

FREIGHTLINER & PENTALVER TERMS & CONDITIONS OF PURCHASE

Definitions

- (i) **“Applicable Laws”** means all applicable laws, statutes, regulations from time to time in force, including without limitation:
 - a. Modern Slavery Act 2015;
 - b. the Bribery Act 2010; and
 - c. the GDPR and the Data Protection Act 2018.
- (ii) **“Conditions”** means these Conditions of Contract.
- (iii) **“Control”** has the meaning given in section 1124 of the Corporation Tax Act 2010, and **“Controlled”** and **“Controlling”** shall be construed accordingly;
- (iv) **“Company”** means either of Freightliner Group Limited (Reg. No. 05313119), Freightliner Acquisitions Limited (Reg. No. 05313136), Management Consortium Bid Limited (Reg. No. 03118392), Freightliner Limited (Reg. No. 03118392), Freightliner Heavy Haul Limited (Reg. No. 3831229), Freightliner Maintenance Limited (Reg. No. 05713164) or Freightliner Railports Limited (Reg. No. 05928006) Pentalver Transport Limited (Reg. No. 02453541) and Pentalver Cannock Limited (Reg. No. 01189068) as stated in the Purchase Order each with a Registered Office at 3rd Floor, 90 Whitfield Street, Fitzrovia, London, W1T 4EZ.
- (v) **“Company’s Affiliate”** means in respect of the Company, any company from time to time directly or indirectly (i) Controlling, (ii) Controlled by or (iii) under common Control with, the Company.
- (vi) **“Purchase Order”** means the form or document used by the Company to order Goods.
- (vii) **“Supplier”** means the company or person to whom the Purchase Order is addressed.
- (viii) **“Goods”** means the goods or services requested in the Purchase Order.
- (ix) **“Specification”** means the description of the Company’s particular requirements in respect of the Goods stated in the Purchase Order.
- (x) **“Contract”** means the agreement between the Company and the Supplier incorporating the Conditions and the Purchase Order and any other documents specified therein.
- (xi) **“Delivery Date”** means the date specified for delivery of the Goods in the Purchase Order or any extension thereof granted in writing by the Company.

1 Entire Contract and Commencement

These Conditions and the Purchase Order shall form the entire Contract save as may be specifically varied in writing by the Company. The Supplier shall provide the Goods to the Customer and its Affiliates subject to and in accordance with the provisions of this Contract. The Contract shall arise upon acceptance of the Purchase Order by the Supplier.

2 Specification, Quality of Goods and Packing

2.1 The Goods shall comply in all respects with the Specification or any agreed modifications thereof and when the Specification is silent on the type and quality the Goods shall be of good quality and form, fit and function.

2.2 If any drawings, samples, patterns, materials or other Goods are supplied to the Supplier by the Company for use in connection with the Purchase Order, the supplier shall be responsible for their safe custody and return for any loss of or damage to them however caused whilst in the Supplier’s possession. Drawings and any other documentation shared by the business shall not be reproduced by the supplier other than for use in connection with this Purchase Order and shall be returned to the Company on or before the date when the Goods are delivered to the Company.

2.3 The Goods shall be properly packed, the carriage paid by the Supplier and dispatched to such place as maybe specified in the Purchase Order. If the Company so requests the packing cases and packing materials shall be clearly marked with such particulars as the Company may reasonably require.

2.4 The Supplier shall be responsible for any damage, loss or expense included by the Company which arises out of improper packing or incorrect delivery of the Goods.

2.5 No charge shall be made by the Supplier for any packing cases and packing materials unless specifically agreed by the Company.

3 Price

Prices stated in the Purchase Order are fixed unless otherwise stated and are not subject to adjustment for the period of the Contract. Any failure by the Supplier to meet the Delivery Date(s) shall not remove its obligation to maintain a fixed price.

4 Delivery

4.1 The Supplier shall deliver the Goods carriage paid in accordance with the Delivery Date.

4.2 Delivery shall be deemed to have been made when the Goods are received in good and proper condition by the Company or their agent at the place specified in the Purchase Order or such place as may be agreed by the Company.

4.3 The Company reserves the right to terminate the Contract in whole or in part if the Supplier fails to deliver or provide the Goods by the Delivery Date(s).

5 Rejection

5.1 The Company may be notice in writing either at the time of delivery or within a reasonable period thereafter reject the Goods or any part thereof which in the reasonable opinion of the Company or its agent are of inferior or defective quality or are not in accordance with the Specification. The Company shall be entitled to reject the entirety of the Goods delivered under a Purchase Order whether or not the same includes Goods which are not of inferior quality or defective.

5.2 Following rejection of any Goods by the Company:

(a) The Company may either return any rejected Goods at the Supplier's expense and risk or require the Supplier to collect those Goods.

(b) The rejected Goods shall remain at the sole risk of the Supplier and subject to a lien for any amount owing to the Company for any carriage, care or other charges in respect thereof and to a right of sale by the Company in default of payment of such charges within a reasonable time. The Company shall, subject to the aforesaid lien be entitled to remove and dispose of the Goods as it may think fit and charge the Supplier with the costs and expenses in respect thereof if the Supplier does not collect the Goods within such period (not less than 14 days) as may be specified by the rejection notice.

(c) The Supplier shall replace the rejected Goods as soon as possible (not later than 14 days from the date of notice of rejection or any extension that the Company may agree) failing which, the Company shall be entitled to obtain replacement Goods from third parties and the Supplier shall make good to the Company any additional costs and expenses in excess of the Contract price incurred by the Company in obtaining replacement goods.

(d) The Supplier shall be responsible for any loss, damage and expense that the Company may thereby suffer or incur arising out of any delays or adverse affects on the Company's plans or work in respect of which the rejected Goods were required.

6 Variation

6.1 The Supplier shall not change the Specification or supply the Goods otherwise than in accordance with the Purchase Order unless so agreed by the Company in writing.

6.2 The Company shall be entitled to vary the Purchase Order including the Specification at any time before the Delivery Date subject to payment of any reasonable costs incurred by the supplier.

7 Health, Safety and Quality

7.1 The Supplier and its agents warrant that they shall at all times and for all purposes related to this Purchase Order conform to the Health and Safety at Work Act 1974 and any subsequent or amending legislation.

7.2 The Company reserves the right to require evidence of the Supplier's quality systems.

8 Property and Risk

8.1 Without prejudice to the rights and obligations of the parties under the Contract, the property and risk in the Goods shall pass to the Company on delivery in accordance with the Purchase Order unless rejected in accordance with the terms of Clause 5.

9 Payment

9.1 The Company shall make payment in respect of a Purchase by the end of the month following the month in which the invoice is received. Each invoice shall refer to the Purchase Order number to which it relates.

9.2 The Company shall not be obliged to make payment for Goods if those Goods have not been delivered or if the Company has rejected those Goods.

10 Indemnity

The Supplier shall indemnify and keep indemnified the Company against any liability or damage, injury (whether or not fatal) cost or expense howsoever caused arising out of the performance or breach of any of the provisions of the Contract by the Supplier and any loss, damage, cost, expense or liability in respect of loss of or damage to property or injury or deaths howsoever caused arising out of any act or omission of the Supplier, its servants and agents.

11 Access to Supplier's Premises

Except where otherwise agreed the Supplier shall give access to the Company's authorised representative at all reasonable times.

12 Access to Company's Property

A Supplier may not enter Company property without the appropriate authorisation and any necessary safety training. The Supplier and its agents warrant that they shall at all times and for all purposes related to this Purchase Order conform to the Company's relevant regulations, copies of which are available on request.

13 Sub-Contractors

The Supplier is accountable at all times for the performance of all products/services used in the execution of the Contract.

14 Confidentiality

Any information supplied or received by the Supplier relating to the Company pursuant to the Contract which is of confidential nature or marked so as to indicate that is confidential shall not be disclosed to any third party or to the Supplier's servants and agents save as may be required and only to the extent necessary for the Supplier to carry out its obligations under the Contract.

15 Advertising

The Supplier shall not without the written consent of the Company advertise or announce that it will supply or has supplied Goods to the Company.

16 Marked Goods

Goods marked to denote that they are the property of the Company or are for use by the Company which are not delivered to the Company or are rejected by the Company shall not be disposed of to a third party without the prior written consent of the Company unless such markings are first completed erased or removed.

17 Cancellation or Termination of the Contract

17.1 The Company may without liability other than as may be provided herein cancel an order at any time prior to the Delivery Date subject to the payment of the Supplier's reasonable costs and expenses.

17.2 The Company shall be entitled to terminate the Contract forthwith if:

- (a) Without prejudice to the other provisions of these Conditions the Supplier commits any breach of the Contract and has failed to remedy the same within 14 days of being given notice to do so.
- (b) The Supplier dies, becomes bankrupt or insolvent or has a receiving order made against him or being a corporation enters into liquidation whether compulsory or voluntary (except for the purpose of amalgamation or reconstruction) or has a receiver appointed to a substantial part of its assets or if execution is levied against the Supplier's Goods.
- (c) The Company reasonably believes that the Supplier will be unable, or is unlikely to, render proper performance under the Contract.

18 Compliance with Applicable Laws

18.1 In performing its obligations under this agreement, the Supplier shall comply with the Applicable Laws.

18.2 The Customer may terminate the agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of clause 18.

18.3 The Supplier shall:

- (a) not engage in any activity, practice or conduct which would constitute either:
 - (i) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
 - (ii) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
- (b) have and shall maintain in place throughout the term of this agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier) and to ensure compliance with clause 18.3(a);
- (c) notify the Customer in writing if it becomes aware of any breach of clause 18.3 (a) or has reason to believe that it or any person associated with it has received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of this agreement;
- (d) the Supplier shall keep at its normal place of business detailed, accurate and up-to-date records and books of account showing the steps taken by the Supplier to comply with its obligations under this Clause 18.3 during the previous six years. The Supplier shall ensure that such records and books of accounts are sufficient to enable the Customer to verify the Supplier's compliance with its obligations under this Clause 18.3.
- (e) the Supplier shall permit the Customer and its third party representatives, on reasonable notice during normal business hours to access and take copies of the Supplier's records and any other information held at the Supplier's premises and to meet with the Supplier's personnel to audit the Supplier's compliance with its obligations under this Clause 18.3. Such audit rights shall continue for three years after termination of this agreement. The Supplier shall give all necessary assistance to the conduct of such audits during the term of this agreement and for a period of three years after termination of this agreement.
- (f) Audit access by any third party representative of the Customer shall be subject to such representative agreeing confidentiality obligations in respect of the information obtained, always provided that all information obtained may be disclosed to the Customer.

19 Guarantee

Without prejudice to the Company's rights generally the Supplier shall repair/replace defective Goods in the event of a defect occurring within a period of 12 months from the date of delivery of those Goods provided that the defect was not caused by misuse of the Goods by the Company. Repairs and replacements are also subject to the foregoing obligations.

20 Notice

Notices shall be deemed to have been properly served if sent by recorded delivery post or by facsimile to the address for the parties stated respectively on the Purchase Order and the Supplier's offer or acceptance as applicable or such other address as the Supplier may specify in writing.

21 Third Party Rights

21.1 Any term of this Contract is enforceable by any of the Company's Affiliates.

21.2 In the event that the Company brings any legal action, suit, claim or proceeding directly against the Supplier on behalf of any of its Affiliates, which any of its Affiliates would otherwise have if it were a party to this Contract (each an "Affiliate Claim"), for the purpose of any Affiliate Claim, any losses suffered by the relevant Affiliate may be deemed to be losses suffered by Company.

21.3 Subject to clause 21.1, the Parties do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999 Act, by any person who is not a party to this Agreement.

22.4 The rights of the Parties to rescind or vary this agreement are not subject to the consent of any other person. The Parties do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement.

22 Governing Law

The Contract shall be subject to English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

23 Severability

If any provision (or part thereof) herein shall be found to be invalid, ineffective or unenforceable, the other provision (or part thereof) shall remain unaffected and continue to be applicable to both parties in full force insofar as they can be severed and stand on their own.