

The Dealer's attention is drawn in particular to the provisions of clause 9

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6.

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

Dealer: the person, firm or company who purchases the Goods from the Company.

Force Majeure Event: has the meaning given in clause 10.

Goods: the goods (or any part of them) set out in the Order.

Order: the order by the Dealer for the Goods, as set out in the purchase order form of the Dealer.

Company: Electric Mobility Euro Limited (registered in England and Wales with company number 02419231).

1.2 **Construction.** In these Conditions, the following rules apply:

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

2. BASIS OF CONTRACT

- 2.1 The Conditions apply to the Contract to the exclusion of any other terms that Dealer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Dealer to purchase the Goods in accordance with these Conditions. The Dealer shall ensure that the terms of the Order submitted by the Dealer are complete and accurate.
- 2.3 The Order shall be deemed to be accepted on the earlier offer when the Company issues a written acceptance of the Order, or, the delivery of the Goods at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Dealer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 2.5 Any marketing information, descriptions, samples, drawings, descriptive matter, or advertising issued by the Company and any descriptions or illustrations contained in the catalogues or brochures or on the website of the Company are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and are for the purposes of illustration only. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Goods given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

3. GOODS

- 3.1 Subject to clause 2.5, the Goods are described in the marketing information of the Company.
- 3.2 The Dealer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the use of the Specification by the Company. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Company reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 3.4 The Goods may vary in non-material respects from those in the marketing information of the Company.
- 3.5 The Company reserves the right to change the product specifications of the Goods from time to time and without prior notice provided that the Goods shall comply with any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1 The Company shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant reference numbers of the Dealer and the Company, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (b) if the Company requires the Dealer to return any packaging materials to the Company, that fact is clearly stated on the delivery note. The Dealer shall make any such packaging materials available for collection at such times as the Company shall reasonably request. Returns of packaging materials shall be at the expense of the Company.
- 4.2 The Company shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Company notifies the Dealer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the arrival of the Goods at the Delivery Location and the Dealer shall at that time be deemed to have accepted the Goods.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the failure of the Dealer to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Company fails to deliver the Goods, its liability shall be limited to the reasonably and properly incurred costs and expenses incurred by the Dealer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the failure of the Dealer to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Dealer fails to take delivery of the Goods within 3 Business Days of the Company notifying the Dealer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the failure of the Company to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9:00 am on the third Business Day following the day on which the Company notified the Dealer that the Goods were ready; and
 - (b) the Company shall store the Goods until delivery takes place, and charge the Dealer for all related costs and expenses (including insurance).
- 4.7 If 5 Business Days after the Company notified the Dealer that the Goods were ready for delivery the Dealer has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Dealer for any excess over the price of the Goods or charge the Dealer for any shortfall below the price of the Goods.
- 4.8 The Dealer shall not be entitled to reject the Goods if the Company delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Dealer that the wrong quantity of Goods was delivered.
- 4.9 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Dealer to cancel any other instalment.

4.10 The Dealer must notify the Company of any claim for non-delivery of Goods, or partial non-delivery of Goods or damaged Goods or the wrong quantity of Goods, within 48 hours of delivery.

5. QUALITY

5.1 Subject to clauses 3.3 – 3.5 above, the Company warrants that on delivery, the Goods shall conform in all material respects with their description.

5.2 The Dealer shall be entitled to reject any quantity of the Goods which do not comply with the warranty set out at clause 5.1 above, provided that any purported rejection is made no later than two days from the date of delivery and the Dealer shall (if asked to do so by the Company) at the cost of the Dealer return such Goods to the place of business of the Company at such time and by such method as the Company shall direct .

5.3 This Clause 5.3 only applies if the Dealer is not based in the UK:

Save for Clauses 5.1 and 5.4, all other warranties or conditions (whether express or implied) as to quality, condition, description or fitness for purpose (whether statutory or otherwise) other than those expressly set out in this agreement as to apply are excluded from this agreement to the fullest extent possible.

5.4 Clause 5.4 and Clause 5.5 only apply if the Dealer is based in the UK:

The Company warrants that on delivery the Goods shall be free from material defects in design, material and workmanship.

5.5 Subject to Clause 5.4, if:

- (a) the Dealer gives notice in writing to the Company during the period within 2 Business Days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.4; and
- (b) the Company is given a reasonable opportunity of examining such Goods; and
- (c) the Dealer (if asked to do so by the Company) at the cost of the Dealer returns such Goods to the place of business of the Company at such time and by such method as the Company shall direct.

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

5.6 The Company shall not be liable for failure of the Goods to comply with the warranties set out in clause 5.1 or Clause 5.4 in any of the following events:

- (a) the defect arises because the Dealer failed to follow the oral or written instructions of the Company as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; or
- (b) the defect arises as a result of the Company following any drawing, design or Specification supplied by the Dealer; or
- (c) the Dealer alters or repairs such Goods without the written consent of the Company;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;
- (f) the Dealer makes use of the Goods otherwise than for the purpose for which they were intended;
- (g) any technical information, statements or advice given by the company, its employees or agents not given in writing in response to a specific request from the Dealer before the Contract is made.

5.7 Except as provided in this clause 5, the Company shall have no liability to the Dealer in respect of the failure of the Goods to comply with the warranties set out in clause 5.1 and 5.4.

5.8 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

5.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Dealer on completion of delivery or, if the Dealer wrongfully fails to take delivery of the Goods, the time when delivery is deemed to have been made in accordance with Clause 4.6(a).
- 6.2 Title to the Goods shall not pass to the Dealer until the Company has received payment in full (in cash or cleared funds) for the Goods; and any other goods that the Company has supplied to the Dealer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Dealer, the Dealer shall:
- (a) hold the Goods on a fiduciary basis as the bailee of the Company;
 - (b) store the Goods separately from all other goods held by the Dealer so that they remain readily identifiable as the property of the Company;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (e) notify the Company immediately if it becomes subject to any of the events listed in clause 8.2; and
 - (f) give the Company such information relating to the Goods as the Company may require from time to time,
- but the Dealer may resell or use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to the Dealer the Dealer becomes subject to any of the events listed in clause 8.2, or the Company reasonably believes that any such event is about to happen and notifies the Dealer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Dealer to deliver up the Goods and, if the Dealer fails to do so promptly, enter any premises of the Dealer or of any third party where the Goods are stored in order to recover them.

7. PRICE AND PAYMENT

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the published price list of the Company in force as at the date of delivery.
- 7.2 The Company may, by giving notice to the Dealer at any time up to 5 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or
 - (b) any request by the Dealer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Dealer or failure of the Dealer to give the Company adequate or accurate information or instructions.
- 7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Dealer.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Dealer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 The Company may invoice the Dealer for the Goods on or at any time after the completion of delivery.
- 7.6 The Dealer shall pay the invoice in full and in cleared funds [within 30 days of the date of the invoice] or [in accordance with the payments terms set out in the purchase order form]. Payment shall be made to the bank account nominated in writing by the Company. Time of payment is of the essence.
- 7.7 If the Dealer fails to make any payment due to the Company under the Contract by the due date for payment (**due date**), then the Dealer shall pay interest on the overdue amount at the rate of 8% per annum above the base rate of The Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Dealer shall pay the interest together with the overdue amount.

7.8 The Dealer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Dealer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Dealer against any amount payable by the Company to the Dealer.

8. THE DEALER'S INSOLVENCY OR INCAPACITY

8.1 If the Dealer becomes subject to any of the events listed in clause 8.2, or the Company reasonably believes that the Dealer is about to become subject to any of them and notifies the Dealer accordingly, then, without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries under the Contract or under any other contract between the Dealer and the Company without incurring any liability to the Dealer, and all outstanding sums in respect of Goods delivered to the Dealer shall become immediately due.

8.2 For the purposes of clause 8.1, the relevant events are:

- (a) the Dealer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Dealer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Dealer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Dealer with one or more other companies or the solvent reconstruction of the Dealer;
- (c) (being an individual) the Dealer is the subject of a bankruptcy petition or order;
- (d) a creditor or encumbrancer of the Dealer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (e) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Dealer;
- (f) (being a company) a floating charge holder over the assets of the Dealer has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the assets of the Dealer or a receiver is appointed over the assets of the Dealer;
- (h) any event occurs, or proceeding is taken, with respect to the Dealer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(g) (inclusive);
- (i) the Dealer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (j) the financial position of the Dealer deteriorates to such an extent that in the opinion of the Company the capability of the Dealer to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (k) (being an individual) the Dealer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

9.1 This Clause 9.1 only applies if the Dealer is based in the UK:

Nothing in these Conditions shall limit or exclude the liability of the Company, where the Dealer is based in the UK for :

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

9.2 Subject to clause 9.1

the Company shall under no circumstances whatever be liable to the Dealer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss or any economic loss or damage or the loss of actual profit, interest, revenue, anticipated savings or business or damage to goodwill arising under or in connection with the Contract.

9.3 Subject to clause 9.1

the total liability of the Company to the Dealer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

9.4 The Company shall not be liable for any losses arising from the Dealer's subsequent use or misuse of the Goods including, fair wear and tear wilful damage, Dealer's negligence or any alteration or repair of the Goods.

The Dealer acknowledges and agrees that the price of the Goods reflects the limitations of liability contained in this agreement.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Companies or subcontractors.

11. Import and Export Licences

The Dealer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by the Company, the Dealer shall make those licences and consents available to the Company prior to the relevant shipment.

12. GENERAL

12.1 Assignment and subcontracting.

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

12.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 Severance.

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

- 12.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 12.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Company.
- 12.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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