

## **GENERAL TERMS AND CONDITIONS OF SALE**

### **BREYTON WHEELS**

The Buyer is hereby notified and in signing acknowledges that no employee or agent of the Seller has authority to contract on any other basis than as set out in these Terms and Conditions

### **1 DEFINITIONS**

1.1 'Acceptance' A written or verbal acknowledgement or acceptance from the Seller of an Order given or submitted by the Buyer. For the avoidance of doubt, any such acknowledgement or acceptance shall be limited to specifying the quantity, description and price of the goods, the delivery and insurance charge (if applicable), together with an estimated delivery date in accordance with these Conditions.

'Buyer' The person, firm or company who orders the Goods from the Seller and/or with whom the Seller contracts to sell the Goods 'Conditions' The standard terms and conditions of sale of the Seller set out in this document

'Contract' any contract between the Seller and the Buyer for the sale and purchase of the Goods, incorporating these Conditions, the Order and the Acceptance 'Customer' a third party consumer (as defined in Section 12 of the Unfair Contract Terms Act 1977) purchasing all or part of the Goods from the Buyer 'Customer Warranty Card' a card included by the Seller with each end-user box of Extended Warranty Goods and intended to instigate Registration of the Extended Warranty Goods by the Customer with the Seller as part of any Extended Warranty Period being validly Registered

'Extended Warranty Period' such longer full warranty period (up to a maximum of five years from the date of purchase by the Customer from the Buyer) as may be specified in any Customer Warranty Card provided by the Seller with Extended Warranty Goods (provided that the Extended Warranty Period has been properly Registered by the Customer)

'Extended Warranty Goods' wheels for cars or motorbikes carrying the 'Breyton' logo (or any derivative thereof, where any such logo is the intellectual property of the Seller or any part of the Seller's 'group' as defined in the Companies Act 2006),

'Full Warranty Period' one year from the date that the Goods are sold by the Buyer to a Customer or, in respect of Extended Warranty Goods only, such longer Extended Warranty Period as has been validly Registered by the Customer

'Goods' The Goods described in the Buyer's Order and/or confirmed in the Seller's Acceptance

'Limited Warranty Period' one year from the date of the expiry of the Full Warranty Period

'Order' The order of the Goods (whether written or oral) placed by the Buyer with the Seller

'Payment Date' means the last working day of the month following the month in which the Goods were delivered

'Seller' Breyton Wheels

1.2 Any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

1.3 Words importing the singular number include the plural number and vice versa;

1.4 Words importing any gender include both genders;

1.5 Condition headings do not affect the interpretation of these conditions.

### **2 CONTRACUAL CONSTRUCTION**

2.1 The terms of the Contract shall consist of the Order, the Acceptance and these Conditions. In the event of any inconsistency between the Order, the Acceptance and the Conditions, the terms of the Acceptance and the Conditions shall prevail.

2.2 Except where expressly referred to in these Conditions or as otherwise expressly agreed in writing between the parties, no other terms or conditions contained in any document issued by either party or in any other communication between the parties shall form part of the Contract. For the avoidance of doubt, the Contract shall not be modified without the express prior written agreement of the Seller signed by either the Seller's UK Sales Director, or Managing Director and referring to a modification of the Conditions.

2.3 In order that the Contract shall be a complete statement of the understanding between the parties with regard to the sale of the Goods, the Buyer acknowledges that it shall not be able to rely upon any pre-contractual statement, promise or representation made by or on behalf of the Seller which has not been expressly incorporated in writing into the Contract. Nothing in this condition shall exclude or limit the Seller's liability for fraudulent misrepresentation.

2.4 The Seller reserves the right to make modifications to the design, composition and/or specification of the Goods at any time without prior notification to the Buyer. Any descriptions or illustrations of the Goods provided whether on the Seller's website or by way of any brochure supplied by the Seller are for information purposes only.

### **3 ORDERS**

3.1 Each Order placed by the Buyer shall be deemed to be an offer by the Buyer to buy the Goods subject to these Conditions.

3.2 No order placed by the Buyer shall be deemed to be accepted by the Seller until an Acceptance is communicated by the Seller to the Buyer, or, if earlier, the Seller delivers the Goods to the Buyer.

3.3 Each Order from the Buyer will constitute the basis of a separate Contract, but the application of these Conditions to a Contract shall constitute notice to the Buyer of their applicability to all future Orders accepted by the Seller. The Buyer is hereby notified and acknowledges that no employee or agent of the Seller has authority to contract in any other manner, save for those employees authorised under clause 2.2 above.

3.4 The quantity and description of the Goods shall be as set out in the Seller's Acceptance. In the absence of any evidence as to the exact terms of the Acceptance, the quantity and type of Goods delivered in accordance with clause 4 shall be regarded as conclusive evidence as to the terms of the Seller's Acceptance. 3.5 Any and all drawings, photos, brochures, descriptive matter, specifications and advertising material issued by the Seller that appears on the Seller's website or which is otherwise issued or published by or on behalf of the Seller is made available for the sole purpose of providing the Buyer with an approximate idea of the Goods so described. Such materials shall not form part of the Contract and any sale shall not constitute a sale by sample or description.

### **4 DELIVERY**

4.1 Delivery shall take place when the Goods are delivered to the Buyer's premises or to such other delivery location as may be specified in the Contract, except that if the Buyer collects or arranges for collection of the Goods from the Seller's premises, or nominates a carrier for the collection and/or transportation of the Goods, delivery shall take place when the Goods are loaded onto the Buyer's vehicle or the nominated carrier's vehicle.

4.2 Any dates requested by the Buyer or specified by the Seller for delivery of the Goods are intended to be an estimate only and time for delivery shall not be made of the essence, nor be capable of being made so. If no dates are specified, delivery shall take place within a reasonable time, which shall not be less than 30 days after Acceptance by the Seller.

4.3 In the event of any change to an agreed delivery date without the prior written agreement of the Seller, the Buyer shall be liable to the Seller for all costs and expenses incurred by the Seller as a result of any such change to that date, including (but not limited to) the Seller's reasonable storage charges.

4.4 The quantity of any Goods delivered pursuant to the Contract shall be recorded by the Seller upon dispatch. The Seller's record shall be accepted by the Buyer as conclusive evidence of the quantity delivered. It shall be the Buyer's responsibility to notify the Seller if the Goods have not been received within five (5) working days of receipt of the Seller's invoice or the actual delivery date, whichever is the earlier. If no such notification is made, the Buyer shall be deemed to have received all the Goods. Any liability of the Seller for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable period of time after such notification or issuing a credit note at the pro-rata Contract price against any invoice raised for such Goods.

4.5 The delivery of a greater or a lesser quantity of the Goods than the quantity provided for in the Contract, the delivery of other goods not provided for in the Contract, or the delivery of Goods only some of which are defective, shall not entitle the Buyer to reject all the Goods delivered or to terminate the Contract, whether in whole or in part.

4.6 If the Seller agrees to arrange carriage and/or insurance on behalf of the Buyer, all charges and expenses in connection with such carriage and/or insurance shall be payable by the Buyer and the Seller shall use reasonable endeavors to notify the Buyer of the same at the time of Acceptance. For the avoidance of doubt, the Seller shall not be liable for these charges in the event that they are not notified to the Buyer at the time of Acceptance. The Seller shall not be liable to the Buyer for the suitability of the terms of any such carriage and/or for the adequacy of any such insurance and Sections 32(2) and 32(3) of the Sale of Goods Act 1979 shall not apply to the Contract.

4.7 At delivery the Buyer shall provide, at its own expense, adequate and appropriate equipment and manual labour for unloading the Goods.

4.8 If for any reason the Buyer fails to accept delivery of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations or adequate and/or appropriate equipment and manual labour for unloading the Goods, then:-

a. risk in the Goods shall pass to the Buyer (including risk of loss or damage caused by the Seller's negligence) at the date and time of the abortive delivery; and b. the Goods shall be deemed to have been delivered for the purposes of this Contract (and for the avoidance of doubt, the Seller shall be entitled to invoice the Buyer for the same in accordance with clause 10) ; and

c. the Seller may store the Goods until a new delivery date is agreed, whereupon the Buyer shall be liable for all related costs and expenses associated with such storage (including, without limitation, the Seller's storage charges or the cost incurred by the Seller in arranging storage by third parties ).

d. If the Buyer fails to take delivery of the Goods within 10 working days of the Seller notifying the Buyer that the Goods were ready for delivery, the Seller may thereafter resell or otherwise dispose of part or all of the Goods (and after

deducting reasonable storage and selling costs) account to the Buyer for any excess profit over the price of the Goods (if applicable) paid by the Buyer pursuant to clause 10 below.

4.9 The Seller may deliver the Goods by separate instalments.

4.10 Save as otherwise expressly provided for in these Conditions, the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract.

4.11 The Seller shall be entitled if any of the events listed in clause 7.5(a)-(h) below occur or if the Seller reasonably believes any of the same are about to occur, to cancel or suspend all further deliveries under this Contract without incurring any liability to the Buyer

4.12 For the avoidance of doubt, the Buyer shall not be entitled to cancel any Order after Acceptance has taken place in accordance with clause 3.2 above. The Seller shall have no obligation whatsoever to accept any purported cancellation of an Order by the Buyer. In the event that the Seller agrees to the cancellation of an Order, the Seller shall do so in writing. As a automatic condition of any such agreed cancellation, the Seller be entitled to invoice the Buyer for 25% of the price of the Goods as set out in the Acceptance (including VAT) in the manner stipulated in clause 10, save that the 'Payment Date' shall be construed as the date 5 working days after the date the Seller agrees in writing to the cancellation. The Buyer hereby confirms that it is reasonable for the Buyer so to do, in order for the Seller to mitigate any losses sustained in connection with such cancellation and to lend certainty and business efficacy to the calculation of such losses. For the avoidance of doubt, this charge shall be refunded to the Buyer in the event that the cancelled Goods are re-sold by the Seller within 2 months of cancellation at the same or a greater price than that set out in the Acceptance.

## **5 PACKAGING**

Packaging for the Goods shall be the Seller's responsibility. The Seller shall have the right to pack the Goods in such manner and with such materials and in such quantities as it, in its absolute discretion, thinks fit.

## **6 EXAMINATION AND CLAIMS**

The Buyer shall upon delivery examine the Goods and shall promptly (but in any event within forty eight (48) hours of delivery) notify the Seller in writing (and any insurer or third party carrier, if relevant) of any apparent damage to the Goods delivered. In the event that the Buyer does not so notify the Seller, the Goods shall be deemed to have been received free of damage. Any damaged Goods that are so notified to the Seller shall be returned to the Seller for inspection pursuant to clause 11.

## **7 PROPERTY AND RISK**

7.1 Risk in the Goods shall pass to the Buyer from the time of delivery notwithstanding that any such delivery may not be to the final destination. 7.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of: (a) the Goods; and (b) all other sums which are or which become due to the Seller from the Buyer on any account.

7.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

- (a) hold the Goods on a fiduciary basis as the Seller's bailee;
- (b) store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or of any third party in such a way that they remain readily identifiable as the Seller's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods nor remove the same from such packaging except temporarily for the purposes of inspection; and
- (d) maintain the Goods in satisfactory condition for re-sale and keep them insured, with a reputable insurance company, on the Seller's behalf for their full invoiced price against all risks to the reasonable satisfaction of the Seller. The Buyer shall produce the policy of insurance to the Seller within five (5) working days of being so requested.

7.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions: -

- (a) any sale shall be effected in the ordinary course of the Buyer's business at full retail market value; and
- (b) any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

7.5 The Buyer's right to possession of the Goods shall terminate immediately if:

- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as

defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, or the Seller reasonably believes any of the same to be imminent; or

(b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

(c) the Buyer encumbers or in any way charges any of the Goods; or

(d) The Seller serves written notice on the Buyer that in the opinion of the Seller, The financial position of the Buyer has deteriorated to such an extent that the capability of the Buyer to adequately to fulfill its obligations under the Contract has been placed in jeopardy; or

(e) The Seller (being an individual) dies or by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or become a patient under any mental health legislation; or

(f) The Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business

(g) Immediately after service of notice by the Seller of the Seller's termination of the Buyer's right to possession

7.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

7.7 The Buyer grants the Seller, its agents, contractors and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them on reasonable notice, or, where the Buyer's right to possession has terminated, to recover them without prior notification.

7.8 Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.

7.9 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this condition 7 shall remain in effect.

## **8 PRICES**

The price for the Goods shall be as notified to the Seller on Acceptance. The price for the Goods notified on Acceptance shall be exclusive of VAT (where applicable) unless expressly stated at the time of Acceptance to be otherwise.

## **9 LOCAL LAWS, IMPORT DUTIES & TAXES**

The Buyer shall be solely responsible for any additional charges for customs clearance connected with the delivery of the Goods outside of the United Kingdom, and shall also be considered the importer of record for all purposes connected with such delivery. The Buyer also hereby agrees to comply with all laws and regulations of the country in which the Buyer is receiving the Goods, and to fully indemnify the Seller in respect of any charges or fees levied against the Seller in respect of delivering the Goods outside of the United Kingdom.

## **10 PAYMENT**

10.1 Unless otherwise expressly agreed in writing by the Seller, payment for the Goods is due on the Payment Date. The Seller shall be entitled (but shall not be required) not to dispatch any further Goods under any other Contract between the Buyer and Seller unless and until payment under this Contract has been received in full and in cleared funds. For the avoidance of doubt, any such further dispatch shall not be deemed to constitute a waiver of the obligations of the Buyer under this clause.

10.2 Time for payment shall be of the essence.

10.3 Payment shall be made directly to the Seller via direct debit mandate or standing order and the Seller's internal records shall in the absence of manifest evidence to the contrary be considered the conclusive record of whether or not payment has been received by the Seller. No payment shall be deemed to have been made by the Buyer or received by the Seller until the Seller has received cleared funds.

10.4 The Buyer shall not be entitled to withhold payment of any amount due to the Seller under the Contract by reason of any payment made or due or owing to any third party, or any credit, set-off, counterclaim, allegation of incorrect or defective Goods, or for any other reason whatsoever which the Buyer may allege excuses it from performing its obligations under the Contract.

10.5 In the event that any payment invoice remains unpaid after the Payment Date, the Buyer shall, in addition to the amount stipulated in the payment invoice, pay the following sums to the Seller:-

(a) In the event that payment is made up to five days after the Payment Date, 5% of the amount invoiced on the payment invoice (including VAT)

(b) In the event that payment is made more than five days after the Payment Date, 10% of the amount invoiced on the

payment invoice (including VAT)

Such amount to be added to the total amount due for the purposes of clause 10.6

10.6 Any sums outstanding 10 days after the Payment Date shall, in addition to the charge made pursuant to clause 10.5, attract interest at a rate of eight per cent (8%) per annum above the base lending rate for the time being of Barclays Bank plc, accruing on a daily basis, from Payment Date until the date of actual payment. The Buyer shall also reimburse to the Seller any legal and other professional costs and debt collection agency's fees (including any surcharge in respect thereof, being no less than 10% of the invoiced price of the Goods) incurred by the Seller in recovering or attempting to recover any payments which are owing and overdue from the Buyer.

10.7 If any of the events listed in clause 7.5(a)-(h) above occur, or in the event that any payment invoice remains outstanding 10 days after the Payment Date, any payment invoices issued by the Seller shall immediately be deemed to have fallen due in accordance with this clause 10

## **11 RETURNS POLICY –WARRANTED GOODS**

11.1 Where any defect appears in the Goods (under proper use) within the Full Warranty Period (or in respect of Extended Warranty Goods only, during the Limited Warranty Period), the Buyer shall immediately upon receiving notice of the same notify the Seller in writing of these claimed defects

11.2 In the case of any notification made to the Seller in accordance with either clauses 6 or 11.1, the Buyer will, at its own expense, return that part of the Goods which it claims are defective or damaged to the Seller. The Seller will (provided that the Seller has been notified of the defect during the Full Warranty Period, or in the case of a return pursuant to clause 6, with the notification period stipulated therein), at its own option and expense, either make good by repair or supply a replacement of any actually defective part of the Goods (such replacement Goods or parts to be as near in specification to that of the original Goods as the Seller shall consider reasonably achievable from within its present stock) provided that the Seller is first satisfied:-

- (a) In the case of a return made under clause 6, that the damage was caused prior to delivery of the Goods to the Buyer; and
- (b) In the case of a return made under clause 11.2, that the defects arose solely from faulty design (other than a design made, furnished or specified by the Buyer for which the Seller has disclaimed responsibility in writing), materials or workmanship; and
- (c) That the defect arose within the relevant Warranty Period. The Seller shall be entitled to require that the Buyer's Customer produce a valid receipt for the purchase of the Goods from the Buyer as evidence of the same, such receipt to be provided within 14 days of being so requested by the Seller of the Buyer

11.3 Where the Seller is so satisfied in accordance with clause 11.2, but the Seller has been notified of a defect in respect of Extended Warranty Goods outside of the Full Warranty Period but within the Limited Warranty Period, the Seller will offer replacement Extended Warranty Goods to the Buyer (as near in specification to that of the original Extended Warranty Goods as the Seller shall consider reasonably achievable from within its present stock) in exchange for the defective Extended Warranty Goods. The amount due from the Buyer to the Seller in respect of those replacement Extended Warranty Goods shall be the same as that due under the original Payment Invoice in respect of those defective Extended Warranty Goods, subject to the following appropriate discount:-

- (i) where the defect is notified to the Seller within the first 6 months of the Limited Warranty Period, 50% of the amount invoiced (not including VAT) in respect of the defective Extended Warranty Goods
- (ii) where the defect is notified to the Seller within the second 6 months of the Limited Warranty Period, 25% of the amount invoiced (not including VAT) in respect of the defective Extended Warranty Goods

11.4 Where the Seller is so satisfied in accordance with clause 11.2 in respect of any claim made within the Full Warranty Period, the Buyer's reasonable costs of returning any defective Goods will be reimbursed by the Seller and the repaired or replacement Goods will be delivered to the Buyer to the original place of delivery at the sole expense of the Seller, but otherwise subject to the provisions of these Contract. Where the Seller is so satisfied in accordance with clause 11.2 in respect of any claim within the Limited Warranty Period in respect of Extended Warranty Goods, the Buyer shall be responsible for the cost of returning any defective Extended Warranty Goods to the Seller, and the cost of delivering any repaired or replacement Extended Warranty Goods to the Buyer.

11.5 As an alternative to Clause 11.2 above, the Seller shall, in its absolute discretion, be entitled to refund to the Buyer the original amount paid by the Buyer for the defective Goods pursuant to the Payment Invoice, provided that the Buyer has already paid for the defective Goods when the claimed defect is notified by the Buyer to the Seller.

11.6 Any remedy provided for in this Clause 11 is without prejudice to the other provisions of these Conditions, including, without limitation, Clause 12 below.

11.7 Except where expressly agreed in writing between the parties or otherwise provided for in this Clause 11, there shall be excluded from the Contract any warranty, condition, term or statement, whether express or implied and whether statutory or otherwise, as to the satisfactory quality of the Goods or their fitness for any particular purpose.

## **12 LIMITATION OF FURTHER LIABILITY**

12.1 Save as provided in Clause 12.2 below, the Buyer's rights in respect of Goods delivered which do not correspond to the contractual description and/or the supply of defective Goods shall be limited to those referred to in Clause 11 above. The Parties agree that in the interest of ensuring that the Seller can offer the Goods for sale to the Buyer at a competitive price, the Seller shall under no circumstances whatsoever be liable to the Buyer for any loss, or damage of whatsoever type sustained by the Buyer, whether it results directly and naturally in the ordinary course of events from any breach of contract of any nature whatsoever by the Seller, whether it results from such breach under special circumstances made known to the Seller, or whether it be indirect, consequential or of any other nature whatsoever, including (without limitation) loss of use, loss of revenue, loss of anticipated savings, loss of profits or anticipated profits, or damages of any third party claimed against the Buyer, or damage of any nature whatsoever caused by the Goods or any other items supplied by the Seller to the Buyer.

12.2 Nothing in these Conditions shall exempt either party from any liability which it may have in respect of death or personal injury caused by a party.

## **13 NOTICES**

Save for any Order or Acceptance, any further notice required or authorised to be given under the Contract shall be in writing and may be served by either personal delivery or first class letter sent by Special Delivery, in the case of the Seller, marked for the attention of the UK Sales Director, Breyton Wheels (UK) Limited, Unit 7 Causeway Industrial Estate, Galliford Road, Maldon, Essex, CM9 4XD and, in the case of the Buyer, to the address last known by the Seller or, in either case, any other address notified in writing by the party in question for such purpose from time to time and any such notice shall be deemed to have been served on the next working day after proven despatch.

## **14 ASSIGNMENT**

14.1 Subject to clause 14.2, neither the Buyer nor the Seller may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under the Contract without the prior written agreement of the other party.

14.2 The Buyer or the Seller may assign and transfer all its rights and obligations under this Contract to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other party under this Contract to be bound by the obligations of the assignor under this Contract.

## **15 FORCE MAJEURE**

The Seller reserves the right to defer the date of delivery or to cancel the Contract or to reduce the volume of Goods ordered by the Buyer (without any liability to the Buyer) if it is prevented from, or delayed in, the carrying on of its business due to events or circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## **16 WAIVER**

The failure or delay by the Seller to exercise any right, power or privilege given to it by this Contract shall not impair its ability to use the same at a later date, nor shall it be capable of being taken by the Buyer as a waiver of the same. The Seller shall also not be precluded from further exercising any such right, power or privilege simply because it has in the past not exercised it or has done so only partially. The rights and remedies provided to the Seller (as opposed to the Buyer) under this Contract are cumulative and not exclusive of any rights and remedies provided by law.

## **17 DATA COLLECTION**

17.1 The Seller may use the Buyer's personal information for administration and management purposes, including carrying out appropriate financial checks, and reserves the right to disclose such information to service providers and agents for these purposes.

17.2 The Seller may store the Buyer's contact details and any other information held pursuant to this Contract ('the

Buyer's Data') for the purpose of adding the same to the Seller's marketing databases, provided that the Seller stores such information in accordance with the Data Protection Act 1998. The Seller may use the Buyer's Data for the purposes of internal statistical analysis, fulfilling any requests from the Buyer for further information, and to contact the Buyer by mail, telephone or electronic communication about any other goods, services or events offered by the Seller. The Seller shall be permitted under this Contract to transfer the Buyer's Data to any successor to the Seller's business (or a relevant part of it).

17.3 In addition to the rights set out in clauses 17.1 and 17.2 above, the Seller shall be entitled to release or sell the Buyer's Data to carefully selected third parties who may use it to contact the Buyer in relation to offers or products which relate to the automotive industry ('Third Party Marketing Purposes').

17.4 Notwithstanding clause 17.3, the Buyer shall be entitled to elect in writing at the time that the Buyer's Data is conveyed to the Seller for the Seller to retain the Buyer's Data and not release it for Third Party Marketing Purposes.

## **18 CONFIDENTIAL INFORMATION**

18.1 The Buyer shall keep confidential (and procure that its respective employees, contractors and agents shall keep confidential) any and all information relating to the Seller which is by its nature confidential and which it or they may acquire in relation to the Contract, and shall not use or disclose such information except with the prior written consent of the Seller or in accordance with the order of any court of competent jurisdiction. 18.2 The Buyer shall ensure that any confidential specifications and drawings are kept in a secure location at its normal place of business and in such a way that they are visible only to properly authorised employees of the Buyer while they remain in the custody or control of the Buyer.

## **19 SEVERANCE**

If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions, and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract

## **20 THIRD PARTIES**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Contract, this Contract is not intended to, and does not give any person who is not a party to it any right to enforce any of its provisions or any right to any remedy hereunder.

## **21. USE OF TRADEMARKS & PROPRIETARY NOTICES**

21.1 The Seller hereby grants to the Buyer during the term of this Contract to use the trademarks, trade names, logos and designations used by the Seller for the Seller's products solely for the purpose of marketing the Seller's products for sale and not for any other purpose, subject to prior written approval by the Seller of the details of such use. The Buyer hereby agrees and confirms that the Buyer is an authorised re-seller of the Seller only, and that the Buyer is not authorised to hold itself out as an employee, agent, group company or partner of the Seller ('a Connected Person'). The Buyer agrees to take all such steps as may reasonably be considered prudent, together with such further steps as may reasonably be required by the Seller, not to give any person reasonable cause to believe the Buyer to be a Connected Person. The Seller is entitled to notify the Buyer at any time of the revocation of this consent.

21.2 The Buyer shall not remove or destroy any copyright notices, trademarks or other proprietary markings on the Goods, documentation or other materials provided by the Seller.

## **22 LAW AND JURISDICTION**

The Contract shall be subject to English law and any and all disputes arising under the Contract shall be dealt with exclusively by the courts of England, save that the Seller shall be entitled to bring proceedings against the Buyer in any other court or courts having jurisdiction.

∫ We, the Buyer, hereby agree that we have read and understood the above Conditions (particularly those relating to the Seller's liability to us) and have been given an opportunity to seek independent legal advice thereon. We hereby agree to be bound by the above Conditions in respect of this and all future dealings with the Seller.

∫ We, the Buyer hereby confirm that we have no objection to Breyton Wheels personally contacting us from time to time regarding offers or products that they feel we may be interested in.

] In addition to the above, we the Buyer confirm that we have no objection to Breyton Wheels passing on information they are storing about us to carefully selected third parties, who may use it to contact us in relation to offers or products which relate to the automotive industry.

Signed: Dated: \_\_\_\_\_

Print Name: Occupation: \_\_\_\_\_

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- 7 Galliford Road Industrial Est
- Maldon