

SIMON BEIRNE LIMITED TERMS AND CONDITIONS

1. DEFINITIONS
 - 1.1 Where used in these Terms and Conditions:
 - “SBL” means Simon Beirne Limited.
 - “Purchaser” means the purchaser named on the front of this form.
 - “Vehicle” means the motor Vehicle described on the front of this form.
2. DELIVERY
 - 2.1 SBL will use its best endeavours to make the Vehicle available for delivery on the day specified on the front of this form. However, such date is not to be treated as a condition of the sale and if delivery of the Vehicle is delayed for any reason, SBL will not be responsible or liable in any way to the Purchaser or any other party for loss suffered due to that delay.
3. PAYMENT
 - 3.1 Payment for the Vehicle will be made in full without deduction on or before the date specified on the front page of this form (“the due date”) if such a date is specified.
 - 3.2 Upon receipt of payment for the Vehicle SBL will supply an MR2A to the Purchaser where applicable.
 - 3.3 SBL reserves the right to charge backdated penalty interest if payment is not made by the due date.
4. TITLE AND RISK
 - 4.1 The risk in the Vehicle supplied to the Purchaser pursuant to these Terms and Conditions shall pass to the Purchaser on delivery but ownership in them shall not pass to the Purchaser, until all money the Purchaser owes to SBL has been paid in full.
 - 4.2 Until SBL receives payment in full the Purchaser shall hold or deal with the Vehicle for and on behalf of SBL and in every respect as a fiduciary and agent.
 - 4.3 If the Vehicle or any part of it is sold by the Purchaser prior to payment having been made to SBL then the proceeds of sale shall be held by the Purchaser on trust for and on behalf of SBL in a separate account.
 - 4.4 In the case of vehicles where title is reserved to SBL under this condition the Purchaser hereby authorises SBL to approach the Purchaser’s existing or subsequent chargeholder(s) where appropriate to obtain the acknowledgement of the chargeholder of SBL’s Security Interest in the Vehicle to SBL and confirmation that SBL shall have priority with regard to any vehicle in which title is reserved to SBL under this condition.
5. PERSONAL PROPERTY SECURITIES ACT 1999 (“PPSA”)
 - 5.1 The Purchaser acknowledges SBL’s Security Interest in all vehicles (“Collateral”) supplied to the Purchaser but not paid for under these Terms and Conditions.
 - 5.2 SBL reserves the right at its discretion to register a Financing Statement in respect of each vehicle supplied to the Purchaser which comprises Collateral. SBL’s costs of registering a Financing Statement or a Financing Change Statement shall be paid by the Purchaser and, where applicable, debited by SBL against the Purchaser’s account with SBL. On the request by SBL the Purchaser shall promptly execute any documents and do anything else required by SBL to ensure that SBL’s Security Interest in the Collateral created by these Terms and Conditions constitutes a Perfected Security Interest over the vehicles comprising Collateral.
 - 5.3 The Purchaser shall not agree to allow any person to file a Financing Statement over the Collateral without the prior consent of SBL and shall notify SBL immediately if it becomes aware of any person taking steps to file a Financing Statement against any of the Collateral.
 - 5.4 The Purchaser:
 - 5.4.1 agrees that nothing in s114(1)(a), 133, and 134 of the PPSA will apply to these Terms and Conditions; and
 - 5.4.2 waives the Purchaser’s right to do any of the following:
 - 5.4.2.1 Object to SBL’s proposal to retain any Personal Property under s121 of the PPSA;
 - 5.4.2.2 Redeem any Personal Property under s132 of the PPSA; and
 - 5.4.2.3 To receive a copy of the Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the Security Interest created by these Terms and Conditions.
6. DEFAULT
 - 6.1 If the Purchaser fails to make payment on any invoice when due or becomes insolvent, commits an act of bankruptcy, is adjudicated bankrupt or makes any composition or arrangement with creditors or being a Company goes into liquidation whether compulsory or voluntary other than for the purpose of and followed by amalgamation or reconstruction, or has a receiver appointed of any part of its business or assets then SBL reserves the right:-
 - 6.1.1 To treat all sums due or to become due from the Purchaser whatsoever as immediately due and payable;
 - 6.1.2 To cancel or suspend delivery of vehicles and the provision of services;
 - 6.1.3 By its agents to enter onto the Purchaser’s premises (without the necessity of giving notice) where the vehicles may be installed or stored and to search for and remove and take possession of the vehicles without being in any way liable to the Purchaser or anyone claiming under it for so doing; and
 - 6.1.4 To withhold the further supply of vehicles on credit.
 - 6.2 In the event of default under these Terms and Conditions the Purchaser shall at SBL’s request:-
 - 6.2.1 Re-deliver the Vehicle to SBL or do anything reasonably necessary to allow SBL to retake possession of the Vehicle;
 - 6.2.2 Instruct any third parties who owe money in respect of Vehicle to pay that money direct to SBL; and
 - 6.2.3 Make any records available which may assist SBL to take the proceeds of the vehicles.
 - 6.3 The Purchaser will be liable for and indemnifies SBL for all expenses (including solicitor – own client legal costs) and losses incurred or suffered by SBL as a result of any default under these Terms and Conditions or from any other cause.
7. CLAIMS
 - 7.1 If the Purchaser makes any claim that the Vehicle is defective or damaged, SBL may, at its discretion, repair the damage or defect or replace the Vehicle or make a reasonable allowance on the purchase of a replacement Vehicle if:
 - 7.1.1 the Purchaser returns the Vehicle within seven days of delivery at its cost, together with a copy of the invoice and a claim specifically identifying the damage or defect(s); and
 - 7.1.2 SBL is given a reasonable opportunity to investigate the claim.
 - 7.2 Without limiting SBL’s ability to accept or decline claims, if the Purchaser does not comply with the above requirements, it will be deemed to have accepted the Vehicle and SBL will not incur any liability whatsoever to the Purchaser in relation to the Vehicle.
8. LIMITATION OF LIABILITY
 - 8.1 Without restricting the limitations of liability contained elsewhere in these Terms and Conditions and on the front of this form, SBL’s liability in relation to the supply of the Vehicle and the Vehicle itself is limited to the purchase price of the Vehicle. SBL has no further liability or responsibility for any direct, indirect or consequential injury, loss or damage of whatever nature and however caused.
 - 8.2 SBL will not be responsible for any damage of whatever nature caused to the Vehicle or as a result of the malfunction of the Vehicle if:
 - 8.2.1 The Vehicle is adapted to a use for which it was not specifically intended;
 - 8.2.2 The Vehicle is added to or repaired using components not recommended or approved by the manufacturer; or
 - 8.2.3 The Vehicle is improperly stored or transported.
 - 8.3 SBL gives no guarantee that the accessories such as audio systems installed in the Vehicles are in working condition.
 - 8.4 SBL will not be in breach of these Terms and Conditions because of any failure on its part directly or indirectly due to wars, strikes, lock-outs, delays or defaults of manufacturers or suppliers, acts of God or any other cause (whether similar or dissimilar) beyond its reasonable control.
9. CONSUMER GUARANTEES ACT 1993 (“CGA”)
 - 9.1 Where SBL is supplying the Vehicle to the Purchaser for business purposes within the meaning of the CGA, pursuant to section 43 of the CGA, the provisions of the CGA will not apply to these Terms and Conditions.
 - 9.2 Where the Purchaser supplies the Vehicle on to a person acquiring them for business purposes it will be a term of the Purchaser’s contract with the buyer of the Vehicle that the CGA will not apply in respect of the Vehicle.
10. SPECIAL CONDITIONS
 - 10.1 This agreement will be conditional only on conditions specifically endorsed on the face of this form as special conditions.
 - 10.2 On fulfillment of the special conditions or in the absence of any special conditions, this agreement will be unconditional.
11. PRIVACY ACT 1993
 - 11.1 This clause will apply only where the Purchaser is a sole trader or partnership.
 - 11.2 The Purchaser acknowledges that personal information collected or held by SBL is provided and may be held, used and disclosed to enable SBL to:
 - 11.2.1 Ascertain at any time the Purchaser’s creditworthiness and obtain any credit reports, character references or credit statements;
 - 11.2.2 Provide to the Purchaser or have provided to the Purchaser advice or information concerning Vehicles or services SBL believes may be of interest to the Purchaser; and
 - 11.2.3 Communicate with the Purchaser for any purpose.
 - 11.3 The Purchaser authorises SBL to obtain at any time from any person or entity any information SBL may require for the purposes referred to in Clause 11.2. The Purchaser authorises any such person to release to SBL any personal information that person holds concerning the Purchaser.
 - 11.4 Any personal information provided in this agreement is collected by and will be held by SBL at the address specified on the front of this form.
 - 11.5 If the Purchaser fails to provide any information requested in this form, SBL may be unable to accept the Purchaser’s offer.
 - 11.6 The Purchaser has the right under the Privacy Act 1993 to obtain access to and request correction of any personal information held by SBL concerning the Purchaser.
12. ASSIGNMENT
 - 12.1 SBL is entitled at any time to assign to any other person or company all or part of any debt the Purchaser owes to SBL. Such assignee will be entitled to claim full rights of set off or counterclaim against the Purchaser, its shareholders or successors in respect of the debt or part of the debt which is assigned.
 - 12.2 The Purchaser shall not assign any rights under this agreement.