



Terms and Conditions of Sale

1. General

These Terms and Conditions ("Terms and Conditions") form an integral part of the attached sales proposal and/or any future sales proposal ("Proposal") of Formel D USA Inc. and/or any affiliates thereof, including without limitation Formel D USA, Inc. (hereinafter and collectively, "Formel D"), and shall supersede any and all printed terms and conditions, whether set forth on any request for proposal, purchase order, or other form or other medium (collectively, a "Form"), if any, of or presented by a customer of Formel D ("Customer") and any other inconsistent terms submitted by a Customer prior to written acceptance and confirmation by Formel D of a purchase order (upon written confirmation by Formel D, an "Order"). These Terms and Conditions may not be varied or supplemented unless agreed to in writing by a duly authorized representative of Formel D (it being understood that sales representatives of Formel D do not have such authority). Failure of Formel D to object to conflicting or different provisions contained in any Form or Order or other writing of Customer shall not be construed as a waiver of these Terms and Conditions nor an acceptance of any terms and conditions of Customer. Except only as otherwise agreed in writing by a duly authorized representative of Formel D, the provision of services detailed in the Proposal, or as subsequently amended ("Services"), shall be governed only by these Terms and Conditions. Customer shall be deemed to have accepted these Terms and Conditions if Customer requests and/or accepts, as applicable, the provision of any Services performed, or to be performed, on Customer's behalf, in whole or in part, to which these Terms and Conditions relate. Formel D hereby expressly rejects any portion of any Form or Order that attempts to modify these Terms and Conditions.

2. Offer and Acceptance

The Proposal is an offer to sell upon these Terms and Conditions and will be considered accepted upon Formel D's receipt of an Order from Customer for the Services and Formel D's confirmation and acceptance in writing of the Order ("Order Acceptance"). Such an Order is an "Accepted Order." Formel D shall have the right to revoke any Proposal at any time prior to Formel D's confirmation and acceptance unless otherwise agreed in writing by both Formel D and Customer. No modification of any Proposal shall be effective unless approved in writing by Formel D's authorized representative (it being understood that Formel D sales representatives do not have such authority). The provisions of a Proposal control any contrary provision of any Form or Order. Customer acknowledges that Formel D reserves the right to reject any Form or Order for any reason or for no reason.

3. Prices

Formel D's provision of Services shall be subject to the Proposal and these Terms and Conditions. Any price shall be confirmed by Order Acceptance and the issuance of an invoice. All price quotations issued by Formel D for Services are valid for a period of thirty (30) calendar days, unless otherwise indicated therein by Formel D. Prices are subject to change without notice.

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4. Payment

All invoices are payable no later than fourteen (14) calendar days after the date of invoice unless otherwise agreed by the parties in writing and set forth in the Order Acceptance. All payments provided hereunder shall be due as invoiced and shall not be contingent upon any payment to Customer from any third party or subject to offset or reduction for any reason. Interest will accrue at the rate of one point five percent (1.5%) per month, or, if such rate is greater than the maximum rate permitted by applicable law, then at the highest rate allowed by applicable law, compounded monthly on overdue balances. Customer shall pay all costs of collection, including without limitation the actual, documented fees and disbursements of counsel ("Legal Fees") to Formel D, subject to the limited exceptions set forth in paragraph 16, below, with respect to arbitration proceedings. Formel D reserves the right to seek any additional remedies allowed by law. Discounts and any unauthorized deductions or adjustments are not allowed. Delinquent account Accepted Orders will not be processed until account balance is current.

5. Taxes and Expenses

Customer shall pay, in addition to any invoiced amount, (a) all taxes, if applicable, upon the provision, sale, or use of the Services, including, without limitation, all federal, state, or local property, license, privilege, sales, use, excise or gross receipts taxes or other like taxes and tariffs ("Taxes"), and (b) all performance-related costs, fees and expenses incurred by Formel D in connection with the provision of Services, including, without limitation, any and all travel, accommodation, printing, copying, postage and/or any other general and administrative costs and expenses ("Expenses"). If Formel D is required by law to pay any such Taxes or Expenses, then Customer shall indemnify, pay or reimburse Formel D on demand for such payments and any penalties or fees related thereto.

6. Delivery of Services

Services shall be delivered, performed and/or provided, as applicable, in accordance with the terms of the Accepted Order.

7. Customer Cooperation

Customer acknowledges and agrees that Formel D's provision of Services hereunder is contingent upon Customer's full cooperation with Formel D to the extent necessary to facilitate Formel D's performance hereunder. Customer hereby agrees to provide Formel D, its affiliates and their respective representatives, with full access to, and/or the delivery of, certain of Customer's documents, records and information, upon request, to the extent necessary as determined by Formel D in its sole discretion. In the event that Customer fails to cooperate in any manner as contemplated by this Section 7, Formel D is hereby authorized to terminate any Accepted Order as set forth in Section 14 hereinbelow. Any materials, services or other cooperation by Customer with Formel D shall be without charge to Formel D.

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8. Cancellation

After Order Acceptance by Formel D, Customer may not cancel any Accepted Order without Formel D's prior written consent. If Customer requests the cancellation or suspension of the provision of Services and Formel D agrees to cancel or suspend the provision of Services, then Customer shall, as a cancellation charge and liquidated damages, reimburse Formel D for all documented expenditures incurred by Formel D in connection with its provision of Services, whether partial or complete, or in preparation thereof, incurred prior to such cancellation or suspension, which expenditures may include, without limitation, any Expenses and any third party cancellation charges, plus the contemplated profit associated with the applicable Accepted Order.

9. Force Majeure

- 9.1. Formel D shall not be liable for damages as a result of any delay or failure to provide any Services due to any cause beyond Formel D's control, including, without limitation, acts of nature or God, act of Customer or any of its representatives, any statute, ordinance, regulation, order or other governmental, agency or judicial action, fire, storm, flood, earthquake, explosion, accident, war or rebellion, sabotage, epidemic, quarantine restrictions, strike, riot, terrorism, war, transportation embargoes, failure or delay in transportation or inability to obtain or delay in obtaining necessary labor, products, fuel or manufacturing locations or failures of manufacturing machinery. In the event of any such delay, applicable date(s) of delivery or performance by Formel D shall be extended for a period equal to the time loss by reason of such delay and, if such delay is caused by act of Customer or any of its representatives, Formel D shall be reimbursed for any additional costs arising from such delay.

10. Warranty Disclaimer

THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED. PROVISION AND/OR USE OF SERVICES ARE AT CUSTOMER'S SOLE RISK. FORMEL D DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR FREE. FORMEL D EXPRESSLY DISCLAIMS AND MAKES NO REPRESENTATION OR WARRANTY AS TO THE PERFORMANCE OR ANY RESULTS THAT MAY BE OBTAINED BY USE OF THE SERVICES. FORMEL D MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, LOSS OF DATA, OR OTHERWISE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, WARRANTIES OF TITLE, NON-INFRINGEMENT AND WARRANTIES BASED UPON COURSE OF DEALING OR TRADE USAGE.

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11. Damages Disclaimer and Limitation

IN NO EVENT SHALL FORMEL D BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THE SERVICES, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, EVEN IF FORMEL D HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, FORMEL D WILL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR FAILURE TO ACCEPT AN ORDER OR ISSUE AN ORDER ACCEPTANCE, DELAYS IN PERFORMANCE OF SERVICES OR PRODUCT WARRANTY CLAIMS OF PURCHASERS FROM, OR CUSTOMERS OF, CUSTOMER. IN NO EVENT SHALL FORMEL D'S TOTAL AGGREGATE LIABILITY FOR DAMAGES EXCEED THE LESSER OF THE AMOUNT OF (A) TOTAL FEES PAID BY CUSTOMER TO FORMEL D IN CONNECTION WITH THE PROVISION OF SERVICES, OR (B) PROCEEDS AVAILABLE FROM ANY INSURANCE POLICY IN EFFECT AND APPLICABLE TO THE EVENT GIVING RISE TO SUCH LIABILITY.

12. Intellectual Property

- 12.1. Customer acknowledges Formel D's exclusive right, title and interest in and to Formel D's patents, trademarks, service marks, trade names, emblem, designs, intellectual property and proprietary information (including without limitation all forms and types of financial, business, marketing, operations, scientific, technical, economic and engineering information, whether tangible or intangible, including without limitation patterns, plans, formulas, designs, prototypes, techniques, know-how, software, shoppractices, engineering and manufacturing information, costing information, strategic plans, trade secrets and derivative information of any of the aforementioned and regardless of medium of record, if applicable, and whether or not patentable, copyrightable or otherwise protectable, collectively, "Intellectual Property"). Customer acknowledges that Formel D owns or possesses certain Intellectual Property, which Formel D will disclose to Customer from time to time in connection with the provision of Services. Customer shall not acquire any right, title or interest in or to the Intellectual Property by virtue of the provision of Services, or at any time describe or represent itself to others as having such right, title or interest. Should any law or regulation vest Customer with any rights and any of the Intellectual Property, Customer hereby assigns and agrees to assign to Formel D all such rights contemporaneously with their vesting. Customer shall promptly notify Formel D of any and all infringements of the Intellectual Property of which it becomes aware and will assist Formel D in taking action against any such infringements. Customer shall keep confidential, and shall cause its affiliates and its and their officers, directors, employees and advisors to keep confidential, all nonpublic information relating to Formel D, the subject matter of the Accepted Order and any Intellectual Property and other information or materials disclosed by Formel D to Customer in connection with or relating to the subject matter of an Accepted Order, except as required by law and except for information that becomes public other than as a result of a breach of this Section 12.1.

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- 12.2.** Customer acknowledges that all rights to any discoveries, ideas, inventions, improvements and innovations and other Intellectual Property (including, all data and records pertaining thereto) related to, or in connection with, the performance of Services pursuant to any Accepted Order, whether or not capable of being registered as a copyright, trademark or patent, and whether or not reduced to writing, that Formel D may discover, create, invent or originate during its performance of any Services (collectively, "Inventions"), shall be the sole and exclusive property of Formel D. If applicable, Customer shall (i) promptly disclose all Inventions to Formel D, (ii) execute and deliver at the request of Formel D all assignments or other documents that Formel D may deem necessary or appropriate to protect or perfect its rights therein, and (iii) assist Formel D, at Formel D's expense, in obtaining, defending and enforcing Formel D's rights therein.
- 12.3.** Customer acknowledges and agrees that irreparable harm would be suffered by Formel D in the event of a breach of this Section 12 and that Formel D shall have the right to seek injunctive relief in the event of a breach or threatened breach of this Section. Customer agrees that the rights of Formel D provided in the sentence above and under the terms of these Terms and Conditions shall be in addition to, and not in lieu of, all other rights Formel D may have at law or in equity to protect the Intellectual Property.

13. Indemnification

Indemnification. Customer hereby agrees to indemnify, defend and hold Formel D and its affiliates, employees, officers, directors, subsidiaries, affiliates, shareholders, agents and assigns (collectively, "Indemnified Parties") harmless from and against any and all claims (including without limitation lawsuits, administrative claims, regulatory actions and other proceedings to recover for personal injury or death, property damage, or economic losses), losses, costs, damages, liabilities or expenses, including without limitation settlements, judgments and Legal Fees (collectively, "Losses"), arising out of (i) Customer's breach of any term, covenant, obligation or undertaking in any Accepted Order, including without limitation these Terms and Conditions, or any other agreement between Customer and Formel D, (ii) any inaccuracy in any representation or warranty or information, drawings, data or other material (regardless of medium) supplied by Customer to Formel D, or (iii) that are related in any way to the Services or the performance by or obligations of Formel D or any of the other Indemnified Parties under any Accepted Order, including without limitation claims based on Formel D's or any of the other Indemnified Parties' breach of contract or warranty, or claims for any related violations of any applicable law, ordinance or regulation or government authorization or order. Customer's obligation to indemnify Formel D and the other Indemnified Parties under this section will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise. If Formel D or any of the other Indemnified Parties provides services to Customer on Customer's premises or on any other premises designated by Customer, then Customer shall be exclusively liable for, shall bear, and shall indemnify, hold harmless, and relieve Formel D and the other Indemnified Parties from liability for all Losses, damage or claims (including without limitation lawsuits, administrative claims, regulatory actions and other proceedings) resulting from bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person or persons, or on account of damage to or destruction of property, including that of Customer, arising out of, or in connection with the performance of work on premises of or designated by Customer, except that Customer shall not be responsible for or relieve Formel D from liability for claims arising from the willful misconduct of Formel D or any of the other Indemnified Parties.

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14. Default

In the event of breach of these Terms and Conditions, Formel D may exercise all rights and remedies available to it hereunder and under the laws of the State of Georgia. Among such remedies and without limitation, Formel D reserves the right to cancel all or any part of a current Accepted Order and any other Accepted Orders outstanding, without liability to Customer, if Customer fails to perform under any applicable provision of these Terms and Conditions or of any applicable Accepted Order and the failure is not cured within ten (10) calendar days after notice to Customer by Formel D.

15. Bankruptcy or Insolvency

If Customer files any petition under any bankruptcy reorganization, composition or insolvency law, or if any other person or entity files such petition with regard to Customer, or if a receiver has been appointed to manage Customer's affairs or property, Formel D, in its sole discretion, may terminate any Accepted Order by written notice to Customer. Formel D's termination shall not prejudice its rights to the amounts then due under this Proposal or to any other remedies available. In the event an action is brought by Formel D to collect the monies due hereunder, Customer shall pay all cost of collection, including reasonable attorney's fees, and interest allowed by law.

16. Arbitration

If the parties are unable to agree on any matter for which agreement is required under an Accepted Order, including these Terms and Conditions, or if either party commits a breach hereunder, whether material or immaterial, either party shall have the right to submit the matter to binding arbitration in accordance with the rules of the American Arbitration Association ("AAA"), as then in effect. Each party shall pay onehalf of the deposit required by AAA. If the matter in dispute exceeds Fifty Thousand Dollars (\$50,000), the matter shall be considered by a panel of three arbitrators. Each party shall appoint one arbitrator within fifteen (15) days of receipt of notice of the other party requesting arbitration and the arbitrators so selected shall then select a third arbitrator. Upon failure of a party(ies) to appoint an arbitrator (or of the arbitrators selected to appoint a third arbitrator) as contemplated in the foregoing sentence, AAA shall appoint an arbitrator. If the matter in dispute is Fifty Thousand Dollars (\$50,000) or less, the matter shall be considered by a single arbitrator. The parties shall mutually agree to the single arbitrator, or if the parties are unable to so agree on an arbitrator within thirty (30) days following a request for arbitration by either party, the arbitrator shall be selected by AAA. The decision of the arbitrator(s) (by majority vote if there are three arbitrators) shall be binding upon all parties. If there are three arbitrators, each party shall bear the cost of its arbitrator and cost of the third arbitrator shall be borne by the non-prevailing party. If there is a single arbitrator, the non-prevailing party shall bear the cost of the arbitrator. Each party shall bear all of its own witness fees and attorneys' fees. The arbitration proceeding shall occur in Atlanta, Georgia.

17. Jurisdiction; Venue

For purposes of injunctive relief or should arbitration not be available, in any legal action relating to the provision of Services or otherwise under these Terms and Conditions, Customer irrevocably agrees and consents (i) to the exercise of personal jurisdiction over it by the State or superior courts of the State of Georgia or by the United States District Court for the Northern District of Georgia; and (ii) that

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if Customer brings the action, it shall be instituted in one of the courts specified in Subsection (i) above. Service of process provided to Customer in accordance with Section 20 below shall be effective and sufficient to establish jurisdiction and venue in such court in any such action. Should arbitration not be available, Formel D may institute legal action in any appropriate jurisdiction.

18. Governing Law

The Accepted Order, including these Terms and Conditions and any Transaction shall be governed by and construed in accordance with the laws of the State of Georgia, United States of America.

19. Severability

If any provision of an Accepted Order, including these Terms and Conditions shall be judged by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such adjudication shall not affect or modify any other provision of the Accepted Order, including these Terms and Conditions and the effect thereof shall be confined to the provision as to which such adjudication is made.

20. Notice

Any notice or other communication required or permitted by these Terms and Conditions to Formel D must be given in writing and must be delivered by personal delivery (including personal delivery by overnight courier such as Federal Express, DHL, or similar overnight courier), air mail (registered or certified with return receipt requested), telecopy or e-mail (with a copy sent by personal delivery or air mail), in each case addressed to Formel D, Hunsrückerstrasse 1, 53842 Troisdorf-Spich, GERMANY, Attention: Legal Department Manager, Telefax: +49-2241-996-100, in each case with written notification or proof of delivery being required. Notice will be deemed given when received or delivered.

21. Assignment

Customer shall not have the power to delegate any duties or assign any rights under any Accepted Order without the prior written consent of Formel D. Any such attempted delegation or assignment shall be void.

22. Third Party Rights

Nothing in any Proposal, Order Acceptance or Accepted Order is intended to confer any rights or remedies on any persons other than Customer, Formel D, and their respective successors and permitted assigns.

23. Headings

The headings contained in these Terms and Conditions are included for mere convenience of reference and shall not affect the language included herein.



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24. Amendment

Formel D reserves the right to change, modify, add, or delete portions of these Terms and Conditions from time to time without further notice.

Effective as of December 18, 2020