



## EUROPEAN METAL RECYCLING LIMITED

### Terms & Conditions Applying to the Sale of Auto Parts

#### 1. Definitions

1.1 The following terms apply in this document:

“Conditions”: these terms and conditions as amended from time to time;

“Consumer”: any person contracting with EMR for purposes which are outside his business;

“Contract”: any contract between EMR and You for the sale and purchase of Parts of which these Conditions form part;

“Contract Date”: the date on which a Contract is entered into;

“Delivery”: shall take place at the moment Contract was formed;

“Distance Contract”: any Contract concluded by way of one or more means of distance communication;

“EMR”: European Metal Recycling Limited, a company registered in England and Wales with number 02954623 and whose registered office is at Sirius House, Delta Crescent, Westbrook, Warrington WA5 7NS;

“Parts” any used Vehicle parts to be purchased by You pursuant to a Contract;

“Safety Rules”: the rules which specify the way in which You must act at EMR premises as amended from time to time and as displayed at EMR’s premises and/or on the Website;

“Vehicle” a motor vehicle described in clause 4.1 below from which Parts are severed;

“Website”: [www.emrgroup.com](http://www.emrgroup.com); and

“You”: the person, firm, partnership or body corporate which enters into the Contract to purchase Parts or Vehicles from EMR and “Your” and “Yourself” shall be construed accordingly.

1.2 A reference to a law is a reference to that law as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being made under it. Words in the singular include the plural and in the plural include the singular. A reference to one gender includes a reference to the other gender and to the neuter. Clause headings do not affect the interpretation of these Conditions.

#### 2. Applicability of Conditions

2.1 Subject to any variation agreed in accordance with clause 2.3 below, a Contract shall incorporate and be concluded on these Conditions to the exclusion to the fullest extent permitted by law of all other terms and conditions whether express or implied (including any terms and conditions which You purport to apply under any purchase order, confirmation of order, specification or other document).

- 2.2 No terms and conditions endorsed on, delivered with or contained in Your purchase order, confirmation of order, specification or other document shall form part of the Contract.
- 2.3 These Conditions apply to all sales by EMR of Parts and any variation to these Conditions and any representations about Parts shall have no effect unless expressly agreed in writing and signed by an authorised signatory of EMR. By entering into a Contract You acknowledge that You have not relied on any statement, promise, representation or warranty made or given by or on behalf of EMR which is not set out in these Conditions. Nothing in this clause shall exclude or limit EMR's liability for fraudulent misrepresentation.
- 2.4 Each order for Parts from You shall be deemed to be an offer by You to buy Parts subject to these Conditions.
- 2.5 No order placed by You shall be deemed to be accepted by EMR until a written acknowledgement is issued by EMR. Such written notice shall be either (a) in the case of orders placed over the internet, an electronic acknowledgement or (b) in the case of orders placed at the place of business of EMR, a receipt.
- 2.6 If You are a Consumer and have entered into a Distance Contract, You shall be entitled to cancel the Contract within seven days of the Contract Date. Any such cancellation should be notified to EMR in writing and should include full details of the Contract including any reference number. On such cancellation, EMR shall refund the price of the Contract less any associated administration costs.

### **3 Description & Extent of Parts**

- 3.1 All drawings, descriptions, specifications and advertising issued by EMR and any descriptions or illustrations contained in EMR's advertising materials, publicity brochures are issued or published for the sole purpose of giving an approximate idea of the Parts described in them. They shall not form part of the Contract.

### **4 Description of Vehicles**

- 4.1 EMR is in the business of selling Parts from Vehicles, which are damaged, recovered stolen, low value and/or used motor vehicles which are likely not to be in a roadworthy condition without substantial repair and restoration or at all.
- 4.2 You acknowledge and agree that any information provided to You by EMR in respect of a Part, whether provided in written, oral or digital image form ("the Part Information") may be inaccurate and incomplete as it is often provided by EMR in good faith reliance on information disclosed to EMR by a third party without EMR's knowledge or investigation of the Part's condition, description or status. Part Information is provided for Your convenience only and should not be relied on when deciding whether to purchase a Part.
- 4.3 EMR is not liable if you rely on Part Information or on any and all representations (written or verbal), warranties and guaranties regarding Parts sold by EMR, except for those set out in these Conditions.
- 4.4 If you are a Consumer, in addition to your statutory rights and the other provisions of these Conditions, EMR will, for seven days after the Contract Date, issue You with a refund of the purchase price for any Part You have purchased PROVIDED THAT you return the Part to EMR in the same condition in which You purchased it along with all the original receipts and documentation You were given at the time of purchase. If you are not a Consumer, all Vehicle sales are final.

### **5 Your Obligations**

- 5.1 You acknowledge that You have seen and read the Safety Rules and agree that You will abide by the Safety Rules at all times and in all respects while You are at EMR premises.

- 5.2 You acknowledge and agree that You will comply with any and all safety and/or procedural instructions that You may be given by any employee of EMR while at EMR's premises. If you fail to comply with any such instructions or You otherwise fail to comply with the Safety Rules EMR reserves the right, at its discretion, to require You to leave EMR's premises. In such circumstances EMR will have no liability to You for any loss You may have suffered and You will not be given a refund.
- 5.3 Where You purchase a Part from EMR's premises, You understand that EMR will not provide You with any tools and that You must bring Your own tools when You come to recover Parts.

## **6 Risk & Title**

- 6.1 Subject to any variation under clause 2.3, (as may be appropriate), the risk in all Parts will pass to You upon Delivery.
- 6.2 Title to Parts shall pass to You upon the later of (a) Delivery, and (b) EMR recovering payment in full (in cash or cleared funds) of all sums due to it in respect of the Parts.

## **7 Price of Parts**

- 7.1 Unless otherwise specified by EMR, the price for Parts shall be exclusive of any value added tax and all costs or extra charges in relation to packaging, loading, unloading, carriage and/or insurance or any other charge howsoever arising, all of which charges shall be paid for in addition to the price for the Parts on the Contract Date.

## **8 Payment**

- 8.1 Payment of the price for Parts is due in pounds sterling on the Contract Date.
- 8.2 Time for payment shall be of the essence.
- 8.3 You shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

## **9 Quality of Parts**

- 9.1 EMR warrants that (subject to the other provisions of these Conditions) on Delivery, each Part shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 taking into account (a) the description of the Vehicle set out in clause 4 above from which Parts have been taken, (b) their price, and (c) all other relevant circumstances.
- 9.2 EMR shall not be liable for a breach of the warranty in clause 9.1 above unless:
- (a) You give written notice of the defect to EMR within seven days of the time when You discover or ought to have discovered the defect; and
  - (b) EMR is given a reasonable opportunity after receiving such notice to examine such Part and You (if asked to do so by EMR) return such Part to EMR at EMR's cost for the examination to take place.
- 9.3 EMR shall not be liable for a breach of the warranty in clause 9.1 if:
- (a) You make any further use of any Part after giving notice under clause 9.2(a); or
  - (b) You damage the Parts while severing them from a Vehicle or You alter or repair such Parts without the prior written consent of EMR; or
  - (c) the defect arises because You failed to follow EMR's oral or written instructions as to the use of the Part or good trade practice.
- 9.4 Subject to clauses 9.2 and 9.3, if any Part does not conform with the warranty in clause 9.1 EMR shall, at its option, repair or replace such Part or refund the price of such Part to such an amount as EMR deems to be reasonable given the nature and value of the

defective Part, provided that, if EMR so requests, You shall, at EMR's expense, return the Part to EMR.

9.5 On compliance with clause 9.4, EMR shall have fully discharged any and all further liability to You in respect of such Part.

## **10 LIMITATION OF LIABILITY-GENERAL**

10.1 SUBJECT TO THE OTHER PROVISIONS OF THESE CONDITIONS, EMR 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 OR ANY SIMILAR LOSS), COSTS, DAMAGES, CHARGES OR EXPENSES CAUSED DIRECTLY OR INDIRECTLY BY ANY DELAY IN DELIVERY OF ANY PART, NOR SHALL ANY DELAY ENTITLE YOU TO TERMINATE OR RESCIND THE CONTRACT.

10.2 THE FOLLOWING PROVISIONS SET OUT THE ENTIRE FINANCIAL LIABILITY OF EMR (INCLUDING ANY LIABILITY FOR THE ACTS OR OMISSIONS OF ITS EMPLOYEES, AGENTS AND SUB-CONTRACTORS) TO YOU IN RESPECT OF:

- (a) ANY BREACH OF THESE CONDITIONS;
- (b) ANY USE MADE OR RESALE BY YOU OF ANY PART OR OF ANY PRODUCT INCORPORATING ANY PART; AND
- (c) ANY REPRESENTATION, STATEMENT, TORTIOUS OR DELICTUAL ACT OR OMISSION INCLUDING NEGLIGENCE ARISING UNDER OR IN CONNECTION WITH THE CONTRACT.

10.3 YOU CONFIRM THAT IT IS REASONABLE FOR EMR, GIVEN THE NATURE OF ITS BUSINESS, TO RELY UPON THESE RESTRICTIONS, LIMITATIONS AND WHERE APPROPRIATE EXCLUSIONS OF LIABILITY AND YOUR PURCHASE OF GOODS AND USE OF THE SERVICES PROVIDED BY EMR ARE MADE EXPRESSLY ON THE BASIS THAT THESE TERMS HAVE BEEN READ BY YOU, UNDERSTOOD BY YOU AND YOU ACCEPT THAT IN THE CIRCUMSTANCES THEY ARE REASONABLE.

## **11 LIMITATION OF LIABILITY – IF YOU ARE A CONSUMER**

11.1 ALL WARRANTIES, CONDITIONS AND OTHER TERMS IMPLIED BY STATUTE OR COMMON LAW ARE (SAVE FOR THE CONDITIONS IMPLIED BY SECTION 12 OF THE SALE OF GOODS ACT 1979), TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THE CONTRACT.

11.2 NOTHING IN THESE CONDITIONS EXCLUDES OR LIMITS THE LIABILITY OF EMR:

- (a) FOR DEATH OR PERSONAL INJURY CAUSED BY EMR'S NEGLIGENCE;
- (b) UNDER SECTION 2(3) OF THE CONSUMER PROTECTION ACT 1987;
- (c) FOR ANY MATTER IN RESPECT OF WHICH IT WOULD BE ILLEGAL FOR EMR TO EXCLUDE OR ATTEMPT TO EXCLUDE ITS LIABILITY; OR
- (d) FOR FRAUD OR FRAUDULANT MISREPRESENTATION.

11.3 SUBJECT TO THE OTHER PROVISIONS OF THIS CLAUSE 11, EMR'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 ANY CONTRACT SHALL BE LIMITED TO THE CONTRACT PRICE.

11.4 YOU HEREBY ACKNOWLEDGE THAT EMR'S BUSINESS IS THAT OF SELLING PARTS FROM ACCIDENT-DAMAGED, INSURANCE WRITE-OFF OR USED VEHICLES.

11.5 YOU ACKNOWLEDGE AND AGREE THAT PARTS ARE NOT REPRESENTED TO BE MECHANICALLY SOUND OR MAINTAINED AT ANY LEVEL OF QUALITY WHATSOEVER. PARTS MAY NOT BE FIT FOR USE IN ROADWORTHY VEHICLES. VEHICLES AND PARTS MAY REQUIRE SUBSTANTIAL REPAIRS AT YOUR EXPENSE. PARTS MAY NOT BE OF SATISFACTORY QUALITY, TAKING INTO ACCOUNT ALL CONSIDERATIONS, INCLUDING WITHOUT LIMITATION THE PRICE YOU PAY FOR THEM.

## **12 Limitation of liability – if you are not a Consumer**

12.1 The following provisions set out the entire financial liability of EMR (including any liability for the acts or omissions of its employees, agents and sub-contractors) to You in respect of:

- (a) any breach of these Conditions;
- (b) any use made or resale by You of any Part, or of any product incorporating any Part; and
- (c) any representation, statement, tortious act or omission including negligence arising under or in connection with the Contract.

12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.3 Nothing in these Conditions excludes or limits the liability of EMR:

- (a) for death or personal injury caused by EMR's negligence;
- (b) for any matter in respect of which it would be illegal for EMR to exclude or attempt to exclude its liability; or
- (c) for fraudulent misrepresentation.

12.4 Subject to the other provisions of this clause 12, EMR's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation, restitution or otherwise, arising in connection with the performance of the Contract shall be limited to the price of the Contract.

12.5 You hereby acknowledge that EMR's business is that of selling Parts from Vehicles as described in clause 4.2. You hereby acknowledge and represent that You are purchasing Parts with a view to Your trade and with a view to a profit.

12.6 All Parts offered by EMR are sold "As seen". As seen sales are sales without any express or implied warranty (including without limitation any warranty of fitness for a particular purpose or satisfactory quality). EMR expressly disclaims the accuracy or completeness of any and/or all Part Information. EMR expressly disclaims any and all representations, whether written or verbal, warranties and guarantees regarding vehicles and parts sold by EMR. EMR does not guarantee that Parts meet or can be modified to meet local emission and/or safety requirements. It is Your responsibility to ascertain, confirm, research, inspect and/or investigate to Your satisfaction Parts and any and all Part Information prior to deciding You wish to purchase any Parts offered for sale by EMR.

12.7 You agree that all EMR's Parts are sold "As seen" and are not represented to be mechanically sound or maintained at any level of quality whatsoever. Parts may not be fit for purpose as a means of transportation or for any other purpose and may require substantial repairs at Your expense. Parts may not be of satisfactory quality, taking into account all considerations, including but not limited to the price You pay for any Part offered for sale by EMR.

12.8 You hereby confirm that it is reasonable for EMR given the nature of its business and the fact that you are a trader in Parts to rely upon these restrictions, limitations and where appropriate exclusions of EMR's liability and Your purchase of Parts is expressly on the basis that these Conditions have been read by You, understood by You and You accept that in the circumstances they are reasonable.

### **13 Assignment**

13.1 EMR may assign the Contract or any part of it to any person, firm or company. You are not entitled to assign the Contract or any part of it without the prior written consent of EMR.

### **14 Force Majeure**

14.1 EMR reserves the right to defer the date of Delivery or to cancel the Contract or reduce the volume of Parts ordered by You (without liability to You) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control 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 EMR's workforce), or restraints or delays affecting carriers or inability in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of thirty days, You shall be entitled to give notice in writing to EMR to terminate the Contract.

### **15 Communications**

15.1 All communications between the parties about the Contract shall be in writing and delivered or sent by pre-paid first class post or sent by fax:

- (a) (in case of communications to EMR) to its registered office or such address as shall be notified to You by EMR; or
- (b) (in the case of communications to You) to the registered office of the addressee (if You are a company) or (in any other case) to any address set out in any document which forms part of the Contract or such other address as shall be notified to EMR by You.

15.2 Communications shall be deemed to have been received:

- (a) if sent by pre-paid first class post, two days (excluding weekends and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand on a working day prior to 4pm, on the day of delivery and otherwise at 9.30am on the next working day; or
- (c) if sent by fax on a working day prior to 4pm, at the time of transmission and otherwise at 9.30am on the next working day.

15.3 Communications addressed to EMR shall be marked for the attention of the Company Secretary.

### **16 General**

16.1 Each right or remedy under the Contract is without prejudice to any other right or remedy whether under the Contract or not.

16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable be deemed severable and the remaining provisions of the Contracts and the remainder of such provision shall continue in full force and effect.

16.3 Failure or delay by either party to the Contract in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

16.4 Any waiver by either party to the Contract of any breach of, or any default under, any provision of the Contract by the other party shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

- 16.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.6 If You are a consumer, no provision of the Contract will adversely affect Your statutory rights as a consumer.
- 16.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.