

# TERMS AND CONDITIONS

## 1 DEFINITIONS

In these Conditions:-

- (a) "Company" means Honda Racing Development UK Limited.
- (b) "Contract" means any contract governed by these Conditions.
- (c) "Goods" means the goods described in the Order.
- (c) "Honda Company" means any of (i) the Company, (ii) any holding company for the time being of the Company and (iii) any subsidiary for the time being of the Company or any such holding company ("holding company" and "subsidiary" shall have the meanings respectively given by Section 1159 of the Companies Act 2006).
- (d) "Intellectual Property Rights" means any patents, rights to inventions, copyright, trade marks, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, whether registered or unregistered and including all applications for such rights, in any part of the world.
- (e) "Order" means the purchase order issued by the Company to the Supplier.
- (f) "Services" means the services described in the Order.
- (g) "Specification" means the technical description (if any) of the Goods or Services set out or referred to in the Order.
- (h) "Supplier" means the addressee specified in the Order.

## 2 ACCEPTANCE AND VARIATION OF CONDITIONS

- (1) The Order is placed on these Conditions which shall override and exclude any other conditions contained or referred to in the Supplier's quotation, acceptance, correspondence or elsewhere or implied by law, trade custom, practice or any course of dealing established between the Company and the Supplier. Subject to clauses 2(3) and 2(5), no modification of these Conditions shall be effective unless in writing and signed by or on behalf of both parties.
- (2) An Order constitutes an offer by the Company to purchase Goods or Services subject to these Conditions. If the Supplier accepts the Order (whether verbally or in writing or by commencing performance) a Contract shall be entered into on these Conditions. Any counter-offer by the Supplier shall only be validly accepted if such acceptance is in writing and signed by a duly authorised representative of the Company.
- (3) The Company shall be entitled to vary the quantity, quality or design of the Goods or Services to a reasonable extent after acceptance by the Supplier and the price and delivery shall be subject to such adjustment as is reasonable in consequence of such variation. Such variations must be in writing and signed on behalf of the Company.
- (4) Any minimum item charge operated by the Supplier must be notified to the Company as soon as possible after receipt of the Order. The Company reserves the right to instruct the Supplier to supply the maximum quantity for any such minimum item charge.
- (5) The price payable in respect of the Goods and Services shall be as stated in the Order unless otherwise agreed in writing by the Company.
- (6) The Company relies on the expertise of the Supplier where the Company has sought its advice or recommendations.

## 3 DELIVERY

- (1) The Goods (properly labelled and packed, and secured in such manner as to reach their destination in good condition) shall be delivered by and at the Supplier's risk and expense to, and the Services shall be performed at, the place stated in the Order or such other place as may be agreed in writing by the parties.
- (2) If so requested by the Supplier, the Company will return any re-usable packing materials to the Supplier at the Supplier's risk and expense.
- (3) Time is of the essence as to delivery of the Goods and performance of the Services. The Company reserves the right to cancel this Order or any part thereof without incurring any liability to the Supplier if the Goods are not delivered or the Services are not performed within the time specified in the Order. On such cancellation the Company shall be entitled:
  - (a) to return to the Supplier at the Supplier's risk and expense any Goods already delivered hereunder which cannot be effectively and commercially used;
  - (b) to request the Supplier to cease any Services which the Supplier has already started to perform hereunder which cannot be effectively and commercially used;
  - (c) to recover from the Supplier any monies paid by the Company in respect of such Goods and Services; and
  - (b) to receive from the Supplier any additional expenditure reasonably incurred by the Company in obtaining other Goods and Services in replacement of those in respect of which the Contract has been terminated.
- (4) Goods delivered in excess of the quantities specified in this Order may be accepted by the Company at its discretion, but if not so accepted will be returned by the Company at the Supplier's risk and expense. Any storage charges in respect of the same will be the Supplier's responsibility.
- (5) The Company reserves the right not to accept delivery by consignments.
- (6) All Goods delivered and Services performed shall be subject to the Company's inspection and approval. Any Goods which the Company rejects as not conforming with the Order shall be returned at the Supplier's risk and expense.

#### **4 RISK AND OWNERSHIP**

- (1) Unless otherwise stated in the Order the Goods shall be at the risk of the Supplier until delivery to the Company. The Supplier shall off-load the Goods at its own risk as directed by the Company.
- (2) Ownership in the Goods shall pass to the Company on delivery without prejudice to any right of rejection which may accrue to the Company whether under these Conditions or under the general law.

#### **5 PRICE AND PAYMENT**

- (1) Unless otherwise specified in the Order, the price shall be payable on or before the 30<sup>th</sup> day of the calendar month following the month in which the Goods are delivered (in accordance with clause 3) or performance of the Services is completed.
- (2) No carriage charges or charges for packing, boxing, crating, barrels, cases, containers or other packaging shall be payable by the Company unless otherwise agreed in writing by the parties.
- (3) Should the Supplier deliver Goods or perform the Services prior to the date agreed or specified by the Company, the Company reserves the right to delay payment until the due date under the Contract.
- (4) Without prejudice to any other right or remedy, the Company reserves the right to set off any amount at any time owing to it by the Supplier against any amount payable by it to the Supplier under the Contract.

#### **6 WARRANTY**

- (1) The Supplier warrants to the Company that it has good and sufficient title to the Goods.
- (2) The Supplier warrants to the Company that the Goods and Services shall:
  - (a) conform with the quality, quantity, description and other particulars stated in the Order and the Specification;
  - (b) conform with all drawings, descriptions and specifications provided by the Company to the Supplier, and with all samples and supplies previously approved by the Company;
  - (c) be of sound materials and workmanship;
  - (d) be of satisfactory quality and fit for any intended uses expressly or impliedly made known to the Supplier;
  - (e) be free from all defects in materials, workmanship and installation for the period stated in the Order or Specification (or, if no such period is stated, for 12 months from the date of delivery (in the case of Goods) or the date on which performance is completed (in the case of Services));
  - (f) conform with the standards and regulations of any government body or other regulatory body specified in the Order or the Specification; and
  - (g) comply with all applicable legislation for the time being in force within any relevant state of jurisdiction notified by the Company to the Supplier.
- (3) The Supplier further warrants to the Company that the Services shall be performed using all reasonable skill, care and diligence.
- (4) Without prejudice to clause 6(2) the Supplier warrants that the safety of the Goods shall be such as persons generally are entitled to expect and that the Goods shall in all respects conform with such relevant regulations as may have been made pursuant to the Consumer Protection Act 1987 at the time of delivery (whether or not such regulations are then in operation).
- (5) Without prejudice to clause 6(4) the Supplier shall ensure that the Goods are correctly labelled in accordance with all relevant safety standards, regulations and/or requirements applicable to the Goods.
- (6) The Supplier shall supply full and adequate instructions in relation to the assembly, fitting and/or use of the Goods so as to ensure that the Goods are, so far as possible, safe and without risk to the health of any person when in use.
- (7) All Goods shall be subject to the Company's inspection and approval to be made within a reasonable time after delivery of the Goods or performance of the Services. If the Goods or Services do not conform in all respects with the Contract, the Company shall be entitled to:
  - (a) reject the Goods or Services even if it has already paid of the Goods or Services. Any rejected Goods shall be held at the Supplier's risk and returnable at the Supplier's expense; or
  - (b) arrange for the non-conforming Goods or Services to be repaired, replaced or re-performed so that they meet the above requirements and debit the Supplier with the cost to the Company of the necessary work.
- (8) The provisions in this clause 6 shall survive any delivery, inspection, acceptance, payment or performance pursuant to the Contract and shall extend to any replacement, repaired, substitute or remedial Goods or Services provided by the Supplier.

#### **7 INSPECTION, TESTING AND CERTIFICATION**

- (1) Before despatching the Goods, the Supplier shall carefully inspect or test them for compliance with the Specification and any relevant safety standards, regulations and/or requirements applicable to the Goods and on request supply a copy of the test sheet certified by the Supplier to be a true copy.
- (2) The Supplier shall on request provide all reasonable facilities to enable the Company or persons authorised by the Company to inspect or test the Goods during or on completion of manufacture.
- (3) If it is found either during inspection or test that the Goods do not comply with the Company's requirements, the Company shall inform the Supplier accordingly and the Supplier shall take such steps as may be necessary to ensure such compliance.

#### **8 SUPPLIER'S INDUSTRIAL PROPERTY**

- (1) The Supplier warrants that the sale or use of the Goods and Services will not infringe any third party's Intellectual Property Rights. The Supplier shall at all times indemnify and keep the Company indemnified from and against all direct, indirect and consequential liabilities (including loss of profits, loss of business,

depletion of goodwill and similar losses), claims, losses, costs and expenses (including legal and other professional fees and expenses) resulting from any actual or alleged infringement of any third party's Intellectual Property Rights arising out of the sale or use of the Goods and Services.

- (2) In the event of any such action or claim being brought against the Company, the Company shall promptly notify the Supplier and the Supplier shall fully cooperate with and actively assist the Company in defending the same.

## **9 COMPANY'S INDUSTRIAL PROPERTY**

- (1) All patterns, moulds, jigs, tools, fixtures, samples, materials and all plans, designs, drawings and other documents sent by the Company to the Supplier in connection with the manufacture of goods ordered shall remain the property of the Company and shall be kept confidential and used solely for the provision of the Goods and Services. The Supplier shall at its own expense take out and secure the continuance of an all-risk insurance policy in respect of all such items provided by the Company.
- (2) The Order is placed on the understanding that all Intellectual Property Rights:
- (a) in any Goods manufactured specially for the Company;
  - (b) arising in the performance of the Services; and
  - (c) in any improvements or developments to the Goods which the Supplier may make or suggest belong to the Company. The Supplier shall not supply such Goods manufactured specially for the Company to third parties, or otherwise use such Intellectual property Rights, without prior written consent of the Company.

## **10 CONFIDENTIAL INFORMATION**

The Supplier 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 the Supplier by the Company or its agents, and any other confidential information concerning the Company's business or its products which the Supplier may obtain. The Supplier shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging the Supplier's obligations to the Customer.

## **11 FORCE MAJEURE**

The Company may defer the date of delivery of the Goods or performance of the Services or the date for payment or cancel the Order or any uncompleted part thereof without incurring any liability to the Supplier if the Company's requirements for the Goods or Services ceases for the time being or the Company's business is disrupted due to fires, strikes, lock-outs, or other industrial action, any acts or restraints of any government or public authority, war, the outbreak of hostilities of any kind or any other matter outside of the Company's control.

## **12 INDEMNITY**

The Supplier shall at all times fully indemnify and keep indemnified the Company and all Honda Companies from and against direct, indirect and consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), claims, losses, costs and expenses (including legal and other professional fees and expenses), and whether in circumstances involving negligence on the part of the Supplier or its servants or agents or otherwise, arising out of or in connection with the Goods and Services or any breach by the Supplier of any of these Conditions. Without prejudice to its generality the foregoing indemnity shall extend to cover:

- (a) any failure or delay in delivery of the Goods;
- (b) any defect in the Goods or their design or manufacture;
- (c) any defect in the Services; and
- (d) any claim made against any Honda Company under the terms of such Honda Company's Service and Guarantee Booklet which is attributable (directly or indirectly) to a defect in the Goods or their design or manufacture or to a defect in the Services.

## **13 INSURANCE**

The Supplier undertakes that it will take out and maintain in full force and effect for 6 years after expiry or termination of the Contract product liability insurance and where appropriate professional indemnity insurance in such amount, on such terms and with such insurers as may be specified by the Company or are otherwise reasonably acceptable to the Company and that it will, at the Company's request, produce evidence of such policy and payment of the premiums thereunder for inspection by the Company.

## **14 TERMINATION BY THE COMPANY**

- (1) Without prejudice to any other rights the Company may have the Company may terminate the Contract if:
- (a) the Supplier commits any continuing or material breach of any of these Conditions and, in the case of such a breach which is capable of remedy, fails to remedy the same within 14 days after receipt of a written notice by the Company giving full particulars of the breach and requiring it to be remedied;
  - (b) an encumbrancer takes possession or a receiver (or similar office holder) is appointed over any of the Supplier's property or assets;
  - (c) the Supplier (being a company) makes any voluntary (or similar) arrangement with its creditors, or has an administrator appointed, or is subject to insolvency proceedings in any jurisdiction, or goes into liquidation;
  - (d) the Supplier (being an individual or partnership) makes any composition or arrangement with his or their creditors, or has a receiving order made or a bankruptcy petition presented against him or them; or

- (e) the Supplier ceases, or threatens to cease, to carry on business.
- (2) On termination of the Contract:
  - (a) the Supplier shall return all of the Company's property and, if it fails to do so, the Company may enter the Supplier's premises and take possession of the same. Until the property has been returned, the Supplier shall be solely responsible for its safe keeping and will not use it for any purpose;
  - (b) the accrued rights, remedies, obligations and liabilities of the parties shall not be affected, including the right to claim damages in respect of any breach which existed at or before the date of termination; and
  - (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

**15 ADVERTISEMENT**

The Supplier shall not, without previous written consent of the Company, advertise or publicly announce that it supplies Goods or Services to the Company.

**16 LIMITATION OF LIABILITY**

- (1) Nothing in these Conditions shall limit or exclude the Company's liability for death or personal injury caused by its negligence or fraud or fraudulent misrepresentation.
- (2) Subject to clause 14(1):
  - (a) the Company shall not be liable to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or contracts, or for any indirect or consequential loss whether arising from negligence, breach of contract or otherwise; and
  - (b) the Company's total liability to the Supplier in respect of all other losses arising under or in connection with the Contract shall not exceed the price payable under the Contract.

**17 ANTI-BRIBERY COMPLIANCE**

- (1) The Supplier shall comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010 and shall have in place and maintain its own policies and procedures (including adequate procedures as referred to in the Bribery Act 2010) to ensure compliance with the same and enforce them where appropriate.
- (2) The Supplier shall ensure that any supplier it engages in connection with the Contract is bound by terms equivalent to those imposed on the Supplier in this clause 17. The Supplier shall be responsible for the observance and performance by such persons of such terms and shall be directly liable to the Company for any breach by such persons of such terms.
- (3) The Supplier shall promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract.
- (4) Breach of this clause 17 shall be deemed a material breach, which is irredeemable, under clause 14(a).

**18 LAW**

These Conditions and all Contracts made hereunder shall be governed by and construed in accordance with English law and the Supplier submits to the exclusive jurisdiction of the English courts.

**19 GENERAL**

- (1) Nothing contained in these Conditions authorises the Supplier to enter into any contractual arrangement in the name of or on behalf of the Company nor is intended nor deemed to constitute a partnership or joint venture of any kind between the parties.
- (2) The Supplier shall not, without the Company's prior written consent assign, transfer, charge, subcontract or deal in any other manner with any of the Company's rights or obligations under these Conditions.
- (3) These Conditions shall not be enforceable by a person who is not a party to them under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- (4) No waiver by the Company of any breach of these Conditions by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provisions.
- (5) If any provision of these Conditions is declared by any judicial or any other competent authority to be void, voidable, illegal or otherwise unenforceable then that provision shall be limited or eliminated to the minimum extent necessary so these Conditions shall otherwise remain in full force and effect and enforceable.