

Xtreme-DI Terms and Conditions

XTREME-DI LLC

Approved Contractor of Bosch Motorsport North America



1. General. The sale of the "Services" or "Products" (defined below) by Xtreme-DI LLC, a Michigan limited liability company ("XDI") to the buyer ("Buyer") is expressly limited and subject to Buyer's acceptance of XDI's quotation and the terms and conditions contained herein. No modification or waiver of any of the terms and conditions herein and no additional or different terms or conditions proposed by Buyer shall be effective unless agreed to in writing by both parties.

Buyer's acceptance of the Services and Products sold hereunder constitutes Buyer's acceptance of the terms hereof.

2. Scope.

2.1 The terms and conditions set forth herein apply to the supply of various services and products (the "Products") to be used by Buyer in motorsport vehicles, including: (a) Products which are produced by Robert Bosch LLC, through its Bosch Engineering North America Division (hereafter, "Bosch") and distributed by XDI which may be (i) Products produced via standard serial production processes for use on the public roads ("Serial Production Products"); (ii) Serial Production Products which have been modified; and (iii) Products which are not Serial Production Products but are Products which have been produced in accordance with Buyer's specifications, or (b) Products which are purchased by XDI from a third party manufacturer and modified, enhanced or altered by XDI through its unique engineering designs, processes and procedures to meet Buyer's specifications or (c) engineering or consulting services XDI offers to the Buyer.

2.2 Buyer acknowledges that Serial Production Products, whether or not modified, are not designed to meet the requirements and demands of motorsport racing.

2.3 Buyer acknowledges that modified Serial Production Products, Buyer specified Products and XDI modified Products cannot be tested to the same degree as Serial Production Products and that production of such modified Serial Production Products, Buyer specified Products or XDI modified Products does not follow the testing and validation standards applicable to Serial Production Products.

2.4 Buyer acknowledges that the use of the Products in motorsport racing applications will lead to early wear, and that modified Serial Production Products, Buyer specified products and XDI modified Products are produced with a focus on race performance and not on endurance or emissions.

2.5 Buyer acknowledges that XDI's engineering services are performed with a focus on race performance and not on endurance or emissions.

2.6 The terms of Sections 2.1 to 2.5 above apply irrespective of the Customer's application of the Products or Services.

3. Use of the Products.

3.1 The Products are provided solely for use by racing professionals and Buyer warrants and represents that it possesses the appropriate engineering and professional racing experience to use the Products for motorsport racing. Buyer acknowledges that the use of the Products may be dangerous and that the Products shall not be used in any consumer application.

3.2 Buyer shall use the Products: (i) only for motorsport racing purposes; (ii) only through engineers and mechanics who are trained and experienced in motorsport racing; (iii) only in vehicles which are suitable for use in motorsport racing; and (iv) only in such suitable vehicles that are operated by trained, professional motorsport race drivers.

3.3 Buyer shall not use, nor permit any other party to use, the Products in any vehicle operated on the public roads, or in connection with any consumer application.

3.4 Neither XDI nor Bosch shall be liable for any use of the Products on the public roads.

3.5 Should a Product be used on the public roads or in connection with any consumer application, all Product warranties are void.

4. Prices and Taxes.

4.1 The prices of the Products are as stated in the Quotation. All prices quoted do not include any installation charge or shipping charges. The fulfillment of the Purchase Order is subject to XDI's ability to procure the materials comprising the Products.

4.2 All prices are exclusive of sales, use, value added, excise and/or any other taxes. Buyer will pay all such taxes or other charges incidental to the sale of Products. In the event that XDI determines that any such taxes are subject to withholding requirements, XDI may bill Buyer for such taxes, and Buyer shall promptly pay the amount billed. If any such tax for which Buyer is responsible hereunder is paid by XDI, Buyer agrees to promptly reimburse XDI therefore.

5. Payment Terms. Unless otherwise specified in XDI's Quotation or as otherwise agreed to in writing by XDI and the Buyer, payment terms are cash in

advance (C.I.A) and the full purchase price shall be paid within ten (10) days of Buyer's acceptance of the Quotation. If Buyer refuses to accept C.I.A. payment terms, XDI may refuse to begin performance in connection with the Quotation and shall have the right, in addition to all other available rights and remedies, to cancel Buyer's order. Amounts past due pursuant to this Agreement shall be subject to an interest charge of the lower of 1.5% per month or the highest rate permitted under applicable law. Notwithstanding the foregoing, no interest charge shall be added to any payment owed by Buyer pursuant to the CIA payment terms and XDI shall instead have the right to cancel the Buyer's Purchase Order. All costs and expenses incurred by XDI relating to non-payment or delinquent payment by Buyer, including collection costs, interest, and actual attorneys' fees, shall be paid by Buyer.

6. Shipment and Delivery. All delivery dates are estimates only. XDI's only obligation with respect to delivery dates shall be to use reasonable efforts to meet same. Delivery terms, unless otherwise specified in XDI's Quotation, shall be FCA (Incoterms 2000) at XDI's named location. Title to the Products shall transfer upon completion of delivery of the Products per the applicable delivery term specified above. Unless otherwise instructed, XDI will ship via industry standard means for the applicable Products. XDI will not be liable for any delays, breakage, loss or damage after having made delivery. Unless otherwise specified in XDI's Quotation, standard packing for domestic shipment is included in the quoted price. When special domestic or export packing is requested, Buyer will be charged any additional expenses. Shipments shall be deemed accepted by Buyer unless written notice of rejection is received by XDI within ten (10) days after delivery of the Products.

7. Cancellations and Changes. No cancellations of or changes to the Products ordered by Buyer shall be effective without XDI's written consent. Without such consent, a cancellation of, or change to, the Products ordered by Buyer shall entitle XDI to all remedies available by law or equity including, but not limited to, cancellation costs and/or increased prices.

8. Termination; Cancellation. Either party may terminate this Agreement: (a) upon breach of any material term of this Agreement by the other party which is not remedied within thirty (30) days after notice of such breach; or (b) upon the written consent of XDI pursuant to terms that will indemnify XDI against all losses, including but not limited to payment for tooling, engineering costs and material obsolescence and other costs incurred by XDI in connection with its performance under the Quotation.

9. Intellectual Property. When title to the Products transfers to Buyer, such title shall only mean and refer to the specific physical representation of the Products, and shall not include any intellectual property rights whether patent, copyright, trademark, trade secret, know-how or other form of right (collectively "Intellectual Property Rights"), with all such Intellectual Property Rights remaining at all times the sole property of either Bosch or XDI, as applicable.

10. Warranty.

10.1 Unless otherwise noted in the Quotation, XDI warrants that, upon delivery, the Products will be free of defects in material and workmanship. This warranty covers only defects that existed at the time of delivery. The foregoing warranty does not cover defects which occur due to the use in a motorsport environment.

10.2 Buyer acknowledges that the Products are designed for race performance, with reduced durability and stability, and that the extreme wear inherent in a racing environment may result in Product malfunction which will not be covered by the limited warranty set forth above.

10.3 XDI does not warrant that the Products or Services will display the features or operational performance requested or expected by Buyer.

10.4 XDI's sole obligation for any breach of warranty shall be to remedy any nonconformance. In the event there is a breach of warranty, XDI will, at its sole discretion, repair, correct or replace any defect to conform to this warranty or refund the payments received from Buyer. Any warranty service (consisting of time, travel and expenses) performed at a location other than XDI's facilities will be at the Buyer's expense.

10.5 XDI's sole obligation to the Buyer for any breach of warranty of any Bosch Products distributed by XDI which have not been subject to any modification or

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alteration by XDI shall be limited to the remedy selected by Bosch, if any, in Bosch's sole discretion.

10.6 Upon demand by XDI, Buyer shall return 100% or a statistically relevant share, as mutually agreed upon, of any Products claimed to be defective. XDI shall have the right to request reasonable evidence of, and impose reasonable requirements for, submission of a warranty claim including, by way of example and not limitation, printouts of diagnostic test results performed by the Buyer.

10.7 In the event of (a) improper installation or misuse of the Products, (b) use of Products outside of XDI's or Bosch's approved applications, specified environments or installation conditions, (c) use of Products for racing or testing applications, (d) failure to maintain Products in accordance with applicable maintenance instructions, or (e) alteration or damage caused to the Product, or similar circumstances, no warranty shall apply and XDI shall not be liable for such Products or any damage caused by such products.

10.8 THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING A WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING WARRANTY DOES NOT APPLY TO ANY ISSUES STEMMING FROM BUYER'S USE OF THE PRODUCT IN ANY APPLICATION. THE REMEDIES SET FORTH IN THIS SECTION REPRESENT BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY XDI BREACH OF WARRANTY. IN NO EVENT SHALL XDI'S LIABILITY UNDER THIS AGREEMENT EXCEED THE ACTUAL AMOUNTS PAID BY THE BUYER FOR THE ORDER GIVING RISE TO THE CLAIM. FURTHER, IN NO EVENT SHALL XDI BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS) WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF SUCH DAMAGES OR THE POTENTIAL FOR SUCH DAMAGES.

10.9 Promptly following the receipt of Products, Buyer shall inspect the same. Any claim for defect must be made within five (5) days following the receipt of the Products and prior to use or installation of the Products. All claims not made in conformity with this provision shall be deemed waived.

11. Prototype and Sample Parts Warranty.

Prototype components and sample parts are for use only in Product testing/evaluation by qualified Buyer representatives in an appropriate test environment. Prototype components and sample parts are provided "AS IS" and all warranties (whether express or implied) are expressly excluded. Neither XDI nor Bosch shall have any liability for claims related to the prototype components or sample parts. Buyer shall indemnify and hold XDI and/or Bosch harmless from claims related to the prototype components and sample parts.

12. Indemnity. Buyer shall defend, indemnify, and hold harmless XDI and its members, managers, shareholders, officers, directors, employees, agents, affiliates, successors and assigns (collectively, the "Indemnified Parties") from and against any and all claims, suits, actions, demands, damages, losses, liabilities, penalties, fines, costs and expenses (including, without limitation, actual legal fees) whatsoever that are incurred by or made against any of the Indemnified Parties which that arise out of or result from (i) the acts, omissions, negligence or willful misconduct of Buyer; (ii) any breach of these Terms by Buyer; or (iii) any claim by Buyer, any of its customers, or any successor holder of any of the Products, or any other person or entity, related to the Products sold by XDI, or the purchase, installation, or use of such Products, or any undertakings, acts or omissions relating to such Products, to the extent such claim is not based upon a product defect proven to have been caused solely by XDI's negligence.

13. Limitation of Liability.

13.1 The following provisions set out the entire financial liability of XDI (including any liability for the acts or omissions of its employees, shareholders, managers, members, agents, affiliates, officers, directors, and sub-contractors) to the Buyer in respect of any claim, regardless of the form of action, for any damages arising from or in any manner connected with this Agreement or the Products:

(a) XDI's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising from or in connection with this Agreement or the Products shall be limited to the purchase price of the Products; and

(b) XDI shall not, under any circumstances, be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect, special or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Agreement or the Products.

13.2 Buyer agrees, acknowledges and confirms that the limitations of liability set out in this Section are fair and reasonable in the commercial circumstances of this Agreement and that XDI would not have entered into this Agreement but for Buyer's agreement to limit the liability of XDI in the manner, and to the extent, provided herein.

The limitations of liability set out in this Section shall apply even in the event of a breach of condition, a breach of an essential or fundamental term, or a fundamental breach of this Agreement.

14. Confidential Information. Any and all information concerning the Products or the transactions covered here under which XDI discloses to Buyer, or which Buyer otherwise obtains knowledge of hereunder, remains the exclusive property of XDI and/or Bosch and shall not be disclosed by Buyer to third parties without XDI's prior written consent. Buyer shall have no right whatsoever to such information other than to use it for purposes of the transactions covered hereunder. XDI will not disclose, without Buyer's prior written consent, information submitted to it by Buyer which is confidential and proprietary to Buyer and clearly designated as such.

15. Force Majeure. In the event either party is unable to fully perform its obligations hereunder (except for Buyer's obligation to pay for Products ordered) due to events beyond its reasonable control including but not limited to acts of God, action by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes, slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order, that party shall be relieved of its obligations to the extent it is unable to perform. Timely notice of such inability to perform shall be given to the other party. In the event of XDI's inability to perform due to force majeure, Buyer shall be entitled to reduce its purchase obligations towards XDI by the quantities purchased from other sources, but shall not have the right to terminate this Agreement.

16. Waiver. Any delay by a party in exercising its rights hereunder will not constitute a waiver of its rights or its ability to enforce any such rights.

17. Set-off. Buyer is not entitled to set-off any amounts due or allegedly due from XDI to Buyer from the amounts owed by Buyer to XDI.

18. Assignment. Neither party shall assign its rights or obligations hereunder without the other party's prior written consent. A corporate reorganization, which does not result in a change of control or beneficial owner, shall not be deemed an assignment.

19. Relationship of the Parties. Buyer and XDI are independent contracting parties. Nothing hereunder or in the course of performance of this Agreement shall grant either party the authority to create or assume any obligation on behalf, or in the name, of the other party, or shall be deemed to create the relationship of joint venture, partnership, association or employment between the parties.

20. Severability. In the event that any provision of this Agreement shall by a court be declared void or unenforceable, the validity of any other provisions and of the entire Agreement shall not be affected thereby.

21. Applicable Law; Arbitration.

This Agreement and all disputes between the parties arising out of or related to this Agreement shall be governed by the laws of the State of Michigan except for its choice of law rules; the United Nations Convention on the International Sale of Goods shall not apply. The parties agree to submit all such disputes to binding arbitration which shall be held in the metropolitan area of Detroit, Michigan, in accordance with the rules of the American Arbitration Association ("AAA") pertaining to commercial arbitration. Within thirty (30) days after either party has notified the other in writing that it is submitting a dispute to arbitration, three (3) arbitrators shall be appointed in accordance with said rules. Neither party shall be allowed to object to an arbitrator appointed by the other party. The arbitrators shall have no authority to award punitive damages or any other damages excluded herein. The arbitration award shall be final and binding, and it may be entered in and enforced by any court of competent jurisdiction. The party prevailing in the arbitration or any other legal proceedings shall be entitled to recover its costs including reasonable attorney's fees incurred due to the arbitration or other legal proceedings.

22. Validity of Quotation. Each Quotation (and the prices and quantities thereunder) issued by XDI shall be valid for thirty (30) days from the date of issuance unless otherwise stated therein, and such Quotation is deemed revoked if Buyer has not provided its acceptance of such Quotation in writing prior to the end of the defined period.