



TERMS OF TRADE BSL RACING LIMITED

These Terms of Trade shall apply to all Goods and Services provided by BSL Racing to the Customer. Any order or instructions received by BSL Racing from the Customer for the supply of Goods and/or Services shall be deemed to incorporate these Terms of Trade and will constitute acceptance of these Terms of Trade.

1. Interpretation

1.1 Defined Terms: In these Terms of Trade unless the context otherwise requires, the following words have the following meanings:

Agreement: means the agreement between the Parties for the provision of Goods and/or Services which agreement shall comprise these Terms of Trade and any other written agreement between the Parties setting out the terms of supply.

BSL Racing means BSL Racing Limited

Custom Build Services means the custom building of vehicles or vehicle parts whether to specifications provided by the Customer or in accordance with a design owned by BSL Racing.

Customer means the person or entity acquiring Goods and/or Services from BSL Racing.

Goods means the goods supplied from time to time by BSL Racing to the Customer and includes any goods manufactured or produced as a Service provided by BSL Racing.

GST means goods and services tax payable at the applicable rate in accordance with the Goods and Services Tax Act 1985.

Parties mean BSL Racing and the Customer.

PPSA means the Personal Property Securities Act 1999.

Services means the services to be provided by BSL Racing to the Customer and includes Custom Build Services.

Terms of Trade means these Terms of Trade

1.2 PPSA Terminology: Words in these Terms of Trade which are defined in the PPSA, have the same meanings as in the PPSA unless the context otherwise requires.

2. Acceptance

2.1 The Customer acknowledges and agrees that by requesting BSL Racing to provide Goods and/or Services, whether by completion of any order form, acceptance of any quote or otherwise, the Customer is offering to purchase those Goods and/or Services and agreeing to and accepting these Terms of Trade.

2.2 Goods and Services are supplied by BSL Racing to the Customer only on the terms set out in these Terms of Trade and any variations specifically agreed to by BSL Racing in writing. BSL Racing shall not be bound by any terms to the contrary set out in the Customer's order or elsewhere which purport to override these Terms of Trade.

3. Supply and Delivery of Goods

3.1 Delivery: Delivery to the Customer shall be deemed to take place when the Goods leave BSL Racing's premises. Goods are deemed to leave BSL Racing's premises when the Customer or the Customer's agent signs a receipt acknowledging the delivery of the Goods. If the Customer pays for freight of the Goods, the freight carrier is deemed to be the Customer's agent.

3.2 Risk: The risk in the Goods shall pass to the Customer when the Goods leave BSL Racing's premises.

3.3 Delivery date or time: Any time or date for delivery given by BSL Racing is only an estimate and BSL Racing shall not be liable for the direct or indirect consequences of a delay however arising. The Customer acknowledges that BSL Racing will not accept any liability for any claims or losses (direct or indirect) arising from its failure to meet the delivery date (if any).

3.4 Instalment Delivery: BSL Racing reserves the right to make deliveries in instalments, in which event each instalment will be a separate contract on these terms.

4. Performance of Services

4.1 Standard: The Services will be provided with due skill and care, in a competent and professional manner.

4.2 The Customer will:

- (a) promptly provide BSL Racing any required material, data, or other information;
- (b) perform any tasks BSL Racing reasonably requests the Customer to carry out; and
- (c) comply with any reasonable instructions from BSL Racing.

If the Customer fails to provide or carry out any of the above requirements, BSL Racing will not be liable for any failure or delay in providing the Services and BSL Racing may charge, and the Customer will pay, any costs relating from such failure.

4.3 Where a Customer passes possession of goods or a vehicle already owned by the Customer to BSL Racing for the purposes of repair or for custom work to be carried out on such goods or vehicle, the Customer shall keep such goods or vehicle insured at all times whilst it is in the possession of BSL Racing. BSL Racing shall have no liability to insure such goods or vehicle. If the Customer does not have such goods or vehicle insured, the Customer shall notify BSL Racing of the non-insurance.

5. Custom Build Services

5.1 Custom Build to Customer Specifications: If BSL Racing agrees to custom build in accordance with specifications provided by the Customer:

- (a) Provision of Plans: The Customer shall provide BSL Racing with all necessary designs, specifications and plans to enable BSL Racing to custom build the relevant vehicle or parts.
- (b) Conformity with Plans: BSL Racing will use all reasonable care in custom building the relevant vehicle or parts in conformity with the plans and specifications provided by the Customer.
- (c) No Warranty: BSL Racing gives no warranty as to the appropriateness of the plans and specifications provided by the Customer. Without limitation, BSL Racing specifically gives no warranty as to fitness or suitability for any purpose, safety, durability or otherwise and the Customer acknowledges and agrees that it has made its own investigations into the suitability of any Goods or Services provided in accordance with the Customer's plans and specifications.
- (d) Intellectual Property Warranty and Indemnity: The Customer warrants that custom building by BSL Racing in accordance with plans and specifications provided by the Customer will not infringe the intellectual property rights of any third party. The Customer indemnifies BSL Racing from all and any liability which may arise in the event of any claim being made by any third party that there has been a breach of their intellectual property rights.

5.2 Custom Build of BSL Racing Design: If BSL Racing agrees to custom build for a Customer to a design owned by BSL Racing:

- (a) Conformity with Plans: BSL Racing will use all reasonable care in custom building the relevant vehicle or parts in conformity with the design.
- (b) No Warranty: BSL Racing gives no warranty as to the appropriateness of the design. Without limitation, BSL Racing specifically gives no warranty as to fitness or suitability for any purpose, safety, durability or otherwise and the Customer acknowledges and agrees that it has made its own investigations into the suitability of any Goods or Services to be provided.
- (c) Suitability for Racing: The Customer acknowledges that various racing authorities may from time to time set and amend standards for vehicles and parts. BSL Racing gives no warranty

that any custom build vehicle or part will meet any such standards and the Customer is responsible for ensuring that any relevant standards will be met.

6. Price

6.1 The price payable by the Customer for Goods and Services shall be, subject to clause 6.2, the price specified by BSL Racing at the time the order is placed or quote accepted by the Customer.

6.2 Change in Price: Any change in price arising from:

- (a) imposition of or change in Government duties, levies, fees and taxes of any type whatsoever; and
- (b) in the case of Services, any increase in the cost of materials after the date on which BSL Racing gives a quote

shall be for the Customer's account, shall be invoiced accordingly and shall be deemed to be part of the price.

6.3 GST: The Customer shall pay all GST, taxes and levies on and in respect of the Goods and Services.

7. Payment

7.1 Date: Unless BSL Racing otherwise agrees, payment is to be made in full:

- (a) for Goods, immediately upon delivery; and
- (b) for Services immediately upon completion of performance of the Services;

in each case time being strictly of the essence.

7.2 Deposit: BSL Racing may, in its discretion, require payment of a deposit by the Customer prior to ordering or supplying Goods or commencing provision of Services to the Customer. Deposits are non-refundable.

7.3 Payment in Advance: BSL Racing may, in its discretion, require payment in full from the Customer prior to ordering or supply Goods or commencing the provision of Services to the Customer. Payments made in advance are non-refundable.

7.4 Credit: If BSL Racing agrees to extend credit to the Customer then, unless BSL Racing otherwise agrees, payment is to be made in full by the Customer:

- (a) for Goods, within 5 Business Days of the date of the invoice;
- (b) for Services, within 5 Business Days of the date of the invoice

BSL Racing has the absolute right to terminate any credit arrangements with the Customer and to substitute cash-on-delivery payment terms at any time, without prior notice or reason being given.

7.5 Payments: All payments by the Customer to BSL Racing must be paid to BSL Racing in cleared funds without deduction, counterclaim or set-off.

7.6 Returns and Cancellations: The Customer may not return Goods supplied by BSL Racing or cancel any order for Goods or Services unless BSL Racing agrees in writing.

7.7 Failure to Pay: If the Customer fails to make payment by the due date, BSL Racing, without prejudice to its other rights or remedies, shall be entitled to charge the Customer interest from the due date at a rate of 5% per annum above the current overdraft rate charged by BSL Racing's bankers, compounding monthly on the unpaid balance owing on the first day of each month until payment in full is received by BSL Racing, such interest to accrue after as well as before judgment. Further, any expenses, disbursements and legal costs incurred by BSL Racing in enforcing any rights shall be paid by the Customer, including any solicitor's fees or debt collection agency fees.

7.8 Immediate Payment: Notwithstanding anything contained in these Terms of Trade or any other written agreement between BSL Racing and the Customer, all payments (whether due or not), shall become immediately due to BSL Racing if:

- (a) the Customer fails to comply with the terms of the Agreement; or
- (b) the Customer commits an act of bankruptcy; or
- (c) the Customer enters into an arrangement or composition with its creditors;

if the Customer is a company:

- (d) the Customer does anything that would make it liable to be put into liquidation;

(e) a resolution is passed or an application is made for the liquidation of the Customer;

(f) a receiver or statutory or official manager, or a person in a similar position, is appointed over all or part of the Customer's assets and undertaking; or

(g) any act of insolvency is committed.

8. Authorisations and Safety Requirements

8.1 Authorisation: It is the Customer's risk and responsibility to obtain every necessary or prudent authorisation (including licences, permits and consents) to buy, possess or use any Goods. In particular, the Customer acknowledges that where Goods or Services are being provided in respect of racing vehicles, the Customer is responsible for ensuring and warrants to ensure that any such Goods or Services will meet any and all requirements to enable the vehicle to be raced.

8.2 Acknowledgement: The Customer acknowledges that the Customer is responsible for ensuring and warrants to ensure that that any Goods and Services will meet any necessary safety standards. In particular, if the Customer is to use Goods and Services in relation to racing of vehicles, the Customer acknowledges that participation in vehicle racing involves risk of personal injury and damage to vehicles. The Customer acknowledges that safety requirements are set by racing authorities and BSL Racing makes no warranty that any Goods or Services will meet any particular safety standards.

8.3 Indemnity: The Customer indemnifies BSL Racing from any and all liability which may arise from any failure by the Customer to obtain all and any necessary authorisations and safety approvals.

9. Limitation of Liability

9.1 General Limitation: To the greatest extent permitted by law, and in addition to any other limitation of BSL Racing's liability set out in the Agreement, the Customer waives and releases BSL Racing from and holds BSL Racing harmless from any and all liability pursuant to the Agreement, including in respect of or resulting (directly or indirectly) from:

- (a) any damage or injury resulting from the misuse or incorrect installation of Goods;
- (b) any use of the Goods in an illegal manner;
- (c) any use of Goods which have been tampered with or modified or which have not been used in a proper manner;
- (d) any breach by the Customer of the Agreement.

9.2 Purchase for Business Purposes: If the Customer acquires the Goods or Services from BSL Racing for the purposes of a business in any way, or the Customer holds itself out as acquiring the Goods or Services for the purposes of a business in any way, the Customer agrees:

- (a) the conditions, warranties and guarantees, representations and descriptions in the Sale of Goods Act 1908 and the Consumer Guarantees Act 1993 ("CGA") or implied by law, trade or custom will not apply and are excluded from the Agreement; and
- (b) the only warranties, representations, conditions and agreements in respect of the Goods and Services are those which are contained in the Agreement or expressly authorised or confirmed in writing by BSL Racing.

9.3 Limitation on Quantum: To the greatest extent permitted by law, BSL Racing's liability in respect of all claims for loss, damage or injury arising from the breach of its obligations under the Agreement or in connection with the Goods and Services or from negligence on the part of BSL Racing, its employees, agents or contractors, shall be limited (at the option of BSL Racing) to repair or replacement of the Goods or Services or re-performance of the Services, or credit, and shall not in aggregate exceed in value the price invoiced to the Customer for those Goods or Services.

9.4 Duty to Mitigate: The Customer shall use its best endeavours to minimise loss and damage arising from any alleged breach of the Agreement by BSL Racing.

9.5 Consequential Loss: BSL Racing will not be liable to the Customer for any consequential loss or damage

howsoever caused. This exclusion of liability includes, but is not limited to, consequential loss or damage arising from suspension of performance of the Agreement, negligence, delivery and the costs incurred in returning any Goods to BSL Racing or any manufacturer. This exclusion applies whether the consequential loss is incurred by the Customer or a third party.

10. Customer Indemnities

10.1 Indemnities: The Customer agrees to fully indemnify BSL Racing for, and on demand pay BSL Racing, all costs (including costs calculated on a lawyer and own client basis), losses, damages, expenses and claims incurred or which BSL Racing is or becomes liable for as a consequence of or in connection with:

- (a) the Customer's failing to comply with or breach any of its obligations and/or warranties under the Agreement; and
- (b) any claim or legal proceedings the Customer or any other person brings against BSL Racing or any person acting as BSL Racing's agent in the exercise of the BSL Racing's rights under the Agreement; and
- (c) anything done or not done in good faith in the exercise or attempted exercise by BSL Racing of its rights under the Agreement; and
- (d) any amount that the Customer fails to pay on the due date for payment; and
- (e) the exercise, enforcement, preservation or attempted exercise, enforcement or preservation of any of BSL Racing's rights under the Agreement, or in suing for and recovering any moneys that the Customer owes or is liable to pay to BSL Racing or indemnify BSL Racing for; and
- (f) taking any actions or doing any things (including paying or incurring liabilities to pay any moneys) to protect or preserve BSL Racing's rights under the Agreement, including the security interest granted to BSL Racing pursuant to the Agreement.

in all cases on a full indemnity basis.

11. Intellectual Property

11.1 The sale of any Good or Services by BSL Racing to the Customer does not give the Customer the right to use, sell, disseminate or duplicate any of BSL Racing's trademarks, copyrights, designs or other intellectual property rights (unless agreed otherwise by BSL Racing in writing).

12. Default and Enforcement Rights

12.1 Default Event: If the Customer fails to pay any amount owing on the due date or commits any other default under the Agreement and any such default continues for seven days, or any of the events set out in clause 7.8 occur or BSL Racing in its absolute discretion forms the opinion that the Customer cannot or will not be able to pay its debts to BSL Racing as they fall due (each of such to be a Default Event), then:

- (a) BSL Racing shall be entitled to refuse to provide any further Goods and/or Services to the Customer;
- (b) BSL Racing may exercise any or all of its rights pursuant to any security interest it has;
- (c) BSL Racing may require the Customer, at its expense, to promptly return to BSL Racing all Goods supplied by BSL Racing which have not been fully paid for; and
- (d) BSL Racing may by written notice to the Customer cancel the Agreement;

and any rights exercised by BSL Racing pursuant to this clause shall not in any way limit the Customer's liabilities under the Agreement including without limitation the Customer's obligations and liabilities pursuant to the indemnities contained in the Agreement and/or to pay damages for any breach nor preclude BSL Racing from exercising any other right or remedy (in equity or in law) that may be available to it.

13. Exercise of Rights:

13.1 The following provisions apply to the exercise of BSL Racing's rights under the Agreement:

- (a) BSL Racing may exercise a right under the Agreement alone, or at the same time as exercising any other rights, powers or remedies available to the Company.
- (b) BSL Racing does not need to notify the Customer or any other person first before BSL Racing exercises any rights (unless provided otherwise in the Agreement or by law).
- (c) any delay by BSL Racing in exercising any of its rights will not affect the subsequent exercise of any other rights.
- (d) BSL Racing will not be liable or accountable to the Customer or any other person for any loss caused by:
 - (i) the exercise or attempted exercise of any of BSL Racing's rights; or
 - (ii) a failure by BSL Racing to exercise, or any delay in exercising, any of BSL Racing's rights; or
 - (iii) the manner in which BSL Racing exercises any of its rights;whether or not resulting from a mistake or error of judgment.

14. Personal Property Securities Act 1999

14.1 Security Interest: The Customer grants BSL Racing a security interest in the Goods and their proceeds to secure the obligations and liabilities of the Customer under the Agreement. If any of the Goods and/or their proceeds are not readily identifiable and/or traceable, the Customer grants BSL Racing a security interest in all of the Customer's property of which the Goods form part.

14.2 Ownership: Property and ownership in the Goods remains with BSL Racing and will not pass to the Customer until BSL Racing receives payment in full of the invoice relating to the relevant Goods or Services.

14.3 Assistance: As and when required by BSL Racing, the Customer will, at its own expense, provide all reasonable assistance and all relevant information to enable BSL Racing to register its security interest, maintain such registration, and enforce its rights pursuant to its security interest.

14.4 Change of Name: The Customer will not change its name without giving BSL Racing 7 days prior written notice.

14.5 Access to Premises: The Customer irrevocably authorises BSL Racing, its agents and employees, to search for and remove the Goods (and if any Goods are wholly or partially attached to or incorporated in any other goods, sever or disconnect the Goods from those other goods) and for that purpose to enter into any premises where they may be found using such force as is necessary. The Customer will indemnify BSL Racing against any costs and liabilities that may arise directly or indirectly as a result of the entry by BSL Racing, its agents or employees into any premises or the seizure by BSL Racing of any Goods (or the severing or disconnection of such Goods from other goods) under this clause.

14.6 Contracting Out: The Customer waives its right to:

- (a) receive a statement of account pursuant to s116 of the PPSA;
- (b) receive notice of BSL Racing's proposal to retain collateral under s120(2) of the PPSA and to object to that proposal under s121 of the PPSA;
- (c) receive notice from BSL Racing under s114(1)(a) of the PPSA that BSL Racing intends to sell certain goods in which it has a security interest;
- (d) not have goods damaged if BSL Racing removes an accession under s125 of the PPSA;
- (e) to receive notice of the removal of an accession under s129 of the PPSA;
- (f) to apply to the Court for an order concerning the removal of an accession under s131 of the PPSA; and
- (g) to reinstate a security agreement under s133 and/or 134 of the PPSA.

15. Privacy Act 1993

15.1 BSL Racing will hold any personal information received from the Customer for marketing, product development, account administration and credit purposes. BSL Racing

may disclose personal information about the Customer to any person the Customer names as a credit referee or to any person for the purpose of securing BSL Racing's security interest granted pursuant to the Agreement. Failure by the Customer to supply personal information for these purposes entitles BSL Racing to withdraw or refuse credit to the Customer and to repossess any Goods in the possession or control of the Customer.

16. **General**

- 16.1 Severance: If any clause or part of a clause of these Terms of Trade or any Agreement is held to be invalid or unenforceable for whatever reason, to the extent not inconsistent with that invalid clause, the remaining provisions shall remain in full force and effect.
- 16.2 Entire Agreement: The Agreement constitutes the entire agreement of the Parties in respect of the Goods and Services and replaces any previous agreements and understandings. The terms and conditions of the Agreement will prevail over any existing or subsequent terms and conditions set out in any document (including any Customer purchase order), unless agreed otherwise in writing by BSL Racing.
- 16.3 Waiver: No waiver of any breach of, or failure to enforce any provision of, the Agreement at any time by any party will in any way limit the right of such party thereafter to enforce and compel strict compliance with the provisions of the Agreement.
- 16.4 Force Majeure: BSL Racing shall not be liable for any delay in performing its obligations under the Agreement to the Customer due in whole or in part by force majeure which shall include (but not be limited to) an act of God, weather conditions, natural disasters, strikes, lockouts, fire, war, suit, civil commotion, inability to obtain goods, services or supplies including the imposition of any export or import bans or any other cause beyond the reasonable control of BSL Racing.
- 16.5 Amendment: BSL Racing may amend these Terms of Trade, from time to time, by notice to the Customer.
- 16.6 Joint and Several: If the Customer comprises more than one person, then each of them shall be jointly and severally liable for the obligations and liabilities of the Customer under these Terms of Trade.
- 16.7 Assignment: The Customer is not entitled to assign, transfer or otherwise dispose of any of its rights or obligations under the Agreement without BSL Racing's prior written consent. BSL Racing shall be entitled to assign, transfer or dispose of any or all of its rights and obligations under the Agreement without the prior consent of the Customer.
- 16.8 Notice: Unless agreed otherwise in writing, all notices under the Agreement shall be served in writing to the last known address of the Parties.
- 16.9 Errors and Omissions: Errors and omissions of a clerical nature in quotations, invoices or statements shall be subject to correction.
- 16.10 Legislation: a reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision.
- 16.11 Governing Law: The Agreement shall be governed by, and construed in accordance with, the laws of New Zealand.