

STANDARD TERMS AND CONDITIONS

1. Terms and Conditions; Purchase and Work Orders. These Kraken Motorsports LLC (“*Company*”) Standard Terms and Conditions or any modified version then in effect at the time of Order (as hereinafter defined) (these “*Terms*”) govern all Orders and other communications sent by the undersigned Customer to the Company for automotive equipment (the “*Products*”) as well as any services the Company may provide to Customer (the “*Services*”). The Company’s performance hereunder and provision of any Products or Services to Customer is strictly limited to the terms and conditions contained herein, and the Company hereby expressly rejects any additional or different terms proposed by Customer at any time. These Terms may only be varied for a specific accepted Order by written agreement expressly referencing these Terms and specifically identifying any such variance to these Terms. All requests for Products or Services must be made by written Order. The Company is not obligated to accept any Order. For purposes of these Terms, “*Order*” means any current, in process, or future request for Products or Services made by Customer to the Company, as confirmed by the Company.

2. Fees and Payment. Payment of any applicable deposit is due prior to Services being performed or Products being delivered. All other payments must be made promptly following the Company’s request therefor (or as otherwise mutually agreed between the Company and Customer); provided however, the Company reserves the right in its sole discretion to require full payment in advance. Notwithstanding anything herein to the contrary, payment of all outstanding amounts is required prior to delivery of finished Products. Customer is responsible for any taxes, duties or government levies resulting from the sale of Products or the provision of Services hereunder, excluding any taxes on the Company’s income. The Company reserves the right to charge interest on all late amounts at the rate of the lesser of (1) eighteen percent (18%) per annum or (2) the highest permissible rate of interest under applicable law, until all amounts owed to the Company have been paid in full. The Company reserves the right to suspend or terminate any Order if Customer’s account is in arrears. Customer must promptly review each invoice and raise any objections in writing within ten (10) days of invoice date or such objections will be deemed to have been waived. CUSTOMER IS NOT ENTITLED TO OFFSET OR DEDUCT FROM ANY AMOUNTS DUE AND PAYABLE TO THE COMPANY ANY DISPUTED AMOUNTS OR AMOUNTS CUSTOMER ALLEGES ARE OWED FROM THE COMPANY.

3. Independent Contractor. In the performance of any Services, it is mutually understood and agreed that the Company is at all times acting and performing as an independent contractor with, and not as an employee or joint venture of, Customer.

4. Termination. An applicable Order will remain in effect until the earlier of (1) completion of the Services and/or delivery of the finished Product; and (2) the time at which such Order is terminated by either party on written notice to the other party. Upon expiration, termination, or cancellation of an applicable Order for any reason, Customer shall pay the Company within ten (10) days of such expiration, termination, or cancellation the following costs and charges as calculated by the Company: (1) fees for all Services already rendered by the Company prior to expiration, termination, or cancellation and (2) any other costs incurred by the Company in connection with the Order prior to expiration, termination, or cancellation (including reimbursable expenses for products or parts already ordered, if any). Upon any expiration or termination, all rights and duties of Customer and the Company toward each other shall cease except that this Article 4 (Termination), and Article 5 (Representations and Warranties; Indemnity), Article 6 (Limitation of Liability), and Article 8 (Miscellaneous) will survive termination or expiration of the applicable Order in accordance with their terms.

5. Representations and Warranties; Indemnity.

A. Company’s Representations as to the Products. The Company shall have no obligation to honor or otherwise provide any warranty whatsoever for parts or products purchased from any third party and/or Customer or otherwise provided by or made available by Customer. Product defect claims must be referred to the product manufacturer. With respect to Products manufactured by the Company, the Company warrants to Customer that, for a period of six (6) months from the date of delivery of Products to Customer, such Products will conform to the Company’s published specifications in effect as of the date of delivery and will be free from material defects in material and workmanship. This limited warranty does not apply to damages to Products caused by oil starvation.

B. Company’s Representations as to the Services. The Company represents and warrants to Customer that it shall perform the Services in a good and workmanlike manner in substantial conformity with these Terms, or as otherwise mutually agreed by the parties in writing, and with the same level of service and degree of care, skill, prudence, quality, and efficiency as provided in connection with its own projects.

C. No Other Warranties. The Company expressly disclaims any warranty beyond the obligations in Sections 5.A and 5.B. above or as may otherwise be specified in any written warranty provided by the Company to Customer. Except as otherwise set forth herein, the Products and the Services are provided “as-is” and with all faults, without warranty of any kind, either expressed or implied, including

without limitation the implied warranties of merchantability or fitness for a particular purpose.

D. Breach of Warranty. In the event that, on or prior to the date that is six (6) months following the date of the Company’s provision of Products and/or Services to Customer, the Company breaches either of the warranties stated in Section 5.A or 5.B or as may otherwise be provided in a written warranty provided by the Company to Customer, then Customer will provide prompt and detailed written notice to the Company (in any event within five (5) days after Customer knows or should have known of the alleged breach), and the Company will thereafter use commercially reasonable efforts to repair or replace the applicable non-conforming Products or correct and/or re-perform the non-conforming Services directly performed by the Company at no additional cost to Customer within a commercially reasonable timeframe. Customer’s sole and exclusive remedy, and the Company’s sole and exclusive liability, for the Company’s breach of the warranties stated in Section 5.A and 5.B or as otherwise provided in the Company’s written warranty shall be the repair, replacement, correction or re-performance, as applicable, as stated in this Section 5.D.

E. Indemnification by Customer. Customer will defend, indemnify and hold harmless the Company and its affiliates and their officers, directors, employees, shareholders, partners, members, customers, agents, successors and assigns from and against any and all losses and expenses related to any claim, suit, legal or dispute resolution proceeding arising out of a breach of any Order or these Terms by Customer or a failure to use any Product and/or the Services in the manner and for the purposes designed under these Terms. The indemnification obligations pursuant to this Section 5.E. shall survive the term of any applicable Order.

6. Limitation of Liability. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL THE COMPANY BE LIABLE TO CUSTOMER OR TO ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS OR LOSS OF BUSINESS, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER CUSTOMER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. NOTWITHSTANDING THE FOREGOING, EACH OF THE COMPANY AND CUSTOMER HEREBY AGREE THAT IN NO EVENT SHALL THE COMPANY’S LIABILITY TO CUSTOMER ARISING OUT OF OR IN CONNECTION WITH AN APPLICABLE ORDER OR THESE TERMS EXCEED THE AMOUNTS PAYABLE BY CUSTOMER TO THE COMPANY FOR THE TERM OF THE APPLICABLE ORDER.

7. Risk of Loss; Authority. Customer acknowledges that Customer’s property may be stored outdoors at the Company’s facility and that Customer is not entitled to storage or maintenance of its property indoors or under any protective covering whatsoever. Furthermore, Customer specifically authorizes the storage of Customer’s equipment, vehicle(s) and other property outdoors regardless of weather conditions. The Company is not responsible for, and no warranty provided by the Company or any third party shall cover, damages from rain, fire, tornado, windstorm, gales, hail or other perils or casualty occurring before, during or after the performance of Services or delivery of the Product to Customer.

8. Miscellaneous.

A. Governing Law; Venue. All Orders and these Terms shall be governed by the laws of the State of Texas, without regard to the conflicts of law provisions of any jurisdiction. The exclusive jurisdiction and venue for any legal proceeding arising from these Terms, any Order and/or the Company’s provision of any Products or Services to Customer will be those courts located in Tarrant County, Texas.

B. Entire Agreement. The applicable Order and these Terms constitute the entire agreement and understanding between the parties with respect to the subject matter herein and supersedes all prior written and oral agreements, discussions, or representations between the parties.

C. Attorneys’ Fees. To the extent permitted by law, in any claim or action at law or equity that is brought by one of the parties to enforce or interpret the provisions of the applicable Order or these Terms, the prevailing party will be entitled to reasonable attorneys’ fees, in addition to any other relief to which that party may be entitled.

E. Force Majeure. The Company is excused from any failure or delay if and to the extent it is prevented or delayed by reason of any circumstance beyond its reasonable control, including without limitation default or delays of Customer or any third party, telecommunications breakdown, interruption in utilities, travel delays or cancellations, illness or injury of a Company principal, labor dispute, strike, terrorism, war or other hostilities, embargo, governmental order or regulation, severe weather, fire, flood, or act of God, or any of any government authority.