

TRADE TERMS & CONDITIONS

The customer's attention is drawn in particular to the provisions of clause 10.

1. INTERPRETATION

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

**Authorised Dealer:** an Authorised Dealer for Alfa and Fiat vehicles as selected by the Supplier.

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

**COD Customer:** a Customer that does not hold an account with the Supplier.

**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 Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Delivery Fee:** fee charged by the Supplier to the Customer for delivery of the goods.

**End User:** the owner of the vehicle in which Goods are fitted.

**Force Majeure Event:** has the meaning given in clause 11.

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

**Manufacturer:** Alfa or Fiat

**Manufacturer's Warranty:** the warranty offered by the Manufacturer for the Goods.

**Order:** the Customer's order for the Goods whether made by telephone or email.

**Returns Number:** A reference number issued by the Supplier when Goods are being returned by a Customer.

**Special Order:** any Special Order for the Goods, including any electrical and safety goods, that is agreed by the Customer and the Supplier.

**Specification:** any standard specification for the Goods, including any related plans and drawings, that is agreed by the Customer and the Supplier.

**Supplier:** Tomo Prestige Limited (registered in England and Wales with company number 07519653).

**Supplier's Website:** [www.tomoparts.co.uk](http://www.tomoparts.co.uk)

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 These Conditions apply to the Contract to the exclusion of any other terms that the Customer 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 Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

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- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained on the Supplier's Website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.
- 3. GOODS**
- 3.1 The Goods are described on the Supplier's Website as modified by any applicable Specification or Special Order.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Special Order supplied by the Customer, the Customer shall indemnify the Supplier 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 professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 3.4 It is the Customer's responsibility to ensure that any Goods are suitable for their particular needs and requirements.
- 4. DELIVERY**
- 4.1 The Customer shall be entitled to cancel the Order at any time prior to the dispatch of the Goods except for those Goods which are ordered with a Special Order.
- 4.2 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, 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.
- 4.3 The Supplier 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 Supplier notifies the Customer that the Goods are ready. Goods will not be delivered to post office boxes or shipping agent addresses.
- 4.4 The Supplier will select the most appropriate carrier for the Goods. Small parcels may be delivered by Royal Mail.
- 4.5 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.7 It is the Customer's responsibility to provide adequate information for the Supplier's carrier to find the Delivery Location. The Customer agrees to identify the Supplier against any costs that it may incur as a result of non-delivery as a result of inaccurate or inadequate instructions.

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- 4.8 If the Supplier fails to either deliver the Goods, or make them available for collection within 30 days of the estimated delivery date, the contract will be cancelled and any deposit paid will be returned to the Customer. Delivery Fee will vary depending on the contents or the Order and the Customer's chosen delivery service. The Supplier will confirm the Delivery Fee to the Customer prior to dispatch of the Goods.
- 4.9 The Supplier shall have no liability for any failure to deliver the Goods where such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.10 If the Customer fails to accept delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure 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 after the day on which the Supplier notified the Customer that the Goods were ready; and
  - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.11 If 5 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.
- 4.12 The Supplier 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 Customer to cancel any other instalment.
- 4.13 Where a Customer makes multiple Orders, delivery of the Goods may not be in the same sequence as the Orders were made.
- 4.14 The Supplier shall charge the Delivery Fee to the Customer but such Delivery Fee is limited to one per Order. The
- 5. QUALITY**
- 5.1 The Customer or, where the Goods have been resold, the Customer's End User has the benefit of the Manufacturer's Warranty for the Goods, the time for which begins to run when the Goods are invoiced to the Customer. Any claim under the Manufacturer's Warranty should be made via the Supplier in the first instance.
- 5.2 The Manufacturer warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:
- (a) conform with their description and any applicable Specification;
  - (b) be free from material defects in design, material and workmanship; and
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.3 The Warranty Period may vary for different Goods but will be for a minimum period of 12 months from the date of delivery.
- 5.4 Subject to clause 5.56, if:
- (a) the Customer gives notice to the Supplier within 21 days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.12;
  - (b) the Customer provides their original invoice for the Goods;
  - (c) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (d) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business or to an Authorised Dealer at the Customer's cost,

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the Supplier shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full (along with any applicable Delivery Fee). Any Goods which have been fitted into a vehicle must remain fitted at the time the Customer returns the Goods (if asked to do so by the Supplier). The cost of labour will only be considered where repairs are carried out by an Authorised Dealer.

5.5 During the Warranty Period, if any part of the vehicle requires repair or replacement as a result of a manufacturing or material defect in the Goods, the part will be replaced free of charge by an Authorised Dealer, regardless of any changes in vehicle ownership during the Warranty Period.

5.6 The Supplier (or Manufacturer) shall not be liable to repair or replace the Goods in any of the following events:

- (a) the defect arises because the Customer failed to follow the Manufacturer's or Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (b) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (c) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (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.

5.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.8 These Conditions shall apply to any replacement Goods supplied by the Supplier.

**6. TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.2; and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

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- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, then, without limiting any other right or remedy the Supplier may have:
- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
  - (b) the Supplier may at any time:
    - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
    - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
7. **PRICE AND PAYMENT**
- 7.1 The Supplier will accept payment for the Goods by debit or credit card or a bank transfer. A surcharge may be applied to payment by credit card.
- 7.2 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out on the Supplier's Website as at the date of delivery.
- 7.3 The Supplier may, by giving notice to the Customer at any time 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 Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer 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 Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.4 The price of the Goods is exclusive of the costs and charges of transporting the Goods, which shall be agreed prior to dispatch of the Goods and invoiced to the Customer.
- 7.5 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.6 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.7 Where the Customer holds an account with the Supplier, the Customer shall pay the invoice in full and in cleared funds within 30 Business Days of the date of the invoice unless agreed otherwise by the Supplier and Customer in writing. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 7.8 Any COD Customer shall pay the invoice in full on delivery of the Goods.
- 7.9 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

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**8. RETURN OF GOODS**

8.1 Subject to clause 8.4, the Customer is permitted to return Goods with a minimum price of £20 that have been delivered to the Customer but are no longer required. Such Goods must be returned within 5 working days and must not have been fitted or used. The Goods should be returned with their original box, packaging and accessories (if any) and must be in a resalable state.

8.2 The Customer must contact the Supplier prior to returning the Goods in order to be issued with a Returns Number which must be expressly stated on the returned Goods. Failure to state the Returns Number in accordance with this clause 8.2 may result in the Customer being charged for the Goods.

8.3 The Supplier will offer the Customer a refund of the full price of the Goods provided the Goods are returned in accordance with clauses 8.1 and 8.2. Unless the Goods are incomplete or faulty, any Delivery Fee paid by the Customer will not be refunded.

8.4 The Supplier will not accept returns of any Special Order Goods.

8.5 The Supplier reserves the right to charge any Customer returning Goods under this clause 8 a handling fee up to the value of 20% of the price of the Goods.

**9. TERMINATION AND SUSPENSION**

9.1 If the Customer becomes subject to any of the events listed in clause 9.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.

9.2 For the purposes of clause 9.1, the relevant events are:

- (a) the Customer 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 or limited liability partnership) 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 Customer 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 ;

(c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

(d) (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 Customer;

(e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

(f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

(g) (being an individual) the Customer is the subject of a bankruptcy petition or order;

(h) a creditor or encumbrancer of the Customer 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;

(i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to

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which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(a) to clause 9.2(f) (inclusive);

- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (k) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer 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.

9.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.2(a) to clause 9.2(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

9.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

**10. LIMITATION OF LIABILITY**

10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

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

10.2 Subject to clauses 5.1 to 5.7 and clause 10.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort or (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

**11. 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

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of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**12. GENERAL**

**12.3 Severance.**

**12.1 Assignment and other dealings.**

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

(a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**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 or other next working day delivery service, 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 other next working day delivery service, 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.

**12.4 Waiver.** A waiver of any right or remedy under the Contract or law 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent 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 to enforce its terms.

**12.6 Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.



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12.7 **Governing law.** 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 the law of England and Wales.

12.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).