

A KAHN DESIGN LIMITED
CONSUMER TERMS AND CONDITIONS OF SALE

We, **A Kahn Design Limited** of 240 Canal Road, Bradford BD1 4SX (Company Number: 3616548) are the suppliers of prestige motor vehicles and the suppliers and fitters of motor vehicle accessories and for the purposes of these Terms and Conditions are referred to as "We"/"Us"/"Our". All of Our contracts for the Goods and/or Services supplied to You are concluded on the following terms:

1. INTERPRETATION

1.1 In these Terms and Conditions of Sale, the following words have the following meanings:

Contract	any contract between Us and You for the sale and purchase of Goods and/or Services;
Customer	the person, firm or company who purchases Good and/or Services from Us ("You"/"Your");
Deposit	a deposit of 15% as specified in the Order Form payable on the date referred to in the Order Form;
Document	includes, without limitation, in addition to any document in writing, any drawing, plan, diagram, design, picture or other image or other device or record embodying information in any form;
Goods	any Goods agreed in the Contract to be supplied to the Customer by the Company (including any parts of them) as set out in the Order Form at Schedule 1;
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, 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;

Order Form means the Order Form listing the Goods and/or Services You are purchasing attached to these Terms and Conditions at Schedule 1;

Premises Our premises at 240 Canal Road, Bradford BD1 4SX or such other premises that We may choose to use from time to time;

Services the fitting Services agreed between Us and You that are more particularly defined in Services Specification Form at Schedule 2;

Services Specification Form means the form, listing the fitting Services attached to these terms and conditions at Schedule 2;

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

- 1.1 Headings in these conditions shall not affect their interpretation.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 The Schedules form part of the Contract.
- 1.4 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.
- 1.5 A reference to **writing** or **written** includes faxes but not e-mail.

- 1.6 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done
- 1.7 References to conditions and schedules are to the conditions and schedules of the Contract.

2 THE CONTRACT

- 2.1 Unless there is a variation under Condition 2.2, the Contract will be on these conditions only, to the exclusion of any other terms and conditions (including any terms and conditions which You purport to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 To be valid, one of Our directors must give You written confirmation of any change to these conditions or of any representations about the Goods or Services.
- 2.3 If We give you advice about how to store or use the Goods, such advice is for guidance only and is not part of the Contract. We are not responsible for any errors in that advice.
- 2.4 Your order is not accepted by us until We give you an order confirmation or (if earlier); We deliver the Goods, or provide the Services to You. If We give you a quote there will not be a Contract between Us until We give You order confirmation or delivery or We provide the Services. Our quotes are valid for 30 days.
- 2.5 Our catalogues, websites, instruction leaflets, manuals, drawings, specifications and price lists ("**Information**") are not an offer to You to create a Contract. We can correct any clerical error in the Information without any liability to You.
- 2.6 You must make sure that all details contained in Your Order Form are accurate. Our drawings, designs, specifications and particulars of weights, volumes and dimensions are approximate only and We are not liable to You for any deviation from them except where You specifically bring these to Our attention when placing Your order with Us.
- 2.7 We may, without any recourse to You, make any changes to the specification of the Goods and/or Services which are needed to conform with any safety or other statutory or EC requirement or, in relation to the Goods, which do not materially affect their quality or performance.

3. PRICE AND PAYMENT

- 3.1 The price for the Goods and/or Services shall be as listed in the Order Form as at the date of that Order Form and all payments in respect of the Goods and/or Services shall be due before we deliver the Goods and/or provide the Services.

- 3.2 In addition to the price applicable, You must pay all value added tax, any other taxes, levies or duties, carriage, insurance costs, loading and unloading costs at order confirmation.
- 3.3 You will have to pay an additional delivery charge (which We will tell You about) if you want Us to deliver the Goods or provide the Services more than 3 miles from the Premises.
- 3.4 We may revise our price lists from time to time without telling You but We will only increase the price for the Contract between the date of Your order and when We deliver the Goods and/or provide the Services if there is an increase in the cost of raw materials, labour and/or other production costs, changes in the types or rates of tax contributions or levies.
- 3.5 Time for payment shall be of the essence and we will provide You with a proof of purchase as order confirmation. Payment will only be deemed to have been received by Us when We have received cleared funds. If You do not pay Us on the due date then, without affecting any of Our other rights or remedies, We reserve the right to:
 - 3.5.1 cancel the Contract or suspend any further deliveries of the Goods to You or performance of the service to You; and/or
 - 3.5.2 retain your Deposit and/or
 - 3.5.3 charge you interest as specified under Condition 4.1 below.
- 3.6 A deposit, of the amount specified in the Order Form will be payable on each Contract on the date the order is made.

4. GOODS AND/OR SERVICES NOT AVAILABLE IMMEDIATELY

- 4.1 Where you are buying Goods and/or Services which are not available immediately:
 - 4.1.1 You must pay us a deposit as specified at Condition 3.6 and such deposit will act as a prepayment towards the Goods and/or Services and we will reserve the Goods for You.
 - 4.1.2 Once the Goods are available we will telephone you or contact you using the information you have given to us on the Order Form. We will then arrange a mutually convenient time with you for you to collect the Goods from our showroom or for us to deliver them to you in accordance with Condition 7 below. We will also ask you to pay the balance of the purchase price for the Goods prior to any delivery or collection taking place. This will be the total purchase price less any deposit you have paid, as stated on the Order Form. You may pay us when you come to collect the Goods from our showroom, or over the telephone.

- 4.1.3 **If you do not pay us on the relevant date in Condition 4.1.2 we may charge you interest (both before and after judgement) on the amount you have not paid at the rate of 3% a year above the base lending rate of Barclays Bank plc. We will charge you interest until you pay us in full. We can do this as well as using any other rights or remedies we have. You agree that it will be fair for us to charge interest in these circumstances (even if we are holding the Goods) because we will have to store the Goods on your behalf.**

5. GOODS AND SERVICES SPECIFICATION

- 5.1 The quantity and description of the Goods and/or the type of Services to be purchased by You are set out on the Order Form and/or the Services Specification Form. We will endeavour to ensure that the Goods are in accordance with our (or our suppliers') current brochure or other published literature relating to our Goods and Services from time to time and that our publications and websites are up to date in relation to the Services which We provide.
- 5.2 Where you have ordered Goods which require fitting or installation and have not requested the Services from Us or where we are not able to provide you with the Services and we only supply the Goods themselves, We **will not be responsible for installing the Goods**. We may recommend suitable fitters and installers where, in Our opinion, you require this information. However, in such circumstances we do not make any representations or offer any warranties about the standard of work of anyone we may recommend. In such circumstances you will have a separate contract with anyone we recommend who then undertakes work for you in relation to Goods you have purchased from us.
- 5.4 If the Goods are damaged during or after the fit process, we will not be liable to refund or replace the Goods and any warranty supplied by Us for the Goods will be void insofar as any loss or damage results from the actions of any fitter or any defect in the fitting process.
- 5.3 We may use demonstration products in our showroom to show how a typical product works and what it is made of. The Goods you order (as set out in the Order Form) will, as far as possible, be the same in appearance and operation as the demonstration products.
- 5.4 **We may change the specification of the Goods (including substituting parts or materials) if it is necessary to comply with any safety or legal requirements. We will try to limit any such changes to minor or technical alterations wherever possible and will not change the colour or appearance of the Goods unless we agree it in advance with you.**

6. CANCELLATION – YOUR RIGHTS:

- 6.1 You may cancel the contract no later than the earlier of:
 - 6.1.1 5 days from placing your order; or
 - 6.1.2 a minimum of 48 hours before the date on which the Goods are delivered to You; or
 - 6.1.3 the day immediately preceding the date on which the Services are commenced,
- 6.2 You may also cancel the Contract if We are in material breach of the terms of the Contract and you notify us of such breach and we fail to remedy any such breach within 21 days of receiving your notification.
- 6.3 If you cancel the Contract according to Condition 6.1 or 6.2 then you must return any Goods held by you to us at your own cost. We may collect Goods from you again at your own cost. You must keep any Goods to be returned to us in good condition and the original packaging.
- 6.4 Upon cancellation we will return any money that you have paid to us but where you have paid us a deposit under Condition 3.6:
 - 6.4.1 We reserve the right to retain your deposit in full;
 - 6.4.2 invoice You for any other reasonable charges and expenses we have incurred in respect of the manufacture of the Goods and/or the supply of the Services under Your Contract; and
 - 6.4.3 invoice you for any costs or expenses associated with Us collecting the Goods from You.

Please note: Condition 6.3 applies to a cancellation of any Contract, except where Goods and/or Services have been ordered by You over the telephone (for which Condition 7 below applies).

7. ORDERS OVER THE TELEPHONE

- 7.1 Where you have looked at our website or other publicity and you choose to order Goods and/or Services over the telephone, the provisions of this Condition 7 will apply to any contract between you and us.
- 7.2 Where you telephone us with an order, a legally binding contract will be made when we send Your written confirmation by letter or by email or fax to the postal address, email address or fax number you have given us and You acknowledge receipt of such written confirmation. If You fail to acknowledge receipt within 48 hours of Us sending You written confirmation, such confirmation will be presumed delivered.
- 7.3 The price of the Goods you order are:

- 7.3.1 shown on our website at the time you place your order. You can cancel the contract according to Condition 7.7 below; or
- 7.3.2 where we have to order in "bespoke" items tailored to your needs from suppliers we may not be able to calculate the price immediately. If that happens, we will send confirmation of the price as soon as we know it. If you then change your mind, you are entitled to cancel the Contract but you must contact us within 2 working days to cancel.
- 7.4 The description of the Goods and/or Services you order are those shown on our website at the time you place your order.
- 7.5 The Goods may not be available when you order them. If that is the case we will let you know as soon as possible and when we expect such goods to be available.
- 7.6 We make every effort to ensure that the prices shown on our website are accurate at the time you place your order. If there is an error, we will let you know as soon as possible. You can then reconfirm your order at the correct price, or cancel your order. If you cancel, we will refund or recredit you any sum that you have paid us for the Goods.
- 7.7 To exercise your right to cancel you must write to us and deliver it by hand, or send it to us by post, or fax or email to the address at Condition 15.1, giving details of the Goods ordered, (where appropriate) their delivery and the fact that you are cancelling the contract.
- 7.8 Once you have notified us that you are cancelling the contract, we will refund or recredit you any sum that you have paid us for the Goods within 30 days, subject to such Goods being in a good condition and in the original packaging, however we reserve the right to retain your deposit as described in Condition 6.4
- 7.9 If in respect of a telephone order, we are unable to provide You with the Goods and/or Services within 90 days of your order, we will refund the whole of your deposit within 14 days of the expiry of the 90 day period.

8. DELIVERY

- 8.1 Time for delivery or performance shall not be of the essence and all such dates are estimates only. We are not responsible if there is any delay in delivery of the Goods or performance of the Services except if caused by Our negligence. If no dates are specified, delivery will be within a reasonable time and usually within 5 working days of You planning your order. **"Delivery"** means when the Goods are loaded onto Our

vehicle or if collected by You, Your vehicle or when We perform the Services, as appropriate.

8.2 If We are delivering the Goods in instalments, each delivery is a separate contract and if We do not deliver any one or more of the instalments in accordance with these conditions or You make a claim in respect of any one or more instalments You shall not be entitled to treat the Contract as a whole as ended. If for the Goods:-

- (1) You request that delivery be postponed; or
- (2) You fail to take delivery of the Goods; or
- (3) We do not receive adequate delivery instructions from You at the time stated for delivery then:
 - (a) risk of damage to or loss of the Goods will pass to You (including for loss or damage caused by Our negligence);
 - (b) the Goods will be deemed to have been delivered;
 - (c) we may store the Goods until actual delivery and charge You for all related costs including insurance of storage;
 - (d) We may sell the Goods at the best price readily obtainable and charge You for any shortfall below the price under the Contract; and/or
 - (e) without affecting any of Our other rights or remedies We may cancel the Contract or suspend any further deliveries of the Goods or performance of the Services to You.

8.3 If You nominate a place for delivery it is Your responsibility to make sure that suitable access equipment and manual labour is available to unload the Goods. **IF IN OUR DRIVER'S REASONABLE OPINION THESE ARE NOT AVAILABLE WE MAY REFUSE TO DELIVER THE GOODS.**

8.4 Our record of the quantity of any consignment of Goods despatched from Our place of business shall be conclusive evidence of the quantity received by You on delivery.

8.5 It is your responsibility to verify the information confirmed in the Order Form and we shall have no liability for any non-delivery or shortfall in the quantity of the Goods delivered unless You notify Us of any such error within 48 hours of delivery and only then, we may at our option:

8.5.1 deliver such quantity or the Goods to remedy the shortfall; and/or

8.5.2 issue a credit note to You against the invoice for the amount of the Goods where there is non-delivery.

8.6 You must arrange inspection of the Goods immediately on delivery and before the delivery receipt, if required, is signed.

- 8.7 Where We have provided You with the Services and You are not satisfied with the Services and notify us of the same within 48 hours of Us completing the Services, we may (following reasonable investigation of your complaint) at our option:
- 8.7.1 remedy any defects that We feel are reasonably required to remedy.
- 8.8 Where We agree to offer You Services pursuant to a bespoke design, We will not offer any refunds in respect of such Services but will offer to remedy any defects to the extent that We feel it is reasonable to do so, where You bring such defects to Our attention within 48 hours of Us providing You with such Services.

YOU MUST READ CONDITION 9.

9. RISK IN AND OWNERSHIP OF GOODS

- 9.1 Risk of damage to or loss of the Goods shall pass to You when the Goods are delivered i.e. despatched from Our premises but You shall not own them until We have received from You full payment in cash or cleared funds of:
- 9.1.1 the price of the Goods; and
- 9.1.2 all other sums which You owe Us on any account.
- 9.2 Until You own the Goods, You must:
- 9.2.1 hold them on Our behalf (but without You owning them);
- 9.2.2 store them (at Your cost) separately from all of Your other Goods so that they can be identified as Our property;
- 9.2.3 not destroy, deface or obscure any identifying mark or packaging on them; and
- 9.2.4 maintain them in satisfactory condition insured on Our behalf for their full price against all risks to Our reasonable satisfaction and if We ask you to, produce the policy of insurance to Us;
- 9.3 You may not resell the Goods before You own them.
- 9.4 You shall not use the Goods which remain Our property as security for any of Your debts.
- 9.5 Your right to possession of the Goods shall end immediately and We can end the Contract under Condition 8 if:
- 9.5.1 You are the subject of insolvency, administration, bankruptcy (or similar) orders, notices, proceedings, resolutions or arrangements in whatever jurisdiction or are unable to pay Your debts within the meaning of section 123 Insolvency Act 1986 or cease (or threaten to cease) to trade;
- 9.5.2 You are the subject of any execution on Your property or breach the Contract or any other contract between Us and (if capable of remedy) fail to

remedy the breach within 30 days after being required to do so by Our written notice; or

9.5.3 In Our opinion You are in breach of any of the conditions of 9.2 to 9.4.

10. QUALITY AND WARRANTY

10.1 We warrant that on Delivery the Goods will be of satisfactory quality and that the Services will be provided using reasonable care and skill

10.2 Despite any of the other provisions of this Condition 10, if You

- (a) process, manufacture and/or incorporate any of the Goods delivered to You with any other Goods; or
- (b) You sell the Goods; or
- (c) do not return the Goods to Us when We ask You to do; or
- (d) alter the Goods in any way,

You shall be deemed to have accepted the Goods.

10.3 Where We are not the manufacturer of the Goods, or of any other goods supplied by a third party in connection with the Services We will use Our reasonable endeavours to transfer to You the benefit of any warranty, guarantee or indemnity given to Us.

10.4 All Goods carry the benefit of 12 months warranty against manufacturer defects.

11. LIMITATION OF LIABILITY

11.1 Subject to condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

11.1.1 any breach of these Conditions; and

11.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2 All warranties, conditions and other items implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 11.4

11.4 Subject to conditions 11.2 and 11.3:

11.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the

performance or contemplated performance of this Contract shall be limited to the price paid by the Buyer for the Goods under this Contract; and

- 11.4.2 the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

12. EXPORT TERMS

- 13.1 Unless any special terms are agreed in writing between You and Us, where the Goods are supplied for export from the United Kingdom You shall be responsible (at Your cost) for complying with any legislation or regulations governing the importation of the Goods into the country of destination (including obtaining relevant licences, permits and permissions) and for the payment of any duties and for supplying all relevant details to Us where delivery is to be made at Your premises.
- 13.2 Unless the Goods are to be collected by You or Your carrier from Our premises, the Goods shall be delivered at Your nominated premises (as agreed by Us).

14. "FORCE MAJEURE"

We reserve the right to defer the date of delivery, to cancel the Contract, to reduce the volume of the Goods ordered by You or suspend the provision of the Services to You (without liability to You) if We are prevented from or delayed in the carrying on of Our business due to circumstances beyond Our reasonable control including, without limitation, strikes, lock outs or other industrial disputes (whether involving the workforce of the Seller or of any other party), act of God, government actions, war riot, hostilities (whether war be declared or not), armed conflict, terrorist attack, terrorist activity, nuclear, chemical or biological contamination, sonic boom, civil commotion, invasion, revolution, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, power failure, breakdown of plant or machinery, fire, flood, storm, disease, epidemic, default of suppliers or subcontractors, difficulties or increased expense in obtaining raw materials, labour, fuel, parts of machinery, or import or export regulations or embargoes. If the event in question continues for a continuous period in excess of 20 days either You or We shall be entitled to give each other written notice to end the Contract.

15. GENERAL

15.1. Any notice You are required or permitted to give to us shall be made in writing or via telephone to the following address:

A Kahn Designs
240 Canal Road
Bradford
BD1 4SX

TEL: 01274 749999

FAX: 01274 715755

EMAIL: michael.woodhouse@kahndesign.com

Any party giving the notice may deliver the notice personally or by fax, first class recorded delivery post or first class air mail letter. A notice shall be deemed to have been served (if personally delivered) at the time of delivery or (if sent by first class recorded delivery post) 48 hours after posting or (if sent by first class air mail letter) 96 hours after posting or (if sent by fax) at the time of transmission.

- 15.2 You cannot assign, transfer, charge or deal in any other manner with the Contract or any of Your rights under it, nor purport to do any of the same, nor subcontract any or all of Your obligations under the Contract without having obtained Our prior written consent.
- 15.3 We shall be entitled to assign Our rights under the Contract and sub contract any or all of Our obligations under the Contract to any third party.
- 15.4 When We are a member of a group of companies We may perform any of Our obligations or exercise any of Our rights under the Contract by ourself or through any other member of Our group, provided that any act or omission of any such other member shall be deemed to be Our act or omission.
- 15.5 Unless the right of enforcement is expressly granted, it is not intended that a third party should have the right to enforce a provision of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 15.6 No waiver by Us of any breach by You of the Contract shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.7 No failure by Us to exercise nor Our delay in exercising any right or remedy under the Contract shall constitute a waiver of that right or remedy.
- 15.8 Except in respect of any undisputed credit or payment due and owing by Us to You, You shall pay all amounts due under the Contract in full without any deducting or

withholding any money other than as required by law and You shall not be entitled to assert any credit, set off or counterclaim against Us in order to justify withholding payment of any such amount in whole or in part.

15.9 If any of these conditions is, or at any stage in the future becomes invalid, illegal or cannot be enforced in law, it will not affect the other terms which will stay in force.

15.10 If there is a dispute between You and Us, we both agree that the Courts of England and Wales will be the only courts with the power to deal with the dispute and that English law will apply.

**SCHEDULE ONE
ORDER FORM**

SCHEDULE 2
SERVICES SPECIFICATION FORM