

TERMS AND CONDITIONS OF TRANSPORTATION AND STORAGE

- 1. INTERPRETATION**
- 1.1 In these Conditions the following words have the following meanings:
- "Company" means Cotswold Car Storage Limited;
- "Condition Report" means the condition report in the Company's standard format, detailing the exact condition of the Vehicle and highlighting any areas of damage on the diagram of the Vehicle, signed by both parties;
- "Conditions" means the standard terms and conditions relating to the Services set out in this document as the same may be varied from time to time and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Client and the Company;
- "Client" means the person(s), firm or company who accepts a quotation of the Company for the provision of Services or whose order for the Services is accepted by the Company as set out in the Order Form;
- "Contract" means the contract between the Company and the Client for the provision of Services, incorporating these Conditions;
- "Order Form" means the Company's order form, which incorporates these Conditions, as the same may be varied from time to time;
- "Payments" means the amounts paid by the Client to the Company for the provision of the Services as set out in the Order Form;
- "Services" means the transportation and/or storage services provided to the Client by the Company as set out in the Order Form;
- "Term" means the period for which the Company provides the Client with the Services, being the period of storage or the period of transportation, as more particularly set out in the Order Form; and
- "Vehicle" means any car or vehicle transported or stored by the Company, details of which are set out in the Order Form, including all its equipment and accessories (and any part or parts of them).
- 1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3 In these Conditions references to the masculine include the feminine and the neuter, and a reference to the singular include the plural, and vice versa as the context admits or requires.
- 1.4 In these Conditions headings are for reference purposes only and will not affect the construction of these Conditions.
- 2. APPLICATION OF TERMS**
- 2.1 The Contract will be on these Conditions to the exclusion of all other terms and conditions.
- 2.2 The Client must ensure that the details of the Contract as set out in the Order Form are complete and accurate.
- 3. APPOINTMENT**
- The Client appoints the Company to provide the Services for the Term in return for the Payments upon these Conditions.
- 4. DURATION**
- 4.1 The period of storage shall commence on the date set out on the Order Form and, unless agreed otherwise between the parties, shall end on the earlier of:
- 4.1.1 the date agreed between the Company and the Client set out in the Order Form; and
- 4.1.2 the date on which the Vehicle is redelivered to the Client or is collected by the Client from the Company.
- 4.2 The date(s) on which the Vehicle is transported by the Company shall be as set out in the Order Form, unless agreed otherwise between the parties.
- 5. COMPANY'S OBLIGATIONS**
- 5.1 The Company shall perform the Services as set out in the Order Form with reasonable care and skill. This duty will not extend to items of personal property or business goods left in the Vehicle. Clients should therefore ensure that all valuable items of personal property or business goods are removed from the Vehicle prior to performance of the Services.
- 5.2 The Company will maintain at its own cost a policy of insurance cover in accordance with clause 14.
- 6. CLIENT'S OBLIGATIONS**
- 6.1 In consideration of the Services rendered by the Company under the Contract, the Client agrees:
- 6.1.1 to agree the condition of the Vehicle at the beginning and end of the Term by signing the Condition Report provided to it;
- 6.1.2 to make the Payments promptly (without demand or set-off);
- 6.1.3 to notify the Company promptly of all relevant information in relation to the Vehicle, including (without limitation) the correct date(s) and locations relating to transportation of the Vehicle; and
- 6.1.4 to provide the Company with at least 36 hours notice prior to inspecting the Vehicle or taking the Vehicle off the Company's premises.
- 7. PRICE AND PAYMENT**
- 7.1 The price of the Services shall be as set out in the Order Form, together with the appropriate amount of any VAT, and shall include petrol costs (if any) and insurance of the Vehicle whilst on the Company's premises or in the Company's possession.
- 7.2 Prior to the provision of storage Services by the Company, the Client shall pay the Company a deposit equal to the price of two month's storage.
- 7.3 Payment for the Services shall be made within 28 days of the date of the Company's invoice, or, if agreed between the parties:
- 7.3.1 at the time of the Contract; or
- 7.3.2 for Clients who are individuals, in monthly instalments at least one month in advance of provision of the Services by cash, cheque or direct debit; or
- 7.3.3 for Clients who are businesses, in monthly instalments within one month of receipt of the Company's invoice by cash or cheque.
- 7.4 Unless agreed otherwise with the Client, the Company shall be entitled to withhold over-payments relating to the Services and set such amount off against the next invoice.
- 7.5 If the Client reduces the duration of the Term with the agreement of the Company, the Company shall refund such part of any advance payment which relates to a full month but shall not be obliged to refund any advance payment which relates to part of a month.
- 7.6 All sums payable under the Contract, unless stated otherwise, are exclusive of VAT, other duties or taxes. Any such VAT or other duties or taxes shall be payable in addition to such sums.
- 7.7 If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 7.7.1 cancel the Contract or suspend the provision of any further Services to the Client;
- 7.7.2 charge the Client interest at the rate of 3% per annum above the current rate from time to time in force of Lloyds Bank Plc on the amount unpaid until payment in full is made (a part of a calendar month being treated as a full calendar month for the purpose of calculating interest);
- 7.7.3 retain any deposit or part thereof to recover from the Client by way of damages any loss or expense which the Company may suffer or incur by reason of the Client's default; and
- 7.7.4 hold a Vehicle until such time as the account is paid in full.
- 8. OWNERSHIP OF THE VEHICLE**
- 8.1 The Company acknowledges that the Vehicle shall at all times remain the property of the Client and the Client agrees not to sell, rent, lend or otherwise dispose of the Vehicle, or to sublet it to any person, during the Term.
- 8.2 Subject to the terms of these Conditions, the Client shall not permit any lien or charge to be created on the Vehicle and shall not give or allow anyone to obtain any legal rights over it during the Term.
- 8.3 If the Vehicle is not collected at the end of the Term, the Company may exercise its rights under the Torts (Interference with Goods) Act 1977 ("the Act") and may proceed to sell the Vehicle, subject to the service of a relevant notice under the Act. In this event, the Vehicle will be sold at best market price and the balance may be returned to the Client in accordance with the Act after deduction of charges and expenses incurred by the Company.
- 9. CONDITION REPORT**
- 9.1 Subject to 9.2 below, on every occasion that the Vehicle enters or leaves the Company's premises or possession, the Vehicle will be inspected by the Company and the Client to ascertain the condition of the Vehicle and the parties will agree a Condition Report.
- 9.2 If the Client is not present at the beginning of the Term the Condition Report will be either:
- 9.2.1 signed by an authorised representative of the Client; or
- 9.2.2 sent to the Client for his/her approval by fax or email.
- 9.3 If the Client or an authorised representative of the Client is not present when a presently stored Vehicle is leaving the Company's premises, the condition of the Vehicle will be taken as that on the Condition Report agreed between the parties at the beginning of the Term.
- 10. STORAGE**
- 10.1 Should the temperature at the Company's premises for any reason fall below freezing during the Term any damage to the Vehicle caused through lack of anti-freeze is the Client's sole responsibility.
- 10.2 The Client has access to the Vehicle during the Company's office hours during the Term by arrangement with the Company in accordance with condition 6.1.4 above.
- 10.3 Unless agreed otherwise, the Vehicle will not be offered or advertised for sale by the Client whilst on the Company's premises.
- 11. TRANSPORTATION OF THE VEHICLE**
- 11.1 If the Vehicle is transported by the Company, the Client agrees to provide the Company with the location of the Vehicle and full details of the destination and date of transportation.
- 11.2 The Company will take responsibility for the Vehicle during transportation until delivery whereupon full responsibility for the Vehicle will pass to the signatory of the Condition Report.
- 11.3 If the Vehicle is transported to or from the Company's premises by the Client, or is in the possession of the Client on the Company's premises, the Client agrees that:
- 11.3.1 the Vehicle shall be under the control of the Client, or a representative for the Client, at all times;
- 11.3.2 the Client shall ensure that the Vehicle is:
- 11.3.2.1 used safely, without risk to any other vehicles on the Company's premises;
- 11.3.2.2 only used by competent and qualified individuals holding all the necessary current licences (being a full driving licence) in respect of the Vehicle; and
- 11.3.2.3 not driven in such a way so as to cause the Company's insurance cover to be adversely affected or repudiated; and
- 11.3.3 should any loss or damage occur to the Company's premises or any other vehicles on the Company's premises as a result of a breach of this condition by the Client, the Client shall fully indemnify the Company for the cost of all such loss or damage.
- 11.4 Delivery or removal of the Vehicle to or from the Company's premises by a third party shall only occur with the express permission of the Client, either in writing or by direct verbal agreement with the Company. If for any reason the Company is not satisfied with a third party's claim to remove a Vehicle, the Company has the right to refuse access to that Vehicle for whatever reason.
- 12. MAINTENANCE AND REPAIR**
- 12.1 If any Vehicle should suffer damage while under the custody of the Company the Client will be notified within 48 hours of discovery.
- 12.2 The parties agree that no repairs or any other mechanical or technical work shall be done on the Vehicle while it is in storage, unless agreed otherwise between the parties.
- 12.3 If the Vehicle breaks down or is damaged whilst in the Company's possession, otherwise than as a result of wilful misconduct or negligence on behalf of any employee or agent of the Company, and such repairs, or other mechanical or technical work is agreed, the Client shall pay all costs incurred.
- 13. LIABILITY**
- 13.1 The Company shall not exclude or limit liability for:
- 13.1.1 death or personal injury to the extent that the same results from the negligence or wilful default of the Company, its servants, agents or sub-contractors; or
- 13.1.2 fraudulent misrepresentation; or
- 13.1.3 any breach of any undertaking as to title, quiet possession and freedom from encumbrance implied by law.
- 13.2 Subject to the provisions of clause 13.1, the Company's total liability shall not exceed the applicable financial limit for each category of liability specified in clause 13.3.
- 13.3 Subject to the provisions of clause 13.4 the financial limits for each category of liability are as follows:
- 13.3.1 the Company's aggregate liability for loss or damage to tangible property shall be limited to the value of the Company's insurance for damage to property; and
- 13.3.2 the Company's aggregate liability for all other loss shall be limited to the charges paid by the Client to the Company in accordance with the terms of the Contract.
- 13.4 Without prejudice to the provisions of clause 13.1, in no event shall the Company be liable to the Client for any economic, indirect or consequential loss or damages including but not limited to loss of profits, business, revenue, goodwill and/or loss of contracts.
- 13.5 The Client agrees that it is in a better position to foresee and evaluate any loss which it may suffer in connection with the Contract and that the terms of the Contract have been calculated on the basis of the limitations and exclusions as set out in this condition 13 and the Client agrees to effect such insurance as is suitable having regard to its particular circumstances and the terms of the Contract.
- 13.6 The Company shall be liable for, and the levels of liability in this condition 13 shall be applicable to, any acts or omissions of its servants, agents and sub-contractors.
- 13.7 If any legal action is taken against the Company, for whatever reason, then all legal costs shall be covered by the Claimant.
- 13.8 The provisions of this condition 13 shall survive the termination of the Contract howsoever arising.
- 14. INSURANCE**
- 14.1 The Company shall insure, and keep insured, the Vehicle for its insurance value as set out in the Order Form. For the avoidance of doubt, the Client acknowledges that such insurance does not cover any reduction in value of the Vehicle after it has been repaired (eg. loss of originality). In addition, the Client shall insure the Vehicle for third party fire and theft.
- 14.2 The Client irrevocably authorises the Company to collect the insurance monies from the insurers. Any insurance money shall be applied as follows at the Client's option:
- 14.2.1 in making good the damage; or
- 14.2.2 in compensating the Client for the loss suffered by the Client.
- 14.3 The Client shall not do, or suffer to be done, anything which may make void or voidable any insurance effected under clause 14.1 above.
- 15. CANCELLATION**
- 15.1 Either party may cancel the Contract by giving one month's notice in writing to the other side.
- 15.2 In the event that the Contract is cancelled, the Client shall be liable to pay the Company all outstanding sums due to the time at which the Vehicle leaves the Company's premises.
- 15.3 If requested, the Company shall deliver the Vehicle to the Client's premises, or another agreed location, during the Company's normal working hours at the end of the period of storage, payment for which will be at the Company's standard rates.
- 16. INDEMNITY**
- Except in regard to death or personal injury caused by the Company's negligence, the Client shall indemnify the Company against all loss or damage (including claims by the Client's employees) sustained as a result of use of the Vehicle by the Client or the Client's representatives, however caused, including the full cost of damage to any other vehicles on the Company's premises (irrespective of whether or not the Company's insurance policy expires or is repudiated or fails to cover the full insured value), subject always to the Unfair Contract Terms Act 1977.
- 17. TERMINATION**
- 17.1 The following obligations are conditions of the Contract and any breach of them shall be deemed a fundamental breach and the storage and/or transportation constituted by it shall without notice, but at the option of the Company, end in any of the following circumstances:
- 17.1.1 failure on the part of the Client to make punctual payment of any money due to the Company under the Contract; or
- 17.1.2 a breach by the Client of any of the provisions of the Contract other than those relating to the payment of money; or
- 17.1.3 the Client presenting or allowing to be presented an application for an interim order or a petition for a bankruptcy order, or the Client entering into or attempting to enter into a composition with creditors or (in the case of a limited company) going into liquidation, or a receiver or administrator being appointed in respect of the Client's assets or any of them, or a meeting being called of the Client's creditors or any of them.
- 17.2 In the event of the Contract being terminated, whether by effluxion of time, notice, breach or otherwise:
- 17.2.1 The Client shall immediately pay to the Company:
- 17.2.1.1 all arrears of Payments and any other sums due under the Contract; and
- 17.2.1.2 all further sums which would but for the determination of the Contract have fallen due at the end of the Term.
- 17.2.2 Either party shall be entitled to exercise any one or more of the rights and remedies given to it under the Contract and the determination of the Contract shall not affect or prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under the Contract notwithstanding that the other may have exercised one or more of the rights and remedies against it.
- 17.2.3 Any right or remedy to which either party is or may become entitled under the Contract or in consequence of the other's conduct may be enforced from time to time separately or concurrently with any right or remedy given by the Contract or now or afterwards provided for and arising by operation of law so that such rights and remedies are not exclusive of the other or others but are cumulative.
- 17.3 Any refunds payable by the Company as a result of this condition will be for whole month instalments only.
- 18. NOTICES**
- Any notice served under the Contract shall be sufficiently served if sent by prepaid letter post to the last known place of business of the addressee and proof of dispatch shall be conclusive evidence of receipt by the addressee in due course of transmission.
- 19. VARIATIONS**
- Any variations made to the Contract by the Client will be notified to the Company immediately.
- 20. ASSIGNMENT**
- 20.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 20.2 The terms of the Contract shall be binding upon and shall enure for the benefit of the successors, permitted assignees and personal representatives of the Client, and the Client shall not assign the Contract or any part of it.
- 21. FORCE MAJEURE**
- Both parties shall be released from their respective obligations under the Contract in the event of national emergency, war, prohibitive governmental regulation, or if any other cause beyond the reasonable control of the parties or either of them renders the performance of the Contract impossible whereupon all money due under the Contract shall be paid immediately.
- 22. GENERAL**
- 22.1 The Contract contains the entire agreement between the parties and both parties acknowledge that they have not relied upon any oral or written representation made to them by the other.
- 22.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 22.3 Each party irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation whether or not contained in the Contract or for breach of any warranty not contained in the Contract unless such misrepresentation or warranty was made fraudulently and/or rescind the Contract.
- 22.4 No waiver by the Company of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 22.5 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.
- 22.6 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 22.7 The parties to this Contract do not intend that any term of this Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 22.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.