

**STANDARD TERMS AND CONDITIONS
OF SUPPLY FOR ProVia PRODUCTS**



1 INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

Word	Meaning
"Buyer"	the person(s), firm or company from whom an order to supply Goods is received by the Company;
"Company"	WABCO Automotive U.K. Limited whose registered office is at Unit A1 Grange Valley, Grange Valley Road, Batley, West Yorkshire WF17 6GH (registered number 00709827);
"Company Materials"	any documents or other materials, and any data or other information provided by the Company relating to the Goods;
"Contract"	any contract between the Company and the Buyer for the sale and purchase of the Goods;
"Delivery Point"	the place where delivery of the Goods is to take place under Condition 4.1;
"Goods"	any ProVia products agreed in the Contract to be supplied to the Buyer by the Company (including 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 headings will not affect the construction of these Conditions.

2 APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These Conditions apply to all of the Company's sales of Goods and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Company.

2.4 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until the Company issues a written acknowledgement of order or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer must ensure that the terms of its order are complete and accurate.

2.7 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 14 days only from its date, provided that the Company has not previously withdrawn it. The Company reserves the right to amend the terms of the quotation at any time prior to the acknowledgement of order.

2.8 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the installation, use or maintenance of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk. Accordingly the Company is not liable for any such advice or recommendation which is not so confirmed.

3 DESCRIPTION

3.1 The description of the Goods shall be as set out in the Company's quotation.

3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.

4 DELIVERY

4.1 Unless otherwise agreed in writing by the Company delivery of the Goods shall take place at the Company's place of business.

4.2 The Buyer will take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

4.4 Subject to the other provisions of these Conditions the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.5 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

4.5.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);

4.5.2 the Goods will be deemed to have been delivered; and

4.5.3 the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

- 4.6 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading the Goods.
- 4.7 The Company may deliver the Goods by instalments and each instalment shall be treated as a separate Contract so that failure to deliver or defect in one or more instalment shall not entitle the Buyer to reject the other instalments.

5 NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods unless written notice is given to the Company within 7 days of the date when the Goods would, in the ordinary course of events, have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6 RISK/TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
 - 6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
 - 6.3.5 hold the proceeds of the insurance referred to in Condition 6.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 6.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - 6.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if:

- 6.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 6.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 6.5.3 the Buyer encumbers or in any way charges any of the Goods.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7 PRICE

- 7.1 Unless otherwise agreed by the Company in writing the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.
- 7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance (unless otherwise agreed in writing) all of which amounts the Buyer will pay in addition when it is due to pay for the Goods, but inclusive of packaging costs.
- 7.3 The Company reserves the right to alter the prices charged to the Buyer at any time before delivery in the event of increases in costs incurred by the Company including without limitation alterations to rates of taxation, fluctuations in currency rates or the cost of raw materials.

8 PAYMENT

- 8.1 Payment of the price for the Goods is due and payable within 30 days after the date of the relevant invoice.
- 8.2 Time for payment shall be of the essence.
- 8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

- 8.4 All payments shall be made by electronic bank transfer directly to the Company's nominated bank account (details of which shall be provided to the Buyer at the time of the acknowledgement of order).
- 8.5 The Company reserves the right to require payment (whether whole or in part) for the Goods in advance of delivery.
- 8.6 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 8.7 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 8.8 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.
- 8.9 The Company reserves the right to claim interest and fixed sum compensation under the Late Payment of Commercial Debts (Interest) Act 1998.

9 QUALITY

- 9.1 The Company warrants that (subject to the other provisions of these Conditions) upon delivery, and for a period of 12 months from the date of delivery, the Goods will:
 - 9.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1994; and
 - 9.1.2 be reasonably fit for the purpose of use as specified in the accompanying technical documentation.
- 9.2 The Company shall not be liable for a breach of the warranties in Condition 9.1 unless:
 - 9.2.1 the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
 - 9.2.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods, at the Company's expense, to the Company's place of business for the examination to take place.
- 9.3 The Company shall not be liable for a breach of the warranties in Condition 9.1 if:
 - 9.3.1 the Buyer makes any further use of such Goods after giving such notice; or
 - 9.3.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
 - 9.3.3 the Buyer alters or repairs such Goods without the written consent of the Company.
- 9.4 Subject to Conditions 9.2 and 9.3, if any of the Goods do not conform with the warranties in Condition 9.1 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective carefully packaged to the Company.
- 9.5 If the Company complies with Condition 9.4 it shall have no further liability for a breach of the warranties in Condition 9.1 in respect of such Goods.

10 LIMITATION OF LIABILITY

- 10.1 Subject to Condition 9, the following provisions of this Condition 10 set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
 - 10.1.1 any breach of these Conditions; and
 - 10.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.
- 10.4 Subject to Conditions 10.2 and 10.3:
 - 10.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to 100,000.00 £; and
 - 10.4.2 the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11 DATA PROTECTION COMPLIANCE

- 11.1 Each party, when processing personal data under or in connection with the Agreement (collectively, "Personal Data"), determines alone and not jointly with the other party the purposes and the means of such processing. Each party shall therefore act as a separate data controller. When processing Personal Data, each party shall comply with its obligations under applicable data protection legislation.
- 11.2 Buyer acknowledges and agrees that the Company may process Personal Data of Buyer and its representatives, including name, address, telephone number, email address, credit card and transaction details, for account and order processing, communication and payment purposes (collectively, "Purposes").

11.3 Buyer warrants and represents that (a) the Personal Data is collected by Buyer and provided to the Company in accordance with applicable data protection legislation, (b) it will not do or omit to do anything which may cause the Company to be in breach of applicable data protection legislation when processing Personal Data, and (c) the persons whose Personal Data are provided by or on behalf of Buyer to the Company have been informed of, and if required, have given valid consent to the processing of their Personal Data by the Company for the Purposes.

11.4 Each party shall, in relation to the Personal Data, provide reasonable assistance, information and co-operation to the other Party in respect of data protection matters, including (without limitation) in respect of (a) any claim or exercise of purported exercise of rights by a data subject or any investigation or enforcement activity by a regulator relating to or connected with the other party's processing of Personal Data, and (b) any actual, potential or attempted personal data breach.

12 ASSIGNMENT

12.1 The Buyer may not assign the Contract or any part of it without the prior written consent of the Company.

12.2 The Company may assign the Contract or any part of it to any person.

13 INTELLECTUAL PROPERTY

13.1 The property and any copyright or other intellectual property rights in any Company Materials shall, unless otherwise agreed in writing between the Buyer and the Company, belong to the Company, subject only to a revocable, royalty free licence in favour of the Buyer to use the Company Materials for the purposes of receiving the Goods.

14 COMMUNICATIONS

14.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

14.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

14.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.

14.2 Communications shall be deemed to have been received:

14.2.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays within the UK) after posting (exclusive of the day of posting);

14.2.2 if delivered by hand, on the day of delivery;

14.2.3 if sent by facsimile transmission on a working day prior to 4.00 p.m., at the time of transmission and otherwise on the next working day.

15 FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials. Provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

16 GENERAL

16.1 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.

16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract shall continue in full force and effect.

16.3 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.

16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

16.5 The parties to this Contract do not intend that any term of this 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.

16.6 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.