

## TERMS AND CONDITIONS

**The Buyer’s attention is drawn in particular to the limitation of liability in clause 11.**

### 1. INTERPRETATION

1.1 In these terms and conditions (Terms), the following words and phrases shall have the following meanings:

- (a) “the Buyer” means the person, firm or company who purchases the Goods from the Company;
- (b) “the Company” means International Export Supplies Limited (trading as Interex, Interex Motorsport, Road Race Rally or other trading names), a company incorporated in England & Wales with number 03400514 whose registered office is at Interex House, Maitland Road, Lion Barn Industrial Estate, Needham Market, Suffolk IP6 8NS;
- (c) “Contract” means the contract for the sale and purchase of the Goods between the Company and the Buyer which shall be deemed to incorporate these Terms;
- (d) “Force Majeure Event” has the meaning set out in clause 13;
- (e) “Goods” means any goods agreed in the Contract to be supplied by the Company to the Buyer;
- (f) “Place of Delivery” means the place to which the Goods are to be delivered by or on behalf of the Company, as set out in the order confirmation. Unless otherwise agreed:
  - (i) where the Company has agreed to arrange carriage, the Place of Delivery shall be the delivery address identified by the Buyer in its order; and
  - (ii) where the Company has not agreed to arrange carriage, the Place of Delivery shall be the place for collection notified by the Company to the Buyer.

1.2 In these Terms:

- (a) a reference to any statute or statutory provision shall be construed as a reference to such statute or statutory provision as amended, modified, re-enacted or replaced from time-to-time;
- (b) any phrase introduced by the words “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (c) a “person” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

- (d) a reference to “writing” or “written” includes faxes and e-mails;
- (e) headings are for ease of reference only and shall not affect the interpretation of these Terms.

## **2. THE CONTRACT**

- 2.1 The Contract shall be on these Terms to the exclusion of all other terms and conditions, including any terms and conditions that are purported to be included or applied by the Buyer or which are implied by trade, custom, practice or course of dealing.
- 2.2 No terms and conditions contained in any confirmation of order, purchase order or other document of the Buyer will form part of the Contract.
- 2.3 A quotation for the Goods given by the Company shall not constitute an offer. An order by the Buyer constitutes an offer by the Buyer to purchase Goods in accordance with these Terms. The order shall only be deemed to be accepted on the earlier of the Company issuing a written acceptance of the order or despatching the Goods to the Customer, at which point the Contract shall come into existence. The Buyer is responsible for ensuring that the order is complete and accurate.
- 2.4 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by the Company and any illustrations contained in the Company’s sales materials are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force. The Company reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements or as a result of any change or withdrawal of Goods by its suppliers.

## **3. DELIVERY**

- 3.1 The Company shall deliver the Goods to the Place of Delivery or such other location as the parties may agree in writing. Where the Company has agreed to arrange carriage, delivery of the Goods shall be completed on the Goods’ arrival at the Place of Delivery. Where the Company has not agreed to arrange carriage, delivery of the Goods shall be completed when the Goods are given into the custody of the Buyer or its carrier.
- 3.2 Any dates specified by the Company for delivery of the Goods are an estimate only and the time of delivery is not of the essence. If no date is specified for delivery of the Goods, delivery shall be within a reasonable time.

- 3.3 If the Company fails to deliver the Goods its liability shall be limited to a refund of the price paid by the Buyer for the Goods. The Company shall not be liable for any loss, whether direct, indirect or consequential, and whether economic loss, loss of profits or otherwise, arising directly or indirectly out of any delay or failure in the delivery of the Goods to the extent that the delay or failure is caused by:
- (a) a Force Majeure Event;
  - (b) the Company being unable to procure the Goods from its suppliers on reasonable terms or within a reasonable time for delivery of the Goods; or
  - (c) the Buyer's failure to provide adequate delivery instructions.
- 3.4 The Buyer shall not be entitled to terminate or rescind the Contract without the Company's written consent (which shall be entirely within its discretion) for a delay or failure in delivery of the Goods.
- 3.5 If the Company has agreed to arrange carriage and the Buyer fails to accept delivery of the Goods within five days of the first attempted delivery of the Goods at the Place of Delivery then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9:00 am local time on the fifth day after the day on which the first delivery of the Goods at the Place of Delivery was attempted; and
  - (b) the Company may store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance); and
  - (c) if twenty days after the day on which the first delivery of the Goods at the Place of Delivery was attempted the Buyer has not accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.
- 3.6 If the Company has not agreed to arrange carriage and the Buyer fails to collect or have collected the Goods from the Place of Delivery within five days of the Company notifying the Buyer that the Goods are ready then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9:00 am local time on the fifth day after the day on which the Company notified the Buyer that the Goods were ready; and
  - (b) the Company may store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance); and

- (c) if twenty days after the day on which the Company notified the Buyer that the Goods were ready the Buyer has not collected them or had them collected, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

3.7 Delivery of the Goods may be made by instalments, in which case each delivery shall constitute a separate Contract and any failure by the Company to deliver any one or more of the instalments in accordance with these Terms shall not entitle the Buyer to claim for any losses nor treat the Contract as repudiated in relation to any other instalment.

3.8 The Company shall have no liability for any shortfall in the quantity of the Goods delivered, or for any Goods missing from a consignment, unless the Buyer notifies the Company in writing of the shortfall or missing Goods within three days of the delivery to the Buyer of the relevant consignment.

#### **4. RISK IN AND OWNERSHIP OF THE GOODS**

4.1 Risk in the Goods shall pass to the Buyer:

- (a) on delivery at the Place of Delivery (where the Company has agreed to arrange insurance cover in respect of the carriage of the Goods to the Buyer); or
- (b) on the delivery of the Goods by or on behalf of the Company into the custody of the Buyer or a carrier (in any other circumstances).

4.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full in cleared funds all sums due to the Company in respect of the Goods and all other sums which are or may become due to the Company from the Buyer on any account.

4.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods separately from all other goods of the Buyer or any third party in such a way that they remain identifiable as the Company's property;
- (c) not destroy or deface any identifying mark on the Goods or their packaging;
- (d) maintain the Goods in satisfactory condition insured against all risks for their full price from the date of delivery, and hold any proceeds of such insurance on trust for the Company and not mix them with any other money; and
- (e) notify the Company immediately if it becomes subject to any of the events listed in clause 11.2;

but the Buyer may resell or use the Goods in the ordinary course of its business.

4.4 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 11.2, or the Company reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Goods have not been resold or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises or vehicles of the Buyer or of any third party where the Goods are stored in order to recover them.

4.5 The Company shall not be responsible for and the Buyer will indemnify the Company against any liability in respect of any damage caused to such premises or vehicles in the course of such recovery to the extent that it was not reasonably practicable to avoid it.

## **5. INTERNATIONAL SUPPLY CONTRACTS / EXPORT ORDERS**

5.1 This clause applies where the Place of Delivery is outside the United Kingdom.

5.2 The Contract will be deemed to incorporate the latest edition of Incoterms (being the standard trade definitions issued by the International Chamber of Commerce) current at the date of the Contract. If there is any inconsistency between Incoterms and any other term of the Contract, the latter will prevail.

5.3 The Buyer warrants that if an import licence or permit is required for the importation of goods into the country of destination, then such import licence or permit has been obtained or will be obtained prior to shipment and the Buyer shall be responsible for complying with any legislation or regulations governing such importation and for the payment of any duties thereon.

## **6. PRICE**

6.1 The price for the Goods is ex the Company's warehouse and shall be as agreed in the Contract. The price for the Goods shall be exclusive of all costs of packaging, carriage, insurance and VAT (if applicable) which the Buyer shall pay in addition. The Buyer shall pay any and all duties, taxes or other government charges payable in respect of the Goods.

6.2 The Buyer shall pay such deposit towards the price for the Goods as the Company shall direct and the Company may rescind the Contract at any time if the Buyer fails to do so.

**7. PAYMENT**

- 7.1 The Company may invoice the Buyer for the Goods on or at any time after the Goods are available for despatch or collection from the Company's premises.
- 7.2 Payment of the price of the Goods shall be due upon presentation of the Company's invoice for the Goods unless a different payment term has been agreed by the Company in writing. Time of payment is of the essence.
- 7.3 The Buyer shall pay for the Goods in the currency shown on the invoice into the appropriate bank account of the Company. The Buyer shall reimburse to the Company on demand any currency conversion losses or banking charges incurred by the Company arising from or in connection with any failure by the Buyer to comply in full with this clause 7.3.
- 7.4 Payment shall not be deemed to have taken place until the receipt by the Company of cleared funds.
- 7.5 If the Buyer fails to make any payment due to the Company under the Contract by the due date for payment then the Buyer shall pay interest on the overdue amount at the rate of 8% per annum above the base lending rate of Barclays Bank Plc from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment.
- 7.6 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Buyer shall pay all reasonable costs incurred in recovering any outstanding sums.

**8. WARRANTIES**

- 8.1 The Company warrants that at the time of delivery the Goods:
- (a) are of satisfactory quality; and
  - (b) conform in all material respects with any specification published by the Company.
- 8.2 Subject to clause 8.3, if:
- (a) the Buyer gives notice in writing to the Company within 30 days from the date of delivery that some or all of the Goods do not comply with the warranty set out in clause 8.1;

- (b) the Company is given a reasonable opportunity of examining such Goods; and
- (c) the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost,

the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

8.3 The Company shall not be liable for a failure of Goods to comply with the warranty in clause 8.1 if the failure arises from:

- (a) unsuitable storage;
- (b) use in any motorsport activity, racing or testing;
- (c) abnormal use, misuse, wilful damage or negligence;
- (d) use under abnormal conditions;
- (e) use contrary to the recommendations of the manufacturer;
- (f) use in conjunction with parts not approved in writing by the Company or, in the case of automotive Goods, the relevant vehicle manufacturer;
- (g) reconditioning or repair without the Company's written approval;
- (h) use in any hydraulic component of any fluid other than that approved by the Company in writing;
- (i) fair wear and tear;
- (j) faulty installation, servicing or repair of the Goods by any person other than a duly authorised representative of the Company;
- (k) Goods damaged by accident or through negligence of the Buyer; or
- (l) wearing parts and consumables.

8.4 The Company shall not be liable for any breach of the warranty in clause 8.1 if the Buyer makes any further use of the Goods after giving notice pursuant to clause 8.2(a) or alters or repairs the Goods without the written agreement of the Company.

8.5 Except as provided in this clause 8 the Company shall have no liability to the Buyer in respect of a failure of the Goods to comply with the warranty set out in clause 8.1.

8.6 To the maximum extent permitted by law the Company disclaims all other warranties with regard to the Goods either express or implied including but not limited to any implied warranties of satisfactory quality or fitness for any particular purpose. The Buyer acknowledges that that it has, before ordering the Goods, satisfied itself that the Goods will be suitable and appropriate for the use or purpose to which it intends to put them.

8.7 The Company shall use its reasonable endeavours to ensure that the Buyer shall receive such warranty and/or guarantee as is given by the manufacturer of the Goods to the Company and the Buyer hereby agrees to be bound by any conditions attaching to such warranty and/or guarantee.

## **9. RETURNS**

9.1 The Company may in its discretion accept for return any Goods which have been correctly supplied in accordance with the Contract but which are not required by the Buyer.

9.2 If the Buyer wishes to return any Goods which have been correctly supplied in accordance with the Contract the Buyer should request permission from the Company to return them.

9.3 If the Company gives permission for a return, it may charge a re-stocking charge of up to 25% of the price of the returned Goods or at the Company's option such other charge as may be imposed by the Company's supplier of the Goods. The Company will advise the Buyer of the re-stocking charge at the time the Company approves the return.

9.4 The Buyer shall bear the packaging, carriage and insurance costs, and any import, export or other duties, relating to the return of the Goods to the Company.

9.5 Any returned Goods must be received by the Company unused, unfitted, in saleable condition and in their original packaging which must be undamaged and unmarked.

9.6 If the Buyer is a consumer within the meaning of the Consumer Protection (Distance Selling) Regulations 2000 it may have a statutory right to cancel the Contract by giving the Company notice of cancellation within seven working days beginning with the day after the Buyer receives the Goods. Clauses 9.4 and 9.5 shall apply if the Buyer exercises such a cancellation right.

## **10. EXCHANGE PARTS**

10.1 This clause 10 applies where the Buyer purchases Goods to replace other goods which are subject to a manufacturer's exchange scheme (**Replaced Parts**).

10.2 The price of the Goods may include an exchange surcharge which the Company shall refund to the Customer in accordance with this clause.

10.3 The Buyer may, by prior written arrangement with the Company, return the Replaced Parts to the Company for exchange. The Replaced Parts must be accompanied by the Company's reference number for the order.



- 10.4 The Buyer shall bear the packaging, carriage and insurance costs, and any import, export or other duties, relating to the return of the Replaced Parts to the Company.
- 10.5 Following the receipt of the Replaced Parts by the Company the Company shall refund the exchange surcharge to the Buyer provided that:
- (a) the Buyer complies with, and does not act in such a way as to prevent the Company from complying with, the terms of the manufacturer's exchange scheme;
  - (b) the Buyer returns the Replaced Parts in good time to allow the Company to comply with any time limits specified by the manufacturer's exchange scheme;
  - (c) the manufacturer finds the Replaced Parts to be the same as the relevant Goods and in rebuildable or refurbishable condition; and
  - (d) the Company receives funds in respect of the exchange surcharge from the manufacturer.
- 10.6 Subject to the other provisions of this clause, the terms of the manufacturer's exchange scheme shall apply to the exchange process.

## **11. BUYER'S INSOLVENCY OR INCAPACITY**

- 11.1 If the Buyer becomes subject to any of the events listed in clause 11.2 or the Company reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Company without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due as well as all reasonable costs incurred in recovering the outstanding sums.
- 11.2 For the purposes of clause 11.1 the relevant events are:
- (a) the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability pay its debts or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (b) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;

- (d) the Buyer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
- (g) a floating charge holder over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(a) to clause 11.2(h) (inclusive);
- (j) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (k) the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

11.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **12. LIMITATION OF LIABILITY**

12.1 Subject to clause 12.4:

- (a) the Company shall under no circumstances be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or any consequential or indirect loss arising under or in connection with the Contract; and
- (b) the Company's total liability to the Buyer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise shall not exceed the price of the Goods.

- 12.2 Subject to clause 12.4, the Company shall not be liable for any loss or theft of or damage to the Goods in transit, which is apparent on a normal visual inspection, unless the Buyer:
- (a) refuses to accept the Goods from the carrier or signs for the Goods as damaged;
  - (b) promptly notifies the Company and the carrier in writing and provides the Company with photographic evidence of the damage; and
  - (c) retains any packaging of the Goods in accordance with the Company's directions.
- 12.3 Subject to clause 12.4, the Company shall not be liable for any loss, whether direct, indirect or consequential, and whether economic loss, loss of profits or otherwise, arising directly or indirectly out of any delay or failure in the delivery of the Goods which is caused by any act or omission of a carrier appointed by or on behalf of the Buyer.
- 12.4 Nothing in these Terms shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - (d) any other matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

**13. FORCE MAJEURE**

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. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

**14. GENERAL**

- 14.1 The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.

- 14.2 If any part of these Terms is found to be void or unenforceable by any court of competent jurisdiction, such part shall be severed from these Terms which will otherwise remain in full force and effect.
- 14.3 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 14.4 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 14.5 Except as set out in these Terms, any variation to the Contract shall only be binding when agreed in writing and signed by the Company.
- 14.6 These Terms, the Contract, and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall be governed by and interpreted according to English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.