

REPAIR ORDER TERMS AND CONDITIONS

The following **REPAIR ORDER TERMS AND CONDITIONS** (this "Agreement") relate to [Repair Order] number [●] (the "Order"), made between [Formula Motorsports entity name] (the "Company") and the customer identified in the Order ("Customer") for the vehicle described therein (the "Vehicle"), and constitute a contract for the services performed as described on Order (the "Services"). Customer's execution of the Order or acceptance of the Services described therein constitutes an express acceptance of this Agreement.

1. GENERAL:

ANY AND ALL ADDITIONAL, DIFFERENT OR CONFLICTING TERMS OR CONDITIONS SET FORTH IN ANY OTHER COMMUNICATION FROM CUSTOMER ARE OBJECTED TO BY THE COMPANY AND SHALL NOT BE EFFECTIVE OR BINDING UNLESS SPECIFICALLY ACCEPTED IN A WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY.

2. AUTHORIZATION:

Customer hereby authorizes the Company to perform the Services set forth in the Order along with the necessary parts and materials (including parts and materials contemplated by or reasonably related to fulfilling the Order) for the amount set forth in the Order. The Company and its employees may operate the Vehicle on streets, highways or elsewhere at Customer's risk for the purpose of testing, inspection and delivery of the Vehicle.

3. SERVICES:

- (a) The Company shall perform the Services in a reasonable and workmanlike manner.
- (b) All Services shall be performed only upon the terms and conditions herein, regardless of any terms and conditions that may be contained in any purchase order or other form of communication from Customer.
- (c) Unless specifically stated in the Order, time for completion of the Services is not essential.

4. PRICING AND PAYMENT:

- (a) All prices and payments in connection with the Services and all communications related thereto must be kept confidential. Customer acknowledges that disclosing the price and payment terms of Services provided by the Company would harm the Company.
- (b) Payment for the Services shall be due in cash or other immediately transferable funds upon the Company's delivery of the Vehicle, unless (a) other payment terms are set forth in writing and agreed to by the Company and Customer, or (b) credit terms for Customer are approved in a writing signed by an authorized representative of the Company. Payment shall be made without any set-off, deduction, or withholding.
- (c) If no specific price for the Services is described in the Order, Customer shall pay the Company for the Services at the Company's current standard rates.

- (d) If Customer's credit has been duly approved in advance by the Company in a writing signed by an authorized representative of the Company, the amounts due to the Company for the Services shall be due in accordance with a credit agreement (a "Credit Agreement") executed by Customer in connection with Customer's applying for credit with the Company. The terms and provisions of any such Credit Agreement are hereby incorporated herein.
- (e) If payment is not made in accordance with the foregoing terms, in addition to its other legal rights and remedies, the Company shall (i) be entitled to charge Customer, effective from the date payment becomes due, interest at the rate of one and one-half percent (1.5%) per month or the highest rate allowable by law, whichever is less, until payment is made to the Company by Customer, and (ii) be entitled to withhold delivery of the Vehicle until payment is made to the Company by Customer.
- (f) If the Services include the provision of goods, the Company reserves the right to impose a handling charge on goods returned for credit (which have been correctly supplied for the Order).
- (g) The items and the total amount set forth in the Order include only those labor, operations and materials required as evidenced by the Company's inspection of the Vehicle to date. Additional labor, parts and materials may be required after commencement of the Services. Customer will be informed of any additional costs prior to repair.

5. DELIVERY OF VEHICLE:

- (a) For the avoidance of doubt, the Company shall have no obligation to deliver the Vehicle until full payment (including any late fees as described herein) under the Order has been made.
- (b) Unless otherwise stated in the Order, delivery of the Vehicle shall take place at the Company's premises.
- (c) If, following the fifth calendar day after completion of the Services the Vehicle is left at the Company's premises, the Company reserves the right to make a reasonable daily charge for the storage of the Vehicle, which shall be no less than \$85 per day.
- (d) Any Vehicle which is not collected by Customer and in respect of which payment for repairs carried out has not been made within three calendar months of Customer having been advised of the completion of the Services may be sold by the Company, and the cost of the Services and any storage charges may be deducted by the Company from the net proceeds of the sale of the Vehicle. However, before proceeding to sell the Vehicle, the Company shall comply with all applicable laws and notice requirements relating to such sale of the Vehicle. The Company shall, after discharging the costs of the sale, the Services and the storage charges, at its absolute discretion, either retain the balance for the benefit of Customer or forward the same to Customer at Customer's last known address.

6. THIRD PARTY PRODUCTS:

Customer acknowledges that third party parts or products (a) purchased by the Company on behalf of Customer in connection with the Services or (b) purchased by the Customer directly from the Company may not be returned to the Company. Customer explicitly acknowledges and agrees to Section 9(c) of this Agreement with respect to the disclaimer of warranties for third party products.

7. SECURITY:

Customer hereby grants the Company a security interest in the Vehicle together with any replacements, additions or accessories thereto or the proceeds from the sale thereof (the "Collateral") to secure the amounts due the Company under the Order, any expenses and costs described in Section 17 of this Agreement, and all other liabilities, debts and duties of Customer to the Company now existing or hereinafter incurred, including any renewals or extensions thereof and substitutions therefor. Customer hereby appoints the Company or the Company's attorney-in-fact to execute any and all documents and instruments, to file the Order, this Agreement, or other documents as a financing statement and to take all other actions to perfect the security interest granted by Customer herein or to preserve and protect the Collateral. Customer shall also, when requested by the Company, promptly execute and deliver to the Company all other documents and instruments and take all actions to more fully evidence, protect, assure or to enforce the security interest granted by Customer to the Company as described herein. In addition to all other rights and remedies the Company may have, upon a default of Customer of any obligations or duties to the Company, the Company, by written notice to Customer, may require Customer to assemble the Collateral and deliver the Collateral to the Company at a place designated by the Company. The Company shall give Customer reasonable notice of the time and place of any public sale of the Collateral or the time after which any private sale or other disposition of the Collateral is to be made. The requirement of reasonable notice shall be met if such notice is provided at least ten (10) days before the time of the sale or disposition.

8. TAXES:

Unless otherwise agreed to in a writing signed by Customer and the Company, Customer shall be solely responsible for the payment of all sales, use, consumer and other taxes arising out of the Order mandated by any applicable federal, state and local laws, codes, ordinances, rules and regulations, whether currently in effect, scheduled to go in effect, or subsequently enacted, including but not limited to, any increase in such taxes taking effect after the date of the Order.

9. DISCLAIMER OF WARRANTY:

- (a) The Company makes no warranty or guarantee of a result of the Services. Customer shall notify the Company of any claim that the Company did not reasonably perform the Services within three (3) days after the discovery of same and in no event later than ten (10) days after the performance of the Services. Within a reasonable time after notice from Customer, the Company, at its sole option, may correct the Services. If the Company is unable or unwilling to correct such Services, the Company, at its sole option, may refund to Customer the amount Customer paid to the Company under the Order. These remedies shall be Customer's exclusive remedies for any breach of the Order by the Company. The Company shall not be responsible to correct: (i) any condition which reasonably could have been prevented or minimized by Customer, (ii) any condition constituting normal wear and tear; (iii) any condition caused by acts of God; (iv) any condition caused by abuse or misuse; or (v) any condition not caused by the Company's failure to reasonably perform the Services.

- (b) CUSTOMER HEREBY ACKNOWLEDGES THAT NEITHER THE COMPANY NOR ANYONE ACTING ON ITS BEHALF HAS MADE ANY AFFIRMATION OF FACT, REPRESENTATION OR PROMISE RELATING TO THE SERVICES THAT HAS BECOME A BASIS OF THIS TRANSACTION OR WHICH CREATES AN EXPRESS WARRANTY. TO THE FULLEST EXTENT PERMITTED BY LAW, THE COMPANY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD AND WORKMANLIKE SERVICES, INFRINGEMENT, AND THOSE ARISING OUT OF PERFORMANCE OR DEALING OR USAGE OF TRADE OR ANY OTHER IMPLIED WARRANTY WITH RESPECT TO THE SERVICES.
- (c) There are NO WARRANTIES, express or implied, made by the Company or the manufacturer of any parts sold to Customer or other goods incorporated in the Services, except for the manufacturer's written warranty applicable to such parts or goods. Such separate manufacturer's warranty shall be expressly IN LIEU OF any other express or implied warranty, condition or guarantee on said parts or goods. Customer hereby acknowledges that the Company has not in any manner adopted the manufacturer's warranty as a warranty of the Company, including, without limitation, by performing warranty work under the manufacturer's warranty, and Customer acknowledges, represents and warrants that it shall look solely to the manufacturer to perform or satisfy any obligation under the manufacturer's warranty.

10. LIMITATION OF LIABILITY:

THE COMPANY WILL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST USE, LOST PROFITS, LOST SAVINGS OR OTHER COMMERCIAL OR ECONOMIC LOSS, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE OR FOR CLAIMS MADE BY A THIRD PARTY. IN NO EVENT SHALL THE COMPANY 'S TOTAL AGGREGATE LIABILITY TO CUSTOMER OR ANY OTHER PARTY RELATING TO OR RESULTING FROM THE ORDER, THE SERVICES OR THIS AGREEMENT EXCEED THE PRICE PAID BY CUSTOMER FOR SUCH SERVICES. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY AND WHETHER THE ALLEGED BREACH OR DEFAULT IS A BREACH OF A FUNDAMENTAL CONDITION OR TERM, OR A FUNDAMENTAL BREACH. THESE LIMITATIONS APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

11. INDEMNITY:

Customer shall defend, indemnify and hold harmless the Company, its owners, agents, representatives and employees from and against, claims, liabilities, causes of action, costs and expenses, including but not limited to reasonable attorneys' fees and experts' fees arising out of the use, operation and maintenance of the Vehicle; any encumbrances against the Collateral; any violation of any applicable federal, state or local laws, statutes, ordinances or regulations by Customer, any environmental condition with respect to the Collateral; and any negligence or fault of Customer, Customer's agents, representatives or employees, or any person or entity for whose acts Customer is responsible, regardless of whether such claims, liabilities, causes of action, costs and expenses were in part caused by the fault or negligence of the Company or the Company's agents, representatives or employees. The indemnity obligations of Customer shall survive payment of the Order by Customer. The indemnity obligations of Customer hereunder shall not be limited by a limitation on amount or type of damages, compensation or benefit payable by Customer anyone directly or indirectly employed by Customer, or a person or entity for whose acts

Customer may be liable, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

12. FAILURE OR DELAY OF DELIVERY; FORCE MAJEURE:

The Company shall not be liable for failure to deliver or delay in performance of the Services where such failure to deliver or delay is due, in whole or in part, to any cause other than the gross negligence of the Company. Further, the Company will not have any liability for any loss or delay caused by extreme weather or other act of God, strike or other labor shortage or disturbance, fire, accident, war, terrorist act or civil disturbance, delay of carriers, failure of normal sources of supply, act of government or any other cause beyond the reasonable control of the Company, including without limitation, any loss or damage to the Vehicle or any articles or property left in the Vehicle.

13. NOTICES:

It shall be a condition precedent to any liability of the Company, whether in contract, tort, or otherwise, arising out of the Order or any other dealings between the parties that Customer provide written notice to the Company of any claim, controversy, or alleged breach of the Order in the time provided in Paragraph 9(a) hereof, and that Customer provide the Company with a reasonable opportunity to cure the problems or issues giving rise to such claim, controversy, or alleged breach of the Order. Notwithstanding the foregoing, Purchaser must provide the Company with notice of any claim, controversy, or alleged breach of the Order and demand for arbitration within twelve months of discovery or accrual of the same, whichever occurs first. It is understood and agreed by the parties that the foregoing provision is both a condition precedent to the right to take such action, and a contractual modification to the statute of limitations for all actions, whether in contract, tort or otherwise, and failure to comply with this condition precedent and contractual statute of limitations shall be an absolute bar to recovery for any problems, issues, rights, claims or causes of action not specifically pled within the twelve month period. Whenever the Order requires that notice be provided to the other party, notice shall be deemed to have been validly given (i) if delivered in person to the party entitled to receive such notice, (ii) two (2) days after being sent by registered or certified mail to the address indicated on the front side of the Order, or (iii) one (1) day after being sent via overnight mail through a respectable overnight delivery company.

14. REVIEWS:

All reviews of the Company on third party websites must be truthful and based on Customer's own experience with the Company. The Company reserves all rights to defend itself from and take all available legal action against reviewers who post content that is libelous, defamatory, harassing, or inflammatory. Customer acknowledges that the Company has no control over third party products installed in the Vehicle and agrees to not review third party products in connection with a review of the Company.

15. ARBITRATION:

Any controversy or claim arising out of or relating to the Order shall be decided by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, subject to the limitations and restrictions set forth in this Section 15. A demand for arbitration shall be made within a reasonable time after a controversy or claim has arisen and in no event shall be made after the date when institution of legal or equitable proceedings based upon such claim or controversy would be barred by the applicable statute of limitations, subject to the restriction set forth in Section 13.

The arbitrator(s) shall have no authority to award punitive or other damages not measured by the prevailing party's actual damages. The place of arbitration shall be in New York, New York. The parties shall be entitled to discover all documents and information reasonably necessary for a full understanding of any relevant issue raised in the arbitration. Regardless of any term or provision herein to the contrary, claims for contribution or indemnity filed by a party in any lawsuit or action filed or asserted by a third party on account of personal injury or death of any person shall not be subject to the terms and provisions of this Section 15. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Nothing in this Section 15 shall prohibit or limit the Company from seeking provisional remedies (including without limitation injunctive relief, without requirement of a bond) in lieu of or in addition to arbitration at any time directly from a court of competent jurisdiction. The Customer acknowledges and agrees that such provisional remedies may be in addition to and without prejudice to any other rights or remedies that the Company may have for breach of this Agreement.

16. GOVERNING LAW:

The Order, this Agreement, and all exhibits, schedules, attachments and appendices attached hereto and thereto, and all matters arising out of or relating to the Order and/or Agreement, are governed by, and construed in accordance with, the laws of the State of New York, United States of America, without regard to the conflict of laws provisions thereof.

17. EXPENSES AND COSTS:

Should the Company be required to institute any action, including any arbitration proceeding, to enforce any of its rights set forth in the Order, then the Company shall be entitled to reimbursement from Customer for all expenses, including but not limited to, reasonable attorneys' and experts' fees, and costs incurred by the Company in connection with such action. In the event Customer institutes any action, including any arbitration proceeding, against the Company and in the further event the Company prevails in such action, Customer shall pay the Company the amount of all expenses, including but not limited to reasonable attorneys' and experts' fees, and costs incurred by the Company in connection with such action.

18. MISCELLANEOUS:

- (a) **Amendments:** Neither the Order or this Agreement may not be changed, altered or amended in any way except in writing signed by an authorized signatory of the Company and Customer.
- (b) **Opportunity to Review:** Customer acknowledges and agrees that Customer has had an adequate opportunity to review and revise the Order, and to review and understand this Agreement.
- (c) **No Waiver:** No waiver by either party of a breach or default under the Order of this Agreement will be deemed a waiver by such party of a subsequent breach or default of a like or similar nature. No waiver of any part of this Agreement will be effective against the Company unless in writing signed by an authorized representative of the Company.
- (d) **Enforceability:** If any part of the Order or this Agreement is unenforceable, such term or condition will be limited only to the extent necessary to make it enforceable, and all other terms and conditions will remain in full force and effect.

- (e) **Cumulative Remedies:** The remedies expressly provided for in the Order and this Agreement will be in addition to any other remedies that the Company may have under the Uniform Commercial Code or other applicable law.
- (f) **Further Assurances:** Upon the Company's reasonable request, Customer shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.
- (g) **Relationship Between Parties:** The relationship between the Company and Customer is solely that of vendor and vendee, and they are independent contracting parties. Nothing in the Order or this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the parties.
- (h) **Entire Agreement:** The Order and this Agreement, and any related exhibits and schedules, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. No course of dealing or performance, usage of trade or failure to enforce any term or condition will be used to modify the Order or this Agreement.
- (i) **Assignment:** Customer may not assign any of its rights or delegate any of its obligations under the Order or this Agreement without the prior written consent of the Company. The Company may assign any of its rights or delegate any of its obligations to any of its affiliates or to any person acquiring all or substantially all of the Company's assets. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating party of any of its obligations under the Order or this Agreement.
- (j) **Successors and Assigns:** The Order and this Agreement is binding on and inures to the benefit of the parties and their respective permitted successors and permitted assigns.
- (k) **No Third-Party Beneficiaries:** The order and this Agreement benefits solely the parties to the Order and this Agreement and their respective permitted successors and permitted assigns and nothing in the Order or this Agreement, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Order or this Agreement.
- (l) **No Recordings:** The Company does not consent to the recording of any oral communications by the Customer.