

Four Ashes – Post War Aston Martin Specialists

Birmingham Road,
Pathlow,
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Phone: 01789 266851

Fax: 01789 267505

Email: fourashesgarage@btconnect.com

Web: www.fourashesgarage.co.uk

Vat registration no. GB 111 3891 00

Statutory Legal Information is in our Letter Heading & Footer, below is our T & C's

FOUR ASHES GARAGE LIMITED

Standard conditions for sale of goods and provision of services

These terms and conditions apply equally to sales to businesses and to consumers and do not affect any statutory rights.

THESE CONDITIONS SHALL BE THE ONLY TERMS AND CONDITIONS TO ANY CONTRACT BETWEEN US FOR THE SUPPLY OF GOODS AND/OR SERVICES AND TO THE EXCLUSION OF ALL AND ANY OTHER TERMS AND CONDITIONS. PLEASE READ ALL OF THEM CAREFULLY. THEY CONTAIN EXCLUSIONS AND LIMITATIONS OF OUR LIABILITY UNDER ALL AND ANY SUCH CONTRACTS.

The Seller means: Four Ashes Garage Limited Registered in England with Company Number 00581101 and whose registered office is at Four Ashes Garage Birmingham Road Pathlow Stratford on Avon Warwickshire CV37 0EP and any successor company.

The Purchaser means: you the purchaser of goods and/or services from the Seller.

Price means: the sum stated on the Order (as defined below) but VAT shall be payable always at the prevailing rate at the date of the Seller's invoice.

1 Formation of contract

1.1 Any order sent to the Seller by the Purchaser shall be accepted entirely at the discretion of the Seller, and, if so accepted, will only be accepted upon these conditions (hereafter referred to as the "Conditions") and by means of the Seller's standard order acknowledgment form.

1.2 Each order which is so accepted shall constitute an individual legally binding contract between the Seller and the Purchaser and such contract is hereafter referred to in these Conditions as an "Order".

1.3 These Conditions shall override any contrary different or additional terms or conditions (if any) contained on or referred to in an order form or other documents or correspondence from the Purchaser, and no addition alteration or substitution of these terms will bind the Seller or form part of any Order unless they are expressly accepted in writing by a person authorised to sign on the Seller's behalf.

2 Specification

2.1 Goods: All goods supplied by the Seller shall be in accordance with (i) the current edition of the relevant Product Description Leaflet as published from time to time by the Seller (copies of which are available from the Seller upon request) *if any* and (ii) those specifications or descriptions (if any) expressly listed or set out on the face of the Order. No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Order. The Purchaser warrants to the Seller that it has correctly described the parts and/or services requested and ordered from the Seller.

2.2 Services: Any supply of services by the Seller to the Purchaser shall be in accordance with and limited to the terms of the Order ("**the Services**"). In the event that additional services are identified by the Seller as being required during the provision of the Services then such additional services shall only be performed by the Seller subject to the creation of a separate Order subject to these terms and conditions ("**the Additional Services**") and the Seller at its entire discretion shall not be obliged to complete the Services if the Purchaser refuses or declines the Additional Services but the Purchaser shall remain liable for the Price as liquidated damages.

3 Acceptance

The Purchaser shall be deemed to have accepted all goods upon their delivery by the Seller to the address specified in the Order.

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4 Delivery and risk

4.1 Unless otherwise stated in the Order, the price quoted for goods includes standard non-express delivery to the address specified in the Order, provided that the Seller reserves the right to make an additional charge to cover any increase in transport costs occurring before the date of delivery. Any request for express delivery must be made prior to Order and paid for.

4.2 Any time or date for delivery of goods and/or completion of Services/Additional Services given by the Seller is given in good faith, but is an estimate only and time is not of the essence.

4.3 Risk in the goods / any vehicle / component subject of Services / Additional Services shall pass to the Purchaser upon delivery.

5 Title and payment

5.1 The Seller warrants that (except in relation to intellectual property rights of third parties as referred to in Condition 5.3) the Seller has good title to the goods and that (pursuant to s.12(3) of the Sale of Goods Act 1979, or s.2(3) of the Supply of Goods and Services Act 1982, whichever Act applies to the Order) it will transfer such title as it may have in the goods to the Purchaser pursuant to Condition 5.5.

5.2 The Seller warrants that it is not aware of any actual or alleged infringements of any intellectual property rights of third parties which relate to the goods other than those (if any) which the Seller has disclosed to the Purchaser prior to acceptance of the Order.

5.3 The Seller shall have no liability to the Purchaser (other than as provided in Condition 10) in the event that the goods to be supplied under the Order infringe any intellectual property rights of a third party (including without limitation by reason of their possession, sale or use, whether alone or in association or combination with any other goods); the Seller gives no warranty that the goods to be supplied under the Order will not infringe as aforesaid, and all conditions, warranties, stipulations or other statements whatsoever relating to such infringement or alleged infringement (if any), whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded.

5.4 Unless otherwise stated in the Order, **payment of the price of the goods** comprised in each consignment delivered pursuant to an Order shall be due on the date of but prior to actual dispatch of the goods Ordered. **Payment for Services/Additional Services** shall be due forthwith on presentation of Seller's invoice and shall be subject to any stage payment obligations in the Order. Stage payments are due on the due date. Time is of the essence in relation to all payments. Interest is payable at 8% per annum on all sums due but unpaid from and after 7 days of the due date until actual payment in full as cleared funds. All sums due to the Seller from the Purchaser are enforceable as a debt and the Purchaser shall pay as a debt the costs of any enforcement.

5.5 Title to the goods comprised in each consignment shall not pass to the Purchaser until the Purchaser has paid their price to the Seller as cleared funds, but, even though title has not passed, the Seller shall be entitled to sue for their price once its payment has become due.

6 Storage

If the Seller shall be unable, through circumstances beyond its control (including without limitation lack of shipping instructions from the Purchaser), to deliver the goods within 14 days after notification to the Purchaser or its agent that the goods are ready for delivery, the Seller shall be entitled to arrange storage on behalf of the Purchaser, whereupon delivery shall be deemed to have taken place, all risk in the goods shall pass to the Purchaser, and delivery to the Purchaser of Notice of Storage shall be deemed to be delivery of the goods for the purposes of Condition 4. All charges levied by the Seller for storage or insurance shall be paid by the Purchaser within 7 days of submission of an invoice.

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5.6 Seller's Lien

The Seller hereby claims and exercises a repairer's lien over and forthwith on delivery to the Seller by the Purchaser of any vehicle and/or component thereof belonging to the Purchaser and which is located at the Seller's property or elsewhere for such period as the Purchaser shall not have made payment in full for any Services and/or Additional Services and/or Goods ('the lien'). Notwithstanding the exercise of the lien all risk in the vehicle and/or components thereof shall rest entirely with the Purchaser and on Seller's notice of completion of the Services and/or Additional Services Delivery to the Purchaser shall be deemed to have taken place. Any vehicle or component thereof subject to the lien shall be the subject of additional daily storage charges at the then prevailing rate and which shall be an accretion to the sums due and payable by the Purchaser to the Seller and an accretion to the lien. Subject to law the vehicle and/or any components thereof may be sold in satisfaction of the lien.

7 Damage in transit

The seller will replace free of charge any goods proved to the Seller's satisfaction to have been damaged in transit provided that within 24 hours after delivery both the Seller and the carriers have received from the Purchaser notification in writing of the occurrence of the damage and also, if and so far as practicable, of its nature and extent.

8 Force majeure

8.1 The Seller shall not be under any liability for any failure to perform any of its obligations under the Order due to *Force Majeure*. Following notification by the Seller to the Purchaser of such cause, the Seller shall be allowed a reasonable extension of time for the performance of its obligations.

8.2 For the purposes of this Condition, "*Force Majeure*" means fire, explosion, flood, lightning, Act of God, act of terrorism, war, rebellion, riot, sabotage, or official strike or similar official labour dispute, or any event or circumstance outside the reasonable control of the party affected thereby.

9 Guarantee

9.1 For goods which are manufactured by the Seller or which bear one of the Seller's trade marks, and in respect of Services and/or Additional Services the Seller grants the following guarantee:

9.1.1 The Seller shall free of charge either repair or, at its option, replace defective goods/Services/Additional Services where the defect appears under proper standard non-competition (motorsport howsoever) use within 6 months from the date of delivery, PROVIDED THAT:

9.1.1.1 notice in writing of the defects complained of shall be given to the Seller forthwith upon their appearance, and

9.1.1.2 such defects shall be found to the Seller's satisfaction to have arisen solely from the Seller's faulty design, workmanship under the Services / Additional Services or materials, and

9.1.1.3 the defective goods shall be returned to the Seller at the Purchaser's expense if so requested by the Seller.

9.1.2 Any repaired or replaced goods shall be redelivered by the Seller free of charge to the original point of delivery but otherwise in accordance with and subject to these Conditions of Sale save that the period of 6 months referred to in Condition 9.1.1 shall be replaced by the unexpired portion of that period only.

9.1.3 Alternatively to Condition 9.1.1, the Seller shall be entitled at its absolute discretion to refund the price of the defective goods/workmanship provided that such price shall already have been paid by the Purchaser to the Seller, or, if such price has not been so paid, to relieve the Purchaser of all obligation to pay the same by the issue of a credit note in favour of the Purchaser in the amount of such price.

9.2 In respect of all goods manufactured and supplied to the Seller by third parties the Seller will pass on to the Purchaser (in so far as possible) only the benefit of any warranty given to the Seller or any end-user as the case may be by such third parties and will (on request) supply to the Purchaser details of the terms and conditions of such warranty issued by such third parties and the Purchaser shall be solely responsible to the entire exclusion of the Seller for complying with all of these.

9.3 The Seller's liability under this Condition shall (subject to Condition 14) be to the exclusion of all other liability to the Purchaser whether contractual, tortious or otherwise for or arising howsoever from defects in the goods or Services/Additional Services for any loss or damage to or caused by the goods, and (subject to Condition 14) all other conditions, warranties, stipulations or other statements whatsoever concerning the goods or Services/Additional Services, whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded; in particular (but without limitation of the foregoing)

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the Seller grants no warranties regarding the fitness for purpose, performance, use, nature or quality of the goods, whether express or implied, by statute, at common law or otherwise howsoever.

9.4 Any rectification of defective Services/Additional Services undertaken by the Seller in accordance with this clause 9 shall be subject to these Terms and Conditions.

9.5 Where any goods or Services / Additional Services are supplied in relation to any vehicle used or to be used in motorsport then no warranty or guarantee of any sort is given and is expressly excluded.

9.6 The use by Purchaser of any non recommended lubricants and/or coolants or of any additives will automatically negate any warranty/guarantee.

10 Intellectual property rights

10.1 In the event that any claim is made against the Purchaser for infringement of Intellectual Property Rights arising directly from the use or sale by the Purchaser of the goods, the Seller at its own expense shall conduct any ensuing litigation and all negotiations for a settlement of the claim. The Seller will bear the costs of any payment (either by way of a lump sum or a continuing royalty payment) made in settlement, or as a result of an award in a judgment against the Seller in the event of litigation.

10.2 The benefit of Condition 10.1 is granted to the Purchaser by the Seller only in the event that the Purchaser shall give the Seller the earliest possible notice in writing of any such claim being made or action threatened or brought against it, shall make no admission of liability or take any other action in connection therewith, shall permit the Seller to have the conduct of the claim pursuant to Condition 10.1, and shall (at the Seller's expense) give all reasonable information, co-operation and assistance to the Seller (including without limitation lending its name to proceedings) in relation to the conduct of the claim. In addition, if it is made a condition of any settlement made by the Seller, or judgment awarded against the Purchaser, pursuant to Condition 10.1, the Purchaser shall return or destroy, as applicable, all infringing goods still under its control subject to a refund by the Seller of any payment for such goods already made less a reasonable allowance for depreciation of the goods by reason of their use (if any) by the Purchaser prior to their return or destruction as aforesaid.

10.3 The provisions of Condition 10.1 shall not apply to any infringement caused by the Seller having followed a design or instruction furnished or given by the Purchaser nor to any use of the goods in a manner or for a purpose which shall have been specifically prohibited in writing by the Seller or these terms and conditions, nor to any infringement which is due to the use of such goods in association or combination with any other product.

10.4 Any design or instruction furnished or given by the Purchaser shall not be such as will cause the Seller to infringe any intellectual property rights.

10.5 For the purposes of this Condition, the capitalised term "Intellectual Property Rights" means Patents, Registered Designs, Unregistered Designs, Registered Trademarks and Copyright only, having effect in the United Kingdom.

10.6 The foregoing states the Seller's entire liability to the Purchaser and the Purchaser's sole and exclusive remedies against the Supplier in connection with claims based on or resulting from the infringement of intellectual property rights, of any kind whatsoever, of third parties.

10.7 Product and/or procedure information sheets supplied by the Seller and marked "© Four Ashes Garage Limited" are the intellectual property of the Seller and are not to be reproduced or disseminated howsoever by the Purchaser or his agents and are guides only and provided without liability.

11 Confidentiality

Both the Seller and the Purchaser shall each keep confidential and shall not without the prior consent in writing of the other disclose to any third party any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications between them relating to the goods and the Order.

12 Economic loss

Subject to Condition 14, and notwithstanding anything contained in these Conditions (other than Condition 14) or the Order, in

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no circumstances shall the Seller be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof (i) for any loss of profit, business, contracts, revenues, or anticipated savings, or (ii) for any special indirect or consequential damage of any nature whatsoever.

13 Limitation of liability

Subject to Condition 14, and notwithstanding anything contained in these Conditions (other than Condition 14) or the Order, the Seller's liability to the Purchaser in respect of the Order, in contract, tort (including negligence or breach of statutory duty) or howsoever otherwise arising, shall be limited to the price of the goods/Services/Additional Services specified in the Order.

14 Unfair Contract Terms Act 1977

14.1 If and to the extent that s.6 and/or s.7(3A) of the Unfair Contract Terms Act 1977 applies to the Order, no provision of these terms and conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Seller for breach of the express warranties contained in Condition 5, or for breach of the applicable warranties as to title and quiet possession implied into the terms and conditions of the Order by s.12(3) of the Sale of Goods Act 1979, or s.2(3) of the Supply of Goods and Services Act 1982, whichever Act applies to the Order.

14.2 Where the Purchaser is a natural person and if and to the extent that s.2(1) of the Unfair Contract Terms Act 1977 applies to the Order, nothing in these terms and conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Seller for death or personal injury caused to the Purchaser by reason of the negligence of the Seller or of its servants, employees or agents.

14.3 No provision of these terms and conditions shall have effect or operate so as to exclude any liability of one of the parties in respect of fraud or a fraudulent misrepresentation made by that party to the other, or to restrict or exclude any remedy which the other party may have in respect of such fraud or fraudulent misrepresentation.

15 Applicable law

The Order shall be considered a contract made in England and shall be governed in all respects by the law of England and the parties agree to submit to the exclusive jurisdiction of the English courts.