

EMERALD BESPOKE LTD

TERMS OF BUSINESS

INTRODUCTION

Emerald Bespoke Ltd makes and delivers bespoke, customised wheels, tyres and related goods for high performance and 4x4 vehicles. These terms govern the supply of all such goods to you.

By placing an Order with us for the supply of goods, you are deemed to accept these terms.

1. INTERPRETATION

1.1 Definitions:

Business Day	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Commencement Date	the date that the Supplier accepts the Order in writing.
Contract	these terms between the Supplier and the Customer for the sale and purchase of the Goods in accordance with the Order.
Customer	the party purchasing Goods under this Contract.
Delivery Date	the estimated date specified for delivery of an Order.
Delivery Location	the address for delivery of the Goods, as set out in the Order.
Force Majeure Event	events, circumstances or causes beyond a party's reasonable control.
Goods	the goods (or any part of them), as set out in the Order.
Order	an order for the Goods submitted by the Customer and accepted by the Supplier in writing.
Price	the price for the Goods, as set out in the Order.
Specification	the specification for the Goods, including any related plans and drawings that are agreed in writing by the Customer and the Supplier as set out in the Order.
Supplier	Emerald Bespoke Ltd.

2. COMMENCEMENT AND TERM

This Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, until delivery of the Goods, when it shall terminate automatically without notice.

3. ORDERS

3.1 The Customer shall place Orders in writing. The Supplier may accept or decline Orders at its absolute discretion. The Supplier may, at its discretion, accept an amendment to an Order by the Customer.

3.2 The Supplier shall assign an order number to each Order it accepts and notify the order number to the Customer. Each party shall use the relevant order number in all subsequent correspondence relating to the Order.

3.3 After confirming an Order, the Supplier shall as soon as is practicable inform the Customer of the Supplier's estimated delivery date for the Order.

3.4 The Customer is responsible for ensuring that any Specification submitted by the Customer is complete and accurate. The Customer shall give the Supplier all necessary information relating to the Goods that the Supplier reasonably requires in order to fulfil each Order.

4. THE GOODS

4.1 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

4.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause shall survive termination of the Contract.

- 4.3 The Supplier reserves the right to amend the Specification of the Goods if required by any applicable statutory or regulatory requirements.
5. **DELIVERY**
- 5.1 The Supplier shall ensure that:
- 5.1.1 each delivery of Goods is accompanied by a delivery note which shows the order number and the type and quantity of Goods; and
- 5.1.2 if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request.
- 5.2 The Supplier shall endeavour to deliver Goods to the Delivery Location on the relevant Delivery Date.
- 5.3 Delivery Dates are approximate only, and the time of delivery is not of the essence. In addition, the Supplier shall not be liable for any delay in delivery of any Goods that is caused by:
- 5.3.1 a Force Majeure Event; or
- 5.3.2 the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
6. **QUALITY AND FITNESS FOR PURPOSE**
- 6.1 Subject to clause 3.4, the Supplier warrants that the Goods shall:
- 6.1.1 conform in all material respects with their description or the Specification;
- 6.1.2 be free from material defects in design, material and workmanship;
- 6.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 6.1.4 in respect of tyres only (and unless the contrary is stated in the Order), they shall be new (not previously used) and shall have full tread depth
- provided always that the Supplier makes no warranty (and shall have no liability to the Customer) when supplying Goods in connection with a Specification containing a general or imprecise description which shall include, but not be limited to, pictures or photographs of a colour/item/design/finish— in such situations, the Supplier's sole obligation is to use reasonable efforts to comply with the Specification.
- 6.2 Subject to clause 6.3, if:
- 6.2.1 the Customer gives notice in writing to the Supplier within 10 Business Days after discovery that some or all of the Goods do not comply with the warranties set out in clause 6.1; and
- 6.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
- 6.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,
- the Supplier shall, at its option, repair or replace any Goods that are found to be defective, or refund the price of such defective Goods in full, provided that if the Goods are not in breach of clause 6.1, the Customer shall be liable to pay the Supplier for all its reasonable transport and administrative costs incurred.
- 6.3 The Supplier shall not be liable for Goods' failure to comply with the warranties set out in clause 6.1 if:
- 6.3.1 the Customer makes any further use of such Goods after giving notice of defects in accordance with clause 6.2;
- 6.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods;
- 6.3.3 the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- 6.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
- 6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 6.3.6 the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 The Supplier's only liability to the Customer if the Goods fail to comply with the warranties set out in clause 6.1 is as set out in this clause 6.
- 6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.6 The terms of the Contract shall apply to any repaired or replacement Goods supplied by the Supplier.
7. **TITLE AND RISK**
- 7.1 Risk in Goods shall pass to the Customer on completion of delivery of the Goods at the Delivery Location.
- 7.2 Title to Goods shall only pass to the Customer once the Supplier receives payment in full (in cash or cleared funds) for them.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 7.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.1.2; and
- 7.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 7.4 The Supplier may recover Goods in which title has not passed to the Customer. The Customer irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in clause 7.3, and to recover any Goods in which property has not passed to the Customer.
- 7.5 The Supplier may at any time after delivery elect to transfer title in the Goods to the Customer, in which case the Customer shall immediately pay the Price to the Seller.
- 8. PRICE AND PAYMENT**
- 8.1 The Price shall be set out in the Order. The Customer shall pay for Goods in accordance with this clause 8.
- 8.2 Delivery of Goods in the UK: the Price shall include the costs of packaging, insurance and transport of the Goods, but shall exclude amounts in respect of value added tax (**VAT**) which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable). In the event that Goods cannot be delivered due to the Customer's non-availability, the Supplier reserves the right to charge for any return and/or re-delivery costs.
- 8.3 Delivery of Goods outside the UK: the Price excludes:
- 8.3.1 the costs of packaging, insurance and transport of the Goods (including any return and/or re-delivery costs in the event that Goods cannot be delivered due to the Customer's non-availability), which shall be invoiced to the Customer in addition to the Price;
- 8.3.2 amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable); and
- 8.3.3 any costs in relation to customs or export/import duties which may be payable in respect of the Goods, which shall be payable by the Customer in addition to the Price.
- 8.4 The Supplier shall invoice the Customer for the price of Goods plus VAT at the prevailing rate (if applicable) at the time it confirms the relevant Order to the Customer and the Supplier shall not be obliged to take any further steps under the Contract until it has received payment in full..
- 8.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 11:
- 8.5.1 the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and/or
- 8.5.2 the Supplier may suspend all further deliveries of Goods until payment has been made in full.
- 8.6 The Customer shall pay all amounts due under the contract in full without set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Supplier to the Customer.
- 9. LIMITATION OF LIABILITY**
- 9.1 Nothing in this Contract shall limit or exclude the Supplier's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 9.1.2 fraud or fraudulent misrepresentation;
- 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 9.1.4 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- 9.2.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for (i) any loss of profit (direct or indirect), or any indirect or consequential loss arising under or in connection with the Contract; and
- 9.2.2 the Supplier's total liability to the Customer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the total sums paid and/or payable by the Customer for Goods under this Contract.

10. COMPLIANCE WITH RELEVANT LAWS AND POLICIES

In performing its obligations under the Contract, the Supplier shall comply with all applicable UK laws, statutes, regulations and codes from time to time in force.

11. TERMINATION

11.1 Without limiting its other rights or remedies, either party may terminate this Contract with immediate effect by giving written notice to the other party if:

11.1.1 the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing to do so;

11.1.2 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), 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];

11.1.3 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; or

11.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

11.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

11.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.

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

12. GENERAL

12.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.

12.2 Assignment and other dealings.

12.2.1 The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

12.2.2 The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

12.3 Confidentiality.

12.3.1 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

12.4 Entire agreement.

12.4.1 This Contract (including an Order) constitutes the entire agreement between the parties in respect of that Order and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. In the event of a clash between any term of an Order and this Contract, the Order shall prevail.

12.4.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

12.5 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.6 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy 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 modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-

provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

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12.8 Notices.

12.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

12.8.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.8.1; 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 delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

12.8.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.9 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

12.10 **Governing law.** This 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 this Contract or its subject matter or formation.

DETAILS ABOUT THE SUPPLIER

Company Name:	Emerald Bespoke Ltd
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