

# XTRAC Inc.

## TERMS & CONDITIONS OF SALE

(These standard terms and conditions ("Conditions") shall apply to all Contracts)



### GENERAL

These terms shall be incorporated into all contracts for the sale of goods by Xtrac Inc and its associated companies (Xtrac) to the Buyer to the exclusion of any terms stipulated by the Buyer. No modification or waiver of these terms shall be binding on Xtrac unless confirmed in writing by Xtrac.

### DELIVERY

Delivery dates quoted are estimates only and are not binding. Xtrac shall have no liability to the Buyer or any third party for any financial or other loss or damage (whether direct or indirect) if delivery is delayed, nor shall any such delay entitle the Buyer to refuse to accept any goods or to refuse to pay in full for goods when they are delivered. The normal provisions of Force Majeure shall apply.

Prices quoted are ex-works and exclude freight, insurance and delivery charges, Value Added Tax and other taxes or duties, all of which will be invoiced to the Buyer as applicable.

Goods are delivered and risk passes to the Buyer when Xtrac makes them available to the Buyer or any agent of the Buyer or any carrier (who shall be the Buyer's agent whoever pays his charges) at Xtrac's premises or other delivery point agreed by Xtrac.

Xtrac does not accept any responsibility for damage, shortage or loss in transit, Xtrac will take reasonable steps to assist the Buyer's claim against the carrier for any damage, shortage or loss in transit.

### QUANTITIES

Orders are accepted on the condition that Xtrac may at its option supply 10% more or less than the quantity ordered.

### ALTERATION OF PRICES

Xtrac reserves the right to increase the price of the goods to reflect any increase in costs to Xtrac which is due to any factor beyond Xtrac's reasonable control such as (without limitation) any foreign exchange fluctuations; currency regulations; alteration of taxes or duties; increases in the cost of labour, material or other costs of manufacture or delivery; any change in delivery dates, quantities or specifications for the goods which is requested by the Buyer; or any delay caused by any instructions of the Buyer or failure of the Buyer to give Xtrac adequate information or instructions.

### PAYMENT

Goods will be invoiced when ready for despatch and all invoices are payable in USD (unless other arrangements have been made). In no circumstances is the Buyer entitled to make any deduction or withhold payment. Where Xtrac has agreed to grant credit to the Buyer, payment must be made no later than the thirtieth (30th) day of the month following that in which the goods are invoiced. Credit terms may be withdrawn or altered by Xtrac at any time with or without notice. Payments are due in full without any deduction (whether by set-off, counterclaim or otherwise). Without prejudice to any other rights or remedies of Xtrac, if the Buyer fails to settle any invoice by the due date interest shall be payable on any overdue amount from the date on which payment was due to that on which it is made (whether before or after judgement) on a monthly basis at the rate of 1% per month. The Buyer shall in addition reimburse Xtrac all costs and expenses (including legal costs) incurred in the collection of any overdue amount. If by reason of failure to pay, late payment or otherwise Xtrac considers that the Buyer's creditworthiness is impaired, then without prejudice to any other available remedy Xtrac shall be entitled to suspend further deliveries of goods or to suspend performance of its obligations under any contract with the Buyer or treat such contract as repudiated.

### SUB-CONTRACTING OF WORK

Xtrac reserves the right to sub-contract the whole or part of any work at its absolute discretion.

### TOOLING

All tooling, fixtures and cutters are invoiced at part cost only and are to remain the property of Xtrac.

### INFRINGEMENT OF THIRD-PARTY RIGHTS

The Buyer shall indemnify Xtrac against all damages, penalties, cost and expenses to which Xtrac may become liable as a result of work done in accordance with the Buyer's specification or requirements which results in infringement or alleged infringement of a patent, registered design or other intellectual property rights of any third party.

### CONFIDENTIALITY

All information, technical or otherwise, given by Xtrac to the Buyer shall be treated as confidential by the Buyer and shall not be disclosed to any third party except with the written permission of Xtrac. The Customer does not acquire any right in or title to or licence in respect of any such confidential information.

### OWNERSHIP OF GOODS

Notwithstanding the earlier passing of risk, title in the goods shall remain with Xtrac and shall not pass to the Buyer until the Buyer has paid for them in full. Until title passes the Buyer shall hold the goods as the fiduciary agent and bailee of Xtrac and the Buyer shall store or make the goods so that at all times they are identifiable as the property of Xtrac. Xtrac shall be entitled at any time before title passes to require the Buyer to deliver up the goods to Xtrac and to enter upon any premises of the Buyer or any third party to repossess the goods. If the Buyer re-sells the goods the entire proceeds of such resale or any claim for such proceeds shall be held on trust for Xtrac without prejudice to any other claim which Xtrac may have against the Buyer in respect of the goods.

### WARRANTY AND EXTENT OF LIABILITY

**All gearboxes, parts, accessories and equipment are sold by Xtrac without any warranty whatsoever, express or implied, and without in any way limiting the foregoing, Xtrac specifically does not make any warranty of merchantability or fitness for a particular purpose in respect of its gearboxes, parts, accessories or equipment sold hereunder.**

**The buyer is familiar with the auto racing industry and recognises and agrees that there is a risk of failure of gearboxes, parts, accessories, services and or/designs sold hereunder and that auto racing is an inherently dangerous activity for which the participants therein, including the buyer and his employees or associates assume full responsibility for and also for the risk of bodily injury, death or property damage. Xtrac shall not be liable for the consequences of such risks so assumed, nor for the consequences of any open and obvious dangers posed in connection with the purchase and use of gearboxes, parts, accessories or equipment.**

**Lightweight and weight optimised components are supplied subject to warranty only against manufacturing defects. It is possible that in certain conditions operating life may be reduced. Similarly prototype, experimental or components manufactured to the Customer's design are supplied only subject to warranty against manufacturing defects.**

**Furthermore such components, by their very nature, are not warranted as to their suitability for use or performance. Goods intended for motorsport or any related application, or for product development, evaluation or experimentation are supplied subject to the Customer recognising that such goods may operate under extreme loads and conditions and that it is the Customer's responsibility to ensure that the goods are correctly inspected, adjusted and maintained at all times to suit the specific conditions in which they may be used.**

**In partial consideration of Xtrac's sale of goods to the buyer, the buyer, for himself, his heirs, executors, and assigns, and anyone claiming by or through the buyer, and/or any entity owned or controlled by the buyer hereby releases Xtrac, its shareholders, officers, and employees and successors and assigns thereof for all losses or damage, and any claim or damage therefore, on account of property damage, personal injury, disability, or death or anyone associated with the buyer in connection with the purchase and use of the goods or services sold by Xtrac hereunder.**

Xtrac shall have no liability to the Buyer in connection with the performance or purported performance of or failure to perform the contract other than as set out in this Condition. In no circumstances shall Xtrac be

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liable for any claims for indirect or consequential injury or damage (including loss of profits) arising from any such matters.

Subject to the provision of Condition 2 which apply in the case of loss or damage in transit, if the Buyer establishes that any goods have not been delivered or have been delivered damaged, or are not of the correct quantity, or do not comply with their description, Xtrac shall at its option either (i) replace with similar goods any goods which are so missing or damaged or do not comply with their description or (ii) allow a credit to the Buyer for their invoice value or (iii) repair any damaged goods.

In the case of goods not manufactured by Xtrac, Xtrac's sole liability shall be to pass on to the Buyer the benefit of any guarantees, conditions or warranties received by Xtrac in respect of such goods.

Subject to the preceding paragraph, if the Buyer establishes that any goods are defective and notifies Xtrac in writing to this effect and returns the goods in question carriage paid to Xtrac within a period of six months from the date of delivery Xtrac shall at its option (i) replace with similar goods or repair any defective goods or (ii) allow the Buyer credit for their invoice value.

No claim shall arise against Xtrac for any defect arising from any design or specification provided by the Buyer or if any adjustments, alterations or other work has been done to the goods by any person other than Xtrac, or if Xtrac consider that they have been used to such an extent as to have been fulfilled the intended purpose.

In no circumstances shall the liability of Xtrac to the Buyer exceed the invoice value of the goods.

### **RETURN OF GOODS**

Goods made to special order cannot be accepted back for credit unless incorrect or defective. In other cases where it may be agreed to accept the return of goods for credit, a handling charge may be made at Xtrac's discretion. Such goods must be in resaleable condition and returned carriage paid. No credit will be allowed for goods supplied more than six months previously.

### **LAW**

The applicable law shall be the law of the State of Indiana.