.
- 18.6 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

19 Notices

- 19.1 Any notice (other than for or in legal proceedings) given by a party under these Conditions shall:
 - 19.1.1 be in writing;
 - 19.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
 - 19.1.3 be sent to the relevant party at the address or email address set out in the Contract
- 19.2 Notices may be given, and are deemed received:
 - 19.2.1 by hand: on receipt of a signature at the time of delivery;
 - 19.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting; and
 - 19.2.3 by email : on receipt of a delivery receipt email from the correct address.
- 19.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 19.1 and shall be effective:
 - 19.3.1 on the date specified in the notice as being the date of such change; or
 - 19.3.2 if no date is so specified, one Business Day after the notice is deemed to be received.
- 19.4 All references to time are to the local time at the place of deemed receipt.

20 Cumulative remedies

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

21 Time

Unless stated otherwise, time is of the essence for any date or period specified in the Contract in relation to the Customer's obligations only.

22 Further assurance

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

23 Entire agreement

- 23.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 23.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 23.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

24 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

25 Assignment

- 25.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent.

26 Set off

- 26.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract.
- 26.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

27 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

28 Equitable relief

The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

29 Severance

- 29.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

29.2 If clause 29.1 applies, but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

30 Waiver

30.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

31 Compliance with law

31.1 The Customer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

31.2 Without prejudice to clause 31.1, the Customer shall be responsible for ensuring that its use of the Deliverables complies with all user instructions issued with the Deliverables regarding health and safety and shall indemnify the Supplier against all costs, claims, demands, loss, expense and liability suffered or incurred by the Supplier as a result of or in connection with any non-compliance by the Customer with the terms of this clause 31.

32 Costs and expenses

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

33 Third party rights

A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

34 Law and disputes

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales and subject to the exclusive jurisdiction of the courts of England and Wales.

Special Conditions A – (ToolTruck, a division of ISN Europe Limited)

Delivery. Delivery on orders over £150.00 (net of VAT) to UK mainland addresses will be free of charge. Delivery of orders under this amount to UK mainland addresses and to non-UK mainland addresses will be subject to delivery charges. Customers should check when placing an Order. If a Customer has been granted the right to reverse an Order ("Reverse It"), the Customer may only use one Reverse It per calendar month, unless otherwise agreed in writing by the Supplier. All other delivery costs and charges for the return of Goods, if the Contract has been performed by the Supplier, shall be chargeable to the Customer. If an expected delivery is not received, it is the responsibility of the Customer to advise the Supplier within 48 hours of the expected delivery date, so that the issue can be investigated with the carrier.

Discrepancies. It is the responsibility of the Customer to check delivered Goods against delivery notes/orders and to advise the Supplier of any discrepancy as soon as possible (and no more than 14 days) after delivery. If notification is not received, payment for the full invoice amount will become due on the due date.

Returns. Returns should be sent with a Goods Return Note form, which is available on request. Returns made following the Goods supplied against Customer's orders will only be credited if returned in a saleable condition.

On return of Goods where the Customer has ordered in error, or purchased on behalf of someone else in error, or simply changed their mind, the Supplier will not refund/credit any carriage incurred for the dispatch or return of the Goods. Any refund/credit for Goods will also be subject to a 20% handling and administration fee unless faulty. The Supplier will not be held responsible for items damaged or lost whilst being returned to the Supplier unless a collection was arranged by the Supplier using its chosen courier. No credit will be issued against discontinued or obsolete Goods. Special Order

Products (as identified in the order) are non-returnable. This Returns Policy does not affect your statutory rights (if applicable).

Credit Accounts Credit Accounts will be given at the discretion of the Supplier. Once the Customer's account is opened it will be operated on a proforma basis for the first month while references are being requested and so that a trading pattern is established. Should trade facilities be approved, any credit limit allowed will be subject to periodic review. Queries about invoices must be brought to our attention within 5 days of invoice date, any queries raised outside of this timeframe remain payable within the Customer's agreed terms. Payment Terms are strictly 30 days end of the month unless agreed otherwise in writing. This means Goods must be paid for by the end of the month following the month in which the invoice was raised. The Supplier reserves the right to charge interest on any overdue account at a rate equivalent to Barclays Bank unauthorised borrowing rate. Should it be deemed necessary to resort to legal proceedings to recover either Goods or payment, the Supplier reserves the right to recover all of its expenses related to the issuing of proceedings and the serving of warrants and/or any other documents in relation to these proceedings. The expenses may include those for advice taken from professional persons even though these persons may not be acting directly in the case. Time spent on the collection of a lawful debt will be charged to the Customer at the conclusion of any court proceedings at the rate current at that time, and will be payable within fourteen days of invoice. This is in addition to any rights which already exist under common or civil law. The Supplier reserves the right to withdraw credit facilities without notice should the Customer fail to adhere to the Supplier's trading or credit terms. Accounts that the Supplier deems inactive will be subject to closure and withdrawal of all trade facilities, trade pricing and discounts without notice. In the event of termination any monies owed to the Supplier will become due with immediate effect. All credit accounts are subject to full credit checks using an external credit reference company. The Supplier cannot share any information relating to the Customer's external credit references.

Potentially Dangerous Goods. Potentially dangerous Goods, such as knives or power tools may only be purchased by Customers who are at least 18 years of age.

Special Conditions B – (Tyre Bay Direct)

Prices

All prices are quoted in selected currency (£GBP or €Euro) and are exclusive of VAT at the standard UK rate and are also exclusive of any other import duties, taxes, imports and/or levies payable in relation to the goods including state and federal taxes

Availability

All Goods should be dispatched within five working days of acceptance of your Order. However, please allow 10 working days for delivery of your Order within the UK. For shipping times to Europe and the USA we will advise estimated delivery via e-mail.

Delivery and Delivery Charges

Carriage charges apply to all online orders outside the UK under a certain value. You will be charged delivery as per our delivery policy (the current version is on our website: <https://www.tyrebaydirect.com/delivery-policy/>) for any online orders. Shipping rates are subject to change without notice and should the shipping rate quoted differ to actual charges, Customers will be informed prior to delivery and be given the option to change or cancel the order.

Returns Policy

5.1 The Customer can return Goods received to the Supplier within 14 days of dispatch with the completed Goods return form available from our customer service department.

5.2 Goods returned without a Goods return form will not be accepted.

5.3 Goods returned where a delivery has been refused/not accepted will be accepted without the Goods returns form.

5.4 Any Goods believed to be faulty by the Customer, not fit for purpose or which are not of satisfactory quality may be returned by the Customer or collected by the Supplier at the Customer's cost. If applicable, the Price will be refunded/credited once Goods have been assessed by the Supplier and accepted as being faulty, not fit for purpose or of an unsatisfactory quality. Replacement Goods will then be offered free of charge.

5.5 If the returned Goods are not accepted by the Supplier or a manufacturer as being faulty, not fit for purpose or of unsatisfactory quality or are faulty due to the negligence, error, act or omission of the Customer then

carriage/collection costs will not be refunded. Replacement Goods will be offered at the Customer's cost (both the Price and the delivery costs).

5.6 On the return of Goods where the Customer has ordered in error or purchased on behalf of someone else in error or simply changed their mind, the Supplier will not refund/credit any carriage incurred during the dispatch or return of the Goods. Any refund/credit for Goods returned will also be subject to a 20% handling and administration fee unless faulty.

5.7 The Supplier will not be held responsible for items damaged or lost whilst being returned to the Supplier unless the collection was arranged by the Supplier.

5.8 If you are a consumer, this returns policy does not affect your statutory rights.

Please Note: If there are any issues with Goods or parts, e.g. damaged, incorrect part etc, our customer services team will require photographic evidence before the Supplier can investigate further. This will help the Supplier to make any claims from suppliers, couriers etc and help the Supplier to solve any issues.

Please visit <https://www.tyrebaydirect.com/returns-policy/>

Finance

Finance is offered by a third-party organisation, Kennet Equipment Leasing Limited, <https://www.kennet-leasing.co.uk/>

Pay weekly / monthly Prices are displayed as an estimate only and are subject to terms and conditions. Please ask for details. Credit facilities are available subject to status. Finance is only available for orders of at least £1,000 excluding VAT. Finance can only be taken out when paying the full list Price for Goods, unless otherwise agreed.

Special Offers/Discount Codes

All special offers are subject to availability. All offers are subject to fair use policies and the Supplier reserves the right to refuse any Orders placed which it deems unacceptable. No special offer can be used in conjunction with other offers unless otherwise stated. All special offers apply to mainland UK whereas some restrictions may apply outside mainland UK. Please contact the Supplier if you are unsure.

Deposits

Deposits are returnable for a period of 28 days after the deposit is received. Should the Customer change its mind during this time and cancel the Customer's Order, the Supplier will return a maximum of 50% of the Customer's deposit.

Deposits will only be refunded in full, if the Supplier accepts that it is material breach of the Contract or if the Supplier agreed this in writing with the Customer in advance.