

SvTech Terms and Conditions of Business

PARTIES

- (1) S.V.Tech Limited (Company number 02772492) whose registered office is at Summer House, St Thomas Road, Chorley Lancashire PR7 1HP ("the **Company**").
- (2) Any person or organisation which accepts a valid Quotation provided by the Company. (**Customer**).

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions (the **Conditions**).

Agreement: the Customer's acceptance of the Quotation for the provision and supply of the Services by the Company.

Equipment: means the Customer's vehicle(s) which includes but is not limited to parts, spares and components whether or not attached to or comprised within the vehicle

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights (which includes but is not limited to any test results and data produced during the performance of the Services) in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Quotation: the quotation whether in writing (which includes but is not limited to fax or email) or given orally detailing the Services the Company is prepared to offer to the Customer and the price for the provision and supply of the Services

Request Form: the form completed by the Customer specifying the details of the vehicle and proposed modifications (if any), together with any other information the Company requires and the services the Customer wishes the Company to undertake.

Services: the services to be provided by the Company under the Agreement together with any other services which the Company provides or agrees to provide to the Customer.

Company's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Company or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Any obligation in the Agreement on the Customer not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

2. APPLICATION OF CONDITIONS

2.1 Quotations are given by the Company on the basis that no agreement shall come into existence except in accordance with clause 3.2. Any quotation is valid for a period of 30 days from its date, provided that the Company has not previously withdrawn it.

3. COMMENCEMENT AND DURATION

3.1 The Company shall provide a Quotation to the Customer for the provision of the Services. If required by the Company the Company shall forward to the Customer a Request Form for completion by the Customer.

3.2 Acceptance of the Quotation by the Customer shall be communicated to the Company or alternatively it shall be deemed that the Customer accepts the Quotation by completing and returning to the Company the completed Request Form or confirmation of instructions.

3.3 It is agreed that the Company shall have the right (if necessary) to amend the Quotation ("Revised Quotation") for the Services as the Company shall see fit (which for the avoidance of doubt includes the price for the Services) and shall promptly inform the Customer of the Revised Quotation.

3.4 The Services supplied under the Agreement shall be provided by the Company to the Customer from the date of the Customer's acceptance of a valid Quotation (including a Revised Quotation) or confirmation of instructions to the Company.

4. COMPANY'S OBLIGATIONS

4.1 The Company shall carry out the agreed Services or any part thereof with all due reasonable care and skill and within a reasonable time.

4.2 The Customer agrees and accepts that any dates specified for the supply and performance of the Services shall be estimates only and time shall not be of the essence of Agreement.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall co-operate with the Company in all matters relating to the Services and provide, for the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's information, data and vehicles and other facilities as requested by the Company in order to permit the Company to carry out and perform the Services

5.2 It is specifically agreed due to the bespoke nature of the Service that should the Company provide the Services for a specific vehicle modification ("the Modifications") the Customer warrants and undertakes that no further modification, amendment or other such alterations howsoever arising ("Additional Works") will be undertaken to the said vehicle or any other vehicle modified in accordance with the Modifications without the Company's prior written approval and consent.

5.3 The Customer acknowledges and accepts that any Additional Works not undertaken or approved by the Company may invalidate the Services provided by the Company (which includes but is not limited to any test result, projections and any reports prepared by or on behalf of the Company) and are therefore undertaken at the Customer's sole risk.

5.4 It is agreed that a breach of the warranty and undertaking contained in clause 5.2 shall be a repudiatory breach of the Agreement by the Customer and the Company shall therefore be permitted without prior notice, and without any liability whatsoever or howsoever arising (which includes but is not limited to loss or profit or any such direct and/or indirect loss) to terminate the Agreement, and any other agreement under which any service is at that time being provided, or is agreed to be provided to the Customer. In addition the Customer shall immediately cease to use any report or other such information provided to the Customer by the Company and the Customer undertakes to immediately return to the Company any report (which includes but is not limited to test results and test data) prepared by the Company on behalf of the Customer.

5.5 It is agreed that notwithstanding any other provision of these Conditions or the Agreement that the Customer shall fully indemnify the Company against all losses (including loss of profit and indirect loss) claims, awards, damages, cost, expenses whatsoever as a result of the Customer's breach of clause 5.2.

5.6 The Customer acknowledges and agrees that where a vehicle is required to be tested the Customer agrees that the said vehicle may be required by the Company for such period of time as is required for the Services to be completed.

6. CHARGES AND PAYMENT

6.1 Where the Services are provided for an estimated price, the total price for the Services shall be the amount set out in the invoice (as amended) plus VAT. The total price shall be paid to the Company (without deduction or set-off).

6.2 Payment shall be made in accordance with the terms of payment as stated on the Customer's invoice.

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6.3 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company on the due date, the Company may:

(a) charge interest on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of the Royal Bank of Scotland Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and/or the Company may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

(b) suspend all Services until payment has been made in full.

6.4 All sums payable to the Company shall become due immediately on the termination of the Agreement howsoever arising. The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 As between the Customer and the Company, all Intellectual Property Rights and all other rights created and/or arising from whether directly or indirectly from the performance of the Services by the Company shall be owned by the Company which includes but is not limited to any report prepared by the Company.

8. CONFIDENTIALITY AND THE COMPANY'S PROPERTY

8.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Company, its employees, agents or sub-contractors and any other confidential information concerning the Company's business or its products which the Customer may obtain.

8.2 All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Customer shall, at all times, be and remain the exclusive property of the Company.

9. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION

9.1 This condition 9 set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) which includes but is not limited to:-

(a) any breach of the Agreement; and

(b) any use made by the Customer of the Services or any part of them; and

(c) any damage to any of the Customer's Equipment; and

(d) any representation, statement or tortuous act or omission (including negligence) arising under or in connection with the Agreement.

9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions and the Agreement.

9.3 Nothing in these Conditions limits or excludes the liability of the Company for death or personal injury resulting from negligence or for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company

9.4 Subject to condition 9.2 and condition 9.3 the Company shall not be liable for any loss (whether direct or indirect loss), damages, costs penalties, awards interest or costs (howsoever arising) suffered by the Customer.

9.5 Notwithstanding the provisions of clause 9.4 it is agreed that if the Company is found liable for any of the matters referred to in clause 9.4 or otherwise the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Agreement shall be limited to the lower of either the contract price of the Service or the sum of £20,000.

10. TERMINATION

10.1 Without prejudice to any other rights or remedies which the parties may have, the Company may terminate the Agreement without liability to the Customer immediately on giving notice to the other if the other party commits a material breach of any of the terms of these Conditions and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach

10.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Agreement without liability to the other immediately on giving notice to the other if an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party; or a receiver is appointed of any of the other party's assets or undertaking; or the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or the other party ceases, or threatens to cease, to trade or the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

10.3 On termination of the Agreement for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;

11. FORCE MAJEURE

11.1 The Company shall have no liability to the Customer under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement (including the Services) or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control (which includes but is not limited to delay caused by the DVLA VOSA or any other government or regulatory body and/or the Company being unable to secure any necessary testing equipment or test time at any independent test facility).

12. STATUS OF PRE-CONTRACTUAL STATEMENTS

12.1 The Customer acknowledges and agrees that, in entering into the Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Agreement, other than as expressly set out in these Conditions.

13. RIGHTS OF THIRD PARTIES

13.1 The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else and the Contract (Rights of Third Parties) Act 1999 shall not apply.

14. NOTICES

14.1 Notice given under the Agreement shall be in writing, sent by fax or sent by pre-paid, first-class post or recorded delivery to the other party's usual or last known place of business, or such other address as notified to the other party. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting.

15. GOVERNING LAW AND JURISDICTION

15.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter