

**M-SPORT TERMS AND CONDITIONS
FOR SALE OF PARTS**

(B2B)

The customer's attention is drawn in particular to the provisions of clause 9.

1. Interpretation

1.1 Definitions:

Accepted Order: is as defined in clause 2.3.

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

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.5.

Contract: the contract between M-Sport and the Customer for the sale and purchase of the Parts in accordance with these Conditions.

Customer: the person or firm who purchases the Parts from M-Sport.

Customer Specification: any bespoke specification or modifications required for the Part(s), including any related plans and drawings, supplied by the Customer to M-Sport prior to the Order Acceptance and agreed in writing by the Customer and M-Sport and documented in the Accepted Order.

Delivery Date(s): is as defined in clause 5.7.

Delivery Location: is as defined in clause 5.2.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control. For the avoidance of doubt, a Force Majeure Event may include: fire, storm, flood, earthquake, accident, adverse weather conditions, epidemic (including any resumption or worsening of any coronavirus epidemic), pandemic, explosions, Acts of God, acts or threats of terrorism, war, governmental controls, restrictions or prohibitions, strikes, lock-outs, industrial action, employment dispute, protests, traffic congestion, vandalism, interruptions in communications or power supply and mechanical breakdown, failure or malfunction of computer systems.

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

Order: is as defined in clause 2.3.

Quotation: sales quote for the supply of the Parts in M-Sport's standard form.

Specification: any specification for the Parts (as may be amended from time to time) supplied by M-Sport to the Customer within the Quotation and confirmed in the Order Acceptance, and referred to as such.

Parts: the goods (or any part of them) set out in the Order, usually being (new or used) vehicle parts, components, accessories or consumables.

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 successors and permitted assigns.

- (a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted, and includes all subordinate legislation made under that legislation or legislative provision.
- (b) 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.
- (c) A reference to **writing** or **written** includes email.
- (d) Headings will not affect the construction of these Conditions.

2. Order formation and basis of contract

2.1 Contracts for the supply of Parts shall be formed in the following manner:

2.2 *Quotation:* M-Sport shall issue a Quotation to the Customer, setting out:

- (a) a description of and any Specification for the Part;
- (b) the cost of the supply of the Part;
- (c) (subject to clause 8) any additional terms of payment;
- (d) (where applicable) the address for delivery of the Part, where M-Sport and the Customer have agreed to delivery in accordance with clause 4.4; and
- (e) any other relevant information.

2.3 *Order:* The Customer may place an order ("**Order**") with M-Sport for Parts either:

- (a) by placing a written Order in response to and reflecting the terms of the Quotation. If the Customer does not place an Order within 20 Business Days of the date stated of the Quotation, such Quotation shall be deemed to have lapsed; or
- (b) by placing an Order via M-Sport's online webshop for Parts displayed on the webshop.

2.4 The Order constitutes an offer by the Customer to purchase the Parts in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Customer Specification are complete and accurate.

2.5 *Order Acceptance:* M-Sport shall either accept or reject the Order at its sole discretion and shall notify the Customer of its decision (which may be via M-Sport's online webshop). An acceptance by M-Sport of an Order under this clause 2.5 shall be an "**Order Acceptance**" and each such Order shall become an "**Accepted Order**".

2.6 Upon delivery of the Order Acceptance by M-Sport to the Customer, the Accepted Order shall form a legally binding and enforceable Contract between the parties for the supply of the Parts stated therein. Each Contract is a separate contract between the Customer and M-Sport.

- 2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.8 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.9 Orders for Parts are subject to availability of such Parts. M-Sport will not be liable for any loss suffered by the client as a result of the parts being unavailable for purchase at the time the Order is accepted by M-Sport in accordance with clause 2.5.

3. Order cancellation

- 3.1 M-Sport may cancel a Contract (or any part thereof) by written notice to the Customer at any time prior to delivery of the Parts.
- 3.2 Subject to clause 3.3, the Customer may cancel all or part of a Contract for Parts by written notice to M-Sport, received by M-Sport at any time prior to delivery of the Parts, subject to an administration fee of 20% of the total price of the relevant Parts.
- 3.3 The Customer may not cancel any Contract for bespoke Parts, for instance where a Customer Specification has been provided.
- 3.4 For the avoidance of doubt, if the written notice of cancellation is not received by M-Sport prior to delivery of the Parts, then the cancellation will not be effective.

4. Parts

- 4.1 Each Part is as described in the relevant Specification (and any relevant Customer Specification).
- 4.2 Unless expressly stated otherwise in the Contract, M-Sport makes no representation or warranty that any of the Parts shall be compliant with the competition requirements for any specific vehicle or motorsports championship.
- 4.3 M-Sport does not represent, warrant or guarantee the compliance of any of the Parts for use in any specific vehicle or for entry any specific competition, unless expressly stated otherwise in the Accepted Order.
- 4.4 *Supplies outside Europe:*
- (a) Where any Parts are supplied for use in a jurisdiction outside Europe (**Non-Europe**), it is the responsibility of the Customer to ensure that the Specification includes all relevant legal and functional requirements of the Parts for use in the intended Non-UK jurisdiction.
 - (b) Where the Customer provides to M-Sport a Customer Specification for modification of any Part to be supplied into a Non-Europe jurisdiction (**Non-Europe Modifications**), such Customer

Specification should contain sufficient detail for M-Sport to be able to conform the Part to such Customer Specification.

- (c) Subject to clause 9.3, M-Sport shall not be liable in any way for the compliance of the Part or any Non-UK Modifications with the laws or regulations of the Non-Europe jurisdiction in which the Part is used, beyond any manifest failure by M-Sport to conform the Part to the Specification and any Customer Specification.
- (d) M-Sport reserves the right to charge the Customer for all costs and expenses incurred by M-Sport in implementing the Non-Europe Modifications. The Customer shall comply at all times with clause 9.6.
- (e) It is the Customer's responsibility to arrange and pay for any necessary local approvals the Parts must undergo before being permitted for use in a certain jurisdiction.

4.5 *Customer Specification*: Where the Customer supplies any Customer Specification for a Part, which M-Sport agrees to implement and confirms the same in the Order Acceptance:

- (a) the Customer warrants that the Customer Specification does not infringe the intellectual property rights of any third party;
- (b) the Customer 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 and other reasonable professional costs and expenses) suffered or incurred by M-Sport in connection with 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 M-Sport's use of such Customer Specification. This clause 4.5(b) shall survive termination of the Contract; and
- (c) M-Sport reserves the right to amend the Customer Specification if required by any applicable statutory or regulatory requirement, and M-Sport shall notify the Customer in any such event.

5. **Delivery**

5.1 M-Sport shall ensure that:

- (a) each delivery of Parts is accompanied by a delivery note that shows the date of the Order Acceptance, the type and quantity of the Parts (including the code number of the Parts, where applicable), special storage instructions (if any) and, if the Parts are being delivered by instalments, the number of Parts remaining to be delivered; and
- (b) if M-Sport requires the Customer to return any packaging materials to M-Sport, this is clearly communicated to the Customer in writing. The Customer shall make any such packaging materials available for collection at such times as M-Sport shall reasonably request. Returns of packaging materials shall be at M-Sport's expense.

- 5.2 Subject to clause 5.5, M-Sport shall deliver the Parts to the location set out in the Accepted Order or such other location as the parties may agree (**Delivery Location**) at any time after M-Sport notifies the Customer that the Parts are ready.
- 5.3 Delivery is completed on the completion of unloading of the Parts at the Delivery Location.
- 5.4 Unless agreed otherwise in writing, the Customer is responsible for all arrangements and costs regarding importation, export, packaging and insurance of the Parts, which shall be invoiced to the Customer in addition. M-Sport shall be responsible for arranging transport for delivery of the Parts. If M-Sport agrees to arrange for importation, export, packaging and/or insurance on behalf of the Customer, it does so as the Customer's agent and the Customer shall promptly reimburse M-Sport with the full costs thereof. M-Sport shall have no liability for delay or failure in delivery where this arises from the Customer's failure to arrange or pay for any necessary importation, export, packaging or insurance.
- 5.5 The parties may agree in writing that the Customer shall instead collect the Goods from M-Sport's premises at Dovenby Hall, Dovenby, Cockermouth, Cumbria, United Kingdom, CA13 0PN (or such other location as may be advised by M-Sport) within three Business Days of M-Sport notifying the Customer that the Parts are ready. Any such agreed collection may be made at any time on a Business Day during M-Sport's normal working hours (being from 08:30 to 17:30). In such case, delivery is completed on completion of the Parts being made ready for loading at the Delivery Location.
- 5.6 If an individual collects the Parts for or on behalf of the Customer who (so far as M-Sport is aware) has authority to collect the Parts, then M-Sport shall not be responsible to the Customer for any resulting damage or loss arising once the individual has been provided with the Parts.
- 5.7 Once the Contract has formed, M-Sport will liaise with the Customer to provide an estimated date or dates on which the Parts shall be made ready for collection at the Delivery Location and/or delivered (as relevant) (**Delivery Date(s)**).
- 5.8 The Delivery Date and any other dates quoted for delivery are approximate only, and the time of delivery is not of the essence. M-Sport shall not be liable for any delay in delivery of the Parts: (a) for any reason, up to and including 60 days from the estimated delivery date(s) notified to the Customer; nor (b) where such delay is caused by a Force Majeure Event or the Customer's failure to provide M-Sport with adequate delivery instructions or any other instructions that are relevant to the supply of the Parts.
- 5.9 If the Customer wishes Parts to be delivered and/or made ready for collection on the same day as the date on which the Order for such Parts is provided to M-Sport, the Customer must ensure that such Order is placed and received by M-Sport on a Business Day prior to 12:00 (midday). M-Sport will endeavour where possible to meet these requests, however it does not guarantee that any delivery or collection on the same day will be possible.
- 5.10 If M-Sport fails to deliver any Parts, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market

available, less the price of the Parts. M-Sport shall have no liability for any failure to deliver the Parts to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide M-Sport with adequate delivery instructions or any other instructions that are relevant to the supply of the Parts.

5.11 If the Customer fails to take delivery of the Parts (or any of them) within three Business Days of M-Sport notifying the Customer that the Parts are ready, then, except where such failure or delay is caused by a Force Majeure Event or M-Sport's failure to comply with its obligations under the Contract in respect of the Parts:

- (a) delivery of the Parts shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which M-Sport notified the Customer that the Parts were ready; and
- (b) M-Sport shall store the Parts until delivery takes place, and shall be entitled to charge the Customer for all related costs and expenses (including insurance).

5.12 If ten Business Days after the day on which M-Sport notified the Customer that the Parts were ready for collection the Customer has not taken actual delivery of them, M-Sport may resell or otherwise dispose of the Parts and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Parts.

5.13 M-Sport may deliver the Parts by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6. Quality

6.1 M-Sport warrants that on delivery, the Parts shall:

- (a) conform in all material respects with the Specification (and any applicable Customer Specification); and
- (b) be free from material defects in design, material and workmanship.

6.2 Subject to clause 6.5 and clause 6.6, if:

- (a) the Customer gives notice in writing to M-Sport within 15 working days of discovery that some or all of the Parts do not comply with the warranty set out in clause 6.1. Where the relevant defect is obvious on initial inspection of the Part(s), this must be notified to M-Sport within 15 working days from delivery of the relevant Part(s);
- (b) M-Sport is given a reasonable opportunity of examining such Parts; and
- (c) the Customer (if asked to do so by M-Sport) returns such Parts to M-Sport's place of business at the Customer's cost, with a hard copy of the relevant completed Parts Returns Form,

M-Sport shall, at its option, repair, replace or provide a full refund via credit note in respect of the defective Parts. M-Sport shall not be liable for any delay in completing any repairs due to causes beyond its reasonable control, including the non-availability of component parts.

- 6.3 When completing the Parts Returns Form under clause 6.2(a), the Customer must clearly state in the form:
- (a) the relevant part number and description of the relevant Part(s);
 - (b) the quantity of each of the Part(s) returned;
 - (c) the reason for return of the Part(s). Any Part(s) reported as faulty must be returned with a description of the problem;
 - (d) an M-Sport reference number relating to the Order for the relevant Part(s). This may be an invoice number, order number or delivery note number;
 - (e) the date upon which the Parts were ordered by the Customer.
- 6.4 In respect of clause 6.2(c), the Customer may only return Parts to M-Sport under this clause 6 if the Customer has already: notified M-Sport under clause 6.2(a) of the non-compliance of the Part(s); placed a request for repair, replacement or refund of the relevant Part(s); and notified M-Sport that it will be returning such Part(s).
- 6.5 M-Sport shall not be liable for any Part's failure to comply with the warranty set out in clause 6.1 if:
- (a) the Customer makes any further use of such Part after giving notice in accordance with clause 6.2;
 - (b) the defect arises because the Customer failed to follow any relevant manual or instructions provided with the Part, and M-Sport's oral or written instructions as to the storage, commissioning, installation, fitment, use and maintenance of the Parts or (if there are none) good industry practice regarding the same;
 - (c) the defect arises as a result of M-Sport following any drawing, design or Specification supplied by the Customer;
 - (d) the Customer or a third party fits, alters or repairs such Part without the written consent of M-Sport;
 - (e) the defect arises as a result of fair wear and tear (taking into account whether the Parts are designed for use in or with a racing or rallying vehicle), wilful damage, insufficient care or maintenance, improper fitment, negligence, an accident or collision, theft, vandalism, damage from contaminated or improper fluids, excessive exposure to sunlight, improper ventilation, or abnormal storage or operating conditions (for instance, the Parts should be stored safely at all times when not in use);
 - (f) the defect arises as a result of a Force Majeure Event;
 - (g) the defect arises as a result of a defective third party component (as defined in clause 6.6 below);
 - (h) the Parts differ from the Specification as a result of changes made to ensure they complies with applicable statutory or regulatory requirements;

- (i) the Customer does not permit M-Sport to make a full examination of the alleged defect within a reasonable time of the defect being discovered; or
 - (j) the Parts are used for a purpose other than as set out in the Accepted Order.
- 6.6 Notwithstanding the foregoing, M-Sport provides no warranty in respect of Parts, or any sub-components of a Part, manufactured by a third party ("**third party components**"). The Customer's only remedy in relation to defective third party components shall be such transferable warranty as M-Sport may have received from the manufacturer of such third party components (**Manufacturer's Warranty**). M-Sport shall have no liability to the Customer in respect of the failure of any third party component to comply with the Manufacturer's Warranty.
- 6.7 Where any of the Parts is a second-hand or rebuilt Part (as set out in the Accepted Order) the Customer acknowledges that the Part is a (renovated) second-hand product, and will be sold subject to: (a) such wear and tear as is reasonable for a product of its age, usage and type; and (b) any rebuild or repairs that may have been carried out to it.
- 6.8 M-Sport does not warrant or guarantee the roadworthiness of any Part, or that any Part is fit for use in a particular competition, unless stated otherwise in the Accepted Order.
- 6.9 The Customer shall pay to M-Sport on request a handling charge of 20% of the price paid or payable by the Customer for the returned Parts.
- 6.10 Except as provided in this clause 6, M-Sport shall have no liability to the Customer in respect of any Part's failure to comply with the warranty set out in clause 6.1.
- 6.11 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.12 These Conditions shall apply to any repaired or replacement Parts supplied by M-Sport.
- 7. Title and risk**
- 7.1 The risk in the Parts shall pass to the Customer on completion of the Parts being made ready for loading at M-Sport's premises. Where delivery is in instalments, the risk for each instalment passes on completion of that instalment being made ready for loading.
- 7.2 M-Sport recommends that the Customer obtains adequate insurance to cover any losses for damage in loading or in transit.
- 7.3 Title to the Parts shall not pass to the Customer until M-Sport receives payment in full (in cash or cleared funds) for the Parts, in which case title to the Parts shall pass at the time of payment of all such sums.
- 7.4 Until title to the Parts has passed to the Customer, the Customer shall:

- (a) store the Parts separately from all other goods held by the Customer so that they remain readily identifiable as M-Sport's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Parts;
- (c) maintain the Parts in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify M-Sport immediately if it becomes subject to any of the events listed in clause 10.1(c) to clause 10.1(e); and
- (e) give M-Sport such information as M-Sport may reasonably require from time to time relating to the Parts and the ongoing financial position of the Customer.

7.5 At any time before title to the Parts passes to the Customer, M-Sport may require the Customer to deliver up all Parts in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Parts are stored in order to recover them.

7.6 For the avoidance of doubt where any of the Parts has been rebuilt by M-Sport, all component parts of that Parts permanently removed and/or replaced with new components by M-Sport before the delivery of the Parts shall belong to M-Sport.

8. Price and payment

8.1 The price of the Parts shall be the price set out in the Accepted Order, or, if no price is quoted, the price set out in M-Sport's published webshop price list in force as at the date of M-Sport's acceptance of the Order or (if not displayed on the webshop) otherwise communicated to the Customer by M-Sport in writing.

8.2 M-Sport may, by giving notice to the Customer at any before delivery, increase the price of the Parts to reflect any increase in the cost of the Parts that is due to:

- (a) any factor beyond M-Sport's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the Delivery Date(s), quantities or types of Parts ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give M-Sport adequate or accurate information or instructions.

8.3 The price of the Parts excludes:

- (a) amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to M-Sport at the prevailing rate, subject to the receipt of a valid VAT invoice (save where Evidence is provided to M-Sport's satisfaction in accordance with clause 8.4);
- (b) (where applicable) any and all import and export taxes, duties, tariffs, surcharges, tolls or otherwise; and

(c) the costs and charges of transport of the Parts and insurance during transport,

each of which shall be invoiced to the Customer in addition, where relevant (including where arranged and paid for by M-Sport under clause 5.5).

- 8.4 If the Customer is shipping Parts outside the UK, the Customer must provide to M-Sport all export evidence requested by M-Sport (**Evidence**) to M-Sport's satisfaction as soon as possible and in any event within 30 days after such items are shipped, further to which M-Sport agrees not to charge VAT additionally on such Parts. If the Customer does not provide the Evidence to M-Sport's satisfaction within this time frame, then M-Sport shall charge the Customer any anticipated VAT or other tax payable in respect of such Parts. M-Sport shall issue the Customer with a credit note to the value of such charges upon subsequent receipt by M-Sport of the Evidence to M-Sport's satisfaction within 60 working days from the date of receipt of such Evidence.
- 8.5 M-Sport may invoice the Customer for the Parts on or at any time after M-Sport's Order Acceptance in accordance with clause 2.5.
- 8.6 The Customer shall pay each invoice submitted by M-Sport in full and in cleared funds to a bank account nominated in writing by M-Sport, and within 30 days of the date of the invoice or in accordance with any other credit terms agreed by M-Sport and confirmed in writing to the Customer (including any payment plan which may be set out in the Accepted Order). In any event the Customer shall pay M-Sport in full prior to collection of the Parts, unless stated otherwise in the Accepted Order.
- 8.7 Time for payment shall be of the essence of the Contract.
- 8.8 If the Customer fails to make a payment due to M-Sport under the Contract by the due date, then, without limiting M-Sport's remedies under clause 10, the Customer 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 8.8 will accrue each day 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 that base rate is below 0%.
- 8.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.10 Without prejudice to M-Sport's other rights and remedies, M-Sport reserves the right to suspend provision of Parts to the Customer while any amount due from the Customer to M-Sport (whether under the Contract or otherwise) remains unpaid.

9. Limitation of liability

- 9.1 M-Sport has obtained public liability and product liability insurance cover in respect of its own legal liability for individual third party claims not exceeding £10,000,000. The limits and exclusions in this clause reflect the insurance cover M-Sport has been able to arrange.

- 9.2 The restrictions on liability in this clause 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for death or personal injury caused by negligence; fraud or fraudulent misrepresentation; or breach of the terms implied by section 12 of the Sale of Goods Act 1979.
- 9.4 Subject to clause 9.3, M-Sport's total liability to the Customer:
- (a) for breach of warranty by M-Sport, shall be to provide the remedy set out in clause 6 only;
 - (b) for delayed delivery of a Part, shall be the remedy set out in clause 5.10 only;
 - (c) in any other case, shall not exceed the total price of the Parts set out in the Accepted Order.
- 9.5 Subject to clause 9.3, the following types of loss are wholly excluded: loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, data or information; loss of or damage to goodwill; and indirect or consequential loss.
- 9.6 The Customer is responsible for ensuring that the Parts comply with all applicable laws in any country outside of the United Kingdom where the Customer will be keeping or using the Parts. The Customer shall indemnify M-Sport (together with any of its contractors, representatives, employees, officers and agents (**Indemnified Parties**)) against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other reasonable professional costs and expenses) suffered or incurred by any Indemnified Party arising out of or in connection with M-Sport's possession, use, sale or supply of the Parts outside the United Kingdom.
- 9.7 For the avoidance of doubt M-Sport shall not be liable in respect of any loss of competition points, awards, loss of entry fees or other similar losses resulting from or in connection with any Part.
- 9.8 This clause 9 shall survive termination of the Contract.

10. Termination

- 10.1 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 Customer fails to pay any amount due under the Contract on the due date for payment;
 - (b) the Customer 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;
 - (c) the Customer 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 Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the Customer'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.

10.2 Without limiting its other rights or remedies, M-Sport may delay or suspend delivery of the Parts under the Contract or any other contract between the Customer and M-Sport if the Customer becomes subject to any of the events listed in clause 10.1(c) to clause 10.1(e), or M-Sport reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10.3 On termination of the Contract for any reason the Customer shall immediately pay to M-Sport all of M-Sport's outstanding unpaid invoices and interest and, in respect of any Part supplied but for which no invoice has been submitted, M-Sport shall submit an invoice, which shall be payable by the Customer immediately on receipt.

10.4 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry.

10.5 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.

11. **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.

12. **Dispute resolution (escalation clause)**

12.1 In the event of a dispute arising out of or relating to this contract, including any question regarding its breach, existence, validity or termination, and including any non-contractual claims (whether in tort or otherwise) (**Dispute**), the parties shall endeavour to reach a resolution of the Dispute satisfactory to both parties. Either party may commence such process by requesting a meeting with the other party, which may take place in person, or remotely. Each party shall nominate a representative who shall meet to try to resolve the Dispute.

12.2 Notwithstanding clause 13.13, if the Dispute is not resolved within 20 Business Days of the meeting between the parties' appointed representatives taking place (or if, for any reason, such meeting does not take place within 20 Business Days of either party requesting the meeting (or such longer period as may be agreed between the parties)), then:

- (a) the Dispute may, at either party's request, be referred to mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure, and informal negotiations need not continue. Either party may initiate the mediation process by giving notice in writing to the other party requesting mediation (**Mediation Notice**).
- (b) if there is any aspect of the form or conduct of the mediation (including the identity of the mediator to be appointed) on which the parties cannot agree within 20 Business days from the date of delivery of the Mediation Notice, CEDR shall, at the request of either party, decide that point, having first made reasonable efforts to consult with each of the parties on the issue.
- (c) the mediation shall start not later than 10 Business Days from the date of delivery of the Mediation Notice.
- (d) the mediation shall take place in Manchester and the language of the mediation shall be English.
- (e) the Mediation Agreement referred to in the CEDR Model Mediation Procedure shall be governed by the substantive law of England and Wales.
- (f) CEDR's fees, and those of the mediator together with other expenses of the mediation, will be borne equally by the parties.
- (g) each party will bear its own costs and expenses of its participation in the mediation.

12.3 If either party refuses or fails to participate in the mediation process or if a resolution of the Dispute is not reached within 30 Business Days from delivery of the Mediation Notice, either party may refer the dispute to court in accordance with the provisions of clause 12.4 below.

12.4 Subject to the provisions of clause 12.1 to clause 12.3 above, in the event of a Dispute arising, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with clauses 13.12 and 13.13.

13. General

13.1 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 Customer 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.

13.2 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 13.2(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 13.2; 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.

13.3 Entire agreement.

- (a) 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.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

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

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

13.6 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.

13.7 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 13.7 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.

13.8 **Complaints.** If the Customer has any questions or complaints, it can contact M-Sport in the following ways and M-Sport will provide its complaints procedure:

- (a) Email: info@m-sport.co.uk
- (b) Telephone: 01900 828888
- (c) Address: M-Sport UK Limited, Dovenby Hall, Dovenby, Cockermouth, CA13 0PN

13.9 **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 specified below:
 - M-Sport:** rally2support@m-sport.co.uk
 - Customer:** the email address communicated by the Customer to M-Sport from time to time for the purpose of communication between the parties.
- (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 13.9(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.

13.10 **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.

13.11 **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.

13.12 **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.

13.13 **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.