

**M-SPORT TERMS AND CONDITIONS
FOR SUPPLY OF EVENT ENGINEERING SUPPORT SERVICES**

(B2B)

M-Sport UK TCs - Supply of
Engineering Services Rally2

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

1 INTERPRETATION

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

1.1 Definitions:

Accepted Order: is as defined in clause 2.3.

Amendment Fee: a fee, calculated at the value of 50% of the Day Rates applicable under the Contract at the date on which such amendment fee becomes payable.

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

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Communications Charge: a charge for administration provided by M-Sport In liaising with the Customer to make travel arrangements and make bookings, payable per Event at which Services are performed, charged at such rate as shall be notified by M-Sport to the Customer.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.5.

Contract: the contract between M-Sport and the Customer for the supply of Services in accordance with these Conditions.

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

Customer Default has the meaning set out in clause 4.4.

Day Rates: the applicable daily charges for supply of the Services that shall be notified by M-Sport to the Customer.

Customer Support Order Form: the form in M-Sport's standard form for requesting supply of engineering, technician or other labour services, available via M-Sport's online e-shop.

Event: the motorsport test and/or event specified in the Accepted Order.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

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

M-Sport Materials has the meaning set out in clause 4.1(h).

Order: is as defined in clause 2.2.

Services: technical and engineering support services at an Event supplied by M-Sport to the Customer as set out in Accepted 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 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 BASIS OF CONTRACT

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

2.2 *Order:*

- (a) The Customer shall complete and issue to M-Sport a Customer Support Order Form via email, telephone or via M-Sport's e-shop, wherein the Customer shall request the supply of Services, including but not limited to:
 - (i) the type of Services to be provided (engineering, technician or other);
 - (ii) the location and date of the Event at which Services are required to be performed;
 - (iii) the dates and destinations for Personnel travel in connection with the performance of the Services; and
 - (iv) any additional information relevant to the Event.
- ("Order").
- (b) The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3 *Order Acceptance:*

- (a) M-Sport shall either accept or reject the Order at its sole discretion and notify the Customer of its decision (which may be via M-Sport's e-shop). For example, M-Sport may

reject the Order if the Customer has not provided sufficient notice prior to the Event for M-Sport to arrange for Engineer availability. An acceptance by M-Sport of an Order under this clause 2.3 shall be an “**Order Acceptance**” and each such Order shall become an “**Accepted Order**”.

(b) M-Sport shall, no later than date of the Order Acceptance, provide to the Customer details of the applicable:

- (i) Day Rates for the Services,
- (ii) Amendment Fee; and
- (iii) Communications Charge

and the same shall be incorporated into and form part of the Accepted Order.

2.4 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 Services stated therein. Each Contract is a separate contract between the Customer and M-Sport.

2.5 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.

2.6 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.

2.7 Any samples, drawings, descriptive matter or advertising issued by M-Sport, and any descriptions or illustrations contained in M-Sport's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

3 SUPPLY OF SERVICES

3.1 M-Sport shall supply the Services to the Customer in accordance with the Accepted Order in all material respects.

3.2 Unless otherwise agreed with the Customer, M-Sport shall arrange and book all flights, ferries or other transport and all accommodation for the Personnel performing the Services and invoice the Customer in respect of the same, plus a reasonable price supplement to be notified by M-Sport to the Customer. M-Sport shall charge a. M-Sport shall notify the Customer of such arrangements prior to booking and the Customer may accept or reject the proposed arrangements. Where the Customer rejects the arrangements, the M-Sport shall book alternative arrangements. Following booking, M-Sport shall supply to the Customer the Personnel's travel itinerary.

3.3 M-Sport reserves the right to amend the Accepted Order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and M-Sport shall notify the Customer in any such event.

3.4 M-Sport warrants to the Customer that the Services will be provided using reasonable care and skill.

4 CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with M-Sport in all matters relating to the Services;
- (c) ensure the suitability of transportation and accommodation for the M-Sport personnel providing the Services (**Personnel**), from the Personnel's arrival at the destination airport for the Event, until their departure from the destination airport, unless otherwise agreed in writing between the parties;
- (d) (where the Customer has specified in the Order that it wishes the Personnel to wear the Customer's chosen team kit at the Event) provide appropriate clothing for the Personnel to wear during the Event;
- (e) provide, or procure that the Customer's team provides, food and drink for the Personnel during the Event;
- (f) provide M-Sport with such information and materials as M-Sport may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (h) keep all materials, equipment, documents and other property of M-Sport (**M-Sport Materials**) in the Customer's possession in safe custody at its own risk, maintain M-Sport Materials in good condition until returned to M-Sport, and not dispose of or use M-Sport Materials other than in accordance with M-Sport's written instructions or authorisation.

4.2 The Customer warrants to M-Sport that the following safety measures are in place at any Event where the Personnel is/are required, in the performance of the Services, to ride in a rally car:

- (a) safety helmets are worn at all times a rally car is in motion;
- (b) the road is completely closed to the general public for the duration of the Event with appropriate persons positioned to ensure that the closure remains in force;
- (c) measures are in place to make it impossible for a member of the public to stray onto the closed road during the Event;
- (d) two-way radio communication are in place at all times between the rally car containing the Personnel and the persons controlling the road closure; and
- (e) the nearest emergency medical centre is aware of the Event and has plans in place (demonstrated to the Customer) to quickly supply emergency medical support in the event of an accident.

4.3 Notwithstanding the Customer's warranties at clause 4.2, where the Personnel, in his/her reasonable opinion, is not satisfied with the safety arrangements present at the Event or has concerns around the Customer's service area or working practices, he/she shall be under no obligation to perform any Services or ride in any motor vehicle. The Personnel's refusal to perform any Services or ride shall not amount to a breach by M-Sport of its obligations under the Contract.

4.4 The Personnel may drive a car between stages of an Event or in a service park. This is undertaken solely at the Customer's risk and shall not be covered under M-Sport's road insurance

- 4.5 If M-Sport's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, M-Sport shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays M-Sport's performance of any of its obligations;
 - (b) M-Sport shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from M-Sport's failure or delay to perform any of its obligations as set out in this clause 4.4; and
 - (c) the Customer shall reimburse M-Sport on written demand for any costs or losses sustained or incurred by M-Sport arising directly or indirectly from the Customer Default.

5 CHARGES AND PAYMENT

- 5.1 The Charges for Services shall be calculated on a time and materials basis:
- (a) Charges for Services shall be calculated in accordance with M-Sport's relevant Day Rates for the Personnel engaged to provide the Services;
 - (b) M-Sport shall additionally charge the Customer the Communications Charge per Event;
 - (c) M-Sport shall charge the Customer for any expenses reasonably incurred by the Personnel, including travelling expenses to and from the Event, hotel costs, subsistence, additional costs incurred relating to COVID-19 while attending the Event and any associated expenses and for the cost of any materials. All such expenses shall be charged at cost plus a reasonable price supplement to be notified by M-Sport to the Customer.
- 5.2 M-Sport reserves the right to increase the Day Rates and Communications Charge:
- (a) annually, with such amends notified by M-Sport in a technical bulletin issued to the Customer; and
 - (b) additionally from time to time by notice to the Customer in writing.
- 5.3 Any Services that are performed for part of a calendar day will be charged at a full days' rate.
- 5.4 If the Customer requests any change to the Services as stated in the Accepted Order and provides notice of such requested change after M-Sport has placed any bookings relating to travel or accommodation, the Customer shall pay to M-Sport on demand the Amendment Fee, together with all related unrecoverable travel and accommodation costs incurred by M-Sport and notified to the Customer.
- 5.5 M-Sport shall invoice the Customer:
- (a) on completion of the Services, where the Customer is an existing customer of M-Sport; or
 - (b) upon issuing the Order Acceptance, where the Customer is a new customer of M-Sport (**New Customer**).
- 5.6 The Customer shall pay each invoice submitted by M-Sport:

- (a) by the date for payment stated on the invoice and, in the case of New Customer, not less than 2 days prior to the Event; and
 - (b) in full and in cleared funds to a bank account nominated in writing by M-Sport, and
- time for payment shall be of the essence of the Contract.

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

5.8 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 9, 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 5.8 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%.

5.9 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).

6 INTELLECTUAL PROPERTY RIGHTS

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by M-Sport.

6.2 The Customer grants M-Sport a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to M-Sport for the term of the Contract for the purpose of providing the Services to the Customer.

7 INSURANCE

7.1 M-Sport has taken out insurance policies for (a) public liability, (b) product liability and (c) travel and medical respect of Personnel only, whilst they are attending an Event to provide Services. Personnel shall not be required to drive any motor vehicle where the insurance cover for them cannot be demonstrated, in writing, prior to the Personnel attending the Event.

8 LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

8.1 References to liability in this clause 7 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.2 Nothing in this clause 8 shall limit the Customer's payment obligations under the Contract.

8.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

- 8.4 Subject to clause 8.3, clause 8.5 and clause 8.6, M-Sport's total liability to the Customer for all loss or damage shall not exceed the Charges payable for the Services, save that where the Services are performed or are to be performed at more than one Event, M-Sport's total liability to the Customer for all loss or damage shall not exceed that portion of the Charges payable in respect of the specific Event in respect of which the claim arose.
- 8.5 In no event shall M-Sport or any Personnel be liable:
- (a) for any losses occurring directly from Personnel driving a rally car, irrespective of fault.;
or
 - (b) in respect of any loss of competition points, awards, loss of entry fees or other similar losses resulting from or in connection with any Services provided by M-Sport.
- 8.6 Subject clause 8.2 and clause 8.3, 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.
- 8.7 M-Sport has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.8 This clause 7 shall survive termination of the Contract.

9 TERMINATION

Termination by Customer:

- 9.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract by giving M-Sport not less than 2 weeks' written notice.
- 9.2 If the Customer gives notice to terminate the Contract with less than 2 weeks' prior notice to the date on which the Personnel is scheduled to depart to attend the Event, the Customer shall pay to M-Sport on demand the Amendment Fee, together with all related unrecoverable travel and accommodation costs incurred by M-Sport and notified to the Customer.

Termination by M-Sport:

- 9.3 Without affecting any other right or remedy available to it, M-Sport may terminate the Contract by giving the Customer not less than 2 weeks' written notice.
- 9.4 Without limiting its other rights or remedies, M-Sport may terminate the 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.

9.5 On termination of the Contract, the Customer shall immediately pay to M-Sport all of M-Sport's outstanding unpaid invoices and interest and, in respect of Services 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

9.6 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.

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

10 FORCE MAJEURE

10.1 Neither party shall be in breach of the Contract nor be 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.

11 DISPUTE RESOLUTION (ESCALATION CLAUSE)

11.1 In the event of a dispute arising out of or relating to this contract, including any question regarding its breach, existence, interpretation, 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.

11.2 Notwithstanding clause 12.13, 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.

11.3 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.

11.4 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.

12 GENERAL

12.1 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.

12.2 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 M-Sports of the other party, except as permitted by clause 12.2(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 12.2; 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.

12.3 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.

12.4 **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.

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

12.6 **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.

12.7 **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 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.

12.8 **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 Ltd, Dovenby Hall, Dovenby, Cockermouth, CA13 0PN

12.9 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 12.9(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.

12.10 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.

12.11 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.

12.12 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.

12.13 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.