

## General Terms and Conditions KMS Racing Engines in Amstelveen

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## APPLICATION

### Article 1 - Definitions

In these terms and conditions:

1. **KMS:**  
KMS Racing Engines B.V.  
Kuiperij 6  
(1185 XS) Amstelveen  
Telephone: +31653260362  
Website: [www.kmsracingengines.com](http://www.kmsracingengines.com)  
Chamber of Commerce number: 92307108  
VAT identification number: NL865991017B01
2. **Customer:** any (legal) person with whom KMS enters into an Agreement or with whom KMS negotiates about the conclusion of an Agreement;



3. **Products:** all items, including engines and parts for engines, in the broadest sense of this concept, which are the subject of an offer, Agreement or other legal act between KMS and the Customer, or the parts and accessories for such items. In these General Terms and Conditions, 'Product' is also understood to mean the result of a Service, insofar as this Service leads to the delivery or completion of a material work. In this context, Custom Product is understood to mean a Product that is the result of a Service by KMS and that relates to the development, installation, repair or overhaul of an engine for car racing and/or off-road circuits.
4. **Services:** All work performed or to be performed by KMS that is the subject of an offer, Agreement or other legal act between KMS and the Customer. In a general sense, KMS offers services in the field of trade (purchase and sale) of Products for itself or for others (third parties), the development and/or repair of vehicle engines and associated (small) metalworking, all of this in the broadest sense of the word. In particular, KMS carries out work in which it develops, installs, repairs and/or overhauls a racing engine or a so-called off-road car engine on behalf of a Customer. If a Service leads to the delivery of a material work, the Agreement (also) qualifies as an agreement for the contracting of work.
5. **Agreement:** any agreement between the Customer and KMS with regard to a Product or a Service, any amendment or addition thereto, as well as all related (legal) acts, whether or not in preparation or implementation thereof;
6. **General Terms and Conditions:** the present General Terms and Conditions of KMS, as these terms and conditions have been filed with the District Court of Amsterdam on January 9<sup>th</sup> 2024 under number 6/2024
7. **Ex works:** the way in which the Product is delivered by KMS to the Customer, meaning that the delivery thereof is deemed to have taken place as soon as the Product leaves the KMS workshop. Ex works means that any transport costs are for the account of the Customer and that the risk of the transport is also for the account of the Customer.

## Article 2. Applicability

1. The General Terms and Conditions apply to all offers from KMS and to all Agreements concluded with it.
2. Any deviating (general) terms and conditions and provisions of the Customer are expressly rejected by KMS and they are only binding if and insofar as KMS has expressly agreed to them in writing.
3. Changes or additions to any provision of these General Terms and Conditions are only valid if they have been laid down in writing and signed by both parties.
4. If any provision of these General Terms and Conditions should come into conflict in whole or in part with any provision of mandatory law, these General Terms and Conditions will otherwise remain in full force, while with regard to the null and void, nullified or annulled provisions, KMS will determine new provisions in consultation with the Customer to that effect, which approach the purport of the null and void, nullified or annulled provisions as closely as possible. The Customer is bound by these new provisions.
5. If any provision of the Agreement conflicts with the provisions of these General Terms and Conditions, the provisions of the Agreement will prevail.

## PRODUCTS (BUY/SELL)

### Article 3. The Offer

1. All offers from KMS are without obligation.
2. If a term for acceptance has been set by KMS, the offer from KMS will be valid during the term indicated in the offer.
3. If no acceptance period has been set in the offer, the offer must be accepted by the Customer immediately, failing this will void the offer and no rights can be derived from it.
4. An offer from KMS expires anyway if the Service or the Product to which the offer relates is not or no longer available and/or can no longer be delivered.
5. The electronic acceptance of an offer from KMS by the Customer, which has been received by KMS, constitutes a valid acceptance of the offer.
6. A statement of images, drawings, statements of weights, dimensions, colours and similar variables in an offer from KMS are only approximate. Deviation from this does not entitle a Customer to any action, including an action for replacement, repair or compensation.
7. Mistakes or errors in the offer do not bind KMS, even if they are not obvious mistakes or errors.

### Article 4. Price, price changes/increases

1. The prices stated in KMS his offer for the Products and/or Services are in euros. The prices do not include VAT. The prices do not include any shipping costs, costs of (transport) insurance, administration costs and other levies, including government levies.
2. KMS is, even if it has agreed a fixed sales price with the Customer, entitled to increase this price if significant price changes have occurred between the time of the offer and the time at which the actual delivery takes place with regard to raw materials, materials, taxes, tariffs (including import and export tariffs), currency, other duties and/or wages or otherwise unforeseen circumstances. In such a case, KMS will, after notification to the Client, only charge the actual cost increase to the Client, without surcharge. 'Significant' within the meaning of this provision is in any case understood to mean an increase in the cost price of the Product or Service by at least 5%.
3. After a price increase as referred to in art. 4.2 only has the right to dissolve the Agreement if the price increase is more than 20% and, if it concerns a Service, the work has not yet started.
4. The dissolution by the Customer under this article must take place within ten days after the notification of the price change by KMS by means of a declaration of dissolution sent by registered mail.

## SERVICES

### Article 5. Quotation and term



1. Before or upon the conclusion of the Agreement with regard to a Service, the Client may request a statement of the price of the work, as well as of the term (including the performance period) within which the work will be performed.
2. Each term included in the Agreement for the performance of a Service only creates a best effort obligation for KMS, never an obligation of result. No term specified in the Agreement is a strict deadline.
3. A period specified in the Agreement (including an implementation period) will only start if the agreement has been reached on all technical, commercial and implementation details, all necessary information has come into the possession of KMS, the agreed (instalment) payment has been received and the necessary conditions for the performance of the Service have also been met.
4. If there are other or changed circumstances than those known to KMS when the execution period was determined, KMS can extend the execution period by the time necessary to execute the assignment under these circumstances. If this additional work cannot be fitted into KMS' existing planning, it will be carried out as soon as its planning permits.
5. If a term is exceeded or threatened, KMS will inform the Customer of this, stating a new term within which the work will take place.
6. Exceeding an agreed term (execution period) does not under any circumstances entitle the Customer to dissolve the Agreement or to receive any compensation.

#### **Article 6. Agreement**

1. If an acceptance deviates from the offer for a Service, KMS is not bound by it. The Agreement will then not be concluded in accordance with this deviating acceptance, unless KMS indicates otherwise.
2. The Client is obliged to provide KMS with all relevant data for the execution of the Service. The Customer is also obliged to provide KMS with the correct contact and payment details and any (interim or otherwise) changes therein. KMS is not responsible for the consequences of incorrect or late information provided by the Customer.
3. The Client is obliged to report any inaccuracies in the order confirmation from KMS to KMS within five days, if not the Client cannot invoke these inaccuracies against KMS.
4. KMS is entitled to full or partial payment of the Service before the relevant work has been performed, or it may require installment payments to be made. KMS is entitled, prior to the performance of the Service or prior to the performance of work in a certain phase, to charge the Customer an advance to be determined by KMS.

#### **Article 7. Execution of agreement**

1. KMS is entitled to engage third parties in the performance of the Agreement.
2. KMS is entitled to perform a Service in several phases and to invoice the Client separately or in advance for the work performed in one phase.
3. If the Agreement is executed in phases, KMS can suspend the execution of those parts that belong to a subsequent phase until the Client has approved the results of the work in the preceding phase in writing.

#### **Article 8. Change of agreement. Additional work.**

1. If it appears during the performance of the Agreement that it is necessary for proper performance to change or supplement the Service and/or if changes occur in the



basic principles or if there are other circumstances that underlie the Service, then KMS is entitled to adjust the Service, at the expense of the Customer.

2. There is in any case reason to adjust the Agreement if:
  - a) relevant changes occur to (government) regulations or decisions;
  - b) relevant changes occur in the schedule of requirements or in the original contract;
  - c) the Customer requires changes or variants of work that has already been approved, or is part of a phase that has already been approved;
  - d) there are price-increasing costs of at least 10%;
  - e) more work proves necessary and/or desired by the Customer.
3. KMS will inform the Customer as much as possible of the changes to the Service and the associated costs.
4. Without being in default, KMS can refuse a request for amendment of the Agreement by the Customer if this has consequences for the work to be performed or the goods to be delivered in that context.
5. In the event of a change to the Service, KMS will be entitled to adjust the execution period and the price. In that case, KMS will charge the Customer its usual rate for such additional and/or changed work.

#### **Article 9. Obligations KMS**

1. KMS will make every effort to perform the Service carefully and to represent the interests of the Customer to the best of its knowledge and ability.
2. KMS will treat the information provided by the Customer confidentially insofar as KMS knows or should reasonably know that this information is confidential.
3. KMS will, if desired, keep the Client informed of the performance of the work. On request and to the best of its ability, KMS will provide the Client with all information that is important for the execution of the assignment.
4. KMS will warn the Customer if information and/or data provided by or on behalf of the Customer or by or the decisions taken by the Customer apparently contain such errors or defects that KMS cannot perform the Service in a careful manner and/or an adjustment of the Service is necessary.

#### **Article 10. Conformity and warranty with regard to Customized Products**

1. In the case of a Custom Product, KMS guarantees that this Product meets the specifications specified by KMS for this Product upon delivery.
2. At the request of the Customer, the test report will be delivered to the Customer.
3. The Customer accepts the test report as proof of fulfillment of the warranty obligation by KMS, as described in Article 15.1.
4. If the Customer has doubts about the correctness of the test report, it will be given the opportunity to have a new test carried out in the test laboratory of KMS prior to delivery of the Customized Product. The costs of this test will be at the expense of the Customer, unless this test shows that the warranty obligation as referred to in art. 15.1 has been breached by KMS.
5. If a test in the laboratory of KMS shows that the Customized Product does not meet the specified specifications, KMS will be given the opportunity to repair the product.
6. Any action by the Customer on the basis of a failure to comply with the Agreement, at least not properly, by KMS, including an action based on the warranty referred

to in Article 15.1, lapses as soon as the Customized Product leaves the KMS workshop, is processed (including in a vehicle is built in), modified, used or disposed of. 'Any action' includes all actions of the Customer for performance, dissolution and/or compensation towards KMS.

### **Article 11. Repair obligation with regard to non-Customized products**

1. In the case of Products that do not qualify as Customized Products, the following provisions apply.
2. Deviations in colour, size, weight, design and/or aesthetic aspects of the Product compared to the offer or Agreement do not entitle the Customer to fulfillment, repair, dissolution or compensation by KMS.
3. Visible defects in the Product, not being Custom Products, must be reported to KMS in writing within five days after delivery, with accompanying supporting documents.
4. Non-visible defects must be reported to KMS within five days after they become apparent, but no later than ten days after delivery.
5. With a report, the Customer must enclose a copy of the proof of purchase.
6. If a defect or complaint is reported later than stated in this article, the Customer will no longer be entitled to repair, replacement or compensation by KMS.
7. If desired, the Customer will give KMS the opportunity to investigate a complaint or defect. In that case, the Product will be made available to KMS at the address of its workshop at the expense of the Customer.
8. If it is established that a Product is non-conforming or does not comply with the warranty provided by KMS and the Customer has complained about this to KMS in a timely manner, KMS will notify the Customer within a reasonable period of time after receipt of the Product. In that case, at the discretion of KMS, it will replace the Product or arrange for its repair or pay a replacement fee to the Customer. A replacement fee is never higher than the price paid by the Customer for the relevant Service. KMS may, in the event of replacement compensation, require that the defective Product is first send to KMS by the Customer.
9. If it is established that the Customer's complaint is unfounded, the costs incurred by KMS as a result, including the investigation costs, will be at the expense of the Customer.
10. All claims of the Customer relating to Products as referred to in this article lapse if they are not reported to KMS within two weeks after the delivery of the Product, but before the processing or use of the Product.

### **Article 12. Corresponding application**

1. If a Service provided by KMS leads to the creation of a Product, Articles 13 to 15 of these General Terms and Conditions are applicable, unless Articles 5 to 11 deviate from this.

## **PRODUCTS**

### **Article 13. Exceeding the delivery time**



1. The delivery times of a Product specified by KMS are always approximate and are never strict deadlines. The delivery time stated by KMS is indicative and only commences after all necessary data and/or documents are in the possession of KMS.
2. If a specified delivery time is exceeded, the Customer must first give KMS written notice of default and set it a reasonable term to still fulfill its obligations. The term 'reasonable term' is understood here to mean a term within which KMS can still fully meet its obligations to comply with the Agreement.
3. If KMS has not yet delivered the Product within this further, reasonable period, the Customer has the right to dissolve the agreement without judicial intervention. Dissolution must take place in writing, by means of a registered letter to KMS.
4. If a delivery term is exceeded as a result of temporary force majeure on the part of KMS, KMS has the right to postpone delivery until this temporary force majeure has been lifted. During this period of temporary force majeure, the Customer cannot independently dissolve the Agreement. If the temporary force majeure on the part of KMS has lasted at least six months, both parties have the right to dissolve the Agreement, without KMS being obliged to pay any compensation to the Customer in that case.
5. In all cases in which KMS can invoke a situation of force majeure of a permanent nature, both parties are authorized to dissolve the Agreement immediately, without KMS being obliged to pay any compensation to the Customer in that case.
6. Force majeure within the meaning of this article includes, but is not limited to: illness among staff of KMS or its suppliers, fire, water damage, flood, strike at delivery services, late delivery of materials by suppliers, government measures, the consequences of a pandemic or epidemic, the consequences of wars and/or riots, all in the broadest sense of the word.

#### **Artikel 14. Delivery and retention of title**

1. Delivery of a Product by KMS takes place Ex works.
2. The risk in the Products passes to the Customer at the time of actual delivery. The moment of actual delivery is regarded as the moment the Product leaves the workshop of KMS.
3. The ownership of the Products belong to KMS, notwithstanding the actual delivery, only passes to the Customer after it has paid all claims of KMS regarding the consideration for Products or Services delivered or to be delivered by it to the Customer under the Agreement, as well as all claims of KMS due to failure to comply with such Agreements, and all claims of KMS related to previous Agreements between KMS and the Customer.
4. Products delivered by KMS, which are subject to retention of title, may not be resold by the Customer and may not be used as a means of payment. The Customer is not authorized to pledge or encumber in any other way the goods subject to retention of title.
5. The Customer must do everything that may reasonably be expected of him to secure the retention of title of KMS.
6. If third parties seize the goods delivered under retention of title or establish or enforce rights thereon, the Customer is obliged to immediately inform KMS thereof in writing.
7. As long as ownership of the Product has not passed to the Customer, the Customer is obliged to take out the legally prescribed insurance policies with

regard to the use of the Product, as well as insurance against total or partial loss or theft (hull cover). The Customer is furthermore obliged to have the delivered Product maintained at his expense.

8. In the event that KMS wishes to exercise its property rights referred to in this article, the Customer gives an unconditional and irrevocable authorization in advance to KMS and to third parties to be designated by KMS to enter all those places where the property of KMS is located. and take back those properties.
9. KMS will not be obliged to indemnify the Customer in any way against its liability as holder of the Product. On the other hand, the Customer indemnifies KMS against third-party claims against KMS that can be related to the retention of title.

### **Article 15. The risk of the Products**

1. The Customer is aware of the fact that Products originating from KMS are not intended for use outside a (race) circuit and/or an off-road circuit. In all cases, the Customer is obliged to investigate whether the Product may be lawfully used on the aforementioned circuits.
2. KMS does not have any responsibility and/or liability for damage of the Customer and/or third parties caused by or with the use of the Product, both when used on a designated circuit and when used outside a circuit. This exclusion of liability also applies if the Product is still legally owned by KMS.
3. The Customer indemnifies KMS against all claims. (also claims from third parties) related to the use of the Product.

## **GENERAL PROVISIONS**

### **Article 16. Intellectual Property Rights**

1. All intellectual property rights, copyrights and know-how of KMS with regard to a Product and/or Service supplied by it, are vested exclusively in KMS.
2. There is no transfer of any intellectual property right under the Agreement, unless otherwise agreed in the Agreement.

### **Article 17. Payment**

1. The full price must be paid for the delivery of a Product by KMS to the Customer, unless the parties have made different arrangements in the Agreement.
2. The Customer is in default by operation of law after the payment term stated on the invoice has expired. From the moment of being in default, the Customer owes the statutory commercial interest on the amount due, plus a penalty interest of 6% per year. If the Customer fails to fulfil one or more of its obligations, all judicial and extrajudicial costs incurred in obtaining payment will be at the expense of this Customer.
3. For Customers, payment by means of set-off is excluded, unless KMS expressly agrees to this in writing. The Customer is not authorized to suspend payment.
4. Payments made by the Customer always serve firstly to settle all interest and costs owed, and secondly to payable invoices that have been outstanding the longest, even if the Customer states that the payment relates to a later invoice .
5. If, after carrying out the work assigned to KMS and notifying the Customer thereof, the Product has not been collected within two weeks after the notification, KMS is entitled to charge the Customer for storage costs or storage costs in accordance with the locally applicable rate.



### **Article 18. Liability**

1. KMS is only liable towards the Customer for damage caused by intent or willful recklessness on the part of KMS or its managerial subordinates.
2. The liability of KMS is in any case limited to the amount of the payment to be made by the liability insurance of KMS plus the deductible.
3. If the insurance policy of KMS does not provide coverage or does not pay and KMS is nevertheless liable beyond the limits set out in Article 18.1. described case, its liability is limited to the invoice value of the relevant transaction, or at least that part of the transaction to which the liability relates.

### **Article 19. Right of retention**

1. KMS can exercise the right of retention on a Product if and for as long as:
  - a. the Customer does not pay or has not paid all the costs of the work;
  - b. the Customer does not or has not fully paid the costs of previous work performed by KMS;
  - c. the Customer does not or does not fully pay other claims arising from the contractual relationship with the KMS.
2. KMS can also exercise the right of retention if a dispute regarding the work or the Product has been brought to the court.

### **Article 20. Personal data**

1. In order to be able to offer and perform Services, KMS processes personal data. KMS ensures that the processing of Personal Data complies with the GDPR and with the Privacy Statement included on its website.
2. KMS and the Customer ensure that the processing of Personal Data complies with applicable data protection legislation, such as the GDPR of the European Union (EU 2016/679).
3. Unless otherwise agreed in the applicable Guidelines, the Customer acts as a controller in accordance with the GDPR and, by agreeing to these Terms and Conditions, authorizes KMS to process Personal Data on behalf of the Customer in the role of Processor, to the extent required for the Service.
4. As far as KMS is the Controller, KMS has the right, but not the obligation, to publish general instructions (including in the applicable Guidelines) with regard to the processing of Personal Data to which the Client undertakes in order to obtain the Service

### **Article 21. Applicable law and competent court**

1. Dutch law applies to all agreements between KMS and the Customer and these general terms and conditions.
2. All disputes between parties arising from or otherwise related to any agreement and/or these general terms and conditions will be settled exclusively by the (Injunction Judge of the) Amsterdam District Court, unless this is contrary to mandatory law.
3. When the contents and the meaning of these general conditions are interpreted, the Dutch text shall always be decisive.

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