ACTIVATE LUBRICANTS - CONDITIONS OF SALE

1 **DEFINITIONS**

1.1 'The Company' means Activate Lubricants.

1.2 'Goods' means materials or things to be supplied by the Company.

1.3 'Purchaser' means the person, firm or company to whom goods are supplied.

2 **GENERAL**

2.1 The Company offers goods for sale subject to these Conditions which shall apply to all contracts made by the Company for the sale of goods to the exclusion of any terms or conditions contained in any document issued by or on behalf of the Purchaser.

2.2 No alterations or addition to or exclusion of these Conditions or any part thereof shall be effective unless agreed in writing by a Partner of the Company.

2.3 Save as aforesaid, no servant or agent of the Company has authority to modify, amend or exclude these Conditions or any part thereof, or to enter into an agreement to sell on any other terms, or to take any representation or warranty in relation to any goods supplied without the express authority in writing of a Partner of the Company.

3 **OFFERS FOR SALE**

3.1 Statements in the Company's price lists, sales leaflets, catalogues and advertisements shall not constitute an offer to sell.

3.2 Quotations issued by the Company shall constitute an offer to sell goods in accordance with the description and specification there stated and on the terms there stated and subject to these Conditions.

3.3 Unless otherwise stated in writing in the quotation, an offer of sale by the Company contained in a quotation shall remain open for acceptance for a period of 30 days from the date thereof. In any event and notwithstanding the foregoing, any offer by the Company shall be subject to the right of the Company to revoke any offer at any time by notice to the offeree.

4 **PRICE**

4.1 The price of goods supplied shall be the price ruling at date of despatch in the Company's current trade price list or the price stated in the Company's quotation.

4.2 Unless previously agreed in writing in accordance with Condition 2, prices stated by the Company are for delivery on UK mainland only, provided the net invoice value exceeds £150.

4.3 Unless previously agreed in writing in accordance with Condition 2, the price of all Goods shall exclude Value Added Tax and all applicable taxes and duties, the cost of which shall be determined at the date of the invoice and shall be payable by the Purchaser.

4.4 The Purchaser shall not be entitled to make any deduction from the price of the Goods in respect of any set-off or Counterclaim unless both the validity and the amount thereof have been expressly admitted by the Company in writing.

5 **PAYMENT**

5.1 Unless otherwise agreed in writing and in accordance with Condition 2, or unless the Purchaser has an account with the Company, the price of the Goods and any additional charges will be paid in full in cash, on or before delivery.

5.2 Where the Purchaser has an account with the Company, the price of the Goods and any additional charges will be paid in full not later than 30 days from the date of the invoice.

5.3 The Company shall be entitled to close any account, at any time, at its sole discretion. In that event, the balance of the account shall be payable forthwith.

5.4 Time of payment is of the essence of the Contract.

5.5 Without prejudice to any rights of the Company, whether rising pursuant to the express or implied terms hereof, at common law or by statute or otherwise howsoever, in the event that the Purchaser fails to pay the price of any part thereof or any other sum due hereunder in accordance with these Conditions,

a) the Company shall be entitled to charge interest at the rate of 2% per month on a daily basis on all sums which remain payable by the Purchaser from the date on which sums became payable until payment has been received by the Company;

b) The Company shall be entitled to refuse to make delivery of any goods ordered by the Purchaser whether under the same or any other contract with the Company, without incurring any liability whatsoever to the Purchaser, until payment in full of all sums due from the Purchaser to the Company has been received by the Company;

c) The Company shall be entitled to recover all costs and expenses incurred by the Company in the collection or recovery of sums due and the Purchaser hereby agrees to indemnify the Company in respect of all such costs and expenses.

6 **PROPERTY AND RISK**

6.1 The Purchaser acknowledges that before entering into an agreement to purchase Goods from the Company he has expressly or by placing an order impliedly represented and warranted that:

a) he is not insolvent;

b) he has not committed an act of bankruptcy;

c) being a company with limited or unlimited liability, it knows of no circumstances which would entitle any debenture holder, secured creditor or any other person to appoint a receiver, to petition for its winding-up or to exercise any other rights over or against its assets.

6.2 All goods shall be at the Purchaser's risk from the time of delivery to the Purchaser, save that if property passes to the Purchaser prior to delivery the Goods shall be at the Purchaser's risk from the time when property passes to the Purchaser. A Purchaser shall ensure that Goods the property of the Company are at all times when at risk of the Purchaser the subject of insurance cover against all risks.

6.3 Until such time as the Purchaser shall have paid the Company in full the price of and all additional charges in respect of Goods supplied,

a) such Goods shall remain the sole and absolute property of the Company as legal and equitable owner and the Company shall reserve the right to dispose thereof;

b) the Purchaser shall be in possession of the Goods solely as bailee for the Company;

c) the Purchaser shall store the Goods on his premises, separate from his own Goods and those of any other person in a manner which makes them readily identifiable as the Goods of the Company.

6.4 Subject to the terms hereof, the Purchaser is licensed by the Company to sell or to agree to sell to a sub-purchaser or sub-purchasers Goods supplied and delivered by the Company to the Purchaser, notwithstanding that ownership of the Goods has not passed to the Purchaser, on the express condition that such a sale or agreement to sell shall, as between the Company and the Purchaser, be made by the Purchaser as agent of the Company (save that the Purchaser shall not hold himself out as such) and bailee for the Company, whether the Purchaser sells on his own account or not, that the Purchaser owes a fiduciary duty to the Company and that such part of the proceeds thereof as represents or is equal to the price and additional charges at which the Goods resold were invoiced by the Company to the Purchaser shall be held in trust for the Company and shall not be mingled with any other monies or paid into any overdrawn bank account and shall at all times be identifiable as the Company's monies and the Company shall have the right to trace the said part of the proceeds.

6.5 Without prejudice to any other rights of the Company, if the Purchaser becomes insolvent or makes composition with his creditors or enters into any negotiations for arrangement or composition with his creditors, or commits an act of bankruptcy or has a petition in bankruptcy presented against him or if the Purchaser does or fails to do anything which would entitle a receiver to take possession of any of the Purchaser's assets or undertakings, or if a receiver of the Purchaser's assets or undertakings or any part thereof shall be appointed or if any part of the contract price of or additional charges in respect of the Goods remains unpaid after the date on which it fall due, or if the Purchaser is or becomes in default of any of his obligations hereunder, or if the Purchaser ceases or threatens to cease to carry on business, or if any distress or execution shall be levied upon the Purchaser, or if the Purchaser, being a body corporate, does or fails to do anything which act or failure would entitle any person to present a petition for winding-up, or if any resolution is proposed or petition presented to wind-up by the Purchaser, or if an application is made for an administration order, or if the Company considers that its interest in goods supplied to the Purchaser is prejudiced in any way;

a) the Purchaser's right of possession shall cease;

b) the Company may by its servants or agents enter any premises where its Goods are stored or are reasonably believed to be stored and repossess the same without prejudice to the obligation of the Purchaser to purchase the Goods;

c) the Company may, with or without notice, terminate the Agreement insofar as it remains unperformed and the Purchaser shall be liable to pay to the Company all sums due at termination plus the amount of any loss, sustained by the Company on the resale of undelivered goods, without prejudice to any other rights of the Company; and

d) The Purchaser's right of resale under Condition 6.4 hereof shall cease.

6.6 The Company may maintain an action for the price of Goods sold notwithstanding that the property in them may not have passed to the Purchaser.

6.7 The Purchaser shall have no power to create any charge, lien or other encumbrance whatsoever on the Goods or any part thereof so long as the property in and legal ownership in the same shall remain in the Company.

7 **DELIVERY**

7.1 Any date agreed by the Company for the supply or delivery of goods shall not be a contractual term but an indication of the approximate date of supply or delivery only and in the event of any failure of the Company to deliver or supply on such date or to deliver or supply Goods of the correct quantity, quality or description or at all on such date for any reason whatsoever, whether or not due to the negligence of the Company, its servants or agents, the said failure shall not constitute a breach or repudiation by the Company of any agreement and the Company shall not be liable for any loss or damage whatsoever (including any consequential loss or damage of any nature whatsoever) arising therefrom or in connection therewith whether in contract, tort or otherwise howsoever, whether the same be due to any act, omission, or negligence on the part of the Company, its servants or agents, or any act, omission, negligence or wilful default on the part of its suppliers or the manufacturers of the Goods, or any other cause whatsoever, save where an absolute legal prohibition against exclusion and restriction of liability applies.

7.2 Save where the Company expressly states to the contrary, all sales shall be on a free delivered UK mainland basis, provided the net invoice value exceeds £150.

7.3 Delivery and the Purchaser's acceptance of the Goods shall be deemed to take place upon the occurrence of the first in time of the following:

a) the delivery of the Goods to the Purchaser at the Company's premises;

b) the delivery of the Goods to the Purchaser's carrier or his agent;

c) the delivery of the Goods to the Purchaser's place of business;

d) the delivery of the Goods to such place in the United Kingdom mainland as the Purchaser may reasonably specify.

7.4 The Company shall be entitled to deliver by instalments.

7.5 Save where an absolute legal prohibition against exclusion and restriction of liability applies, the Company shall not be liable:

a) for partial loss, partial misdelivery or shortage unless the Company is advised thereof in writing (otherwise than on a consignment or delivery note) within 3 days and the claim is made in writing within 14 days after delivery;

b) for loss or non-delivery of the whole consignment or of any separate package or container forming part of the consignment unless the Company is advised of the loss or non-delivery in writing (otherwise than on a consignment or delivery note) within 3 days and the claim is made within 14 days of the despatch of the Goods from the Company's premises.

c) the Company must be notified in writing if Goods are not received within 14 days of date of invoice.

7.6 Without prejudice to any other rights of the Company, whether arising pursuant to the express or implied terms hereof, at common law or by statute or otherwise howsoever, if the Purchaser shall fail to give on or before the agreed date of delivery all instructions and all documents, licences, consents and authority which the Company may reasonably require to enable it to make delivery of the Goods in manner satisfactory to the Purchaser or shall otherwise cause or request delay or fail to take delivery the Purchaser shall pay to the Company all storage costs incurred and arising from such delay and if such delay continues for a period in excess of 3 months or beyond the expiry of a period of reasonable notice given by the Company the Company shall be entitled to rescind the Contract of Sale and resell the Goods

8 **DEFECTIVE GOODS**

8.1 The Purchaser undertakes that on discovering any defect in the Goods it will give immediate written notice to the Company (otherwise than on a consignment or delivery note) and thereafter in accordance with the Company's instructions return the Goods to the Company for examination. The Purchaser further undertakes that he will prevent further use or distribution of such Goods.

8.2 The Company undertakes that it will, at its option, either replace or refund the contract price of any Goods supplied which are defective or do not conform with their contract description or sample, provided that:

a) in the case of defects or non-conformity with description or sample which were apparent on delivery, the Company shall be under no obligation to replace or refund the contract price unless advised of the defect or non-conformity in writing (otherwise than on a consignment or delivery note) within 14 days of delivery and the Goods alleged to be defective or not in conformity with description or samples are thereafter returned to the Company for examination in accordance with Condition 8.1 hereof;

b) in any event, the Company shall be under no obligation to replace any Goods or refund the contract price or any other obligation whatsoever in respect thereof unless advised of the defect within 12 months of delivery.

All other warranties or conditions as to quality or description (statutory or otherwise) are excluded except in so far as such exclusion is prevented by law.

8.3 In cases where the Company exercises its option to replace defective Goods, the replacement Goods shall be supplied subject to these Conditions of Sale.

8.4 Save as expressly provided in Condition 8.2 hereof and save where an absolute legal prohibition against exclusion and restriction of liability applies the Company its servants or agents shall be under no liability whatsoever to the Purchaser, whether in contract, tort or otherwise howsoever (including any liability for consequential injury, loss or damage of any nature whatsoever) for or arising out of or in connection with defect in, failure of or unsuitability for any purpose, failure to conform with description or sample of the Goods or any part thereof whether the same be due to any act, omission or negligence on the part of the Company, its servants or agents, or any act, omission, negligence or wilful default on the part of its suppliers or the manufacturers of the Goods, or any other cause whatsoever, and all conditions, warranties and other terms whether express or implied, statutory or otherwise, inconsistent with the provisions of this term are herby excluded.

9 **ADVICE, INFORMATION, OPINION ETC**

9.1 Save where an absolute legal prohibition against exclusion and restriction of liability applies, the Company, its servants and agents shall be under no liability whatsoever to the Purchaser whether in contract, tort or otherwise howsoever (including any liability for consequential injury, loss or damage of any nature whatsoever) for or arising out of any advice, information, opinion or statement given or made by the Company, its servants or agents, and whether the same be oral or in writing and whether or not the same be due to any negligent act or omission on the part of the Company, its servants or agents, and all conditions, warranties and other terms whether express or implied, statutory or otherwise, inconsistent with the provisions of this sub-paragraph are hereby excluded.

9.2 It is the responsibility of the Purchaser to determine whether the Goods ordered are fit for any purpose for which they may be required, and all conditions, warranties and other terms whether express or implied, statutory or otherwise, inconsistent with the provisions of this sub-paragraph are hereby excluded, except in so far as such exclusion is prevented by law.

10 **LIMITATION OF LIABILITY**

If, notwithstanding the other provisions hereof, the Company shall be held to be under any liability (whether in contract, tort or otherwise howsoever and whether or not due to any negligence on the part of the Company its servants or agents), without prejudice to the other provisions hereof such liability shall not exceed the sum of £5,000 in respect of any claim, save where an absolute legal prohibition against exclusion or restriction of liability applies.

11 **FORCE MAJEURE**

If the Company is prevented, hindered or delayed, whether directly or indirectly from making delivery of the Goods or any part thereof in accordance with the terms of any agreement or from otherwise performing such agreement or any part thereof by reason of an act or acts of God, war, embargo, riot, strike, lock-out, trade dispute, fire, breakdown, inclement weather, interruption of transport, government action, delay in delivery or non-delivery to the Company of any Goods or materials or by any cause whatsoever (whether or not of like nature to those specified above) outside its control, it shall be under no liability whatsoever whether in contract, tort or otherwise howsoever, to the Purchaser and shall be entitled at its option, to be notified in writing to the Purchaser, either to cancel the contract or, without any liability, to extend the time for such performance by a period at least equivalent to that during which performance has been prevented, hindered or delayed, as aforesaid.

12 **PREVENTION OF EXCLUSION**

These Conditions shall be without prejudice to the absolute legal prohibitions against exclusion and restriction of liability contained in the Unfair Contract Terms Act 1977 or any other statute.

13 **INDEMNITY**

The Purchaser shall indemnify the Company against all costs, claims, demands, expenses and liabilities whatsoever made by third parties, caused in whole or in part or arising out of or in connection with any act or omission of the Purchaser in connection with the Goods.

14 **SUB-CONTRACTS**

The Company reserves the right to sub-contract the performance of the contract or any part thereof.

15 **ASSIGNMENT**

The Purchaser shall not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any other person whatsoever.

16 **REBRANDING AND REPACKAGING**

The Purchaser shall not at any time rebrand or repackage the Goods or cause the same to be rebranded or repackaged in any form whatsoever.

17 **PATENTS, LICENSING, TRADEMARKS ETC**

The Purchaser shall indemnify the Company against all loss, damages, costs and expenses suffered by the Company or to which the Company may become liable as a result of any work done in accordance with the Purchaser's specification which involves infringement or alleged infringement of a patent, registered design, trade mark, copyright or any other right in property. If the Purchaser uses or sells the Goods in such manner as to infringe any such rights, the Company shall not be responsible for such infringement and the Purchaser agrees to indemnify the Company from and against all liability arising therefrom.

18 **WAIVER**

No time given or concession made on the part of the Company shall be construed as a waiver of any of its rights or remedies.

19 **SEVERANCE**

In the event of the invalidity or unenforceability of any of these Conditions or any paragraph, sub-paragraph or part thereof, the same shall be severed and shall not affect the validity or enforceability of the remaining provisions.

20 **PROPER LAW AND JURISDICTION**

20.1 Each contract of sale entered into by the Company shall be deemed to have been made in England and shall be governed by English Law.

20.2 Any claim or dispute arising out of or in connection with a contract of sale made by the Company or the supply of goods by the Company shall be subject to the exclusive jurisdiction of the English Courts.

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