

PULLMAN FLEET SOLUTIONS LIMITED

Terms and Conditions of Purchase

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Ancillary Equipment: means equipment or plant installed upon or fitted to a Vehicle (including tachographs, tail lifts and air conditioning units).

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by PFS for the supply of the Services in accordance with clause 6.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.5.

Contract: the contract between PFS and the Supplier for the supply of Services in accordance with these Conditions.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Order: PFS's order for the supply of Services, as set out in PFS's Start Up Order, purchase order form or overleaf, as the case may be.

PFS: Pullman Fleet Solutions Limited registered in England and Wales with company number 11057057.

Services: Vehicle/Vehicle Ancillary Equipment assessment, repair and/or maintenance services provided by the Supplier to PFS's customers (including the provision and fitting of replacement parts) as set out in the Order and such other services as are set out in the Order.

Specification: the description or specification for the Services agreed in writing by PFS and the Supplier and set out in PFS's purchase order form.

Start Up Order: PFS's written order form setting out the Order.

Supplier: the company or entity from whom PFS purchases the Services.

Vehicle: the commercial motor vehicle or other equipment specified in the Order including any Ancillary Equipment and any and all accessories, replacements, renewals or additions thereto on or in relation to which the Services are to be performed or provided.

1.2 Interpretation:

(a) A reference to legislation or a legislative provision:

(i) is a reference to it as amended, extended or re-enacted from time to time; and

(ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.

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

(c) A reference to **writing** or **written** includes email.

2. Basis of contract

2.1 The Order constitutes an offer by PFS to purchase Services in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

(a) the Supplier issuing written acceptance of the Order;

(b) any act by the Supplier consistent with fulfilling the Order; or

(c) PFS issuing a Start Up Order form, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3. Supply of Services

3.1 The Supplier shall from the earlier of a date agreed in writing by the parties, the receipt of the Start Up Order (unless an alternative date is specified in it) or the date set in the Order and for the duration of the Contract provide the Services to PFS in accordance with the terms of the Contract.

3.2 The Supplier shall meet any performance dates for the Services specified in the Order or that PFS notifies to the Supplier and time is of the essence in relation to any of those performance dates.

3.3 In providing the Services, the Supplier shall:

(a) co-operate with PFS in all matters relating to the Services, and comply with all instructions of PFS;

(b) respond to any request of PFS for the Services as soon as reasonably possible;

(c) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

(d) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

(e) ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that PFS expressly or impliedly makes known to the Supplier;

(f) provide all equipment, tools, machinery, spare or replacement parts and vehicles and such other items as are required to provide the Services;

(g) use the best quality goods, materials, standards and techniques, and ensure that the deliverables, and all goods and materials supplied and used in the Services or transferred to PFS, will be free from defects in workmanship, installation and design;

(h) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

(i) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the provision of the Services;

(j) observe all health and safety rules and regulations and any other security requirements that apply to the provision of the Services;

(k) hold all Vehicles, property, materials, documentation, equipment and tools of PFS or its customers in safe custody at its own risk, keep them in good condition until returned to PFS or its customer (at the direction, and not dispose or use these items other than in accordance with the PFS's written instructions or authorisation;

(l) not do or omit to do anything which may cause PFS to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that PFS may rely or act on the Services;

(m) provide PFS with all such records of repair, maintenance, inspection and testing as are required to meet all applicable legal standards and requirements and the Supplier shall retain a copy of all such records for a minimum of 15 months.

(n) permit PFS on reasonable notice to access at reasonable times to inspect and audit ("Audit") the Supplier's premises, systems, data, records, health and safety records, manuals, policies, processes, controls and other information relating to the Services and the Supplier Personnel ("Records & Controls") in order to:

(i) monitor compliance by the Supplier with the Supplier's obligation under the Contract and verify the accuracy, integrity, confidentiality and security of its Records & Controls to the extent relevant to its obligations under the Contract;

(ii) verify the Supplier's compliance with any applicable law;

(iii) conduct any of PFS's statutory or contractually required audits;

(iv) comply with any directions imposed on PFS by any regulator;

(v) take copies and records of information related to this Contract;

(o) provide prompt assistance to PFS and/or its agents without charge for so long as is reasonably necessary to carry out an Audit.

4. Customer remedies

4.1 If the Supplier fails to perform the Services by the applicable dates, PFS shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

(a) to terminate the Contract with immediate effect by giving written notice to the Supplier;

(b) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

(c) to recover from the Supplier any costs incurred by PFS in obtaining substitute services from a third party;

(d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided; and

(e) to claim damages for any additional costs, loss or expenses incurred by PFS which are in any way attributable to the Supplier's failure to meet such dates.

4.2 Where there is a defect in the Services caused by faulty workmanship or a defect or fault in the materials or parts supplied or fitted, the Supplier shall rectify such defect at the Supplier's cost where:

(a) for Services, the defect arises twelve (12) months of completion of the relevant Services;

(b) for defects in parts, those parts remain within the manufacturer's warranty period;

(c) PFS has paid the Supplier for the relevant Services in accordance with clause 6 of these Conditions; and

(d) PFS notifies the Supplier of the defect within ten (10) working days from becoming aware of the defect.

4.3 If the Supplier has supplied Services that do not comply with the requirements of clause 3.3(e) then, without limiting or affecting other rights or remedies available to it, PFS shall have one or more of the following rights:

(a) to terminate the Contract with immediate effect by giving written notice to the Supplier;

(b) to return parts to the Supplier at the Supplier's own risk and expense;

(c) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services;

(d) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

(e) to recover from the Supplier any expenditure incurred by PFS in obtaining substitute services or deliverables from a third party; and

(f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to comply with clause 3.3(e).

4.4 Title and risk in any replacement parts or consumables fitted or placed into or on a Vehicle or Ancillary Equipment shall pass to PFS or its customer at the time it is fitted or placed into or on a Vehicle or Ancillary Equipment (as applicable). The Supplier shall ensure any parts or consumables that have been removed or replaced will be disposed of in accordance with any relevant laws or regulations that apply to the disposal of such items.

4.5 These Conditions shall extend to any substituted or remedial services provided by the Supplier.

4.6 PFS's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

5. Customer's obligations

PFS shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Vehicle and/or Ancillary Equipment for the purpose of providing the Services; and
- (b) provide such necessary information and approval too proceed for the provision of the Services.

6. Charges and payment

6.1 The Charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by PFS, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

6.2 The Supplier shall invoice PFS on completion of the Services. Each invoice shall include such supporting information required by PFS to verify the accuracy of the invoice, including the relevant purchase order number.

6.3 In consideration of the supply of the Services by the Supplier, PFS shall pay the invoiced amounts in line with the payment terms agreed in writing with the Supplier (and in the absence of such agreement within 90 days of the date of a correctly rendered invoice) to a bank account nominated in writing by the Supplier.

6.4 All amounts payable by PFS under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to PFS, PFS shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.5 If PFS fails to make a payment due to the Supplier under the Contract by the due date, then PFS shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.5 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%.

6.6 The Supplier shall maintain complete and accurate records of the time spent and materials and parts used by the Supplier in providing the Services, and shall allow PFS to inspect such records at all reasonable times on request and shall provide copies for this purpose.

6.7 PFS may at any time, without notice to the Supplier, set off any liability of the Supplier to PFS against any liability of PFS to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, PFS may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by PFS of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

7. Indemnity

7.1 The Supplier shall indemnify PFS 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 PFS arising out of or in connection with any claim made against PFS by a third party arising out of, or in connection with, the supply of the Services.

7.2 This clause 7 shall survive termination of the Contract.

8. Data protection

The parties shall comply with their data protection obligations as set out in Schedule 1 (Data protection).

9. Insurance

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on PFS's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10. Termination

10.1 Without limiting or affecting any other right or remedy available to it, PFS may terminate the Contract:

- (a) with immediate effect by giving written notice to the Supplier if:
 - (i) there is a change of control of the Supplier; or
 - (ii) the Supplier's financial position deteriorates to such an extent that in PFS's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (iii) the Supplier commits a breach of clause 3.3(i);
- (b) for convenience by giving the Supplier written notice.

10.2 Without limiting or 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:

- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) 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), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, 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; or (c) 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.

11. Consequences of termination

11.1 On termination or expiry of the Contract for any reason, the Supplier shall immediately return all items referred to in clause 3.3(k) as directed by PFS. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

11.2 Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages or causes beyond its reasonable control. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.

11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. General

12.1 **Force majeure.** Neither party shall 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. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.

12.2 Assignment and other dealings.

(a) PFS 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.

(b) The Supplier shall 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 without the prior written consent of PFS.

12.3 Confidentiality.

(a) Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party (in particular contact details and other information and details of PFS's customer's employees, contractors and drivers shall be regarded as strictly confidential by the Supplier), except as permitted by clause 12.3(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12.4 **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.

12.5 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

12.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall 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 shall not constitute a waiver of that or any other right or remedy, nor shall 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 shall prevent or restrict the further exercise of that or any other right or remedy.

12.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity or enforceability of the rest of the Contract. If any provision or part-provision of this Contract is deemed deleted under this clause 12.7, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provisions.

12.8 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in PFS's Order.

(b) A notice or other communication shall be deemed to have been received: if delivered by hand, at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.8(b), 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.

(c) This clause 12.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

12.9 Third party rights.

- (a) 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.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

12.10 **Governing law.** 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 shall be governed by and construed in accordance with the law of England and Wales.

12.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall 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.

Schedule 1 Data protection

DEFINITIONS

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended 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 Information Commissioner or other relevant regulatory authority and applicable to a party.

Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

UK GDPR: has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1. DATA PROTECTION

1.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This paragraph 1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

1.2 The parties acknowledge that for the purposes of the Data Protection Legislation, PFS is the Controller and the Supplier is the Processor. Annex A sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

1.3 Without prejudice to the generality of paragraph 1.1, PFS will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract.

1.4 Without prejudice to the generality of paragraph 1.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

(a) process that Personal Data only on the documented written instructions of PFS unless the Supplier Provider is required by Domestic Law to otherwise process that Personal Data.

Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, it shall promptly notify PFS of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying PFS;

(b) ensure that it has in place appropriate technical and organisational measures, 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 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);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(d) not transfer any Personal Data outside of the UK unless the prior written consent of PFS has been obtained and the following conditions are fulfilled:

(i) PFS or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) the Supplier complies with reasonable instructions notified to it in advance by PFS with respect to the processing of the Personal Data;

(e) assist PFS, at PFS'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;

(f) notify PFS without undue delay on becoming aware of a Personal Data Breach;

(g) at the written direction of PFS, delete or return Personal Data and copies thereof to PFS on termination of the Contract unless required by Domestic Law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this paragraph 1.

1.5 PFS does not consent to the Supplier appointing any third party processor of Personal Data under the Contract.

1.6 Either party may, at any time on not less than 30 (thirty) days' notice, revise this Schedule by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

ANNEX A Processing, Personal Data and Data Subjects

1. Processing by the Supplier

1.1 Scope

The purpose of the processing is to allow the Supplier to provide the Services to PFS's customers

1.2 Nature of processing

To arrange the Services including the transfer of personal data to enable the Supplier the carry out the Services

1.3 Purpose of processing

To carry out vehicle collection, assessment, repair and maintenance

1.4 Duration of the processing

For the duration of the Contract

1.5 Types of Personal Data

☐ contact details (address, telephone, mobile and email address)

☐ driver details

☐ vehicle details

☐ location details

☐ accident records, images (whether captured by CCTV, by photograph or video)

1.6 Categories of Data Subject

PFS's employee, agents, representatives and customers and the employees, drivers, contractors, agents and representatives of PFS's customers