

CONDITIONS OF SALE OF EMU ELECTRIC BIKE COMPANY LIMITED
(the "Company")
PO BOX 772, RICKMANSWORTH WD3 0LY
Telephone 01923 772464,
Registered in England under No 08835491

1. DEFINITIONS

- 1.1 "Conditions" means the terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions applicable to the Contract agreed in writing between the Company and the Customer;
- 1.2 "Contract" means the contract for the purchase and sale of the Goods;
- 1.3 "Customer" means the person who buys the Goods from the Company;
- 1.4 "Customer Insolvency Event" means the Customer (i) has a receiver appointed of the whole or part of its property; (ii) has an administrator is appointed in respect of it; (iii) has a petition for its winding up presented; (iv) has a resolution passed to place it into voluntary liquidation; (v) fails to comply with any statutory demand; (vi) enters into a voluntary arrangement under the Insolvency Act 1986 or proposes to compound with its creditors; (vii) suffers any other act or event of insolvency; or (viii) is subject to any steps taken to put it into insolvency, including (without limitation) the filing of a notice of appointment to appoint an administrator;
- 1.5 "Force Majeure" means quota restrictions and factors or circumstances outside a party's reasonable control which the party could not have reasonably foreseen or, if reasonably foreseeable, could not reasonably have avoided, such as (without limitation) strikes and industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics, natural disasters, extreme adverse weather conditions, or default of suppliers or subcontractors;
- 1.6 "Goods" means the goods (including any instalment of the goods or any parts of them) specified in the order form and/or quotation to which these Conditions are annexed, and any repaired or replacement Goods supplied under the Contract;
- 1.7 "Specification" means any drawings, designs and/or specifications agreed in writing between the parties and incorporated into the Contract.

2. EXISTENCE OF CONTRACT FOR SALE OF GOODS

1. Quotations issued by the Company are invitations and not offers. Orders by the Customer constitute offers to buy the Goods as referred to in the order. The Contract shall come into existence upon the Company's acceptance of the Customer's order which is deemed to occur on the earlier of the Company's giving the Customer written confirmation of its acceptance, delivery of Goods, or the date of the Company's invoice. No order which has been accepted by the Company may be cancelled by the Customer except with the Company's written agreement and on terms that the Customer shall indemnify the Company against all loss (including loss of profit), costs (including the cost of labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
2. The Conditions apply to the Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer or implied by law or by trade custom, practice or course of dealing. The Contract contains the entire agreement between the parties concerning its subject matter. Any samples, illustrations, marketing or other materials provided by the Company are for the purpose of giving only an approximate idea of the Goods and do not form part of the Contract. No representations about the Goods shall have any effect or be relied upon unless set out in the Contract. This shall not exclude or limit the Company's liability for fraudulent misrepresentation.
3. No variations or amendments of these Conditions shall be binding on the Company unless confirmed by its authorised signatory in writing.

2. PRICE AND PAYMENT

- 2.1. The price of the Goods is as set out in the applicable order or, if not there set out, its standard price list on the date the order is accepted. For orders valued at less than £100 excluding VAT or for deliveries of goods to be delivered in instalments valued at under £100 the Company will make an extra charge of £5.00 per delivery.
- 2.2. The Company reserves the right to vary the prices for the Goods between the date of the order and delivery to take account of any factor beyond the control of the Company (such as, without limitation, increased costs of the importation, manufacture or supply of the Goods to the Company, and Customer delay).
- 2.3. All invoices shall be paid without set-off, within 30 days of the invoice date, in cleared funds, to the address or account nominated on the invoice, unless otherwise agreed in writing by the Company. The Company may allocate payments to Goods delivered or sold to the Customer at the Company's discretion.
- 2.4. Time for payment is of the essence. If the Customer fails to pay the invoice price within 30 days of the date of the invoice such other period as has been agreed in writing, the Company reserves the right to charge the Customer interest on any overdue amount from that date until payment is made (whether before or after judgement) on a daily basis at a rate of 2% per annum over Barclays Bank Plc's base rate from time to time.

3. TITLE

- 3.1. The ownership of the Goods shall remain with the Company and shall not pass to the Customer until the Company has been paid in full for (i) the Goods; and (ii) all other sums which are or which become due to the Company from the Customer on any account.
- 3.2. The Company shall be entitled (i) before title passes to repossess the Goods (whether held by the Customer or a third party on its behalf or in transit) without being liable for any damage caused by so doing and use or sell all or any of the Goods including any Goods which incorporate any Specifications supplied by the Customer (without any liability to the Customer) if any Customer Insolvency event occurs; and (ii) for that purpose or for determining what if any Goods are held by the Customer or on its behalf and for inspecting them, at any time to enter upon any premises of the Customer or a third party where the Goods are stored on the Customer's behalf.
- 3.3. Provided no Customer Insolvency Event has occurred and is continuing the Customer may resell the Goods before ownership has passed to it solely on the conditions that any sale shall be (i) effected in the ordinary course of the Customer's business at full market value; and (ii) a sale of the Company's property on the Customer's behalf and the Customer shall deal as principal when making such sale.
- 3.4. Without prejudice to the foregoing the Company shall (in the alternative, in any proceedings) be entitled to maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Customer.

4. RISK AND DELIVERY

- 4.1. Goods are delivered to the Customer when the Company makes them available to the Customer or any agent of the Customer at the Customer's premises or other delivery point agreed by the Company. Risk will pass to the Customer irrespective of the time of property passing in the Goods and property in the Goods can remain with the Company notwithstanding possession and delivery to the Customer or the Customer's agents.
- 4.2. The risk of damage to or loss of the Goods passes when they are delivered to the

Customer, as set out in Condition 5.1 above.

- 4.3. Any property supplied to the Company on behalf of the Customer will be held at the Customer's risk. Transit insurance and insurance for the Customer's property held by the Company shall be the Customer's responsibility.
- 4.4. The Company may at its discretion deliver the Goods by instalment(s) and in any sequence.
- 4.5. Where the Goods are delivered by instalments, each instalment shall be deemed to be the subject of a separate contract and no default or failure by the Company in respect of one or more instalment shall vitiate the contract in respect of either the Goods previously delivered or undelivered Goods.
- 4.6. Any dates quoted by the Company for the delivery of the Goods are approximate only and time for delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods due to Force Majeure or the Customer's failure or delay to provide relevant instructions, packaging and/or materials. If the Company fails to deliver the Goods, its liability shall 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.
- 4.7. If the Customer fails or refuses to take or accept delivery of or collect the Goods or any part of them when delivered then, except where such failure or refusal is due to Force Majeure, the Company shall be entitled upon giving written notice to the Customer to store the Goods, the risk in the Goods shall pass to the Customer and delivery shall be deemed to have taken place. The Customer shall pay to the Company all related costs and expenses including carriage, storage and insurance.

5. QUALITY, MATERIALS AND SPECIFICATIONS

- 5.1. The Company warrants that on delivery the Goods shall (i) be free from material defects in design, materials and workmanship; and (ii) materially conform to any Specification.
- 5.2. While the Company will use reasonable endeavours to supply material in accordance with the sample submitted or the quality estimated (if any), the Company reserves the right to make changes in the Specification which do not materially affect their quality or performance.
- 5.3. The warranties in Conditions 6.1 and 6.2 do not apply where (i) the Customer makes further use of the Goods after notifying the Company of the defect under Condition 8; (ii) the defect is due to the Customer following any Specification or using any material provided by the Customer or ensuring that the Goods comply with applicable law and regulation.

- 5.4. Except where the Goods are sold under a consumer sale, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and any other terms and conditions otherwise implied by law or otherwise are, to the fullest extent permitted by law, excluded from the Contract.

- 5.5. Materials supplied by the Customer in connection with the Goods must meet the specifications required for the purpose of their use and be sufficient to incorporate wastage.

- 5.6. If the Goods are to be made according to any Specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any intellectual property rights of any other person which results from the Customer's use of the Customer's Specification.

6. CLAIMS NOTIFICATION

- 6.1. Any claims for non-delivery of any Goods must be notified in writing by the Customer to the Company, giving reasonable details of the claim, within five working days of the expected delivery date.
- 6.2. Any claims for shortages in delivery, defective Goods or Goods that do not comply with the Specification must be recorded on the delivery note and also notified in writing giving reasonable details of the claim, within 5 working days of the delivery date, by the Customer or the Customer's customer where that is the original delivery location.

- 6.3. The Customer will afford to the Company reasonable opportunity and facilities to investigate any said claim, including checking the Goods under complaint, and the Customer shall, if so requested in writing by the Company, promptly return any such Goods and any packing securely packed and carriage paid to the Company for examination.

- 6.4. The Company shall have no liability with regard to any claim in respect of which the Customer has not complied with the provisions of this Condition.

7. EXTENT OF LIABILITY

- 7.1. Nothing in these Conditions shall limit or exclude the Company's liability for (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); (ii) fraud or fraudulent misrepresentation; (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (iv) defective products under the Consumer Protection Act 1987.

- 7.2. The Company shall not be liable in respect of loss or damage to any property whatsoever (including that of the Customer, its agents and customers, and any of their respective employees) or injury to or death of any person whatsoever (including the Customer, its agents and customers, and any of their respective employees) in respect of any defect in the Goods arising from any Specification, packaging and/or materials supplied by the Customer and incorporated into the Goods or any part of them.

- 7.3. Subject to Condition 8.1, the Customer's sole remedy for the Company's breach of warranty or non-delivery or short delivery shall be, at the Company's option, repair, replacement with similar goods, or refund.

- 7.4. Subject to Condition 8.1, (i) the Company's total liability to the Customer shall not exceed the proportion of the net invoice price which is attributable to the Goods which are the subject of the claim; and (ii) in no circumstances whatsoever, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall the Company be liable for indirect or consequential loss or for loss of profit (including direct).

- 7.5. Where the Goods are sold under a consumer sale (as defined by the Sale of Goods Act 1979) the statutory rights of the Customer are not affected by these Conditions.

- 7.6. The parties do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

- 7.7. The Company shall not be liable for any delay or failure in the performance of any of its obligations under the Contract caused by Force Majeure.

8. GENERAL

- 8.1. The Contract is not assignable by the Customer. The Company may subcontract or assign its obligations or rights under the Contract in whole or in part.

- 8.2. The Company may at its discretion (without prejudice to its other rights and remedies) suspend or terminate the supply of any Goods if the Customer fails to make any payment when due or otherwise defaults in any of its material obligations under the Contract or any other agreement with the Company or a Customer Insolvency Event occurs or the Company in good faith believes that any of those events may occur, and, in the case of termination the Company shall be entitled to forfeit any deposit paid, and thereupon the Customer shall no longer be in possession of the Goods with the Company's permission.

- 8.3. A waiver of any right or remedy under the Contract is only effective if given in

writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 8.4. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

- 8.5. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.