



## CONDITIONS OF SALE

### 1. Definitions

"The Seller" means Ark Racing Limited. "The Purchaser" means the person, firm or company to be supplied with the goods or services by the seller.

"Goods" means the goods, materials, designs and or other items supplied pursuant to the contract.

"Services" means the works undertaken in accordance with the quotation, offer, tender or Contract and (where the context so requires) shall include all workmanship performed.

"The Contract" means the contract for sale and purchase of the goods and services made between the seller and the purchaser to which these conditions apply.

"Export Sales" means a contract by which the seller supplies goods and or services to a purchaser who takes delivery thereof outside of the United Kingdom.

### 2. Scope

These conditions apply to all sales of goods and services by the seller and shall prevail over and apply to the exclusion of any inconsistent terms or conditions contained or referred to in the purchaser's order or in correspondence or elsewhere or implied by trade custom practice or course of dealing unless specifically agreed to in writing by the seller. Purported provisions to the contrary are hereby excluded or extinguished.

For the avoidance of doubt in the event that any sales or technical literature prepared by the seller shall contain any terms and conditions which purport to govern the sale of goods inconsistent with these conditions such terms and conditions shall be of no effect and shall be superseded by these conditions. Under no circumstances shall the seller be responsible for or to be held liable in respect of any term condition statement or representation relied upon by the purchaser which is not attached to or endorsed upon the purchaser's order and subsequently confirmed in writing by the seller.

If the contract is an Export Sales Contract it shall be deemed to incorporate the latest edition of incoterms current at the date of the contract save that in the event of any inconsistency between Incoterms and any express term of the contract, the latter shall prevail. The seller shall be under no obligation to give the purchaser the notice specified in section 32(3) of the sale of goods act 1979.

### 3. Quotations

A quotation or tender by the seller does not constitute an offer and the seller reserves the right to withdraw or amend the same at any time prior to the seller's acceptance of the purchaser's order.

### 4. Orders and Specifications

- (a) The purchaser shall be responsible to the seller for ensuring accuracy of the terms of any order (including any applicable specification) submitted by the purchaser, and for giving the seller any necessary information relating to the goods and or services within a sufficient time to enable the seller to perform the contract in accordance with its terms.
- (b) No order which has been accepted by the seller may be cancelled by the purchaser except with the agreement, in writing, of the seller. And on terms that the purchaser shall indemnify the seller in full against all loss (including loss of profit), costs, (including the cost of all labour and materials), damages, charges and expenses incurred by the seller as a result of cancellation.

### 5. Formation of Contract.

The contract will only be formed once an official order has been received by the seller by way of post, fax, or secured email attachment. The official order must not contain variations that have not been agreed to by the seller. (See Condition 2)

### 6. Prices

- (a) The prices payable for the goods and services shall be those charged by the seller at the time of despatch. The seller shall have the right at any time to revise the price to take account of increases in costs including (without limitation) costs of any goods or materials, labour or overheads, carriage, the increase or imposition of any tax,

duty, surcharge or other levy or any variation in exchange rates. Unless otherwise stated the price is exclusive of value added tax.

- (b) Unless otherwise agreed in writing the seller agrees to deliver the goods to an address specified by the purchaser the purchaser shall pay all carriage charges incurred by the seller.
- (c) The seller shall be entitled to add to the contract price, where applicable, a charge for visits, designs, carriage, insurance, special packaging and any other additional costs associated with the supply of goods.

### 7. Terms of Payment

- (a) Credit Accounts: Unless otherwise specified in writing payment is due 28 days after the month in which the invoice is dated.  
(Credit accounts are only available by completing a credit application form provided by the seller and suitable credit ratings/references have been obtained). The seller reserves the right to refuse, limit credit accounts.
- (b) Trade Sales: Unless otherwise specified in writing payment becomes due on delivery.
- (c) Where trading/credit references are unavailable the seller reserves the right to request pre-payment for the contract prior to delivery.
- (d) Notwithstanding condition 7a hereof in the case of Export Sales the price of the goods and services shall if required by the seller be paid for in advance using a bank transfer payment method.
- (e) No dispute arising under the contract or delays beyond the reasonable control of the seller shall interfere with prompt payment by the purchaser.
- (f) In the event of default in payment by the purchaser, the seller shall be entitled, without prejudice to any other right or remedy:  
To suspend all further deliveries under this contract and any other contract(s)  
To cancel this and any other contracts  
To charge interest on any amount outstanding at the rate of 4% per month (or part thereof) such interest being charged as a separate continuing obligation and not merging with any other judgement order.  
To serve notice on the purchaser requiring immediate payment for all goods supplied by the seller under this and all other contracts with the purchaser whether or not payment is otherwise due or invoiced.
- (g) The seller shall not be liable, in any of the above circumstances, for any damages, claims or expenses whatsoever from the purchaser or any third party

### 8. Delivery

- (a) Time for delivery is given as accurately as possible but is not guaranteed. The purchaser shall have no right to damages or to cancel the order for failure for any cause to meet any delivery times stated.
- (b) Goods may be delivered by instalments in which event the seller may invoice each instalment separately and the purchaser shall pay such invoices in accordance with these conditions. Any failure by the seller to comply with its obligations in respect of any one or more instalments shall not affect the other instalments under the contract.
- (c) The quantity of any consignment as recorded by the seller upon dispatch from the seller's premises will be conclusive evidence of the quantity received by the purchaser. The purchaser must provide conclusive evidence of short delivery, non delivery, or damaged goods and notify the seller within 48hrs. The total liability by the seller will be to replace, repair or credit at the appropriate rate for the goods.
- (d) Should the purchaser refuse to take delivery of goods tendered in accordance with the contract the seller shall be entitled to immediate payment in full for the goods so tendered, risk in the goods will pass to the purchaser.
- (e) Risk passes to the purchaser when the goods have been collected by the purchaser or carrier on his behalf. The goods are delivered to the purchaser's premises, the goods being ready for delivery, then delivery being postponed at the purchaser's request.
- (f) The seller shall be entitled to store at risk of the purchaser any goods that the purchaser has failed to collect or take delivery of and the purchaser shall in addition to the price pay all costs of such storage and any additional costs or carriage incurred as a result of such refusal or failure. The seller after 28 days shall be entitled to dispose of the goods in such a

# CONDITIONS OF SALE CONTINUED

manner as it may determine without any prejudice to the original contract.

## 9. Title

- (a) Title to the goods shall pass to the purchaser only when all sums due from the contract have been paid to the seller.
- (b) Title to any specific designs, calculations, and any other documentation, unless otherwise agreed in writing by the seller, shall remain the property of the seller, and will not be given to, disclosed to or used by any third party.
- (c) The seller may recover goods in respect of which title has not passed to the purchaser at any time and the purchaser hereby licences the seller its offices, employees and agents to enter upon any premises of the purchaser for the purpose of recovering said goods.
- (d) If the goods are combined by the purchaser with other items or utilised in the production of other items the seller shall retain title to the goods if they remain capable of removal or separation. If so required the purchaser will return the goods in good condition to the seller and will meet any costs the seller has incurred in recovering or repairing the goods.
- (e) In the event of the purchaser re-selling the goods to another bona fide business, the purchaser has a duty to the seller to account for the proceeds, but may retain thereon any excess of such proceeds over the amount outstanding under this or any other contract between them.

## 10. Third Party Rights

The purchaser shall indemnify the seller against any and all claims costs demands and expenses incurred by or made against the seller as a direct or indirect result of the carrying out of any work required to be done on or to the goods in accordance with

the requirements or specifications of the purchaser involving any infringement or claims of infringement of any intellectual or industrial property right vested in any third party.

## 11. Force Majeure

The seller shall in no circumstances be liable for any losses caused by or resulting from inability to supply, or a delay in supplying goods arising from any circumstances beyond its control including in particular but without limiting the generality of the foregoing, force majeure, Act of God or the Queen's enemies, fire, flood, ice, frost, withdrawal of labour, breakdown of machinery, loss or detention of vessels or other means of transport, inability to arrange transport by the seller's normal methods, delay in loading or discharging goods, inability to obtain supplies of goods or materials, or restrictions on the use of or supply of fuel or power.

## 12. Governing Law

The Law of England shall govern the validity construction and performance of any contract to which these conditions apply, and the buyer and the seller submit to the exclusive jurisdiction of the English Courts.

## 13. Misc.

The seller does not accept any public and product liability for motor, motorcycle cycle racing and speed trials.

If any part of these terms and conditions that is not fundamental is found to be illegal or unenforceable, such finding will not affect the validity or enforceability of the remainder of these terms and conditions.