

UK Terms and Conditions of Sale – DOCOMO DIGITAL Fine Trade GmbH

§ 1 GENERAL TERMS AND SCOPE.

1. These terms and conditions of sale (“**T&Cs**”) apply in connection with the business relationships regarding sales by **DOCOMO Digital Fine trade GmbH**, a company having its corporate office in Marktplatz 14, 6850 Dornbirn, Austria-rolled with Firmenbuchnummer FN 359644 p Landesgericht Feldkirch (hereinafter the “**Company**”) to its Clients (as defined below).
2. For the purposes of these T&Cs:
“**Consumer Clients**” means individual clients of the Company who, in placing an order with the Company, are acting for purposes which are outside the individual's trade, business, craft or profession;
“**Force Majeure Event**” means any cause beyond the control of the Company or beyond the control of its suppliers including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, acts and/or omissions of the Client or a third party, failure or delay in transportation, acts of any government or any agency or sub-division thereof, government regulations, judicial actions, labour disputes, strikes, embargoes, illness, accident, fire, explosion, flood, tempest or other acts of God, delay in delivery to the Company or its suppliers or shortage of labour, fuel, raw materials or machinery or technical or technical facilities failure, failure of providers of electrical power, unavailability of any third party systems or software, omissions of network operators;
“**Trader Clients**” means clients of the Company who are not Consumer Clients;
Unless otherwise provided herein, these T&Cs apply to Consumer Clients and Trader Clients, hereinafter jointly referred to as “**Clients**”.
3. “**Contract**” means these general T&Cs (including any other documents indicated herein), any further conditions published in the relevant sales channel, rules, guidelines, codes of conduct and / or instructions made available on the illustration sheets of each product or otherwise published in the relevant sales channel or made available in any registration form or Order Proposal.
4. No terms and conditions deviating from or contrary or supplementary to these T&Cs will form part of the Contract, unless expressly agreed by the Company in writing.
5. **Clients should ensure they read these T&Cs carefully and raise any queries with the Company before submitting their Order Proposal.**

§ 2 CONCLUSION OF THE CONTRACT, CONFIRMATION OF RECEIPT BY EMAIL, ACCEPTANCE OF OFFER

1. By placing an order proposal (the “**Order Proposal**”), the Client submits a binding contractual offer. If an Order Proposal is sent by electronic means, the Company will confirm, without delay, the receipt of the Order Proposal electronically (by email). The confirmation of receipt of the Order Proposal receipt does not constitute any binding acceptance of the Order Proposal. The confirmation of the Order Proposal may not be considered as acceptance of the relevant Order Proposal unless expressly stated by the Company.
2. Subject to verification pursuant to paragraph 3 below, the Company is entitled to accept the Order Proposal within 1 (one) week starting on the date of receipt of the Order Proposal by the Company. If the Order Proposal is made by electronic means, the Company is entitled to accept the order within 3 (three) working days starting on the date of receipt of

the Order Proposal by the Company. Upon expiry of the relevant period, without express acceptance by the Company, the relevant Order Proposal will be deemed to have been rejected.

3. Acceptance of the Order Proposal by the Company shall be at the Company's sole discretion and will, in any event, be subject to: (A) availability of the products indicated in the Order Proposal and (B) verification – by reference to third parties – of the Client's satisfactory credit rating.
4. Until payment under any Order Proposal has been made in full, the Company is fully entitled to cancel that Order Proposal and/or to cancel or not accept any other Order Proposal placed by the Client, provided that any monies paid by the Consumer Client under any cancelled Order Proposal will be returned.
5. The Company has the right to freely withdraw from the Contract without liability, in the event that the performance of the Contract becomes impossible or excessively burdensome, due to a Force Majeure Event.
6. In the circumstances outlined in paragraph 5 above, the Client will be informed, and any amounts already paid in respect of the affected products will be returned without delay.
7. If the Order Proposal is made by electronic means, a hard copy will be stored by the Company and a copy of the same will be sent by email upon acceptance. These T&Cs and the Data Protection Policy of the Company are made available to the Client prior to the execution of the Contract, and are printable and saveable on durable media.
8. The Client agrees to be notified by the Company for all purposes under the Contract by way of email to the email address provided by the Client at the time the Order Proposal was submitted to the Company. If no email address was provided then the Company may notify the Client via any other means, including by post or telephone. The Client agrees to inform the Company in the event that any of its contact information (including email address, residential/business address or telephone number) changes.
9. The Company reserves the right to assign the benefit of this Contract to any third party without the Client's prior written consent.

§ 3 RETENTION OF TITLE.

1. The Company remains the sole owner of the products indicated in the Order Proposal until the Client has paid the purchase price in full (in cash or cleared funds).
2. For so long as title in products remains with the Company, the Client must: (a) handle the products carefully and maintain them in a satisfactory condition, (b) keep the products separate from its own products, and (c) indicate that such products are property of the Company.

The Client must, without delay, inform in writing the Company of any action *vis-à-vis* relevant products by any third parties (in particular any enforcement procedure), as well as of any damage suffered by or destruction of the same. The Client must (where relevant) immediately notify the Company of any change in ownership of the Client or any change in the address of the Client or any change in the location of the reserved products. The Client hereby indemnifies the Company for any damage and cost incurred by the latter as a result of any breach of the obligations set forth herein or in respect of any action taken by the Company in order to prevent any third-party claims in respect of products in which the Company retains title.

3. If the Client is in breach of any provision of this Contract, the Company is entitled to withdraw from the Contract and require the return of products. Furthermore, the Company is entitled to withdraw from the Contract and require the return of the products, if the Company reasonably expects that the Client will not fulfil its obligations under the Contract.
4. The Trader Client has the right to sell the products in the ordinary course of business. As of the execution of the Contract, the Trader Client assigns to the Company all the receivables arising from the above-mentioned resale and up to the invoiced amount, and, in respect to this credit, the Trader Client undertakes to issue a credit note to be enclosed to its accounts or invoices (accordingly). The Company accepts the assignment. Following the afore-mentioned assignment the Trader Client is entitled to collect the receivables. The Company reserves the right to collect the receivables itself as soon as the Trader Client ceases to fulfil its payment obligations and, therefore, is in breach of its obligations.
5. Any alterations to the products made by the Trader Client will be made on behalf of the Company and according to the instructions given by the latter. In the event of transformation of the products or their incorporation into new products, the Company will acquire co-ownership of the new item in the ratio of the value of the products delivered by the Company. The same applies in the event that products are altered or mixed with other items that are not owned by the Company.

§ 4 WITHDRAWAL RIGHTS

CONSUMER CLIENT

Information concerning withdrawal rights

The Consumer Client has a period of 14 (fourteen) days to withdraw from this Contract without giving any reason and without incurring any additional costs, except for those that may be borne for the return of products, if any.

The term of 14 (fourteen) days referred to above shall start from the time when the Consumer Client or any third party designated by the Consumer Client (other than the carrier) has the physical possession of the products. In the event of separate delivery of several items, ordered by the Consumer Client under one Order Proposal, the term of 14 (fourteen) days to exercise the right of withdrawal shall begin from the day when the last product is delivered.

In order to exercise your withdrawal right, the Consumer Client must notify the Company, via our receiving agent Bullitt Mobile Limited, att. Tanya Spencer, Service Manager EMEA, One Valpy, Valpy Street, Reading, RG1 1AR,

Berkshire, UK, phone number: +44 203 092 8584, email address: support@landroverexplore.com about its decision to withdraw from this Contract, sending an explicit statement to that effect (by registered letter, fax or email). To this end, the Consumer Client may use the enclosed sample withdrawal form.

In order to exercise the withdrawal right within the term, the Consumer Client shall send a communication concerning the exercise of its withdrawal right before the 14-day period has expired.

Consequences of the withdrawal

If the Consumer Client withdraws from the Contract, the Company shall refund, without delay and in any event no later than 14 (fourteen) days after the receipt by the Company of the withdrawal communication, all payments received from the Consumer Client, including delivery costs (except for the ad-

ditional costs incurred if the Consumer Client selected a delivery method other than the standard offered by the Company).

The Company will process such refund using the same payment method used by the Consumer Client for the payment of the due amount, unless expressly agreed otherwise; under no circumstances will the Consumer Client bear charges (other than the cost of return) as a result of this refund.

The Company reserves the right to withhold said sums until the Company (or another merchant nominated by the Company to receive the returned products) has received the returned products or until the Consumer Client has provided evidence of having sent back the returned products, whichever occurs first.

The Consumer Client must deliver the products to the address provided in the Order Proposal and in the invoice without delay, and in any event within 14 (fourteen) days from the day on which the Consumer Client notified the Company of its intention to withdraw from the Contract.

The Consumer Client will bear the costs of returning the products.

The Consumer Client will only be liable for loss of value of products returned pursuant to this Article 4 if this loss arises from the handling of products, which is not necessary in order to check the condition, characteristics or functionality of the same.

Exclusion of the withdrawal right.

Unless otherwise agreed by the parties, the above right of withdrawal does not apply where it is excluded by applicable law. In particular, but without limitation, a right of withdrawal does not apply to the following type of contracts:

1. products which are produced according to customer specifications or are tailored to personal needs;
2. products which can quickly spoil or whose sell-by date would be quickly exceeded;
3. products which are delivered sealed and which for reasons of health protection or hygiene are not suitable for return, if the seal has been removed after delivery;
4. products which have been inseparably mixed with other products following their delivery;
5. sound or video recordings and computer software, which are delivered in a sealed package, if the seal has been removed after delivery;
6. newspapers, periodicals or illustrated magazines, except for subscription contracts concerning the delivery of such publications; and
7. delivery of digital content which is not stored on a physical data carrier, if the performance has begun with the Consumer Client's prior express consent and his acknowledgment that he thereby loses his right of withdrawal.

TRADER CLIENT

The withdrawal right is excluded and, therefore, the paragraphs above do not apply in respect of contracts concluded with Trader Clients.

§ 5 CONSIDERATION, PAYMENT METHOD.

1. The following provisions apply in the absence of specific conditions agreed in individual sales contracts to the contrary.

2. The prices of products are those published in the sales channel when the Order Proposal is submitted. The relevant price will also be displayed in the acceptance of the Order Proposal.
 3. Prices of products advertised in the sales channel may vary at any time; the Company does not guarantee that the selling price of the products remains available or unchanged for a certain period of time. For the avoidance of doubt, any price in force at the time of submission by the Client of an Order Proposal will remain firm and unchanged between the parties.
 4. Prices for Trader Clients are net of VAT (if applicable).
 5. In the event of sales which require shipment, the relevant price does not include any transport, insurance or shipping and custom duty costs and Company's charges. Such costs are shown before the conclusion of the placement of the Order Proposal and are payable by the Client in addition to the price for the product.
 6. The payment due date and payment method are agreed via individual agreement in the course of the order process. If a payment due date is not expressly agreed in the course of the order process, payment is due upon conclusion of the Contract. Available payment methods depend on a variety of factors and will be clearly displayed in the course of the order process via the sales channel. Certain payment methods may require a prior credit check; in this case, the Client will be informed hereof in the sales process and specific consent of the Client to such credit check will be requested.
 7. It is the Client's responsibility to ensure that the delivery, residence addresses and the address indicated in the invoice are the same.
 8. The Client shall pay interest on any overdue amounts at a rate equal to four per cent per annum. The Client undertakes to bear all costs and expenses connected with recovery of any overdue sums by the Company, including in particular debt collection expenses or other costs necessary for appropriate legal prosecution.
 9. In the event that a Consumer Client has a valid counter claim which has been established as legally enforceable or is not disputed, the Consumer Client is entitled to set off any amounts due to it in respect of that claim against any amounts which it is liable to pay the Company under these T&Cs. Trader Clients are not entitled to withhold payments in these circumstances.
3. The Company will deliver products once these have been made available to it, unless otherwise specified. Products will be delivered to Consumer Clients without undue delay and in any event within 30 days of acceptance of the Order Proposal. Any dates quoted for delivery of products are approximate only, and the time of delivery is not of the essence.
 4. If at the time of the first attempt at delivery you are not present at the address as stated in the order, you will be notified by the delivery agent that the attempt at delivery was unsuccessful. You must agree with the delivery agent on a new delivery date, or in the event that a new delivery date has been stated in the delivery notification you must be present and accept the contractually agreed delivery.
 5. If acceptance has not occurred at the latest on the second attempt at delivery, we are entitled to withdraw from the contract without setting any grace period.
 6. The risk of accidental destruction and accidental deterioration of the goods is transferred to you upon handover, or in the event of shipment sale upon handover of the goods to the forwarding agent, the freight carrier or other person or institution appointed to execute the shipment. The latter does not apply in the context of contracts with Consumer Clients.
 7. If you are in delay with acceptance, this is regarded as equivalent to handover.
 8. The Company accepts no liability to Trader Clients in the event of delay in the fulfilment of the Order Proposal or delivery of products ordered.
 9. Upon receipt of the products by the carrier, the Trader Client is required to verify that:
 - a) the number of boxes is the same as indicated in the note or transport document; and
 - b) that the packaging is not damaged or wet or otherwise altered.
 10. Any external damage or mismatch in the number of packages delivered to the Client should be immediately reported to the carrier (which made the delivery), affixing the words "*rejected for damaged package*" or "*rejected for open pack*" or "*rejected due to missing packages*" on the appropriate document.

§ 6 PAYMENT INFORMATION.

When making a bank transfer, the Client must give the payment reference as stated in the invoice. If the payment reference does not correspond to the reference in the invoice, the Client must (if the Company so requests) send the Company the paying-in slip or bank transfer form by email, fax or post, in order to enable the Company to allocate the payment correctly. The Client will be in breach as of the due date and until the Company has been able to allocate the payment.

§ 7 ACCEPTANCE OF DELIVERY, RIGHT OF TERMINATION IF DELIVERY IS NOT ACCEPTED, TRANSFER OF RISK.

1. The Client must accept the contractually agreed delivery.
2. The Company may only accept Order Proposals under these T&Cs for delivery in the United Kingdom. The Company will not ship to mail boxes, post offices, postal boxes, and companies that provide domiciliation services. Shipping and custom duty costs are borne by the Client and are those expressly shown on the Company's acknowledgement of the Order Proposal. These costs might include surcharges for particular

§ 8 WARRANTY

1. In the event that products purchased by Trader Clients do not conform to their description or published specification, the Company shall (in its sole discretion) repair or replace the affected products.
2. Products purchased by Consumer Clients must be as described, fit for purpose and of satisfactory quality. If products purchased by a Consumer Client do not satisfy these requirements, the Consumer Client will be entitled to a full refund if the defect is notified within 30 days of receipt (in addition to any other rights provided under applicable law).
3. If compliant products (or repairs or replacements therefor) are not provided within 60 days after the relevant requests, the Client shall be entitled, at its own election, either to receive a reasonable price reduction or – provided that the lack of conformity is not merely of a minor nature – withdraw from the Contract.
4. Trader Clients must verify products' compliance with their specification at the time of delivery and must notify the Company in writing within a period of 8 (eight) days following receipt of the products of any defects which would be apparent

on reasonable inspection; otherwise, no claims can be asserted under this warranty.

5. In contracts concluded with Consumer Clients, the Company will provide a repair or replacement at no extra charge (or, where neither is possible, a full refund) when any defect is reported within 2 (two) years from the delivery of the products (or within 1 (one) year from the delivery of second-hand products); the Consumer Client must notify the Company within a period of 2 (two) months from the date on which the defects are detected.
6. In contracts concluded with Trader Clients, the Company will provide a repair or replacement when any defect which is not apparent on reasonable inspection at the time of delivery is reported within 1 (one) year from the delivery of the products; the Trader Client must notify the Company within a period of 2 (two) months from the date on which a defect is detected.
7. The Client has the burden of proof of the existence of defects, the date of discovery of the defects and timely notification.

§ 9 LIMITATIONS AND EXCLUSIONS OF LIABILITY

1. The Company shall be liable for and shall compensate or reimburse the full amount of the Client's losses where these are due to fraud of the Company or in the event that the Company has guaranteed certain quality and characteristics and/or shelf life, or in the event of death or personal injury arising from the Company's negligence, or where Company is subject to mandatory law e.g. product liability law. Nothing in this contract shall be construed as limiting or excluding the Company's liability for such losses, where the Company is prevented from excluding or limiting its liability by mandatory provisions of applicable law.
2. Subject to paragraph 1 of this Article 9 above, if the Company fails to comply with its obligations under this Contract, its liability for any claim or series of connected claims arising from the same breach is limited to damages foreseeable at the conclusion of the Contract.
3. Any liability of the Company for damage or loss which was not reasonably foreseeable at the conclusion of this Contract is hereby excluded.
4. Any limitation or exclusion of the Company's liability applies equally to legal representatives, employees, freelance workers and other agents of the Company.

§ 10 DATA PROTECTION

1. The Company, as data controller, shall provide the Client with the following information in its "Data Protection Policy" available on the Company's sales channel:
 - nature, scope, duration and purpose of the collection, processing and use of the personal data necessary for the execution of orders and billing purposes;
 - right of the Client to object to processing of its personal data, even in anonymous form, for the purposes of advertising, market research and the structuring of our range according to need;
 - how data are forwarded to third parties appointed by the Company for the purpose of checking the Client's credit rating and also for the shipment of the products, which third parties are bound to comply with all data protection law, for the duration of their appointment;
 - Clients' right to obtain –free of charge– information concerning its personal data stored by the Company;
 - Client's right to correct, delete and block its personal data stored by the Company;

- in the event of any assignment of the Company receivables *vis-à-vis* the Client to a third party, the provision to such third party of personal data to the extent necessary for the execution of orders and for billing purposes.
2. Any collection, processing and use of the Client's personal data in addition to paragraph 1 requires the Client's consent.

The Client has the option to give consent to the use, collection and processing of personal data by the Company before the Order Proposal is confirmed. Furthermore, the Client has the right at any time to revoke its consent to any such future use.

§ 11 FINAL PROVISIONS

1. These T&Cs are governed by the laws of England and Wales. The application of the Vienna Convention on the International Sale of Products is expressly excluded.
2. The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract (including any debts due by the Client to the Company) and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
3. The Client shall not, without the prior written consent of the Company, assign, transfer, mortgage, charge, sub-contract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
4. If any provisions of the Contract (including these T&Cs) are or become invalid or unenforceable, either wholly or in part, the validity and enforceability of the remaining provisions shall not be affected. In such a case, the parties agree, in respect to Contracts executed with Trader Clients, to replace the wholly or partially invalid or unenforceable provision with a provision whose economic outcome approximates as closely as possible to that of the invalid or unenforceable provision.
5. Disputes with the Consumer Clients arising from the interpretation, validity or execution of these T&Cs shall be subject to the non-exclusive jurisdiction of the courts of England and Wales.
6. In case of disputes with Trader Clients, the following applies: the place of performance is Dornbirn, Austria. Sole venue for all disputes arising from or in connection with the Contract is Dornbirn, Austria. The Company, however, is also entitled to bring an action at the head office of the Trader Client.
7. The European Commission provides an online dispute resolution platform (ODR Platform) which is available under www.ec.europa.eu/consumers/odr. The Company's email address is office@fine-trade.org. The Company is neither willing nor obligated to use alternative dispute resolution entities to resolve disputes with Consumer Clients.
8. All notices between the Company and Clients relating to the contract must be in English, unless otherwise agreed between the Parties.
9. For any information and/or requirements concerning the products sold by the Company you can contact the customer service at DOCOMO Digital Fine trade GmbH, address: Marktplatz 14, 6850 Dornbirn, Austria or by writing to email address office@fine-trade.org.
10. More specifically, for any information and/or requirements relating to payment and billing you can contact the customer service at the following email address: office@fine-trade.org.
11. Wherever these Terms of Sale conflict with mandatory provisions of the laws of England and Wales, the provisions of the laws of England and Wales shall prevail.

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STANDARD WITHDRAWAL FORM

(Complete and return this form only if you want to withdraw from the contract)

Recipient/receiving agent: Bullitt Mobile Limited, att. Tanya Spencer, Service Manager EMEA, One Valpy, Valpy Street, Reading, RG1 1AR, Berkshire, UK, phone number: +44 203 092 8584, email address: support@landroverexplore.com

With the following I/The Company (*) hereby give notice of withdrawal from my/our (*) contract of sale of the following products/services (*)

Ordered on (*)/received (*)

Name(s) of the consumer(s)

Address(es) of the consumer(s)

Signature(s) of the consumer(s) (only if this form is notified on paper)

Date

(*) Delete as appropriate.

Please note: the product(s) should be returned to [XXX]