

## **Xtreme Race Performance Motorsport Ltd ("XRPM") Terms and Conditions of Sale and Service ("the Terms")**

Important;

Please read these terms and conditions carefully. The terms set out the terms and conditions which apply through your use of the XRPM Website ("SITE") and order of goods and services through this site and other affiliated accounts. By using this site and/or ordering goods or services from XRPM you are bound by the terms.

### **Contract**

1. The terms between XRPM and the Buyer constitute the contract for the sale and purchase of goods and/or services specified in the Issued Invoices. These terms are also binding to all users of the XRPM site and affiliated accounts.
2. XRPM may modify the Terms in whole or part from time to time without notice. The modified terms will immediately take effect and will govern your access to the site. You should periodically check these terms and conditions for alterations.
3. All goods and/or services supplied by XRPM to the buyer shall be supplied under this contract for an indefinite term. Delivery of goods through instalment or separately shall be delivered under this contract and not separate contracts.

### **Price and Payment**

6. The "Contract Price" means the total price for all goods and/or services at the date of invoice together with the cost of freight and other applicable government taxes in relation to the supply of goods within New Zealand.
7. Payment of the Contract Price will be made by a provided payment option and accepted by XRPM through a written tax invoice. Payment of the contract price must be received by XRPM before the goods and/or services are supplied unless credit terms have been arranged in writing.
8. All prices listed on this Site are in New Zealand dollars and are inclusive of GST (unless otherwise stated).
9. In the event a product is listed with an incorrect price due to human or technical error, XRPM reserves the right to refuse or cancel any undelivered orders placed for goods and/or services listed at the incorrect price. XRPM reserves the right to cancel any such orders at any time prior to delivery, regardless to payment status. If the payment has been received, XRPM will refund the payment in full.

### **Delivery**

10. Delivery shall be made at the customer specified address. XRPM reserves the right to select the best method and freight carrier for the particular circumstances. Accuracy of address is solely the Buyers responsibility. XRPM reserves the right to refuse any claims where addresses were submitted incorrectly.

### **Title/Risk**

11. From the time goods and/or services are delivered (through instalments or other means), title to the goods and/or services shall pass to the Buyer and the Buyer shall bear the risk of any loss, damage or deterioration to the goods from this time.

### **Returned Goods**

12. To the extent permissible by law, XRPM reserves the right to refuse return of goods for replacement, credit or refund unless;
  - a. they have been damaged during delivery ("DD") or are not in proper working order ("DA"), and
  - b. the returned goods are delivered to the specified XRPM return address, and
  - c. in the case of DD and DT goods, that XRPM receives the goods intact and in their original packaging.

Provided that the goods are returned to XRPM within a reasonable time specified in the New Zealand Consumer Goods act, the Buyer shall be solely responsible for any claims arising from damage or alleged damage to the goods, regardless to the cause.

### **Delay**

13. Time quoted for delivery of goods and/or services from XRPM to the Buyer shall be approximate only and XRPM shall not be liable for failure to supply or deliver any goods and/or services at such time on any grounds whatsoever, including negligence by XRPM.

## **Liability**

14. To the extent permissible by law, XRPM shall not be liable for any loss in profits or any consequential, indirect or special loss or damage, or injury or any kind whatsoever whether suffered by the Buyer; and/or the any persons, and whether arising directly or indirectly from any;
  - a. defective or non-compliance of goods and/or services supplied, or
  - b. breach of any XRPM obligations under or in connection with this contract, or
  - c. cancellation or termination of this contract, or
  - d. misrepresentation, negligence or other omission on the part of XRPM and affiliated companies and/or individuals.

And the Buyer shall indemnify XRPM against any claim by any of the persons above or their representatives against any loss, damage or injury for which XRPM liability is excluded by this clause.

15. Notwithstanding, to the extent permissible by law, XRPM liability under this contract, concerning claims for injury, damage or loss which arises directly or indirectly, shall not in total exceed the Contract Price for the goods and/or services where the injury, loss, or damage arose.

## **Warranty**

16. If the buyer orders goods under the for the purpose of on-sale to consumers (within the legal confinements of the Consumer Guarantees Act. 1993), the buyer shall complete and issue the consumer a warranty in respect of those goods so that XRPM may provide the buyer, provided the goods are not damaged, defective or shop-soiled at the time of on-sale to the consumer.
17. The Buyer is not authorised to issue a Warranty to any person except in accordance with this clause.

## **Consumer Guarantees Act 1993**

19. Nothing outlined in these Terms is intended to contract out of provisions set out in the New Zealand Consumer Guarantees Act 1993 except to the extent permitted by the act, and the Terms are to be modified as necessary to effect the intention.
20. The buyer agrees to indemnify XRPM against any liability or cost incurred by XRPM under the Consumer Guarantees Act 1993 as a result of any breach by the Buyer of the obligations set out in the Terms.
21. Where the Consumer Guarantees Act 1993 ("Act") applies to the Terms set out;
  - a. if the goods or services are acquired for business purposes, the Buyer agrees that the Act does not apply, and
  - b. if the goods or services are not acquired for business purposes, to the fullest extent permitted by law, XRPM liability for breach of any implied warranty at the option of XRPM to;
    1. in the case of services, the supply of the services again or the payment of the costs of having services supplied again, and
    2. in the case of goods, the replacement of goods or the supply of equivalent goods, the repair of such goods, the payment of costs replacing the goods or acquiring the equivalent goods, or the costs of having the goods repaired.

## **Registration**

22. There are two methods of sale made available through this website. The first method is to place an order as a 'Registered Member' and the second is purchasing for non-members. These 'non-members' may make a one-time-only purchase which does not require registration on the website.
23. Some features made available through our website are only available to registered members. You can acquire a membership by following instructions provided. Upon application or purchase you hereby agree to all terms and conditions set out.
24. There is no charge for registration and membership on the "XRPM" website.
25. The account held on "XRPM" is non-transferrable and may not be combined or merged with any other user account.
26. XRPM reserve the right to refuse your application for registration or terminate your registration at its sole discretion, including but not limited to, in-activity over an extended period of time.

## **Your "XRPM" Online Account**

27. When you register as a member of the XRPM website, you must choose a password. Your password must be used together with your email address (each of which is a "unique" identifier) to access the XRPM website. We reserve the right to reject any unique identifier you choose, at our sole discretion. You are responsible for keeping your unique identifiers confidential and must immediately notify XRPM if you suspect any un-authorized use of these.
28. You are solely responsible for all activities that occur under your XRPM account include, without limitation, all activities authorized or unauthorized, lawful or unlawful which use your specified unique identifiers. XRPM is entitled to act on any instructions received under your Unique Identifiers. XRPM cannot and will not be liable for any changes made to your XRPM account by any person using these identifiers, or for any loss or damage arising from your failure to adequately protect your unique identifiers. For security reasons, you should memorize, and not write down, these unique identifiers for future use and close the browser window at the end of each session.

### **Information that your provide to XRPM**

29. To enable XRPM to provide you with the products and / or services and to enable you to participate in XRPM promotional offers and marketing activities, XRPM may ask you to provide personal information such as your name, address, telephone number and other information regarding your use of the website.
30. All information you provide to XRPM must be true, accurate, current and complete at all times. You must endeavour to maintain these details if any of these details change. If you provide any information which is untrue, inaccurate, not current or not complete, XRPM may suspend or terminate your membership to (and rights of use) the website immediately.
31. In the event that you contribute any materials, including information or statements to the site, you warrant that Your Materials are true and correct to the best of our knowledge and do not infringe on the legal rights of any third parties. You agree to release XRPM from liability in the result of any claims arising from a connection to your materials.

### **Exclusion of Liability**

32. Your use of the XRPM website is at your own risk. Unless otherwise stated in these Terms and Conditions, the material, products and information in, or available through, XRPM are provided "as is" and "as available". XRPM will not be responsible or liable for your reliance on the material, or for any damages caused by the accuracy, completeness or timeliness of the material.
33. Features and specifications of the products outlined on the XRPM website are subject to change at any time without notice. XRPM does not warrant that the products and specifications available through the website are error-free.
34. XRPM will not, under any circumstances (including, without limitation, negligence) be liable for any loss of data, revenue, profits or lost business or any direct, incidental, special, consequential, indirect or punitive damages that result from:
  - a. Use or inability to use the XRPM online service;
  - b. The costs of procurement of substitute goods or services;
  - c. Any transactions entered into through the XRPM website;
  - d. Your reliance on or use of any information, goods or services provided through the website;
  - e. Unauthorized access to or alteration of any communications, registration data or any other data that you provide from time to time;
  - f. The conduct or miss-conduct of a third party;
  - g. Errors, omissions or other inaccuracies in XRPM website or other sales medium; or
  - h. Your use or inability to use, the materials or products or information in any websites linked to this site.

### **Waiver**

35. All the original rights, powers, exemptions and remedies of XRPM shall remain in full force and effect notwithstanding any neglect, forbearance or delay in their enforcement. XRPM shall not be deemed to have waived any of the Terms unless such waiver shall be in writing. Any such waiver, unless XRPM expressly states the contrary, shall apply and operate only in the particular transaction, dealing or matter.

### **Acknowledgement**

36. The buyer confirms that he or she is 18 years or over and has the full legal capacity to enter the Terms as a binding contract.

### **Indemnity**

37. You will indemnify XRPM trading as "XRPM" and keep XRPM indemnified against all actions, proceedings, losses, liabilities, damages, claims, demands, costs and expenses suffered or incurred by XRPM as a result of or in connection with any:

- a. Negligent act or omission;
- b. Use or misuse of the XRPM website;
- c. Violation of the rights of another member;
- d. Breach of these Terms, by you or anyone using your Unique Identifiers;

### **Additional Terms**

38. Ownership and/or operation of the XRPM website may from time to time be transferred or vested in an entity related to XRPM or a third party.
39. Reference in these Terms to "XRPM" includes any related company (within the meaning of the Companies Act 1993.) of XRPM or XRPM and its permitted successors and assigns.

### **Intellectual Property**

40. You undertake not to infringe any copyright, trade mark or other intellectual property rights belonging to XRPM, its affiliates and its third party content suppliers, and to otherwise comply with any copyright and other proprietary notices contained on this Site.

### **Termination**

41. You may terminate these Terms and your XRPM website account at any time, without cause and with immediate effect, by sending your name to [sales@xrpm.co.nz](mailto:sales@xrpm.co.nz). XRPM may terminate these Terms and your XRPM website account at anytime, without cause and with immediate effect, by sending an email to the email address supplied by you when registering for use. In the event of termination you will immediately cease to use the XRPM website. The provisions of these Terms regarding Intellectual Property rights, confidentiality, warranty disclaimers, liability limitations and indemnification shall survive any such termination.

### **New Zealand Law**

42. This agreements shall be deemed to have been made in New Zealand and the terms shall be governed by and construed in accordance with the Law of New Zealand and the parties unconditionally and irrevocably submit to the exclusive jurisdiction of the New Zealand courts. Of any provision of these Terms is deemed unlawful, void for any reason un-enforceable, then that provisions shall be severable and shall not affect the validity and enforceability of the remaining provisions.