

# A S Motorsport Limited

## Conditions of Sale

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### 1. Definitions and interpretation

In these Conditions, unless the context otherwise requires, the following definitions shall apply:

"Buyer" means the person whose order for the replica is accepted by the Seller.

"Conditions" means the standard terms and conditions of the sale set out in this document (unless the context otherwise requires) including any special terms and conditions agreed in writing between the Buyer and the Seller in accordance with clause 2.3.

"Contract" means the contract for the sale and purchase of the Replica.

"Default" means any act, statement, omission, breach of obligations (whether expressed or implied, condition or warranty) contained in, precedent or collateral to the Contract in respect of which the Seller is legally liable to the Buyer. A number of defaults which together result in or contribute to substantially the same loss or damage shall be treated as one Default occurring on the date of the occurrence of the last such default.

"Replica" or "vehicle" means the DBR2 replica car which the seller is to supply in accordance with these conditions.

"Designs" means as defined in clause 11.1

"Seller" means AS Motorsport Limited (Company number: 6303748) whose registered office is; 8 Hopper Way, Diss, Norfolk, IP22 4GT.

### 2. Basis of the sale

- The seller shall sell and the Buyer shall purchase the Replica in accordance with any written order of the Buyer which is accepted by the Seller subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made by the buyer.
- Quotations issued to the Buyer by the Seller may be withdrawn or varied at any time and unless otherwise specified shall be automatically withdrawn after 30 days. No binding contract shall in any event arise until the Buyer's written order has been accepted by the Seller and confirmed in writing by the Seller's authorised representative.
- No variation of these Conditions shall be binding unless agreed in writing between the authorised representative of the Seller and the Buyer.
- The Seller's employees or agents are not authorised to make any representations concerning the Replica unless confirmed by the Seller in writing.
- Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the alterations to, storage, driving or use of the Replica which is not confirmed in writing by the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- Any samples, illustrations or descriptive material including but not limited to particulars of shade and pattern and other information contained in the Seller's brochures, advertising material or elsewhere shall not form part of the Contract and shall be treated as approximate and for guidance only unless specifically stated otherwise. The Seller may at its discretion from time to time vary the design of the Replica from that advertised. Any such changes would be notified to the Buyer before the Seller accepts an order, or as soon as reasonably possibly where such changes are made after an order has already been accepted.

### 3. Orders and Specifications.

- The quantity, quality and description of, and / or any specification for the Replica shall be those set out in the Buyer's order (if accepted by the Seller). Certain specifications of the Replica may be on a bespoke basis, in which event the Seller and Buyer shall agree the specifications at the relevant stage of production of the Replica.
- No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the costs of all labour and materials used) damages, charges and expenses incurred by the Seller as a result of cancellation.
- The vehicle is built to comply with prevailing VOSA regulations. Any changes to the vehicle which would result in non-compliance must be made by written instruction from the buyer.

### 4 Price of the Replica.

- The price of the Replica shall be the Seller's quoted price or, where no price has been quoted, the price listed in the Seller's published price list current at the date of acceptance of the order.
- The Seller reserves the right by giving notice to the Buyer at any time before delivery, to increase the price of the Replica to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Replica which is requested by the Buyer, or any delay caused by instructions of the Buyer or failure of the Buyer to give the Seller accurate information or instructions.
- Unless otherwise agreed in writing between the Buyer and the Seller all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Replica otherwise that at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport and insurance.
- Unless otherwise stated, prices listed or quoted are exclusive of Value Added Tax.

### 5 Payment Terms.

- Subject to any special terms agreed in writing between the Buyer and the Seller, the Buyer is required to pay:
  - A minimum of one thousand seven hundred and fifty pound (£1750) VAT inclusive non refundable deposit to book a production slot.
  - A forty (40) percent deposit of the total purchase price (VAT inclusive) of the Replica (which shall be inclusive of any additional costs as a result of any alterations or specifications requested by the Buyer two weeks prior to the Replica going into production.
  - A further forty (40) percent of the total purchase price (VAT inclusive) of the Replica mid way through the quoted production period or at a mutually agreed point, confirmed in writing between the Buyer and Seller before commencement of the Replica build; Alternatively, four stage payments of ten (10) percent of the total purchase price (VAT inclusive) spread over the period of the aluminium body build. And,

- (d) The balance (less the deposit) upon completion of the Replica.
- 5.2 The time of the payment shall be of the essence of the Contract. All payments shall be made in full without deduction in respect of any set-off or counterclaim.
- 5.3 If the Buyer fails to make any payment on the due date then without any prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- (a) Prior to the Replica going into production:
    - (i) Cancel the Contract and keep any deposit paid;
  - (b) Upon completion of the Replica:
    - (i) Suspend delivery of the Replica and charge the Buyer interest (both before and after any judgment) on the amount unpaid, at a rate of two (2) per cent per annum over the base rate for the time being of the Bank of England (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) until payment is made; or
    - (ii) Sell the Replica at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## 6 Delivery

- 6.1 Delivery of the replica shall be made by the Buyer collecting the Replica at the Seller's premises at any time after the Seller has notified the Buyer that the Replica is ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the replica to that place.
- 6.2 The Seller shall endeavour to deliver the Replica by the date quoted for delivery but such date is not guaranteed nor shall the time for delivery be of essence unless previously agreed by the Seller in writing. The date quoted for delivery shall be extended by a reasonable period if there is any delay caused by industrial dispute or by any cause beyond the reasonable control of the Seller. The Replica may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 If the Buyer fails to take delivery of the Replica or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may store the Replica until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage.

## 7 Risk and Property.

- 7.1 Risk of damage to or loss of the Replica shall pass to the Buyer:
- (a) In the case of Replica to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Replica is available for collection: or
  - (b) In the case of the Replica to be delivered otherwise than the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Replica, the time when the Seller has tendered delivery of the Replica.
- 7.2 Notwithstanding delivery and the passing of risk in the Replica, or any other provision of the contract, the property in the Replica shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the replica and all other goods agreed to be sold by the Seller to the Buyer for which payment is due.
- 7.3 Until such time as the property in the Replica passes to the buyer, the Buyer shall:
- (a) Hold the Replica as the Seller's fiduciary agent and bailee; and
  - (b) Keep the Replica separate from those of the Buyer and third parties and properly stored, protected, insured and identified as the Seller's property.
- 7.4 Until such time as the property in the Replica passes to the Buyer (and provided that the Replica has not been resold) the Seller shall be entitled:
- (a) On 5 days notice to enter upon any premises where the Replica is stored to inspect them; and
  - (b) At any time to require the Buyer to deliver up the Replica to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Replica is stored and repossess the Replica.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness of the Replica which remain the property of the Seller, but if the Buyer does so, all monies owing by the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 7.6 The provisions set out in this clause shall be without prejudice to the obligation of the Buyer to purchase the Replica.

## 8 Notification of Claims.

- 8.1 Any claim which is based on any defect in the quality or condition of the replica or their failure to correspond with the specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within thirty (30) days from the date of delivery or (where the defect of failure was not apparent on reasonable inspection) within a reasonable time after the discovery of the defect or failure.
- 8.2 If delivery is refused, and the Buyer does not notify the Seller of any claim in accordance with the provisions of this clause, the Buyer shall not be entitled to reject the Replica and the Seller shall have no liability for such defects or failure, and the Buyer shall be bound to pay the price as if the Replica had been delivered in accordance with the contract.

## 9 Warranties, Liability and Remedies.

- 9.1 The Seller warrants that the Replica will correspond with their specification at the time of the order (including any amendments hereto agreed between the parties and made in accordance to the terms of these Conditions) and will be free from defects in material and workmanship for a period of one(1) year from the date of delivery.
- 9.2 The above warranty is given by the Seller subject to the following conditions:
- (a) The Seller shall be under no liability in respect of any defect in the Replica arising from any drawing, design, specification, equipment or parts supplied by the Buyer;
  - (b) The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, failure to follow the Seller's instructions (whether oral or in writing), misuse, alteration, or repair of the Replica without the Seller's approval;
  - (c) The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price of the Replica has not been paid by the date for payment;
  - (d) The above warranty does not exist to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of (if any) such warranty or guarantee as is give by the manufacturer to the Seller.
- 9.3 Subject as expressly provided in these Conditions, all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.4 Where the replica is sold under a consumer sale (as defined by the Consumer Transactions (Restriction on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 9.5 Warranty conditions apply to UK supplied cars. Where cars are outside the UK the warranty will be limited to parts only.
- 9.6 Warranty is non transferrable.
- 9.7 Competition/Track & Sporting use- Warranty only applies to use of the vehicle on the public highway. Use of the vehicle for competition or off-road sport will invalidate the warranty with respect to faults arising or considered caused by this use.

### **Liability and remedies.**

- 9.8 The Buyer acknowledges that it has entered into the Contract in reliance only on the representations, warranties, promises and terms contained in the Contract and, save as expressly set out in the Contract, the Seller shall have no liability in respect of any other representation, warranty or promise made prior to the date of the Contract unless it was made fraudulently
- 9.9 The only remedy available in respect of any misrepresentation or untrue statement made by the Seller (other than those made fraudulently) shall be a claim for damages for breach of contract under the Contract and, to the extent that any such representation or statement is not contained in the Contract, then it shall be deemed to be contained for the purpose of applying this provision.
- 9.10 The Buyer shall inform the Seller of any Default and afford it reasonable opportunity to correct the default.

- 9.11 In relation to any Default the Seller will accept unlimited liability for:
- (a) Death or personal injury caused by the negligence of the Seller; and
  - (b) Anything else for which the Seller cannot at law limit or exclude its liability.
- 9.12 Except as provided in sub-clauses 9.8, the Seller will not be liable for the following loss or damage however caused (whether in contract, or (including but limited negligence) or otherwise) and even if foreseeable by the Seller:
- (a) Economic loss including administrative and overhead costs, loss of profits, business, contracts, revenues, goodwill, production and anticipated savings of every description;
  - (b) Loss arising from any claim made against the Buyer by any other person; or
  - (c) Loss or damage arising from the Buyer's failure to fulfil its responsibilities or any matter under control of the Buyer.
- 9.13 Except for the liabilities accepted by the Seller under sub-clause 9.8 the Seller's liability for any one Default shall be limited to an amount equal to [£1000000], and the Seller's entire liability in respect of all Defaults shall be limited to an amount equal to [£1000000].

## 10 Force Majeure.

- 10.1 The Seller shall not be liable to the Buyer or be deemed to be in breach of Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Replica, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control;
- (a) Act of God, explosion, flood, tempest, fire or accident;
  - (b) Strikes involving, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or third parties);
  - (c) War or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - (d) Import or export regulations or embargos;
  - (e) Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - (f) Power failure or breakdown in machinery.

## 11 Intellectual Property.

- 11.1 The Replica includes designs (the "Designs") which are the property of the Seller. The Seller owns the copyright, design right and all other intellectual property rights in the Designs.
- 11.2 The Buyer agrees that the designs may not be reproduced or used in any way except with the prior written consent of the Seller.
- 11.3 The Seller has not knowingly infringed any intellectual property rights of any third party but does not warrant or give any assurance to the Buyer that any Design does not infringe the intellectual property rights of any third party.

## 12 Indemnity.

- 12.1 The Buyer shall indemnify and keep the Seller indemnified against all costs, expenses, damages and demands incurred by the Seller in respect of:
- (a) Any alleged infringement of the patents, trademarks, copyright, design or other industrial property rights used by the Seller at the request of the Buyer;
  - (b) Any alleged breach or infringement of any statute or regulation concerning the preparation, marketing and distribution of the Replica;
  - (c) Any claims arising and made under the Consumer Protection Act 1987 and which arise by reason of or in connection with a defect in the Replica or in the end product manufactured and/or supplied by the Buyer in which the Replica is comprised, which defect is attributable either to the compliance by the Seller with the instructions given by the Buyer or to the Buyer's design of the end product

## 13 Insolvency.

- 13.1 This clause applies if:
- (a) The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being Seller) goes into liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction);
  - (b) An encumbrancer takes possession, or receiver is appointed, over any of the property or assets of the Buyer;
  - (c) The Buyer ceases, or threatens to cease, to carry on business; or
  - (d) The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 13.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer, and if the Replica has been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 14 General.

- 14.1 Any notice to either party under these Conditions shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to a party personally, be left at or sent by prepaid first class post, prepaid recorded delivery, telex or fax to the address of the party as notified in writing from time to time.
- 14.2
- (a) Either party may, in whole or part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it under the Contract by the other party without in any way prejudicing or affecting its rights in respect of any other liability or right not so released, compounded, compromised, waived or postponed.
  - (b) No single or partial exercise or failure or delay in exercising any right, power or remedy by either party shall constitute a waiver by that party of, or impair or preclude any further exercise of that right, power or remedy arising under the contract or otherwise.
- 14.3 To the extent that any provision of these conditions is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be part of these Conditions, it shall not affect the enforceability of the remainder of these Conditions nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.
- 14.4 Any references in these Conditions to any other provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 14.5 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 14.6 Unless expressly provided in this Contract, no terms of this Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to it
- 14.7 If any part of this clause is found to be unenforceable by any court or competent authority or would be found to be unenforceable if it were interpreted or construed in a particular way, then, it is the parties express intention that the relevant wording should be interpreted or construed so as to avoid such a finding and that, in the event of such a finding, the remainder of the provision in question shall be interpreted or construed to give it full effect.
- 14.8 This Contract sets out the entire agreement and understanding between the parties supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this Contract.

## 15 Governing Law and Jurisdiction.

- 15.1 These Conditions shall be governed by and construed in accordance with English Law.
- 15.2 Each of the parties irrevocably submits for all purposes in connection with these Conditions to the exclusive jurisdiction of the courts of England.