

**SMH FLEET SOLUTIONS LIMITED  
STANDARD CONDITIONS OF BUSINESS**

1. **Definitions**  
In these conditions the following words have the following meanings:  
**"Company"** means SMH Fleet Solutions Limited;  
**"Customer"** means the person to whom the Company supplies the Services;  
**"Liability"** means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities; and  
**"Services"** means the services and/or work to be performed by the Company for the Customer as indicated in the Order Form and for which rates have been provided in Appendix A.
  2. **Conditions of business**  
2.1 These conditions shall govern the agreement between the Customer and the Company to the exclusion of any other terms or conditions. Any orders placed by the Customer in any format leading to a contract which is not expressed to be subject to these conditions shall still be subject to them. These conditions supersede all previous terms and conditions and shall replace any terms and conditions previously notified to the Customer.  
2.2 No variation to these conditions shall be binding on the Company unless contained in the Company's quotation or agreed in writing between the Customer and one of the Company's Directors.  
2.3 The Company's employees, sub-contractors and/or agents are not authorised to make any representations or warranties concerning the Services unless confirmed by the Company in writing.
  3. **Services**  
3.1 It shall be at the Company's sole discretion how the Services are performed.  
3.2 Where the Services include vehicle movement services, the Company will provide the Customer with confirmation of all vehicle movements on a weekly basis and will provide delivery notes to the Customer for all vehicles delivered to the Customer's end users or collected from the Customer's site and stored at the Company's site, showing details of the (as appropriate) end user, the vehicle and condition report.
  4. **Times for Performance**  
4.1 Times for performance are estimates only and are not guaranteed. Time is not of the essence in relation to such dates. They are also subject to any matter beyond the Company's reasonable control.  
4.2 The Company will use its reasonable commercial endeavours to ensure delivery and/or performance on (or before) the dates specified in any order for Services.  
4.3 Where Services are to be performed in stages, each separate stage shall constitute a separate and distinct contract and failure by the Company to deliver, or any claim by the Customer in respect of, any stage shall not entitle the Customer to repudiate and/or terminate this Contract as a whole.
  5. **Postponement**  
5.1 The Company will use its commercial endeavours to comply with reasonable requests by the Customer for postponement of performance of the Services but shall be under no obligation to do so.  
5.2 Where performance of the Services is postponed at the Customer's request then the Customer shall pay all the Company's costs and expenses incurred as a result including reasonable charges for storage, transportation and insurance. In addition the Customer shall be obliged to pay for the Services as if performance had not been postponed.
  6. **Price**  
6.1 Unless otherwise stated in an order form the price for the services will be as follows:  

Movement of any vehicle by a Company driver - £1.25 pence per mile driven	13.12
Storage of a vehicle by the Company - £51.00 per day	
Release fee for any vehicle by the Company - £45.00	
Insurance of any vehicle by the Company - £5.85 per day	
Fuel added to any Customer vehicle - £ 1.75 per litre	13.8.4
Maintenance charges per vehicle repair - £75.00 per hour	13.8.5
Parts required for vehicle maintenance - retail plus 10%	13.8.6

(All charges are exclusive of VAT)
  - 6.2 The Company may increase its prices in relation to the Services which it has agreed to supply where the increase is to take account of increases in costs, expenses and/or materials suffered by the Company. In particular, if diesel fuel costs increase the Company will be entitled to charge the Customer a fuel surcharge as set out in Appendix A.  
6.3 The Customer will be informed in writing by the Company of any increases in prices for the Services not less than 30 days before such increase takes effect.  
6.4 The Customer may cancel without Liability any Contract in relation to which the price is to be increased provided that the notice of cancellation is received by the Company before the price increase becomes effective.  
6.5 If the Customer does not cancel the Contract for the provision of the Services within the specified time period then the price increase shall take effect.  
6.6 The Company's prices are exclusive of any applicable VAT for which the Customer shall additionally be liable.  
6.7 The Company's terms of payment are set out on the Order Form. Time for payment shall be of the essence.  
6.8 If the Customer fails to make any payment in full on the due date the Company may charge the Customer any reasonable additional administration costs and/or interest (both before and after judgment) on the amount unpaid and the rate of interest shall be the rate of 4% above the base rate from time to time of HSBC Bank Plc compounded with monthly quarterly rests or the rate of interest prescribed by law.  
6.9 The Customer shall pay all sums due to the Company under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.  
6.10 Payment shall not be deemed to be made until the Company has received either cash or cleared funds in respect of the full amount outstanding.  
6.11 The Company shall be entitled to render an invoice to the Customer on the dates set out on the Front Sheet.  
6.12 If payment in full is not made to the Company when due then the Company may withhold or suspend future or current performance of the Services.  
6.13 If any Services are cancelled or this Contract terminated or performance is suspended before completion of the Services the Company shall be entitled to be paid on a quantum meruit basis for that part of the Services performed. The Company may invoice the Customer accordingly and such monies shall be immediately due for payment.
  7. **Credit Limit**  
7.1 The Company may set a reasonable credit limit for the Customer. Changes in the Customer's credit limit will be notified to the Customer from time to time.  
7.2 The Company reserves the right to refuse to accept orders for Services and/or to suspend or withhold the performance of the Services if such Services would result in the Customer exceeding the Customer's credit limit or the Customer's credit limit is already exceeded.
  8. **Cancellation**  
8.1 The Customer may cancel performance of the Services upon payment to the Company of the charges relating to cancellation set out in Appendix A, on condition that the Company shall have no Liability to the Customer in relation to any Contract cancelled in accordance with this clause.
  9. **Site For Services**  
9.1 The Customer will allow and/or procure sufficient access for the Company's employees, sub-contractors and/or agents to allow them to carry out the Services.  
9.2 The Customer will allow and/or procure sufficient unloading space, facilities and equipment to allow the Services to be carried out.  
9.3 If the Customer refuses to allow or fails to procure that a third party allows performance of the Services, then the Company shall be entitled to withhold performance of any other Services and/or to treat this Contract as repudiated by the Customer and/or may charge the Customer as if the Services had been performed.
  10. **Property And Risk**  
10.1 Risk of damage to or loss of a vehicle which is the subject of the Services shall be with the Customer, unless the option to insure the vehicles at the price stated is confirmed in writing to the Company.  
10.2 Risk of damage to or loss of any parts utilised in the Services shall pass to the Customer once utilised in the performance of the Services. Property in such parts shall pass to the Customer upon payment to the Company in full of all sums relating to such parts.
  11. **Default**  
11.1 If the Customer:-  
11.1.1 fails to make any payment to the Company when due;  
11.1.2 breaches the terms of this Contract and, if the breach is capable of remedy, have not remedied the breach within 14 days of receiving notice requiring the breach to be remedied; persistently breaches any one or more terms of this Contract; ceases or threatens to cease to carry on business, or proposes to compound with the Customer creditors, applies for an interim order under Section 252 Insolvency Act 1986 or have a Bankruptcy Petition presented against the Customer, enters into voluntary or compulsory liquidation, has a receiver, administrator, liquidator, trustee, administrative receiver or other similar officer appointed to the Customer or over all or any of the Customer's assets or any part of the Customer's undertaking, or take or suffer any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by the Customer or by any other person to the Customer in respect of any of the above; [appears to the Company due to the Customer's credit rating to be financially inadequate to meet the Customer's obligations under the Contract]; and/or appears reasonably to the Company to be about to suffer any of the above events; then the Company shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 11.2 below.  
11.2 If any of the events set out in clause 11.1 above occurs in relation to the Customer then:-  
11.2.1 the Company may withhold the performance of any Services and cease any Services in progress;  
11.2.2 the Company may cancel, terminate and/or suspend without Liability to the Customer any agreement with the Customer; and/or all monies owed by the Customer to the Company shall forthwith become due and payable.
  - 11.3 The Company shall have a lien over all property or goods belonging to the Customer which may be in the Company's possession in respect of all sums due from the Customer to the Company.  
11.4 Upon the termination of the Contract for any reason and/or if any monies due to the Company from the Customer have not been paid within 14 days of the due date the Company may sell any property or goods over which the Company has a lien in accordance with clause 11.3 above (and the Customer agrees that the Company may give good title for such property and/or goods) and shall apply the proceeds of sale firstly in discharging any costs or expenses of sale, secondly in repaying any interest owed by the Customer to the Company, thirdly in payment of any principal sums owed to the Company and fourthly the Company shall account to the Customer for the remainder (if any).
  12. **Repairs And Replacements**  
12.1 The Company will at its option either refund the price, repair, replace free of charge or re-perform any defective Services where the defect is apparent on inspection provided that the defect is notified to the Company within [14] working days of when the Customer or its end user first had an opportunity to inspect such Services.  
12.2 The Company shall have the right, upon its request and where reasonable, to inspect the subject-matter of any allegedly defective Services at a mutually convenient time, and the Company will not have any Liability for defective Services until the Company has been allowed to make such inspection.  
12.3 The Company may at its sole discretion replace, repair free of charge, re-perform or refund the price of defective Services which are not notified to the Company within the specified time limit where in the
- Company's opinion the defect would not have been ascertainable on inspection and has been notified to the Company as soon as reasonably practicable.
13. **Limitations On Liability**  
13.1 The Company shall have no Liability for defective Services where the defect has been caused or contributed to by the Customer or its end user to the extent so contributed.  
13.2 The Company shall have no Liability to the Customer if the price for the Services has not been paid in full by the due date for payment.  
13.3 The Company shall have no Liability to the Customer for defective Services, unless the event is notified to the Company within the appropriate time limit set out in this Contract.  
13.4 The Customer shall where reasonable give the Company a reasonable opportunity to remedy any matter for which the Company is liable before the Customer incurs any costs and/or expenses in remedying the matter themselves. If the Customer does not do so the Company shall have no Liability to the Customer.  
13.5 The Customer shall where reasonable produce to the Company written evidence of any claims for which it is alleged that the Company is liable together with written details of how loss was caused by the Company and the steps the Customer has taken to mitigate the loss before the Company shall have any Liability for the claim by the Customer.  
13.6 The Company shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Company.  
13.7 The Company shall have no Liability for any matters which are outside the Company's reasonable control.  
13.8 The Company shall have no Liability to the Customer for any:-  

economic and/or other similar losses;	
loss of profits and/or damage to goodwill;	
special damages;	
aggravated, punitive and exemplary damages;	
consequential losses and/or indirect losses; and/or	
business interruption, loss of business, loss of contracts, loss of opportunity	

and/or production.  
13.9 The Customer shall be under a duty to mitigate any loss, damage, costs or expenses that the Customer may suffer.  
13.10 The Company's total Liability to the Customer in connection with this contract in any relevant 12 month period shall not exceed £500,000.00 For the purposes of this clause, a relevant 12 month period means the 12 months immediately prior to the acts and/or omissions giving rise to the Liability.  
13.11 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:-  

Liability in contract (including fundamental breach);	
Liability in tort (including negligence);	
Liability for breach of statutory duty; and	
Liability for breach of Common Law.	

except clause 14.10 above capping the Company's Liability which shall apply once only in respect of all of the said types of Liability.  
13.12 Nothing in this Contract shall exclude or limit the Company's Liability for death or personal injury due to the Company's negligence or any Liability which is due to the Company's fraud or any other liability which it is not permitted to exclude or limit as a matter of law.  
13.13 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.
  14. **Confidentiality**  
14.1 Neither party shall use and/or disclose any confidential information which is acquired by it about the other's business and/or given by one party to the other party and/or generated by either party from the other party's confidential information except in the proper performance of this Contract.
  16. **Termination for Insolvency; Breach or Non-performance**  
16.1 Without prejudice to any other rights or remedies that Company may have it may terminate this Agreement forthwith by written notice to the Customer without liability if:  
16.2 the Customer shall fail to observe any of the terms or conditions contained in this Agreement on its part to be performed and observed and if such failure shall be remediable and the Customer does not remedy that failure within fifteen (15) days of it receiving written notice of the failure from the Company identifying the failure and requesting the Supplier to remedy it; or  
16.3 the Customer shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement of the Customer within Part I of the Insolvency Act 1986 or for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the Supplier shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Customer or if an order is made or a meeting is convened for the purpose of considering a resolution for the winding up of the Customer or for the making of an administration order (otherwise for the purpose of an amalgamation or reconstruction) in respect of the Supplier; or any security holder or mortgagee takes steps to enforce his security against the Customer in accordance with the terms of the security; or control (as that expression is defined in section 840 of the Income and Corporation Taxes Act 1988) of the Customer shall change and:-  

(i) where control is to be exercised by a company which the Company reasonably believes to be not financially secure or where control passes to a competitor of the Company, change occurs without the Company's consent; or	
(ii) where in any other case the change of control occurs without the Company's consent (not to be unreasonably withheld or delayed); or	

16.4 the Customer shall dispose of or cease to carry on a substantial part of the business carried on by it now or hereafter; or  
16.5 either party shall fail to comply with the decision of an arbitrator pursuant to this Agreement;  
16.6 If the Customer fails to pay undisputed invoices for a period of one or two consecutive months and the Company has served the Customer with written notice of its intention to terminate if the invoices are not paid within thirty days of such notice, the Company shall be entitled to terminate this Agreement immediately.  
16.7 Without prejudice to any other rights or remedies the Company may have, it may terminate this Agreement forthwith by written notice to Customer without liability to the Company if:  
16.8 the Customer fails to observe any of the terms and conditions contained in this Agreement on its part to be performed and observed and if such failure shall be remediable and the Customer does not remedy that failure within 30 (thirty) days of it receiving written notice of the failure from the Supplier identifying the failure and requesting the Customer to remedy it; or  
16.9 the Customer shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement of the customer within Part I of the Insolvency Act 1986 or for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the customer shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Customer or if an order is made or a meeting is convened for the purpose of considering a resolution for the winding up of the Customer or for the making of an administration order (otherwise for the purpose of an amalgamation or reconstruction) in respect of the Customer.
  - 16.10 In the event of termination due to clauses 16.1 through to 16.9 the pricing charged by the Company for any services will be the Company's standard pricing terms as set out in section 7.1
  17. **Non-Assignment**  
17.1 This Agreement shall be binding upon and endure to the benefit of the permitted assignees and the respective legal successors by operation of law of the parties hereto but neither the benefit nor the burden of this Agreement shall be assignable by either party without the prior written consent of the other party such consent not to be unreasonably withheld or delayed.
  18. **General**  
18.1 The Customer agrees to indemnify and keep indemnified the Company against any and all losses, proceedings, lost profits, damages, awards, expenses, costs (including increased administration costs and legal costs on a full indemnity basis), claims, actions and any other losses and/or liabilities suffered by the Company and arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by the Customer.  
18.2 No waiver by the Company of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.  
18.3 If any provision of this Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.  
18.4 The Company shall have no Liability to the Customer for any delay in performance of this Contract (other than in relation to payment) to the extent that such delay is due to any events outside the Company's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, subcontractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. If the Company is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.  
18.5 The Customer shall not assign the Customer's rights and/or obligations in the Contract (or any part) without the Company's written consent. The Company may assign the Company's rights and/or obligations in the Contract (or any part).  
18.6 All third party rights are excluded and no third party shall have any right to enforce this Contract. Any right of a third party to enforce this Contract may be varied and/or extinguished by agreement between the parties to this Contract without the consent of such third party.  
18.7 This Contract is governed by and interpreted in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.