

# XTRAC LIMITED

## TERMS & CONDITIONS OF SALE

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



### 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following words shall have the following meanings:

"Charges" means our charges for supplying the Goods and/or Services as set out in the Order Acknowledgement.

"Contract" means any contract made between the parties for the sale of Goods and/or Services which incorporates these Conditions, the relevant Order Acknowledgement and a Proposal (where applicable).

"Control" means in relation to a party, the ability to direct the affairs of that party, whether by virtue of the ownership of shares, contract or otherwise.

"Delivery" means our delivery of the Goods at our premises on an ex-works basis as defined in the Incoterms 2010 (as amended) or our delivery of the Services at the premises notified to us by you.

"Documentation" means all our internal documentation or information including, but not limited to, manuals and instructions.

"Force Majeure Event" means any event outside of our control, including but not limited to, acts of God, terrorism, war, flood fire, labour disputes, supplier and/or subcontractor delays, technology or telecommunication failures, strikes, lockouts, riots, civil commotion and governmental actions.

"Goods" means all or any goods (including any part or parts of them) that we agree to supply to you as set out in an Order Acknowledgement.

"Manufacturer" means the manufacturer of the Goods.

"Order" means your request for us to supply you with Goods and/or Services in consideration of the Charges, which you make by sending us a purchase order or otherwise requesting the Goods and/or Services that you require in writing.

"Order Acknowledgement" means when we confirm our acceptance of your Order orally or in writing (whether electronically or otherwise) by sending you a form.

"Proposal" means the document setting out the details of the scope of work (where applicable).

"Services" means the design, [installation], support and/or maintenance services to be provided by us to you in accordance with these Conditions.

"Term" means the time period during which we will provide the Services.

"we", "us", "our" means Xtrac Limited, a company incorporated in England and Wales (company number 01825037) whose registered office is at Gables Way, Thatcham, Berkshire. RG19 4ZA

"You", "your" means the person, firm or organisation that places an Order with us.

1.2 In these Conditions, headings will not affect the construction of these Conditions.

### 2. APPLICATION OF TERMS

2.1 These Conditions apply to the Contract to the exclusion of any other terms and conditions, including any terms and conditions which you purport to apply under any purchase order, confirmation of order, specification or any other document.

2.2 We reserve the right to amend these Conditions from time to time, and any such changes are effective immediately from the time they are notified to you.

2.3 Our employees, sub-contractors and/or agents are not authorised to make any representations and/or warranties concerning the Goods and/or Services.

2.4 Any samples, drawings, descriptive matter, or advertising produced by us and any descriptions or illustrations contained in our catalogues, brochures or any electronic media or on our website are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described within them. They shall not form part of the Contract or have any contractual force.

### 3. ORDERS

3.1 Any Order you place will constitute an offer capable of acceptance by us. We will not be obliged to accept an Order and we reserve the right to refuse an Order without giving any reason.

3.2 Each Order if accepted by us shall constitute a separate severable contract.

3.3 Your Order must make specific reference to the Proposal document, where applicable.

3.4 The availability of resources set out in the Proposal will be subject to acceptance of the Proposal by you by the date specified in the Proposal.

3.5 Subject to condition 3.6, you may cancel an Order at any time until you receive an Order Acknowledgement. Once you have received an Order Acknowledgement, the Order and any relevant Proposal are fixed.

3.6 You may not at any time cancel any Order for Goods and/or Services that are customised to meet your particular requirements.

3.7 Should you require any changes to the Order we may quote separately for the agreed additional work and such work will be subject to these Conditions.

### 4. SUPPLY OF SERVICES

4.1 Time for the supply of services shall not be of the essence. We shall provide you with details of dates on which we will endeavour to provide you with the Services, but if we are prevented from providing the Services on any particular date by a Force Majeure Event we shall arrange to provide the Services as soon as reasonably practicable thereafter.

4.2 You acknowledge that the supply of any Services by us is dependent on your full and timely cooperation. If we are unable to perform any of the Services as a result of you failing to cooperate or to grant us access to required facilities we shall be entitled to charge you a reasonable call-out cost.

4.3 You agree to supply data as required to support system design, which will include as appropriate; duty cycle, engine and/or motor or other powerplant and casing input loads, and all such other information as is necessary for the provision of our Services.

### 5. QUANTITIES

5.1 Orders are accepted on the condition that we may at our option supply 10% more or less than the quantity ordered for orders of 10 or more, unless agreed otherwise.

5.2 For quantities of less than 10, we will manufacture and/or Supply the order quantity plus 1 additional component to ensure that our demand is achieved. You will be required to purchase this one additional component if it is successfully manufactured and/or supplied, unless agreed otherwise.

5.3 You shall not be entitled to reject the Goods if we deliver up to and including 10% more or less than the quantity of Goods on the Order, unless agreed otherwise.

### 6. PRICE AND PAYMENT

6.1 Unless expressed otherwise, our Charges are stated and payable in pounds sterling and are exclusive of delivery charges, insurance, VAT and any similar taxes. All such taxes are payable by you at the prevailing rate.

6.2 The prices quoted for the Goods are ex-works.

6.3 Where we have agreed to grant credit to you, Goods will be invoiced when ready for despatch and payment must be made no later than the twenty eighth day of the month following that in which the Goods are invoiced.

6.4 All Charges are payable without any deduction, set-off, counterclaim, discount, abatement or otherwise.

6.5 We may withdraw or alter credit terms at any time with or without notice.

6.6 If you fail to pay any Charges due or if you fail to comply with any credit terms agreed in writing up to the date of actual payment, we may, without prejudice to any other right or remedy available to us, charge interest on the amount unpaid from the due date up to the date of actual payment (both before and after Judgment) at the current rate set out under the Late Payment of Commercial Debts (Interest) 1998 as amended.

6.7 Notwithstanding condition 6.6, if you fail to pay us any Charges, we may, without prejudice to any other right or remedy available to us, suspend any Delivery and/or suspend provision of any Services under any contract between us and/or cancel any contract between us.

6.8 In addition you shall reimburse us all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

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- 6.9 We reserve the right to increase the Charges at any time before Delivery on notice to you if for any reason the price of the Goods and/or Service increases or if there is any change in the delivery dates, quantities and/or specifications for the Goods/and or Services which is requested by you.
- 6.10 The Charges quoted in our estimate or Proposal will remain fixed for 90 days unless we agree otherwise in writing.
- 6.11 Unless agreed otherwise, labour to support testing/race meetings is not included and will be charged to you at an agreed daily rate. Travel, accommodation and subsistence and other out of pocket expenses will be charged to you at cost plus an administration fee of 15%.
- 7. CANCELLATION**
- 7.1 In the event that you wish to cancel the project prior to completion, all our outstanding invoices shall become immediately due.
- 7.2 Notwithstanding condition 7.1, you shall reimburse us all costs and any loss of profit we have incurred prior to cancellation which are not covered by outstanding invoices within 30 days of the date of cancellation. This will include all costs related to engineering, manufacturing, resources, and/or storage of Goods.
- 7.3 We reserve the right to make a charge for any staff released from a cancelled project that cannot be immediately re-allocated. This will be the equivalent of a maximum of two months costs for the relevant staff and any specialised facilities or sub-contract commitments at reasonable charge out rates.
- 8. DELIVERY**
- 8.1 Delivery dates quoted are estimates only and are not binding. Whilst we will use all reasonable endeavours to affect Delivery at our premises at the time we have estimated, time for Delivery is not of the essence.
- 8.2 We shall have no liability whatsoever for any losses, damages, costs and/or expenses (whether direct or indirect) suffered by you or any third party as a result of any delay in Delivery,
- 8.3 Any delay in Delivery will not give you the right to refuse to accept the Goods and/or to refuse to pay in full the Goods.
- 8.4 Where Goods are supplied for export from the United Kingdom, you shall be responsible for supplying proof of export and for complying with any legislation or regulations governing the importation of such goods into the country of destination and for the payment of any duties or taxes that may arise.
- 9. TITLE AND RISK**
- 9.1 Risk shall pass to you on Delivery.
- 9.2 Following Delivery, the Goods shall remain our sole and absolute property until payment of the Charges for the Goods has been received by us in full.
- 9.3 Until title and ownership of the Goods has passed to you, you must not destroy, deface or obscure any identifying mark of packaging on or relating to the Goods.
- 9.4 If you resell the Goods before title has passed to you, you shall hold the entire proceeds of sale on trust for us without prejudice to any other claim we may have against you in respect of the Goods.
- 9.5 We shall be entitled at any time before title passes to require you to deliver up the Goods to us or to provide us with access to any premises where the Goods are held so we can collect the Goods.
- 9.6 For the avoidance of doubt, all tooling, fixtures, patterns and cutters are invoiced at nil or part cost only and shall remain our sole and absolute property and all parts and materials remain our exclusive property.
- 10. WARRANTY**
- 10.1 We warrant that the Goods will meet their specification as set out in the Documentation, but we do not warrant that the Goods will be of satisfactory quality nor fit for a particular purpose.
- 10.2 Subject to condition 10.1, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law excluded from the Contract.
- 10.3 In the case of Goods not manufactured by us, our sole liability shall be to pass on to you the benefit of any Manufacturer guarantees or warranties received by us in respect of such Goods.
- 10.4 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.
- 10.5 Prototype and experimental gearboxes or components manufactured by us to our design or manufactured by us to your design are supplied subject to warranty only against manufacturing defects.
- 10.6 Subject to Conditions 10.4 and 10.5, any such components or gearboxes, by their very nature, are not warranted as to their suitability for use or performance.
- 10.7 Our total liability to you for defective Goods and/or Services shall be limited at our option to (a) the repair; or (b) replacement of any Goods; or (c) in the case of Services the re-performance of the Services.
- 11. REJECTION AND RETURN OF GOODS**
- 11.1 Goods made to special order cannot be accepted back for credit unless incorrect or defective.
- 11.2 If the Goods are defective, you may reject the Goods within the agreed warranty period notified to you, by giving written notice stating the reasons for rejection provided that you provide us with facilities to inspect and test the Goods within 7 days of the defect becoming apparent.
- 11.3 If, in our sole discretion, we accept the return of Goods for credit, a handling charge may be payable. The Goods must be returned undamaged, unaltered, in a resalable condition and carriage paid. The returned Goods must only have been used by you for the purpose for which they were designed.
- 11.4 No credit will be given for Goods supplied more than six months previously.
- 11.5 Unless agreed otherwise by the parties, if Goods returned for repair remain unpaid or uncollected such Goods will be disposed of after 3 months.
- 11.6 No goods shall be returned to us for any reason without a Return Material Authorisation number provided to you by us in advance of the return. You will be liable for and shall indemnify us for any VAT or customs duties payable on such returns to us and any subsequent return of the goods to you.
- 12. INTELLECTUAL PROPERTY AND INFRINGEMENT OF THIRD PARTY RIGHTS**
- 12.1 All intellectual property rights in or arising out of or in the Goods, Services and/or any engineering reports shall be owned by us or our licensors, unless agreed otherwise.
- 12.2 You shall indemnify us against all damages, penalties, cost and expenses to which we may become liable as a result of work done in accordance with your specification or requirements which results in infringement or alleged infringement of a patent, registered design or other intellectual property rights of any third party.
- 12.3 We reserve the right to amend the specification of the Goods and/or Services if required by any applicable statutory or regulatory requirements.
- 12.4 If the Goods made to your design incorporate at your request the intellectual property rights of any third party, you are responsible for obtaining a written licence from the relevant third parties to use such rights.
- 13. CONFIDENTIALITY**
- 13.1 You shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to you by us, our employees, agents or subcontractors, and any other confidential information concerning our business or our products or services which we may disclose.
- 13.2 You shall restrict disclosure of such confidential information to such of your employees, agents or subcontractors that need to know it for the purpose of discharging your obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality as onerous to those which bind you.
- 13.3 You undertake and agree that you shall not (and shall not permit others to do so) decompile, disassemble or reverse engineer the Goods or any part of the Goods except as and to the extent permitted by law or to obtain the information necessary to achieve

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- interoperability of an independently provided program with the Goods or with another program and in each case such information is not readily available from us or elsewhere
- 13.4 Engineering reports are supplied to you for your exclusive use and may only be used by you in respect of the applications described therein. The report may not be disclosed to any third party or placed in the public domain without our express written consent.
- 13.5 A party may, with the consent of the other party, publicise its involvement in the Contract (such consent not to be unreasonably withheld or delayed).
- 13.6 This condition shall survive expiry or termination of the Contract.
- 14. SUSPENSION AND TERMINATION**
- 14.1 We may, in our absolute discretion, suspend any Delivery, suspend provision of the Services and/ or terminate any Contract immediately on notice to you if:
- 14.1.1 You fail to pay any amount due under the Contract on the due day for payment and you remain in default not less than 14 days after being notified in writing to make such payment; or
- 14.1.2 You are unable to pay your debts or you become insolvent or you are subject to an order or a resolution for your liquidation, administration, winding up or dissolution or you have a receiver or administrator appointed over all or any of your assets or business, or you cease or threaten to cease to carry on business, or you are subject to any equivalent or similar event or process in any jurisdiction; or
- 14.1.3 You commit a material breach of any of these Conditions and (if such a breach is remediable) you fail to remedy such breach within 30 days of being notified to do so; or
- 14.1.4 There is a change of Control of you; or
- 14.1.5 We are unable to effect Delivery due to an event of Force Majeure.
- 14.2 Termination of any Contract between us shall not affect your liability to pay us any Charges due for Goods and/or Services, such Charges become immediately due on termination. If on termination of any Contract, we owe you any sums, we reserve the right to set off against such sums any outstanding Charges that you owe us.
- 15. LIMITATION OF LIABILITY**
- 15.1 Nothing in these Conditions excludes our liability for death or personal injury as a result of our negligence or the negligence of our employees or for fraud or fraudulent misrepresentation.
- 15.2 Our total aggregate liability to you in contract, tort (including without limitation negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to a maximum amount of 100% of the Charges paid by you for the Goods and/or Services which have been Delivered and which give rise to the claim.
- 15.3 Subject to condition 15.2, we will not be liable for the following loss or damage howsoever caused: loss of profits, or loss of business, or loss of revenue, or depletion of goodwill, or loss of anticipated savings and/ or special, indirect or consequential loss or damage whether suffered by you or third party.
- 15.5 You acknowledge that Goods intended for motorsport or for product development, evaluation or experimentation may operate under extreme loads and conditions and you agree that it is your 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.
- 15.6 We shall not be liable for any defect arising from any design or specification that you provided to us or for any adjustments, alterations or other work that has been done to the Goods by any person other than us.
- 15.7 You acknowledge that it is your responsibility to ensure compliance with the sporting regulations/homologation, automotive legislation, aerospace standards and/or any other relevant, rules or regulations. You agree to advise us of any changes which are enforceable and/or imminent.
- 16. FORCE MAJEURE**
- 16.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.
- 17. ASSIGNMENT**
- 17.1 We may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights or obligations under the Contract.
- 17.2 In relation to the Contract, you may not assign, charge, transfer, subcontract or deal in any other manner with all or any of your rights or obligations without our prior written consent. For the avoidance of doubt, this does not affect your right to resell the Goods to a third party. However, we will not be liable to any third party you resell the Goods to whatsoever.
- 18. ANTI-BRIBERY POLICY**
- 18.1 We value our reputation for ethical behaviour, financial integrity and reliability. During the course of the Contract, you shall:
- 18.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- 18.1.2 comply with the Company's ethics and anti-bribery and anti-corruption policies as made available to you by us and in each case as we may update from time to time; and
- 18.1.3 have and maintain in place throughout the term of this Contract your own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010.
- 19. GENERAL**
- 19.1 These Conditions, the Proposal (where applicable) and the relevant Order Acknowledgement, constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, arrangements and understandings made between us whether written or oral, relating to its subject matter.
- 19.2 Each party acknowledges that, in entering into a Contract (and any document referred to in it), it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in these Conditions. Each party agrees that its only liability in respect of those representations and warranties that are set out in these Conditions (whether made innocently or negligently) shall be for breach of contract.
- 19.3 These Conditions and/or any Contract shall be governed exclusively by and construed in accordance with English law and the parties agree to submit exclusively to the jurisdiction of the English courts.
- 19.4 Any failure by us to enforce a breach of the Conditions by you shall not be deemed to be a waiver of any subsequent breach of these Conditions that you may make.
- 19.5 The parties agree that there will be no recruitment or employment of each other's employees during the terms of any Contract and for a period of 6 months thereafter. This clause will survive termination of the Contract.
- 19.6 If at any time any one or more of these Conditions are held to be unenforceable, illegal or otherwise invalid in any respect, such enforceability, illegality or invalidity shall not affect the remaining Conditions, which shall continue in full force and effect.
- 19.7 Nothing in the Contract is intended to or shall operate to create a partnership or joint venture between the parties.
- 19.8 The parties agree that no third party shall be afforded any rights under these Conditions.
- 19.9 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, fax or email. A notice will be deemed received: if delivered personally, when left at the appropriate address; if sent by pre-paid first class post or recorded delivery, at 9.00am on the second business day after posting; or, if sent by fax [or email], one business day after transmission.