

**M-SPORT TERMS AND CONDITIONS
FOR PURCHASING OF VEHICLE PARTS AND SERVICES**

M-Sport UK TCs of Purchase

1 INTERPRETATION

1.1 Definitions:

The following definitions and rules of interpretation apply in these Conditions.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.5.

Contract: the contract between M-Sport and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media.

Delivery Location: has the meaning given in clause 4.2(b).

Goods: the goods (or any part of them) set out in the Purchase Order.

M-Sport: M-Sport UK Limited (registered in England and Wales with company number 13848917).

M-Sport Components: vehicle parts provided by M-Sport to the Supplier in respect of which the Supplier shall perform Services (including but not limited to servicing, assembling, modifying, reconditioning or refurbishing);

Purchase Order: M-Sport's order for the supply of Goods and/or Services, as set out in M-Sport's purchase order form.

Services: the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Purchase Order.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by M-Sport and the Supplier.

Supplier: the person or firm from whom M-Sport purchases the Goods and/or Services as named in the Purchase Order.

1.2 Interpretation

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a **party** includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to writing or written includes email
- (f) Headings will not affect the construction of these Conditions.

2 BASIS OF CONTRACT

- 2.1 The Purchase Order constitutes an offer by M-Sport to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2 The Purchase Order shall be deemed to be accepted on the earlier of:
 - (a) the Supplier issuing written acceptance of the Purchase Order; or
 - (b) any act by the Supplier consistent with fulfilling the Purchase Order,at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.5 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

3 SUPPLY OF GOODS

- 3.1 The Supplier shall:
 - (a) ensure that the Goods shall:
 - (i) correspond with their description and any applicable Specification;
 - (ii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by M-Sport, expressly or by implication;
 - (iii) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
 - (iv) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
 - (b) provide to M-Sport, no later than the date of delivery of the Goods:
 - (i) (where the Supplier is supplying the Goods from an establishment outside the United Kingdom) the anticipated tariff code for the Goods, or each component of the Goods as applicable; and
 - (ii) a supplier's declaration of origin of the Goods (in the form set out Article 40 and Annex 6 of the Trade and Cooperation Agreement between the United Kingdom

and the European Union dated 30 December 2020 (the “TCA”) including, as applicable, evidence that non-originating materials (as defined in the TCA) have had domestic production applied in the UK or EU, such that those Goods can no longer be considered as non-originating in accordance with Article 39(2) of the TCA.

3.2 Where the Supplier does not provide a declaration under clause 3.1(b)(ii), the Supplier hereby represents, and M-Sport shall rely upon such representation, that the origin of the Goods is as follows:

- (a) for a Supplier that is supplying the Goods from an establishment within the United Kingdom, the origin of such Goods shall be the United Kingdom; or
- (b) for a Supplier that is supplying the Goods from an establishment within the European Union, the origin of such Goods shall be the European Union.

Nothing in this clause 3.2 shall limit M-Sports other rights or remedies in respect of the Supplier’s failure to provide a declaration under clause 3.1(b)(ii).

3.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.4 M-Sport may inspect and test the Goods at any time before delivery and upon delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier’s obligations under the Contract.

3.5 If following such inspection or testing M-Sport considers that the Goods do not comply or are unlikely to comply with the Supplier’s undertakings at clause 3.1, M-Sport shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.6 M-Sport may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4 DELIVERY OF GOODS

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (c) it states clearly on the delivery note any requirement for M-Sport to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Purchase Order or, if no such date is specified, then within 30 days of the date of the Purchase Order;
 - (b) to the location as is set out in the Purchase Order or as instructed by M-Sport before delivery (**Delivery Location**); and
 - (c) during M-Sport's normal hours of business on a Business Day, or as instructed by M-Sport.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 Where M-Sport and the Supplier agree in writing that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle M-Sport to the remedies set out in clause 6.1.
- 4.5 Title and risk in the Goods shall pass to M-Sport on completion of delivery.

5 SUPPLY OF SERVICES

- 5.1 The Supplier shall from the date set out in the Purchase Order and for the duration of the Contract supply the Services to M-Sport in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order.
- 5.3 In providing the Services, the Supplier shall:
- (a) co-operate with M-Sport in all matters relating to the Services, and comply with all instructions of M-Sport;
 - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (c) (when performing Services at a premises other than the Supplier's premises as directed by M-Sport) observe all health and safety rules and regulations and any other security requirements that apply at such premises;
 - (d) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
 - (e) ensure that the Services will conform with all descriptions, standards and specifications set out in the Purchase Order, and that the Deliverables shall be fit for any purpose that M-Sport expressly or impliedly makes known to the Supplier;
 - (f) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (g) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to M-Sport, will be free from defects in workmanship, installation and design;
 - (h) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by M-Sport to the Supplier (**M-Sport Materials**) in safe custody at its own risk, maintain M-Sport Materials in good condition until returned to M-Sport, and not dispose or use M-Sport Materials other than in accordance with M-Sport's written instructions or authorisation;
- (j) not do or omit to do anything which may cause M-Sport to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that M-Sport may rely or act on the Services; and
- (k) comply with any additional obligations as set out in the Purchase Order.

6 M-SPORT REMEDIES

6.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, M-Sport shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by M-Sport in obtaining substitute goods and/or services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
- (e) to claim damages for any additional costs, loss or expenses incurred by M-Sport which are in any way attributable to the Supplier's failure to meet such dates.

6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, has failed to provide the declaration set out in clause 3.1(b) or has supplied Services that do not comply with the requirements of clause 5.3(e) then, without limiting or affecting other rights or remedies available to it, M-Sport shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to reject the Goods (in whole or in part) whether or not title has passed and to return such Goods and/or any Deliverables to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier (as applicable) to:
 - (i) repair or replace the rejected Goods;
 - (ii) provide repeat performance of the Services; or
 - (iii) provide a full refund of the price of the rejected Goods and/or Services;
- (d) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any costs incurred by M-Sport in obtaining substitute goods and/or services from a third party; and

- (f) to claim damages for any additional costs, loss or expenses incurred by M-Sport which are in any way attributable to the Supplier's failure to supply Goods in accordance with clause 3.1 and/or provide Services in accordance with clause 5.3(e).

6.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

6.4 M-Sport's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

7 CHARGES AND PAYMENT

7.1 The price for the Goods:

- (a) shall be the price set out in the Purchase Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by M-Sport.

7.2 The charges for the Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by M-Sport, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

7.3 In respect of the Goods, the Supplier shall invoice M-Sport on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice M-Sport on completion of the Services. Each invoice shall include such supporting information required by M-Sport to verify the accuracy of the invoice, including the relevant purchase order number.

7.4 In consideration of the supply of Goods and/or Services by the Supplier, M-Sport shall pay the invoiced amounts within 60 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier, unless otherwise agreed in writing between M-Sport and the Supplier.

7.5 All amounts payable by M-Sport under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to M-Sport, M-Sport shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

7.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.

7.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow M-Sport to inspect such records at all reasonable times on request.

7.8 M-Sport may at any time, without notice to the Supplier, set off any liability of the Supplier to M-Sport against any liability of M-Sport to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, M-Sport may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by M-Sport of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

8 INTELLECTUAL PROPERTY RIGHTS

8.1 The Supplier acknowledges that all rights in M-Sport Materials and any M-Sport Components are and shall remain the exclusive property of M-Sport (or as applicable, its licensors) and nothing in these Conditions nor any Contract shall grant the Supplier any rights in respect of the M-Sport Materials or M-Sport Components.

8.2 With regard to any Intellectual Property Rights in or arising out of or in connection with the provision by the Supplier of the Services ("**Foreground IPRs**"):

- (a) the Supplier shall assign and procure the assignment of any Foreground IPRs that arise in any Deliverables to the M-Sport with full title guarantee and free from third party rights. M-Sport shall subsequently grant the Supplier a licence to use those Foreground IPRs, free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Supplier to supply the Services. This licence shall terminate on termination or expiry of this agreement;
- (b) any other Foreground IPRs that arise or are obtained or developed in connection with the provision of the Services (other than IPRs in any M-Sport Materials or M-Sport Components) shall be owned by the Supplier. The Supplier shall grant M-Sport a perpetual and irrevocable licence to use those Foreground IPRs, free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable M-Sport to use the Services.

8.3 M-Sport grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy any materials provided by M-Sport to the Supplier for the term of the Contract, for the sole purpose of providing the Services to M-Sport.

9 INDEMNITY

9.1 The Supplier shall indemnify M-Sport against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by M-Sport arising out of or in connection with:

- (a) any claim made against M-Sport for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding M-Sport Materials and M-Sport Components);
- (b) any claim made against M-Sport by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables;
- (c) any claim made against M-Sport by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services;

- (d) any statement made or information provided to M-Sport by the Supplier under clause 3.1(b); or
- (e) M-Sport's reliance on the Supplier's representation(s) under clause 3.2.

9.2 This clause 9 shall survive termination of the Contract.

10 INSURANCE

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, product liability insurance, public liability insurance and (in the case of Services) professional indemnity insurance, to cover the liabilities that may arise under or in connection with the Contract, and shall, on M-Sport's request, produce both the policy schedule or insurance broker letter detailing the level of cover and the receipt for the current year's premium in respect of each insurance.

11 COMPLIANCE WITH RELEVANT LAWS

11.1 In performing its obligations under the Contract, the Supplier shall comply with all applicable laws, statutes and regulations from time to time in force.

12 TERMINATION

12.1 Without limiting its other rights or remedies, M-Sport may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the Supplier commits a breach of clause 3.1(b) or clause 11 of these Conditions;
- (c) the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business (or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction);
- (d) the Supplier suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy

12.2 On termination of the Contract, the Supplier shall immediately deliver to M-Sport all Deliverables whether or not then complete, and return all M-Sport Materials and M-Sport Components. If the Supplier fails to do so, then M-Sport may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

12.3 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

12.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

13 **FORCE MAJEURE**

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

14 **GENERAL**

14.1 **Assignment and other dealings.**

- (a) M-Sport may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of M-Sport.

14.2 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

14.3 **Conflict.** If there is an inconsistency between any of the provisions of this agreement and the provisions of the Accepted Purchase Order, the provisions of this agreement shall prevail.

14.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.5 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict

the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 14.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 14.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.7 **Notices.**
- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the address for the relevant party specified in the Purchase Order.
- (b) Any notice shall be deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 14.7(b)(iii), **business hours** means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 14.8 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 14.9 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.10 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 14.11 **Language.** These Conditions are drawn up in the English language. If these Conditions are translated into another language, the English language text shall in any event prevail.
- 14.12 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

14.13 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.