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Stark automotive

Terms & Conditions of Sale

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### **Terms and conditions of Sale**

#### **1. Definition**

- 1.1 These terms and conditions of sale shall apply to and form part of every contract of sale entered into by Stark automotive and may not be varied except in writing by one of our directors.
- All contracts to which these terms and conditions of sale apply shall be deemed to have been made in England and be governed by and construed in accordance with English Law.
- 1.2 No contract shall come into being unless and until the Purchaser has accepted these terms and conditions of sale either expressly or by implication. Acceptance of the goods implies acceptance of these conditions. If any inconsistency arises between these terms and conditions of sale and any conditions which the Purchaser seeks to impose, these terms and conditions of sale shall prevail.
- 1.3 Where referenced to in the following terms and conditions of sale:  
The "Company" means Stark automotive or any trading as name associated with it.  
The "Purchaser" means the person, body corporate or firm which buys or has agreed to buy Services or Goods from the Company.  
The "Services" means services of any nature whatsoever to be supplied by the Company and shall include the fitting of Goods, alteration and remedial work upon of vehicles and the parts, materials and labour necessary to complete such work whether supplied by the Company or by the Purchaser.  
The "Goods" means any item of whatsoever nature which is to be sold by the Company.

#### **2. Sale and Payment of Goods and Services**

- 2.1
- 2.1.1 Descriptions, illustrations, specifications and prices shown in brochures, advertisements, websites and by way of samples are correct at time of going to press, errors and omissions excepted.
- 2.1.2 Unless otherwise expressly stated to be firm for a period of time the Company's prices are subject to variation to take account of variations in wages, materials, hiring of equipment and other costs.

- 2.1.3 The price payable for Goods and/or Services shall unless otherwise stated by the Company in writing be the quoted price. If no price has been quoted the list price of the Company current at the date of the order shall be payable.
- 2.2 All prices are exclusive of Carriage and Value Added Tax (except where stated) which is due at the rate currently in force. Quotations shall remain valid for one month from the date of issue.
- 2.3 Any invoice query should be made in writing to the Company within ten days of the date of invoice.
- 2.4
  - 2.4.1 All accounts are payable in full within 30 days of the invoice date.
  - 2.4.2 If payment is tendered by cheque that payment shall not be deemed made until the cheque has been cleared.
  - 2.4.3 If the Purchaser fails to make any payment when due in accordance with these terms and conditions the Company reserves the right in its absolute discretion and without prejudice to any of its other rights or remedies to suspend the supply, fitting, installation, tuning or delivery of Goods and Services under any current or future order until such payment has been made in full or at the Company's option to cancel the balance of the order. The Company shall hold the Purchaser liable for costs it incurred in respect of Goods and Services in the event that it suspends or cancels the order in accordance with these terms and conditions.
- 2.5 Orders for goods may be cancelled only with the written agreement of a Company director. Orders for goods made to special order cannot be cancelled. Orders which have been paid for and later cancelled at the customer's request will be subject to a minimum 25% cancellation fee.
- 2.6 The Company shall be entitled to bring an action for the price or part thereof whether or not the property in the Goods has passed or the Services have been completed.
  - 2.6.1 The Purchaser shall under no circumstances whatsoever be entitled to claim any retention from the purchase price or the amount due under any invoice.
- 2.7 Additionally and without prejudice to its other rights the Company shall be entitled to recover all direct expenses reasonably incurred by the Company in collecting or attempting to collect amounts due to it by the Purchaser.
- 2.8 The property in the Goods shall remain with the Company which reserves the right to dispose of the Goods until payment in full for all the Goods has been received by it in accordance with the terms of this contract. While the Goods remain the property of the Company the Purchaser shall keep the Goods identifiable and separate from all other Goods in its possession.
- 2.9 Deposits and part-payments are non-refundable.
- 2.10 Any invoice not paid in full by the due date shall attract interest payments. These will accrue from the due date at the rate of 10 percent per month.
- 2.11 The Company shall not be liable in any way whatsoever for the consequences of any delay in delivery or in the carrying out of any Services under the contract.
- 2.12 If specified for collection or unsuitable to delivery, the Purchaser shall collect the Goods within fourteen days of being notified by the Company that they are available for collection. Unless pre-approved in writing by a Company director, if the Purchaser fails to collect the Goods within the time nominated, the Company reserves the right to charge the Purchaser a daily fee for storage at the rate from time to time applying and notified at the Company's premises. The Company shall be entitled to exercise a lien over the Goods until all monies, including storage charges, have been paid in full.

### **3. Carriage**

- 3.1
  - 3.1.1 The Company cannot accept liability for delay in dispatch or delivery.
  - 3.1.2 All times or dates nominated for delivery of the Goods and Services are given in good faith but are only approximate and time for delivery shall not be of the essence of the contract.
- 3.2 Unless stated, carriage will be charged in addition to the quoted price.
- 3.3 Shortage of goods or damage must be notified to the Company by telephone within three days of delivery, and confirmed in writing within seven days of delivery or no claim can be accepted. Delivery of obviously damaged goods should be refused. Notifications should give

delivery note number, a list of quantities of the Goods damaged and details of the type of damage. Damaged goods must be retained for inspection.

3.4 Liability cannot be accepted for non-delivery of goods if written notification is not received within fourteen days of the shipment date.

3.5 All packaging and cases are non-returnable.

#### **4. Sub-contracting**

4.1 The Company reserve the right to sub-contract all or any part of the work necessary to fulfil an order for a Purchaser.

#### **5. Quotations**

5.1 If a 'quotation' is given it is a firm price for the job but subject to these terms and conditions. An 'estimate' is our best estimate of the final cost but may be subject to fluctuation due to exigencies of the job which may be difficult or impossible to foresee.

#### **6. Services**

6.1 If the Company has agreed to supply vehicle Services, the Purchaser must ensure that all conditions contained within the Company's quotation (whether verbal or in writing) are complied with prior to delivering any vehicle to the Company. The Company reserves the right in its absolute discretion to refuse to supply Services if it appears to the Company that the Purchaser has not satisfactorily complied with the conditions of its quotation.

#### **7. Intellectual Property**

7.1 All intellectual property rights provided for the purposes of fulfilling any order or proposed order by the Purchaser shall remain the property of the Company absolutely together with any intellectual property rights therein. These shall include without limitation Goods designs, manufacturing details and processes, moulds and patterns, material specifications, drawings, circuit diagrams, hydraulic and pneumatic diagrams and engine electronic control unit maps.

#### **8. Consequential Loss**

8.1 The Company shall not be liable for any consequential loss suffered by the Purchaser. The Company shall not be liable for any expenses, costs, claims or damages whatsoever or arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits income production or accruals or by reference to the accrual of such expenses, costs, claims or damages or on a time basis.

#### **9. Variation**

9.1 The Company shall be under no obligation whatsoever to alter or vary any part of any contract for any work connected therewith. Any alteration to or addition to or amendment or other variation of the specification shall, if requested by the Purchaser, be subject to the agreement of the Company in writing only.

9.2 In the event of any such variation, the Company shall be entitled to adjust the contract price to reflect the costs involved and to adjust delivery dates or schedules as required.

#### **10. Limits of Contract**

10.1 The contract includes only such Goods and Services as are specified in the quotation (whether verbal or in writing) given by the Company or in any acknowledgement accompanying these terms and conditions of sale.

#### **11. Force Majeure**

11.1 Under some circumstances we may cancel the contract without notice or compensation. Such circumstances would include inability to obtain materials, labour and supplies, strikes, lockouts and other forms of industrial action or dispute, fire flood, drought, weather conditions, biological hazard, war, civil disturbance, act of God, terrorism, or any other cause beyond our control making it impossible for us to fulfil the contract but without prejudice to the Company's rights to recover payment for Goods or Services already delivered or fitted.

#### **12. Independence**

12.1 Stark automotive is in no way connected to Lotus Cars Limited or any other member of the Lotus Group of companies ("Lotus") and is entirely independent of Lotus. Accordingly, none

of the Goods offered for sale or supplied by Stark automotive (nor any advice or service offered or provided by Stark automotive) are in any way endorsed by Lotus and Lotus has not tested or approved any such Goods or services. Accordingly, Lotus shall not under any circumstances be liable for any loss, claim, damages or any consequential, indirect or special damages whatsoever arising out of or in connection with the use of Goods sold or supplied by Stark automotive.

- 12.2 Stark automotive is in no way connected to Honda Motor Europe Limited or any other member of the Honda Group of companies ("Honda") and is entirely independent of the Honda Motor Europe Limited. Accordingly, none of the Goods offered for sale or supplied by Stark automotive (nor any advice or service offered or provided by Stark automotive) are in any way endorsed by Honda Motor Europe Limited and Honda Motor Europe Limited has not tested or approved any such Goods or services. Accordingly, Honda Motor Europe Limited shall not under any circumstances be liable for any loss, claim, damages or any consequential, indirect or special damages whatsoever arising out of or in connection with the use of Goods sold or supplied by Stark automotive.
- 12.3 Stark automotive is in no way connected to Bayerische Motoren Werke AG (BMW) or any other member of the BMW Group of companies ("BMW") and is entirely independent of the Bayerische Motoren Werke AG. Accordingly, none of the Goods offered for sale or supplied by Stark automotive (nor any advice or service offered or provided by Stark automotive) are in any way endorsed by Bayerische Motoren Werke AG and Bayerische Motoren Werke AG has not tested or approved any such Goods or services. Accordingly, Bayerische Motoren Werke AG shall not under any circumstances be liable for any loss, claim, damages or any consequential, indirect or special damages whatsoever arising out of or in connection with the use of Goods sold or supplied by Stark automotive.

### **13. Warranty**

- 13.1 All Goods designed and manufactured by the Company carry a 12 month warranty against defects in manufacture. With the exception of Vehicles, replacement goods are issued on a supply only basis.
- 13.2
- 13.2.1 Unless expressed in writing, the Company makes no representation whatsoever that any Goods or Services will be suitable for any specific purpose intended by the Purchaser or that any Goods or Services when supplied or fitted will perform to any specific standard or produce any specific level of performance for the Purchaser.
- 13.2.2 The Company gives no warranty whatsoever in relation to any Goods or Services used in competition or motorsport of any sort.
- 13.2.3 No warranty or representation is made as to any Goods ability to protect the user from injury or death. The user assumes the risk entirely. The effectiveness, warranty and longevity of all parts supplied and manufactured by Stark automotive are directly related to the manner in which they are installed, used and maintained.
- 13.3
- 13.3.1 Fitting instructions must be strictly adhered to and warranties will become invalid should any recommended steps not be taken during Goods installation. The Company takes no responsibility for the incorrect installation of Goods.
- 13.3.2 Vehicle modification can be a dangerous activity. If you are at all unsure of what you are doing, please leave mechanical, electrical or critical safety work to a professional.
- 13.4 Fitment of Goods to automobiles that remain under a manufacturers warranty may void such warranty.
- 13.5 Goods noted for off road use should be use as stated and as such the Company are not liable in any way for Goods that are unable to meet transport, emissions and road safety standards.
- 13.6 Warranties for all Goods supplied by Stark automotive will be deemed invalid if:
- 13.6.1 The Goods are modified in any way from their original state.
- 13.6.2 The Goods are fitted incorrectly or fitted and used for an unsuitable application.
- 13.6.3 The Goods are used in competition, motorsport of any form, or trackdays.

13.6.4 The service schedule intervals are not strictly adhered to.

This extends to Engine Conversion Kit warranties that will be deemed invalid if:

13.6.4 The installation is not carried out in accordance with Company installation instructions and procedures.

13.6.5 The kit or any single component of the kit is modified in any way.

13.6.6 The engine or drivetrain being used for conversion is modified or tuned in any way over its standard form (UK specification Honda K20A2 engine) and outputs for which the kit is intended without written approval from a company director.

- The Vehicle equipped with the conversion is used in competition or motorsport of any form. This extends to converted vehicles used primarily for heavy non competition track use without suitable precautions and upgrades installed either upon specification recommended by the company or advised thereafter.
  - The converted Vehicle is used on track within the first 1000 miles running in period after the conversion.
- Warranties provided for new kit parts are of 1 year / 10,000 mile duration, whichever is soonest. Guarantees provided for vehicles exclude consumable items that can be deemed as under wear and tear from everyday use.
  - No warranty is provided for used engines, gearboxes and other donor parts unless separately specified.
  - Guarantees exclude service and consumable items that can be deemed as under wear and tear from everyday use.
  - Parts are warranted on a "return to base" basis with the customer bearing the cost of delivery for the return.
  - Warranty claims are limited to a maximum of one claim per item.
  - This does not affect your statutory rights.

#### **14. Passing of Property and Risk**

14.1 The risk in the Goods shall pass to the Purchaser immediately on delivery of the Goods.

14.2 Until payment has been received in full by the Company the Company shall be entitled to retain possession of the Goods or the Purchaser shall be under an obligation to re-deliver the Goods to the Company if the Company so requires.

14.3 If payment is not received the Company shall be entitled at any time to re-take possession of the Goods.

14.4 If the Purchaser sells any of the Goods before the property in the Goods has passed to the Purchaser the Purchaser shall hold the proceeds of such sale in trust for the Company. The Purchaser shall at the request of the Company assign to the Company its rights to receive the proceeds of such sale.

14.5 Goods intended for 'off road use' should be used as such and Stark automotive accept no responsibility for any use of such products on the public highway. This includes and conversion kit ordered with a 'decat' link pipe as opposed to the sports catalyst. This extends to goods sold out of the UK – it is the purchaser's responsibility in full to ensure that if the converted car is to be used on the public highway that all relevant tests are carried out and paperwork completed to ensure legality. Stark automotive will accept no responsibility for any road legality issues.

14.6 For international orders it is the sole responsibility of the purchaser to ensure that any modifications carried out are suitable and legal for the relevant local authorities and Stark automotive accept no responsibility for any customers who choose to use supplied products in a country where such modifications are deemed illegal or requiring approval.

#### **15. Bankruptcy**

- 15.1 In the event of the Purchaser committing any breach of this contract or if any distress or execution is levied on the Purchaser, his Goods or assets, or if the Purchaser enters into any negotiations or arrangements or composition with or for the benefit of his creditors or permits any act of bankruptcy or if any petition in bankruptcy shall be presented against him or if being a body corporate the Purchaser shall be wound-up or if any resolution is proposed or petitioned to wind-up the Purchaser (not being a members voluntary winding-up for the purposes of reconstruction or amalgamation without insolvency) or if the receiver of the Purchaser's assets or undertaking or part thereof shall be appointed or if the Purchaser shall be deemed unable to pay its debts or applications made for an administration order or such order is granted, the Company shall be entitled without prejudice to any other claim or right or remedy which it may have, forthwith to suspend any or all deliveries until the default has been made good or to determine the contract or any unfulfilled part thereof.