

## Aftercare Response Limited

### Terms and Conditions

These Conditions will apply to all contracts between Aftercare and the Customer in relation to the supply by Aftercare of any and all Goods and Services to the exclusion of all other terms promoted or put forward by the Customer whether on any invoice, order, quotation, specification, any other document provided by the Customer or otherwise.

Each relevant schedule of these Conditions will form part of Aftercare's contract with the Customer.

The definitions used in these Conditions are set out in Schedule 1.

Schedule 1 (*Definitions and Interpretation*) and Schedule 2 (*General Terms*) apply to all Goods and Services provided by Aftercare.

In addition to Schedule 1 and Schedule 2, Schedule 3 applies when the Customer orders Consignment Goods.

# **Motus Group (UK) Limited trading as Aftercare Response**

## **Terms and Conditions SCHEDULE 1**

### **DEFINITIONS AND INTERPRETATION**

#### **PART 1**

In these Conditions, the following definitions apply:

**Aftercare:** Motus Group (UK Ltd) trading as Aftercare Response registered in England and Wales with company number 00653665.

**Aftercare Materials:** has the meaning given in paragraph 9.1.8 of Schedule 2.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England.

**Business Hours:** the period from 8:00 am – 5:00 pm on any Business Day.

**Collection Location:** Aftercare's premises or such other location as may be advised by Aftercare.

**Commencement Date:** has the meaning given in paragraph 2 of Schedule 2 for Goods and paragraph 7.3 of Schedule 2 for Services.

**Conditions:** these terms and conditions as amended from time to time in accordance with paragraph 18.10 of Schedule 2.

**Contract:** the contract between Aftercare and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** will be construed accordingly.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Core Travel Hours:** 9.00 am to 5.00 pm on any Business Day.

**Customer:** the person or firm who purchases the Goods and/or Services from Aftercare.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Deliverables:** the deliverables set out in the Order, produced by Aftercare for the Customer.

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**Delivery Location:** the location set out in the Order or such other location as the parties may agree.

**Fix:** the vehicle is restored to a useable condition.

**Force Majeure Event:** has the meaning given to it in paragraph 18 of Schedule 2.

**Goods:** the goods (or any part of them) set out in the Order or the Consignment Goods (or any part of them) (as the case may be).

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and Aftercare.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Mobile Maintenance Engineer:** Aftercare's employee engaged to provide Services.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form (for Goods) or by telephone in accordance with paragraph 7.1 (for Services).

**RPI:** means the retail prices index or if the same is no longer published such other index replacing the same with such adjustments as Aftercare may stipulate.

**Services:** the services, including the Deliverables, supplied by Aftercare to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services provided in writing by Aftercare to the Customer.

**Standard Call-Out Hours:** 9.00 am to 5.00 pm on any Business Day.

**Temporary Fix:** the vehicle is restored to a useable condition but the repair(s) should not be considered permanent and the Customer must ensure that the temporary repair is made permanent within timescales specified by Aftercare.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

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#### **PART 2**

In these Conditions, the following rules apply:

1. A reference to:

- a. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- b. a party includes its successors and permitted assigns;
- c. a statute or statutory provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that statute or statutory provision;
- d. writing or written** includes email but not fax.

Any words following the terms **for example, including** or **include** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.

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### **SCHEDULE 2**

#### **GENERAL TERMS**

##### **1. Basis of Contract**

1. The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
2. Any samples, drawings, descriptive matter or advertising issued by Aftercare and any descriptions of the Goods or illustrations or descriptions of the Services contained in Aftercare's catalogues are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They will not form part of the Contract or have any contractual force.
3. 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.
4. Any quotation given by Aftercare will not constitute an offer, and is only valid for a period of 7 Business Days from its date of issue, unless agreed otherwise.
5. All of these Conditions will apply to the supply of both Goods and Services except where application to one or the other is specified.

##### **2. Ordering Goods**

Any Order for Goods will only be deemed to be accepted when Aftercare issues written acceptance of the Order at which point and on which date the Contract will come into existence ("**Commencement Date**").

##### **3. Goods**

1. The Goods are described in the Goods Specification.
2. Aftercare reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and Aftercare will notify the Customer in any such event.

##### **4. Delivery and Collection of Goods**

###### **4.1 If Aftercare delivers the Goods directly to the Customer:**

4.1.1 Aftercare will ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Customer and Aftercare reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and if the Goods are being delivered by instalments;

4.1.2 Aftercare will deliver the Goods to the Delivery Location;

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- 4.1.3 Aftercare (or any courier nominated by it) may deliver the Goods at any time during Business Hours unless agreed otherwise;
  - 4.1.4 the risk in the Goods will pass to the Customer on completion of delivery; and
  - 4.1.5 delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 2. If the Customer offloads the Goods from the delivery vehicle itself, the Customer will be liable for any loss and/or damage to the Goods arising during that offloading process.
- 3. If the Customer collects the Goods from Aftercare:
  - 4.3.1 Aftercare will make available to the Customer a delivery note that shows the date of the Order, all relevant Customer and Aftercare reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
  - 4.3.2 the Customer will collect the Goods from the Collection Location within 5 Business Days of Aftercare notifying the Customer that the Goods are ready during Business Hours;
  - 4.3.3 the risk in the Goods will pass to the Customer on collection; and
  - 4.3.4 collection is completed on the completion of loading of the Goods at the Collection Location.
- 4. Any dates quoted for delivery or collection (as the case may be) are approximate only, and the time of delivery or collection is not of the essence. Aftercare will not be liable for any delay in delivery or collection of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Aftercare with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5. If Aftercare fails to deliver the Goods or make the Goods available for collection, its liability will be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Aftercare will have no liability for any failure to deliver the Goods or make the Goods available for collection to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Aftercare with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6. If the Customer fails to take or accept (as the case may be) delivery of the Goods within 5 Business Days of Aftercare notifying the Customer that the Goods are

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ready, then, except where such failure or delay is caused by a Force Majeure Event or Aftercare's failure to comply with its obligations under the Contract:

- 4.6.1 delivery/collection of the Goods will be deemed to have been completed at 9.00 am on the third Business Day after the day on which Aftercare notified the Customer that the Goods were ready; and
  - 4.6.2 Aftercare will store the Goods until delivery/collection takes place, and charge the Customer for all related costs and expenses (including insurance).
- 7. If 10 Business Days after the day on which Aftercare notified the Customer that the Goods were ready for delivery or collection, the Customer has not taken or accepted (as the case may be) delivery of them, Aftercare may dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
  - 8. If Aftercare delivers or makes available for collection up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment will be made to the Order invoice.
  - 9. Aftercare may deliver the Goods or make the Goods available for collection by instalments, which will be invoiced and paid for separately. Any delay in delivery or defect in an instalment will not entitle the Customer to cancel any other instalment.
5. **Quality of Goods**
- 1. The Customer acknowledges that Aftercare does not normally manufacture the Goods.
  - 2. If the manufacturer of the Goods has given a warranty or guarantee to Aftercare in respect of the Goods, the Company will use all reasonable endeavours to transfer to the Customer the benefit of any such warranty or guarantee.
  - 3. If Aftercare does manufacture the Goods, Aftercare warrants that on delivery or collection (as the case may be) the Goods will conform in all material respects with their description and any applicable Goods Specification and be free from material defects in design, material and workmanship.
  - 4. All warranties, conditions and other terms 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.
  - 5. If Aftercare gives any warranties in relation to the Goods which are not set out in these Conditions, such warranties must be given in writing. Aftercare will, at its option, repair or replace any defective Goods which do not comply with such

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warranties or the warranty given in paragraph 5.3, or refund the price of the Goods it agrees are defective in full if:

- 5.5.1 the Customer gives notice in writing to Aftercare within a reasonable time of discovery that some or all of the Goods do not comply with any warranty given by Aftercare (save that in respect of defects apparent on visual inspection, those must be notified to Aftercare within 24 hours of delivery or collection (as the case may be));
  - 5.5.2 Aftercare is given a reasonable opportunity of examining such Goods; and
  - 5.5.3 the Customer (if asked to do so by Aftercare) returns such Goods to Aftercare's place of business at the Customer's cost.
- 5.6 Aftercare will not be liable for the Goods' failure to comply with any warranty given pursuant to paragraph 5.5 or the warranty given in paragraph 5.3 if:
- 5.6.1 the Customer makes any further use of such Goods after giving a notice in accordance with paragraph 5.5;
  - 5.6.2 the defect arises because the Customer failed to follow Aftercare's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - 5.6.3 the defect arises as a result of Aftercare following any drawing, design or Goods Specification supplied by the Customer;
  - 5.6.4 the Customer alters or repairs such Goods without the written consent of Aftercare;
  - 5.6.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - 5.6.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
7. Except as provided in this paragraph 5, Aftercare will have no liability to the Customer in respect of the Goods' failure to comply with any warranty given pursuant to paragraph 5.5 or the warranty given in paragraph 5.3.
8. The terms of these Conditions will apply to any repaired or replacement Goods supplied by Aftercare.
6. **Title and Risk**
- 6.1 Title to the Goods will not pass to the Customer until the earlier of:
- 6.1.1 Aftercare receiving payment in full (in cash or cleared funds) for the Goods and any other goods that Aftercare has supplied to the Customer



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in respect of which payment has become due, in which case title to the Goods will pass at the time of payment of all such sums; and

- 6.1.2 the Customer reselling the Goods, in which case title to the Goods will pass to the Customer at the time specified in paragraph 6.3.
- 6.2 Until title to the Goods has passed to the Customer, the Customer will:
  - 6.2.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Aftercare's property;
  - 6.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.2.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Aftercare's behalf from the date of delivery;
  - 6.2.4 notify Aftercare immediately if it becomes subject to any of the events listed in paragraph 16.2.1 to paragraph 16.2.3; and
  - 6.2.5 give Aftercare such information relating to the Goods as Aftercare may require from time to time.
- 3. Subject to paragraph 6.4, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Aftercare receives payment for the Goods. However, if the Customer resells the Goods before that time:
  - 1. it does so as principal and not as Aftercare's agent; and
  - 6.3.2 title to the Goods will pass from Aftercare to the Customer immediately before the time at which resale by the Customer occurs.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in paragraph 16.2.1 to paragraph 16.2.3, then, without limiting any other right or remedy Aftercare may have:
  - 6.4.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
  - 6.4.2 Aftercare may at any time:
    - (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
    - (b) 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.

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#### 7. Ordering Services

1. If the Customer wishes to place an Order for Services, the Customer will do so by contacting Aftercare by telephone and providing Aftercare with the following:
  1. a start-up number;
  2. the relevant vehicle's make, model and registration number;
  3. the Customer's reference number;
  - 7.1.4 the exact location of the relevant vehicle and the full name of the driver (if applicable);
  - 7.1.5 the suspected nature of the fault with the relevant vehicle.
2. The Customer acknowledges and accepts that at the time of the telephone conversation described in paragraph 7.1, Aftercare cannot definitively or accurately provide the Customer with a price for the Services because at that stage it is not known specifically what services are required. The Customer accepts that if it instructs Aftercare to attend to provide Services, it will pay Aftercare's charges for such Services on a time and materials basis in accordance with Aftercare's daily fee rates in force from time to time. The Customer acknowledges that it will be responsible for payment of all costs incurred by Aftercare in providing the Services including (without limitation) labour, parts and/or materials.
3. The Customer's Order for Services will only be deemed to be accepted when Aftercare carries out an act consistent with fulfilling the Order at which point and on which date the Contract will come into existence ("**Commencement Date**").
4. On immediate payment of a call-out fee by credit or debit card, the amount of such fee will be notified to the Customer at the time of the telephone call described in paragraph 7.1 (for non credit account customers only), Aftercare will instruct a Mobile Maintenance Engineer to attend the location of the vehicle. If the Customer is a credit account customer, a call-out fee will only apply if the Customer instructs Aftercare to carry out Services outside of Business Hours, the amount of the call-out fee will be notified to the Customer at the time of the telephone call described in paragraph 7.1 and applied to the Customer's account.
5. The payment of the call-out fee described in this paragraph 7 will cover the cost of the Mobile Maintenance Engineer attending to assess and inspect the vehicle only. Aftercare does not guarantee that the Mobile Maintenance Engineer will be able to achieve an immediate Fix or Temporary Fix. If the Mobile Maintenance Engineer is unable to achieve an immediate Fix or a Temporary Fix, the call-out fee is not refundable.
6. An increased call-out fee will apply if Aftercare is required to attend the Customer's premises outside Standard Call-Out Hours.

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#### **8. Supply of Services**

1. Aftercare will supply the Services to the Customer in accordance with the Service Specification in all material respects.
2. Aftercare will use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification, but any such dates will be estimates only and time will not be of the essence for the performance of the Services.
3. Aftercare reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Aftercare will notify the Customer in any such event.
4. Aftercare warrants to the Customer that the Services will be provided using reasonable care and skill.
5. The Customer acknowledges and accepts that neither Aftercare or any of its employees, agents, consultants or subcontractors will carry out any Services unless they consider it is safe to do so. For example, Services will not be performed where there is an unsafe working environment, for example, involving (without limitation) unsafe loads, areas with heavy and/or unsafe traffic volumes or unstable, muddy or waterlogged ground.
6. In relation to any items on which Aftercare performs Services, the Customer warrants that such items have been kept under suitable conditions in accordance with relevant operating manuals and have been utilised by trained and competent personnel following manufacturer operating instructions.
7. Aftercare may instruct a third party agent or contractor to provide the Services on its behalf at its discretion. With the Customer's agreement on a scope of work, Aftercare will instruct the third party agent or contractor and the Customer will be responsible for the costs of that instruction and any associated labour and parts or materials agreed to be purchased plus Aftercare's mark-up on the instruction (notwithstanding any subsequent cancellation by the Customer), such fees will be agreed by telephone between Aftercare and the Customer and confirmed in writing.
8. If:
  - 8.8.1 the Customer cancels the Mobile Maintenance Engineer's attendance;
  - 8.8.2 the driver is not with the vehicle when the Mobile Maintenance Engineer arrives at the location given pursuant to paragraph 7.1;
  - 8.8.3 the vehicle is not in an accessible location;
  - 8.8.4 the vehicle is in a location where it would be unsafe for the Mobile Maintenance Engineer to carry out the Services; or

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8.8.5 no fault is found with the vehicle on inspection by the Mobile Maintenance Engineer,

the Customer will pay an abortive fee plus all expenses incurred by Aftercare including (without limitation) parts and/or materials purchased and travel costs. Any call-out fee paid by the Customer will not be refunded. An increased travel hourly rate will apply if Aftercare's personnel are or were required to travel outside of Core Travel Hours. An increased call-out fee will apply if Aftercare is or was required to attend the Customer's premises outside Standard Call-Out Hours.

8.9 When the Mobile Maintenance Engineer has carried out the initial assessment and inspection of the vehicle, the Mobile Maintenance Engineer will, if possible, Fix the vehicle or achieve a Temporary Fix without first seeking the Customer's approval, unless:

8.9.1 the Customer requests otherwise during the telephone call described at paragraph 7.1; or

8.9.2 the Customer's separate pricing or service legal agreement stipulates otherwise.

10. Aftercare will report to the Customer if the Mobile Maintenance Engineer is unable to restore the vehicle to a useable condition.

11. If the Customer's approval is required in accordance with paragraph 8.9.1, Aftercare and the Customer will verbally agree the scope of work and associated costs (for example, the costs of parts, materials and/or labour) and confirm the same in writing.

12. If the Mobile Maintenance Engineer carries out a Temporary Fix, it is the Customer's responsibility to have the repair made permanent immediately.

13. If the Customer instructs Aftercare to carry out Services outside of Business Hours, the Customer acknowledges and accepts that Aftercare will charge an uplift on top of its usual fees.

## **9. Customer's Obligations**

9.1 The Customer will:

9.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;

9.1.2 co-operate with Aftercare in all matters relating to the Services;

9.1.3 provide Aftercare, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Aftercare to provide the Services;

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- 9.1.4 provide Aftercare with such information and materials as Aftercare may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 9.1.5 prepare the Customer's premises for the supply of the Services;
  - 9.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 9.1.7 comply with all applicable laws, including health and safety laws;
  - 9.1.8 keep all materials, equipment, machinery, tools, documents and other property of Aftercare or which is provided by Aftercare (but which may not be owned by Aftercare) ("**Aftercare Materials**") at the Customer's premises in safe custody at its own risk, maintain Aftercare Materials in good condition until returned to Aftercare, and not dispose of or use Aftercare Materials other than in accordance with Aftercare's written instructions or authorisation. In respect of such Aftercare Materials, at all times when the Aftercare Materials are at the Customer's premises, the Customer will:
    - (a) have the sole risk for loss of or damage to Aftercare Materials;
    - (b) ensure that Aftercare Materials are kept secure;
    - (c) maintain insurance cover for any loss of or damage to Aftercare Materials for its full replacement cost,
  - 9.1.9 comply with any additional obligations as set out in the Service Specification and the Goods Specification.
2. The Customer will indemnify Aftercare in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Aftercare arising out of or in connection with any loss of or damage to Aftercare Materials whilst the same are at the Customer's premises.
3. If Aftercare's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 9.3.1 without limiting or affecting any other right or remedy available to it, Aftercare will have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Aftercare's performance of any of its obligations;

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- 9.3.2 Aftercare will not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Aftercare's failure or delay to perform any of its obligations as set out in this paragraph 9.2; and
- 9.3.3 the Customer will reimburse Aftercare on written demand for any costs or losses sustained or incurred by Aftercare arising directly or indirectly from the Customer Default.

## **10. Charges and Payment**

1. The price for Goods:
  1. will be the price set out Aftercare's written acceptance of the Order given pursuant to paragraph 2 which, if applicable, will reflect the Customer's separate pricing agreement with Aftercare; and
  2. will be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which will be invoiced to the Customer.
2. Aftercare reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Aftercare that is due to:
  - (a) any factor beyond the control of Aftercare (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 Goods Specification; or
  - (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Aftercare adequate or accurate information or instructions in respect of the Goods.
3. In respect of Goods, Aftercare will invoice the Customer on or at any time after completion of delivery or collection (as the case may be).
4. The charges for Services will be the price notified by Aftercare to the Customer after the Services have been carried out which, if applicable, will reflect the Customer's separate pricing agreement with Aftercare.
5. In respect of Services, Aftercare will invoice the Customer on completion of the Services. The Customer will supply a purchase order number within 5 Business Days of receipt of a request from Aftercare to do so. If the Customer fails to supply a purchase order number, Aftercare will raise its invoice in any event and the Customer will pay the same pursuant to paragraph 10.6.

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6. The Customer will pay each invoice submitted by Aftercare:
  1. within 30 days of the date of the invoice or in accordance with any credit terms agreed by Aftercare and confirmed in writing to the Customer; and
  2. in full and in cleared funds to a bank account nominated in writing by Aftercare, and

time for payment will be of the essence of the Contract. Payment will not be accepted by cheque.
7. Should the Customer dispute any invoice raised by Aftercare, it will notify Aftercare immediately and in any event within 5 Business Days and the parties will enter into good faith negotiations to resolve the dispute promptly.
8. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the Contract by Aftercare to the Customer, the Customer will, on receipt of a valid VAT invoice from Aftercare, pay to Aftercare such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
9. Aftercare reserves the right to reduce or withdraw credit facilities without notice.
10. If the Customer fails to make a payment due to Aftercare under the Contract by the due date, then, without limiting Aftercare's remedies under paragraph 15, the Customer will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this paragraph 10. will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
11. All amounts due under the Contract will be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
12. If Aftercare attends the Customer's premises to provide the Services as agreed with the Customer but the relevant item in relation to which Services are to be provided is not available for whatever reason, Aftercare will be entitled to charge the Customer an abortive fee.
13. Aftercare will be entitled to charge the Customer for travelling and other ancillary expenses incurred by the individuals whom Aftercare engages to provide the Services. An increased travel hourly rate will apply if Aftercare's personnel are required to travel outside of Core Travel Hours.
14. Aftercare will be entitled to charge the Customer a call-out fee each time Aftercare attends the Customer's premises to provide Services. An increased call-out fee will

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apply if Aftercare is required to attend the Customer's premises outside Standard Call-Out Hours.

15. If Aftercare agrees any prices with the Customer to remain in place for a period of time (such period of time to be agreed between the parties in writing):
  1. Aftercare may increase such prices on an annual basis with effect from each anniversary of the date the agreement on prices was reached (**Price Agreement Date**) in line with the percentage increase in the RPI in the preceding 12-month period, and the first such increase will take effect on the first anniversary of the Price Agreement Date and will be based on the latest available figure for the percentage increase in the RPI;
  2. other than increases to prices made pursuant to clause 10.15.1, the prices agreed upon will remain fixed for the period of time agreed between the parties in writing after which time Aftercare may increase the prices by notice in writing to the Customer and the increases will be effective immediately upon Aftercare giving such notice.

### 11. Intellectual Property Rights

1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) will be owned by Aftercare.
2. Aftercare grants to the Customer, or will procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
3. The Customer will not sub-license, assign or otherwise transfer the rights granted by paragraph 11.2.
4. The Customer grants Aftercare a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Aftercare for the term of the Contract for the purpose of providing the Services to the Customer.

### 12. Data Protection

1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This paragraph 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this paragraph 12, "**Applicable Laws**" means (for so long as and to the extent that they apply to Aftercare) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and "**Domestic UK Law**" means the UK Data Protection Legislation and any other law that applies in the UK.



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2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and Aftercare is the processor.
3. This paragraph 12.3 sets out the duration of the processing and the types of personal data and categories of data subject:
  1. Scope and purpose of processing: The scope and purpose of processing of personal data by Aftercare is limited to the processing required for its fulfilment of its obligations under the Contract.
  2. Nature of processing: Aftercare will receive the personal data described in paragraph 12.3.5 and 12.3.4 and access, use and store it in order to fulfil the purposes described in paragraph 12.3.1.
  3. Duration of processing: The processing of personal data will be limited to the duration of the Contract.
  4. Categories of data subject: the Customer's employees, agents, consultants and subcontractors.
  5. Types of personal data: names and contact details.
4. Without prejudice to the generality of paragraph 12.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Aftercare for the duration and purposes of the Contract.
5. Without prejudice to the generality of paragraph 12.1, Aftercare will, in relation to any personal data processed in connection with the performance by Aftercare of its obligations under the Contract:
  1. process that personal data only on the documented written instructions of the Customer unless Aftercare is required by Applicable Laws to otherwise process that personal data. Where Aftercare is relying on Applicable Laws as the basis for processing personal data, Aftercare will promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Aftercare from so notifying the Customer;
  2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of

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and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

3. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
4. not transfer any personal data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (a) the Customer or Aftercare has provided appropriate safeguards in relation to the transfer;
  - (b) the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - (c) Aftercare complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - (d) Aftercare complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
5. assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
6. notify the Customer without undue delay on becoming aware of a personal data breach;
7. at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and
8. maintain complete and accurate records and information to demonstrate its compliance with this paragraph 12 and immediately inform the Customer if, in the opinion of Aftercare, an instruction infringes the Data Protection Legislation.

### **13. Confidentiality**

1. Each party undertakes that it will not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by paragraph 13.2.
2. Each party may disclose the other party's confidential information:

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1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract; and
2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
3. Each party will ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this paragraph 13.
4. Neither party will use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

#### **14. Limitation of Liability**

1. Nothing in these Conditions will limit or exclude Aftercare's liability for:
  1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  2. fraud or fraudulent misrepresentation;
  3. breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  4. any matter in respect of which it would be unlawful for Aftercare to exclude or restrict liability.
2. Subject to paragraph 14.1:
  1. Aftercare will under no circumstances whatsoever 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
  2. Aftercare's total liability to the Customer 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, will in no circumstances exceed 75% of the price of the Goods.
3. This paragraph 14 will survive termination of the Contract.
4. Aftercare will not be liable to the Customer for any losses suffered by the Customer arising as a result of or in connection with any period of time during which a vehicle which Aftercare is performing or has performed Services in relation to is off the road.

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#### 15. Non-solicitation

1. The Customer will not, without the prior written consent of Aftercare, at any time from the Commencement Date to the expiry of 6 months after the completion of the Services, solicit or entice away from Aftercare or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Aftercare in the provision of the Services.
2. Any consent given by Aftercare in accordance with clause 15.1 will be subject to the Customer paying to Aftercare a sum equivalent to 20% of the then current annual remuneration of Aftercare's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

#### 16. Termination

1. Without affecting any other right or remedy available to it, Aftercare terminate the Contract by giving the other party not less than 7 days' written notice.
2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

1. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  2. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  3. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
3. Without affecting any other right or remedy available to it, Aftercare may terminate the Contract with immediate effect by giving written notice to the Customer if:
    1. the Customer fails to pay any amount due under the Contract on the due date for payment; or
    2. there is a change of control of the Customer.

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- 16.4 Without affecting any other right or remedy available to it, Aftercare may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Aftercare if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in paragraph 16.2.1 to paragraph 16.2.3, or Aftercare reasonably believes that the Customer is about to become subject to any of them.

### 17. Consequences of Termination

1. On termination of the Contract:
  1. the Customer will immediately pay to Aftercare all of Aftercare's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Aftercare will submit an invoice, which will be payable by the Customer immediately on receipt;
  2. the Customer will return all of Aftercare Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then Aftercare may enter the Customer's premises and take possession of them. Until they have been returned, the Customer will be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
2. Termination of the Contract will not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
3. Any provision of the Contract that expressly or by implication is intended to have effect after termination will continue in full force and effect.

### 18. General

1. **Force Majeure.** Neither party will be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control ("**Force Majeure Event**").
2. **Assignment and other dealings.** Aftercare may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Customer will not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
3. **Conflict.** If there is any conflict between these Conditions and the Customer's separate service level or pricing agreement (if applicable), the service level or

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pricing agreement will take precedence solely to the extent required to resolve the conflict.

- 4. Notices.** Any notice given to a party under or in connection with this Agreement will be in writing and will be sent by email to the address to the address notified to that party for that purpose. Any notice or communication will be deemed to have been received at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. For the purposes of this clause 18.4, business hours means 9:00am to 5:00pm Monday to Friday on a day that is not a public holiday in the place of receipt. This clause 18.4 does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 5. Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will 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 will be deemed deleted. Any modification to or deletion of a provision or part-provision under this paragraph 5. will not affect the validity and enforceability of the rest of the Contract.
- 6. Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law will not constitute a waiver of that or any other right or remedy, nor will it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law will prevent or restrict the further exercise of that or any other right or remedy.
- 7. No partnership or agency.** Nothing in the Contract is intended to, or will be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 8. Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract. Nothing in this paragraph will limit or exclude any liability for fraud.
- 9. Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

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- 10. Variation.** Except as set out in these Conditions, no variation of the Contract will be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 11. Governing law and jurisdiction.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation will be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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#### **SCHEDULE 3**

#### **CONSIGNMENT GOODS**

This Schedule 3 applies when the Customer orders Consignment Goods.

If this Schedule 3 conflicts with any provision in Schedule 2, this Schedule 3 will apply to the extent required to resolve the conflict.

#### **1. Definitions**

1. The following definitions apply in this Schedule 3:

**Consignment Confirmation:** Aftercare's written confirmation setting out the quantity of Consignment Goods to be shipped, the purchase price and the specific terms for delivery of the Consignment Goods to the Customer.

**Consignment Goods:** the goods to be provided to the Customer in response to a Consignment Request.

**Consignment Request:** the Customer's request for Consignment Goods to be shipped to the Storage Location.

**Storage Location:** the location specified in the Consignment Request where the Consignment Goods will be stored.

#### **2. Consignment Goods**

1. If the Customer wishes to order Consignment Goods, it will raise a Consignment Request. The Consignment Request will only be deemed to be accepted when Aftercare issues a Consignment Confirmation at which point and on which date the Contract will come into existence.
2. Aftercare will deliver the Consignment Goods to the Storage Location for the purpose of resale by the Customer to its customers or for the Customer's eventual purchase.
3. The Customer will:
  1. store the Consignment Goods at the Storage Location at all times;
  - 2.3.2 maintain the Storage Location in such manner that it remains suitable to store the Consignment Goods;
  - 2.3.3 store the Consignment Goods at the Storage Location in such manner as to protect them from damage or deterioration.
- 2.4 Aftercare may inspect the Storage Location at any time during Business Hours with reasonable notice to the Customer.



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#### **3. Inspection and Rejection of Consignment Goods**

1. The Customer will inspect all Consignment Goods delivered to the Storage Location within 24 hours after their delivery.
2. If the Customer notifies Aftercare within 24 hours of delivery, the Customer may return any Consignment Goods which are defective or that do not conform to their description.

#### **4. Title and Risk**

1. Risk in the Consignment Goods will pass to the Customer on completion of unloading of the Consignment Goods at the Storage Location.
2. Title to the Consignment Goods will not pass to the Customer until the earlier of:
  - 4.2.1 Aftercare receiving payment in full (in cash or cleared funds) for the Goods; and
  - 4.2.2 the Customer reselling the Consignment Goods to its customer (in which case title to those Consignment Goods passes to the Customer immediately before that sale or the Consignment Goods are used by the Customer (as applicable)).
3. The Customer may resell the Consignment Goods in the ordinary course of its business or purchase the Consignment Goods for use in its own business, but this right ceases immediately if any of the events listed in paragraph 16.2.1 to paragraph 16.2.3 (inclusive) of Schedule 2 occurs, or Aftercare reasonably believes that the Customer is about to become subject to any of them.
4. The Customer acknowledges that it holds Consignment Goods in its possession as bailee for Aftercare until such time as title passes in accordance with paragraph 4.2.
5. Until title passes to the Customer, the Customer will:
  - 4.5.1 store the Consignment Goods in its possession separately from all other goods held by the Customer so that they remain readily identifiable as Aftercare's property;
  - 4.5.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Consignment Goods;
  - 4.5.3 keep the Consignment Goods in satisfactory condition and in accordance with instructions from Aftercare from time to time.

#### **5. Sale or Return**

- 5.1 The Consignment Goods will at all times be subject to the direction and control of Aftercare, and the Customer will immediately return any Consignment Goods that have not been paid for or sold by the Customer on demand by Aftercare.

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2. Aftercare may at its discretion accept the return of Consignment Goods that the Customer is unable to resell to its customers subject to payment by the Customer to Aftercare of a restocking fee.

3. The Customer will bear the risk of loss and any expense of returning any Consignment Goods.

#### **6. Price**

1. The Customer will purchase the Consignment Goods from Aftercare at the prices notified to the Customer at the time Aftercare raises its Consignment Confirmation.
2. Aftercare will inspect the Storage Location at regular intervals at its discretion and carry out a stock check in respect of the Consignment Goods. To the extent that Aftercare has delivered Consignment Goods to the Storage Location but such Consignment Goods are not present at the Storage Location at the date of any stock check, After will invoice the Customer for all of the missing Consignment Goods.
3. The Customer will pay all invoices in full and in cleared funds within 30 days of the date of each invoice. Payment will be made to the bank account specified on the relevant invoice.
4. The Customer is responsible for all credit risks arising out of the resale of the Goods by the Customer and the ability of the Customer to collect the purchase price from the Customer's customer(s) will not affect the Customer's obligation to pay Aftercare's invoice when due.

#### **7. Reports and Reviews**

1. The Customer will keep full, complete and accurate records of all sales of Consignment Goods to its customers and provide such records to Aftercare on request.
2. The Customer and Aftercare will review the Consignment Goods in the Customer's possession at least on an annual basis.