

HILTRAC B.V. / V-MAXX Autosport / TERMS AND CONDITIONS

1. DEFINITIONS

(a) In these conditions (unless the contract otherwise requires) the following expressions shall have the following meanings

COMPANY - Hiltrac B.V. / V-MAXX Autosport hereafter to be called: the Company

CUSTOMER - The person, firm, company or authority purchasing the Goods from the Company

CONDITIONS - means the standard terms and conditions set out in this document which shall govern the Contract to the exclusion of any other terms and conditions

CONTRACT - The contract for the sale and purchase of the Goods between the Company and Customer

GOODS - the goods (including any instalment of the goods or parts of them) which the Company is to supply in accordance with these conditions

(b) The clause headings contained in these conditions are for ease of reference only and shall not affect the construction itself. Where the context admits, references to the singular shall include the plural and vice versa. Any references to statutory provisions or subordinate legislation shall be construed as reference to that provision as amended or re-enacted from time to time.

2. ACCEPTANCE OF ORDER

(a) All orders are accepted and all Goods are supplied on the basis that they are Trade Sales and are supplied subject to these Conditions and all other conditions, warranties and representations, express or implied whether under Common Law, Statute or otherwise (including, without limitations any condition as to merchantability or fitness for any purpose) are hereby excluded so far as permitted by law. No addition thereto or variation therefrom as contained in any Customer quotation, order or confirmation shall apply unless specifically agreed in writing by the parties. The acceptance of the Goods by the Customer shall be considered an acknowledgement that they are sold subject to these Conditions.

(b) Nothing in these Conditions shall be interpreted as excluding or restricting any legal liability of the Company from death or personal injury resulting from the negligence of the Company, its employees, or agents, or restricting any of the Company's legal obligations.

3. TERMS OF PAYMENT

(a) The method of payment shall be determined prior to, or at the time of confirmation of the order.

(b) If the customer does not make any payment on the due date then the Company reserves the right without prejudice to any other right or remedy to

- (i) charge interest whether before or after judgement at 4% over the base bank rate from time to time on extended terms of payment and overdue accounts
- (ii) cancel any contract or suspend deliveries
- (iii) appropriate any payment from the Customer to the Contract

(c) Extended payment terms or credit terms may be made available at the Company's discretion and subject to such terms as the Company thinks fit.

(d) The Company will, at its discretion, accept the return of non-defective Goods for credit no later than 30 days from date of delivery. Goods must be returned carriage paid and credit given will be subject to a handling charge of 20% of the purchase price.

4. DELIVERY

(a) Unless otherwise expressly provided all sales are Ex Works (Incoterms 1990) Company's premises, notwithstanding that the Company may arrange for a delivery.

(b) All allegations of a non-delivery, whether in whole or in part of any consignment of Goods of any discrepancies between the Goods ordered and those supplied and invoiced must be made by the Customer in writing to the Company within 7 days of the date of advice note or invoice or other notification of despatch, whichever shall be the shorter. Failure by the Customer to notify the Company as aforesaid shall be conclusive evidence that the Goods were supplied and delivered in accordance with the Contract.

(c) Any delivery date stated in the Contract is intended as an estimate only; and the Company shall not be liable for any damages or losses arising out of any delivery otherwise than as so stated.

(d) If the Customer refuses or fails to take delivery of the Goods or fails to take any action necessary on his part for delivery or shipment of the Goods, the Company shall be entitled to terminate the Contract with immediate effect, to dispose of the Goods as the Company may determine and to recover from the Customer any loss and additional costs incurred as a result of such refusal or failure and in any event to retain any payment made prior to such refusal or failure.

(e) At the request of the Customer the Company as agents for the Customer arrange for carriage and transport insurance to the destination specified in the Customer's order on such terms as to carriage and insurance as the Company considers appropriate unless the Customer specifies otherwise and the Company shall invoice the Customer all carriage and insurance costs incurred.

(f) The Company may deliver the Goods in one or more instalments and each instalment may be treated as a separate contract. Failure by the Company to make any delivery or part delivery in accordance with the Contract or any claim by the Customer in respect of such delivery or part delivery shall not entitle the customer to reject the balance of the Goods agreed to be purchased by the Customer.

(g) All goods shall be subject to reasonable commercial variation as to quantity other than where specifically agreed to the contrary by the Company in writing.

5. PRICES

All prices are quoted net ex works and are exclusive of VAT. The Company reserves the right to vary its current price list at any time without prior notice and Goods will be invoiced to the Customer at the price ruling at the date of despatch unless otherwise agreed by the Company in writing.

6. DESCRIPTION AND SPECIFICATION

(a) Whilst every effort is made to ensure the accuracy of the descriptions, illustration and material contained in any catalogue, price list, brochure or leaflet, the descriptive matter represents the general nature of the items described therein, but does not form part of any order or contract or amount to any representation or warranty. The Company reserves the right to modify specifications and prices published without prior notice.

(b) Any manufacturer's part numbers quoted in any literature produced by the Company are provided for Customer reference only.

(c) Any errors or omissions in any documents or information provided by the Company shall be subject to correction without any liability on the part of the Company.

7. TITLE

(a) Even though the Goods may be delivered to the Customer and risk in them passes to the Customer, the property in the Goods will not pass to the Customer until they are paid for.

(b) Until the property in the Goods passes to the Customer, the Customer will hold the Goods as the Company's fiduciary agent and bailee, and will keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property.

(c) The Customer may not pledge or in any way charge as security as indebtedness any of the Goods remaining the property of the Company, but if the customer does so all money owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) immediately become due and payable.

(d) The Customer's right to possession of the Goods will cease and all sums due to the company will immediately become payable if:

- (i) the Customer has not paid for the Goods in full by the expiry of any credit period allowed under this contract; or
- (ii) the customer is declared bankrupt or makes any proposal to his creditors for composition or other voluntary arrangement; or
- (iii) the customer does or fails to do anything which would entitle an administrator or administrative receiver or receiver to take possession of any assets or would entitle any person to present a petition for winding-up.

(e) The Company grants the Company and its authorised representatives an irrevocable license to enter at any time any vehicles or premises owned or occupied by the Customer or in its possession for the purpose of repossessing and removing all or any part of any Goods the property in which has remained in the Company, the Customer, and not the Company, shall be responsible for any costs of making such Goods available to the Company, removal and transport of any such Goods by the Company, and any damage caused to vehicles or premises in such repossession and removal, being damage it was not practicable to avoid.

(f) Even though property in the Goods may not have passed to the Customer, the Company will be entitled to bring an action against the Customer for the price of the Goods in the event of non-payment by the due date as if property in the Goods had already passed to the customer, and the Company will have the right by notice in writing to the Customer at any time after the agreed delivery date to pass the property in the Goods to the Customer as from the date of such notice.

8. WARRANTY

(a) Subject as provided below, the Company warrants all Goods supplied by it to be free from defects in material and workmanship for a period which is the lesser of 24 months from delivery to the Customer or its agent or 60,000 km use (verified to the satisfaction of the company), but its sole liability under such warranty shall be limited to replacing or issuing credit at its option, for any Goods which have been returned within four weeks of discovery of any defects by the customer, carriage paid to the Company and for which the Customer has completed a Company warranty claim form and labelled the Goods appropriately.

(b) The Company shall in any case, incur no liability under this warranty:

- (i) For any Goods not received in the time and manner set out above.
- (ii) For any Goods in which the alleged defect is found upon examination to have been caused in whole or in part by misuse, neglect, overload, unsuitable lubricant, improper installation or repair, alteration or accident.
- (iii) For any Goods which are used in any form of motor competition or for performance improvement.
- (iv) For any transport, installation, removal, labour or other consequential costs.

(c) Save as herein expressly provided, the Company shall not be liable for any losses or damage direct or consequential, whether in contract tort or otherwise of whatsoever nature or to whosoever or howsoever caused, arising out of or through the use of any of the Goods supplied by it.

9. SERVICE

Any service, recommendation, suggestion or advice which may be offered by the company in technical literature or in response to specification enquiry, is given in all good faith but the Company shall not be liable for any loss or damage arising therefrom and it is for the Customer to satisfy himself as to the suitability of the Goods for his own particular purpose and shall be deemed so as to have done.

10. FORCE MAJEURE

(a) The Company shall have no liability for any failure or delay in fulfilling any of its obligations to the extent that such fulfilment is prevented, delayed or rendered uneconomic due to any circumstance or event beyond the Company's reasonable control, including without prejudice to the generality of the foregoing, any industrial action, failure of water or energy supply, or compliance with any order, regulation or request from any national or local authority.

(b) If any deliveries by the Company are delayed due to any of the foregoing for three months or more the Company may, at its option exercisable by notice in writing to the customer, either terminate the contract or elect not to deliver any undelivered Goods without liability in either case on the part of the Company.

11. WAIVER

The rights of the Company shall not be prejudiced or restricted by any indulgence or forbearance extended to the Customer and no waiver of any breach shall operate as a waiver of any subsequent breach.

12. LAW

The Contract shall be construed in accordance with Dutch Law and shall be subject to the jurisdiction of the Dutch Courts

13. NOTICES

Any notice hereunder shall be deemed to have been given if delivered by hand or sent by prepaid first-class post or telex or facsimile (confirmed by notice or post) to the party concerned at its last known address, and deemed to have been received on the date of despatch, if delivered by hand or sent by telex or facsimile and on the third day after posting, if sent by post.