

SWR Motorsport Limited, registered number 03909497 whose registered office is at Unit 2 Parkend, Parkway, Harlow Business Park, Harlow, Essex, CM19 5QF

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. DEFINITIONS AND INTERPRETATION

In these Conditions:

- 1.1 the following words and expressions have the following meanings and, in addition, any words and expressions defined in any Condition will have the same meaning when used in any other Condition:

[“Business Day” a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales]

[“Charges” **EITHER**
the charges for the Services set out in our price list in force on the date on which the Order is issued by you

OR

the charges for the Services set out in our price list in force on the date on which the Order Acknowledgement is issued by us

OR

the charges for the Services set out in our quotation

[as those charges may be varied from time to time in accordance with **Condition 6.4**]

“Liability” liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability [under an indemnity contained in the Contract and/or] arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party’s obligations under the Contract and/or any defect in any of the Goods, in each case howsoever caused including if caused by

negligence [or if caused by a deliberate breach by that party]

“Order”

your order for the supply of goods [and services] by us, set out in your acceptance of our quotation and or your purchase order, placed via email/phone or online.

**“Order Acknowledgement/
Proforma Invoice”**

our written acceptance of the Order via email/online

“Prices”

EITHER

the prices for the Goods set out in our price list in force on the date on which the Order is issued by you/received by us

OR

the prices for the Goods set out in our price list in force on the date on which the Order Acknowledgement is issued by us

OR

the prices for the Goods set out in our price list in force on the date of Delivery

OR

the prices for the Goods set out in our quotation
[as those prices may be varied from time to time in accordance with **Condition 6.4**]

“Specification”

the written technical specification for the Goods set out in technical documents/website

“you”

the person named as the customer in the Order

- 1.2 all headings are for ease of reference only and will not affect the construction or interpretation of these Conditions;
- 1.3 references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);

- 1.4 references to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time; [and]
- 1.5 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them; [and]
- 1.6 the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word "other" or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
- 1.7 any reference to:
 - 1.7.1 time of day is to London time;
 - 1.7.2 a day is to a period of 24 hours running from midnight to midnight; and
- 1.8 an obligation on a party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that party.

2. **CONTRACT FORMATION**

- 2.1 Any quotation given by us will be valid for a period of 7 days from and including its date, and will constitute an invitation to treat and not an offer.
- 2.2 The Order constitutes an offer by you to purchase the goods set out in the Order ("**Goods**") and the services set out in the Order ("**Services**") from us on these Conditions. A contract for the supply of Goods and Services by us to you on these Conditions will be formed when we accept the Order by issuing an Order Acknowledgement/Proforma Invoice to you. For the avoidance of doubt, we are under no obligation to accept the Order.
- 2.3 These Conditions are the only terms and conditions on which we will supply goods and services to you and will apply to the exclusion of all other terms and conditions including any terms and conditions which you purport to apply under any purchase order, confirmation of order or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.
- 2.4 Delivery or commencement of the performance of the Services will be deemed conclusive evidence of your acceptance of these Conditions.

2.5 We will be entitled, at our discretion, to deliver Goods by separate instalments. We will be entitled to invoice the Price for each instalment separately in accordance with **Condition 6.5**. Each instalment will be deemed to be a separate contract and no cancellation or termination of any one contract relating to an instalment will give you the right to cancel or terminate any other contract.

3. **THE GOODS**

3.1 We will be entitled at any time to:

3.1.1 vary the design, finish or specification of Goods and/or their packaging; and/or

3.1.2 substitute any materials or parts which are used in Goods and which are unavailable for any reason with alternative materials or parts

to the extent that:

3.1.3 this does not materially affect their quality or performance; or

3.1.4 this is necessary to comply with any health and safety or other legal requirements.

We will give you prior written notice of any such variation or substitution

4. **DELIVERY**

4.1 **OPTION 1 (Collection by Customer)**

You will collect the Goods from our premises at Unit 2 Parkend, Parkway, Harlow Business Park, Harlow, Essex, CM19 5QF and will load them onto the collecting vehicle during the hours of 8:30 am to 5:00 pm and within a period of 14 Business Days from the day on which we inform you that the Goods are available for collection. Delivery of the Goods ("**Delivery**") will be deemed to occur at the time of collection (prior to loading) or, if earlier, on expiry of the period for collection specified in this **Condition 4.1**.

OPTION 2 (Delivery by Supplier to a UK address. This option may be used where the Supplier is delivering to the Customer's premises or where the Supplier is delivering to a carrier appointed by the Customer.)

We will deliver the Goods to the address specified in the Purchase order /Proforma Invoice we will be responsible for off-loading the Goods from the delivery vehicle. We will inform you 1 day in advance of the date on which the Goods will be delivered. Delivery of the Goods ("**Delivery**") will be deemed to occur when they have been off-loaded at the delivery address.

OPTION 3 (Incoterms - International supplies where neither option 1 nor option 2 applies)

The Goods will be delivered DAP (as such term is defined in Incoterms 2010). Delivery of the Goods ("**Delivery**") will be deemed to occur when we complete our delivery obligations under that Incoterm.

- 4.2 We will use reasonable endeavours to make available for collection/deliver Goods on the estimated delivery date set out in the Order Acknowledgement/Proforma Invoice, but time for delivery of the Goods will not be of the essence of the Contract. Any delivery dates given by us are estimates only (save for the dates which we inform you of under **Condition 4.1**).
- 4.3 You will not be entitled to cancel the Contract or to reject any Goods by reason of a delay in delivery or failure to deliver.
- 4.4 If Delivery occurs but you fail to collect/accept delivery of the Goods we will be entitled to:
 - 4.4.1 following written notice to you, treat the Contract as repudiated by you and dispose of the Goods in any way we see fit, including by sale to another person. If we sell any of the Goods under this **Condition 4.4.1** at a price which is less than the relevant Price plus any relevant packaging, insurance, carriage and delivery costs, we will be entitled to charge you for the shortfall; and

5. PASSING OF RISK AND RETENTION OF TITLE

- 5.1 Risk of damage to or loss of the Goods will pass to you on Delivery.
- 5.2 Legal and beneficial ownership of the Goods will not pass to you until we have received in full in cleared funds:
 - 5.2.1 all sums due to us in respect of the Goods; and
 - 5.2.2 all other sums which are or which become due to us from you on any account whatsoever.
- 5.3 Until ownership of the Goods has passed to you, you will:
 - 5.3.1 hold the Goods on a fiduciary basis as our bailee;
 - 5.3.2 store the Goods (at no cost to us) separately from all other goods in such a way that they remain readily identifiable as our property;
 - 5.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

- 5.3.4 not, without our prior written consent, annex any Goods to your premises;
- 5.3.5 maintain the Goods in satisfactory condition
- 5.4 Your right to possession, use and resale of the Goods will terminate immediately if, before ownership of the Goods passes to you in accordance with **Condition 5.2**
 - 5.4.1 you have a receiver, administrator or provisional liquidator appointed; are subject to a notice of intention to appoint an administrator; pass a resolution for your winding-up (save for the purpose of a solvent restructuring previously approved in writing by us); have a winding up order made by a court in respect of you; enter into any composition or arrangement with creditors (other than relating to a solvent restructuring previously approved in writing by us); or cease to carry on business[; or have any steps or actions taken in connection with any of these procedures];
 - 5.4.2 we give you written notice that we have any reasonable concerns regarding your financial standing;
 - 5.4.3 you fail to pay any sum due to us under the Contract on or before the due date/are in breach of any of your obligations under the Contract or any other contract between us and you
 - 5.4.4 you encumber or in any way charge any of the Goods; or
 - 5.4.5 the Contract expires or terminates for any reason.
- 5.5 We will be entitled to recover payment for the Goods including by way of an action for the price notwithstanding that ownership of any of the Goods has not passed from us.
- 5.6 You grant, and will procure that the owner of any relevant third party premises grants, us, our agents, employees and sub-contractors 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 your right to possession, use and resale has terminated, to recover them.
- 5.7 Where we are unable to determine whether any goods are the Goods in respect of which your right to possession, use and resale has terminated, we will be deemed to have sold all goods of the kind sold by us to you in the order in which they were invoiced to you.
- 5.8 If your right to possession, use and resale of the Goods terminates in accordance with **Condition 5.4**, we will be entitled to issue you with a credit note for all or any part of the price of the Goods together with value added tax thereon.

5.9 Our rights contained in this **Condition 5** will survive expiry or termination of the Contract however arising.

6. **PRICE AND PAYMENT**

6.1 You will pay the Prices and Charges to us in accordance with this **Condition 6**.

6.2 The Prices and Charges are exclusive of packaging, insurance, carriage and delivery costs and expenses (reasonably and properly) incurred by us from time to time in performing the Services ("**Expenses**") which will be payable by you in addition to the Prices and Charges.

6.3 Any sum payable under the Contract is exclusive of value added tax and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time.

6.4 We will be entitled to vary the Prices and/or Charges at any time by giving written notice to you to reflect any variation in the cost of supplying the Goods and/or Services which arises as a consequence of any change in law/any variation in your requirements for the Goods and/or Services/any information provided by you being inaccurate or incomplete or any failure or delay by you in providing information.

6.5 We will be entitled to invoice you for the Prices for the Goods and any packaging, insurance, carriage and delivery costs payable by you in addition to the Prices and the Charges and any Expenses payable by you in addition to the Charges following us issuing the Order Acknowledgement/Delivery.

6.6 We will be entitled to invoice you for the Charges for the Services and any Expenses payable by you in addition to the Charges following commencement of performance of the Services.

6.7 Any invoice due exchanged from Euro to GBP will be invoices on a monthly exchange rate set by HMRC.

6.8 Where deposits have been paid in GBP and the estimated delivery is after 1 month, balance payments will be exchanged on the day of goods ready.

6.9 Each invoice will be payable by you on receipt of Invoice unless other payment terms are agreed (30 days from the date of Invoice) All payments will be made in pounds sterling/Euro in cleared funds.

6.10 Notwithstanding any purported contrary appropriation by you, we will be entitled, by giving written notice to you, to appropriate any payment by you to any invoice issued by us.

- 6.11 If any sum payable under the Contract is not paid on or before the due date for payment we will be entitled to charge you interest on that sum at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 8% from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis.
- 6.12 If you fail to make any payment due to us under the Contract or any other contract between you and us on or before the due date we will be entitled to withhold further deliveries of Goods and to suspend provision of the Services until payment of all overdue sums/that payment has been made.
- 6.13 If you fail to make any payment due to us under the Contract on or before the due date or if we have any reasonable concerns regarding your financial standing we will be entitled, by giving written notice to that effect to you, to issue invoices prior to Goods being made available for collection/delivered and we will not be required to make available for collection/deliver the Goods until the relevant invoice has been paid in full.
- 6.14 If you fail to make any payment due to us under the Contract on or before the due date or if any of the events or circumstances set out in **Condition 5.4.2** occur all invoices issued will immediately become due and payable.
- 6.15 Save as otherwise expressly provided in these Conditions or required by law, all payments to be made by you to us under the Contract will be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.
- 6.16 Following expiry or termination of the Contract:
- 6.16.1 we will be entitled to invoice all Prices and Charges and any packaging, insurance, carriage and delivery costs and Expenses incurred which have not yet been invoiced; and
- 6.16.2 all invoices (including any invoices issued under **Condition 6.16.1**) will become immediately due and payable by you.

7. **SERVICES**

- 7.1 We warrant to you that we will provide the Services with reasonable care and skill.
- 7.2 We will use reasonable endeavours to provide the Services on the estimated performance date set out in the Order Acknowledgement, but time for provision of the Services will not be of the essence of the Contract. Any performance dates given by us are estimates only.
- 7.3 Nothing in the Contract will operate to exclude or restrict one party's Liability (if any) to the other:

- 7.3.1 for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977);
- 7.3.2 for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable;
- 7.3.3 for breach of its obligations arising under section 12 Sale of Goods Act 1979;
- 7.3.4 for breach of its obligations arising under Section 2 Supply of Goods and Services Act 1982;
- 7.3.5 [for breach of its obligations arising under Section 8 Supply of Goods (Implied Terms) Act 1973;]
- 7.3.6 arising under Section 2(3) Consumer Protection Act 1987; or
- 7.3.7 for a deliberate breach of the Contract by that party; or
- 7.3.8 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

8. **CANCELLATION OF ORDER**

- 8.1 If you cancel the order/contract without giving the given notice of 4 months prior to the estimated delivery we have the right to keep 40% deposit of the contracted order.
- 8.2 If you cancel the order/contract giving notice before 4 months of the estimated delivery we will refund you the deposit made deposits minus any work done to date.

9. **TERMINATION**

- 9.1 If you commit a material breach of the Contract we may terminate the Contract immediately by giving written notice to that effect to you. This will not apply to any failure by you to make any payment due to us under the Contract on or before the due date.
- 9.2 We may terminate the Contract immediately by giving written notice to that effect to you if you fail to make any payment due to us under the Contract within 7 days after the due date.
- 9.3 Following expiry or termination of the Contract:
 - 9.3.1 any Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract will continue in force; and

- 9.3.2 all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
- 9.4 Within 14 days after the date of expiry or termination of the Contract each party will, subject to the exception set out in **Condition 9.5**,
- 9.4.1 return to the other party all Confidential Information (including all copies and extracts) of the other party in its possession or control; and
- 9.4.2 cease to use the Confidential Information of the other party.
- 9.5 Each party may retain any Confidential Information of the other party which it has to keep to comply with any applicable law or which it is required to retain for insurance, accounting or taxation purposes. **Condition 10** will continue to apply to retained Confidential Information and Records.

10. **CONFIDENTIALITY**

- 10.1 **Confidential Information** means any information (whether written, oral, in electronic form or in any other media) that:
- 10.1.1 is disclosed by or on behalf of a party (the "**Discloser**") to the other party (the "**Recipient**") in connection with the Contract and that relates (in whole or in part) to the Discloser or its business[; and/or
- 10.1.2 relates to the [existence or] terms of the Contract,
- but excluding any information that falls within the exclusions set out in **Condition 10.4**.
- 10.2 The Recipient will:
- 10.2.1 keep the Confidential Information secret, safe and secure and will only disclose it in the manner and to the extent expressly permitted by the Contract; and
- 10.2.2 use the Confidential Information only to the extent necessary for the performance of its obligations under the Contract.
- 10.3 The Recipient may disclose Confidential Information:
- 10.3.1 to such of its officers and employees and, in our case, agents and sub-contractors, who need access to that Confidential Information for the purpose of complying with its obligations under the Contract;
- 10.3.2 to the extent necessary in order to be able to refer a dispute for resolution in accordance with **Condition 12.2**; and

- 10.3.3 to the extent required by applicable law or a court of competent jurisdiction or the rules of any listing authority, stock exchange, the Panel on Takeovers and Mergers or a regulatory authority.
- 10.4 The Recipient's obligations under this **Condition 10** will not extend to Confidential Information which the Recipient can prove:
 - 10.4.1 has ceased to be secret without default on the Recipient's part;
 - 10.4.2 was already in the Recipient's possession prior to disclosure by or on behalf of the Discloser;
 - 10.4.3 has been received from a third party who did not acquire it in confidence and who is free to make it available to the Recipient without limitation;
 - 10.4.4 [was independently developed by the Recipient without any breach of the Contract;] or
 - 10.4.5 at the time of disclosure was in the public domain or subsequently enters into the public domain without default of the Recipient.
- 10.5 The Recipient acknowledges and agrees that damages alone would not be an adequate remedy for breach of this **Condition 10** by the Recipient. Accordingly, the Discloser will be entitled, without having to prove special damages, to equitable relief (including injunction and specific performance) for any breach or threatened breach of this **Condition 10** by the Recipient.]]

11. **GENERAL**

- 11.1 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
 - 11.1.1 neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person) which is not expressly set out in the Contract;
 - 11.1.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into the Contract and which is expressly set out in the Contract will be for breach of contract; and
 - 11.1.3 nothing in this will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

- 11.2 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid [if it is in writing [and signed by the party giving it] and only] in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.
- 11.3 No variation to the Contract will be effective unless it is in writing and signed by a duly authorised representative/director on behalf of each of the parties.
- 11.4 Nothing in the Contract and no action taken by the parties in connection with it or them will create a partnership or joint venture or relationship of employer and employee between the parties or give either party authority to act as the agent of or in the name of or on behalf of the other party or to bind the other party or to hold itself out as being entitled to do so.
- 11.5 Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.
- 11.6 Our rights and remedies set out in these Conditions are in addition to and not exclusive of any rights and remedies provided by law.
- 11.7 You will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of your rights under the Contract. You will be entitled to sub-contract your obligation to collect Goods under **Condition 4.1**, but you will not be entitled to sub-contract any of your other obligations under the Contract.

12. **GOVERNING LAW AND JURISDICTION**

- 12.1 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.
- 12.2 Each party agrees that the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).
- 12.3 Either party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.