

# Total Track Ltd – 2022 MINI CHALLENGE

## TERMS AND CONDITIONS OF SERVICE

### 1. Application

- 1.1 These terms and conditions shall apply to the provision of Services by the Supplier to the Client.
- 1.2 In the event of conflict between these terms and conditions and any other terms and conditions (of the Client or otherwise), the former shall prevail unless expressly otherwise agreed by the Supplier in writing.

### 2. Definitions

2.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

<b>“The Client”</b>	means any individual, firm or corporate body (which expression shall, where the context so admits, include its successors and assigns) which purchases services from the Supplier
<b>“The Commencement Date”</b>	the commencement date for this agreement is the date on which the deposit is paid.
<b>“Services”</b>	means the services to be provided by Total Track Ltd in respect of the UK MINI CHALLENGE race championship to the Clients
<b>“The Supplier”</b>	Total Track Ltd.

2.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### 3. The Service

- 3.1 With effect from the Commencement Date the Supplier shall, in consideration of the full fees being paid, provide the program of events as described in the approved Motor Sport UK (MSUK) regulations for the MINI CHALLENGE.
- 3.2 The Supplier shall use all reasonable endeavours to complete the events described in the approved Motor Sport UK (MSUK) regulations, but time will not be of the essence in the performance of these obligations.
- 3.3. The supplier shall not be liable for the delivery of TV coverage.

### 4. Price

- 4.1 The Client agrees to pay the relevant fee as per the entry form to become a sponsorship partner and/or participate in the 2022 MINI CHALLENGE. The events constituting the MINI CHALLENGE will be defined in the approved Motor Sport UK (MSUK) regulations for the MINI CHALLENGE. The client, nominated team driver, and team members agree to be bound by the Motor Sport UK (MSUK) regulations and those of the MINI CHALLENGE.
- 4.2 In addition the Supplier shall be entitled to recover from the Client his reasonable incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Services.
- 4.3 The Client will pay the Supplier for any additional events or services provided by the Supplier that are not specified in the approved Motor Sport UK (MSUK) regulations for the MINI CHALLENGE, in accordance with the Supplier's then current, applicable daily rate in effect at the time of the performance or such other rate as may be agreed. Any charge for additional services will be supplemental to the amounts that may be due for the Expenses.
- 4.4 All sums payable by either party pursuant to this Agreement are exclusive of any value added or other tax or other taxes on profit, for which that party shall be additionally liable.

## 5. Payment

5.1 Early Bird Championship Entries open on the 15 November 2021 and close on 10 December 2021. During this time entrants can pay a first stage payment to secure an entry and race number, the full balance is to be paid by 12 February 2022 unless a payment plan has been chosen/agreed in which case further stage payments must be made in line with the payment schedule, all payments are non-refundable with due regard to statutory rights and submission of an entry and first stage payment commits the entrant to the full 2022 entry fee, not just the first stage payment.

5.2 Should the entry limit (34 cars) not have been reached by 5pm on 21 November then Standard Championship Entries may be accepted. During this time entrants can pay a first stage payment to secure an entry and race number, in any case the full balance is to be paid by 12 February 2022 unless a payment plan has been agreed/chosen, all payments are non-refundable with due regard to statutory rights and submission of an entry and first stage payment commits the entrant to the full 2022 entry fee, not just the first stage payment.

5.3 Where the Championship is over-subscribed, Entry will be granted on a first come first served basis, based on the date the first stage payment was paid. Where entries are over-subscribed entries over the Championship limit will be placed on a reserve list and will be offered an entry if there are any other entrants who drop out. If a reserve entrant wishes to receive a refund of the first stage payment/entry fee at this stage then their place on the reserve list will be forfeit. Any entrant who does not pay their entry fee balance by the due date accepts that their entry may be replaced by another entrant on the reserve list.

5.4 The time of payment shall be of the essence of these terms and conditions. If the Client fails to make any payment on the due date the Supplier will endeavour to reassign that entry, but any previous payments will not be refunded. If by the start of the season or in respect of round by round entries the event, it has not been possible to reassign the entry the full balance of the full entry fee will be due from the Client.

5.5 Current entrants will receive a 20% discount on championship parts compared to the standard price and a 100% discount on the application of each version of the Championship ECU calibration. Where an ECU is more than 1 version out of date and each version will be charged as a separate calibration until the ECU is fully updated.

5.6 Payment for parts supplied must be made at the time of receipt unless otherwise agreed. Where we do not insist on immediate payment, payment must be made within 14 days of the invoice. If payment is late, we reserve the right to refuse entry to the future events with no refund of entry fees and withhold awards and prizes.

5.7 Where payments a late payment fee will be charged at Bank of England base rate plus 2% per month.

5.8 Should the entrant not race at any round the entry fee will still be payable, no refund will be due.

5.9 Where a payment plan is agreed the payments will continue even if an entrant does not complete the season or misses a round/s.

## 6. Termination

6.1 The Supplier may terminate the agreement forthwith if:

6.1.1 The Client is in breach of any of its obligations hereunder; or

6.1.2 The Client has entered into liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) whether compulsory or voluntarily or compounds with its creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of its undertaking or assets; or

6.1.3 The Client has become bankrupt or shall be deemed unable to pay its debts by virtue of Section 123 of the Insolvency Act 1986; or

6.1.4 The Client ceases or threatens to cease to carry on business; or

6.1.5 Any circumstances whatsoever beyond the reasonable control of the Supplier (including but not limited to the termination of the service through no fault of the Supplier) arise that necessitate for whatever reason the termination of the provision of service, or

6.1.6 The supplier receive insufficient entries to run the 2022 MINI Challenge, all fees paid will be refunded to the client. No compensation will be payable.

6.2 In the event of withdrawal the Supplier shall retain all sums paid to it by the Client without prejudice to any other rights the Supplier may have whether at law or otherwise.

6.3 Entrants & drivers agree that should monies be owed to Total Track or any supplier to Total Track or any Team operating in the Championship then any car owned by the entrant or driver will be ineligible to race in the Championship until such time as monies owed are paid to the relevant party unless otherwise agreed. Should entry fees have already been paid they shall not be refunded. Entrants & drivers selling their cars must make the buyer aware where monies are owed and must draw their attention to this clause.

6.4 Should a driver owe monies to Total Track or any supplier to Total Track or any Team operating in the Championship then said driver will be ineligible to race in the Championship until such time as monies owed are paid to the relevant party unless otherwise agreed. Should entry fees have already been paid they shall not be refunded.

## **7. Sub-Contracting**

7.1 The Client may not reassign their MINI CHALLENGE entry to a third party without written permission from the Supplier and in normal circumstances it will be refused.

## **8. Liability**

8.1 The Client shall indemnify the Supplier against all damages, costs, claims and expenses suffered by the Supplier arising from loss or damage to any equipment (including that of third parties) caused by the Client, or its agent or employees.

8.2 The supplier reserves the right to carry out necessary or required changes to the regulations which are due to "force majeure", or for safety reasons, or if requested by the authorities, by means of Official Bulletins. The supplier further reserves the right to cancel or substitute events if necessary due to exceptional unforeseeable conditions, and are not liable for any damages so incurred as a result or liable to provide a refund of entry fees.

8.3 The Supplier shall not be liable to the Client or be deemed to be in breach of these terms and conditions by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations if the delay or failure was due to any cause beyond the Supplier's reasonable control.

8.4 Where the Client consists of two or more persons, for example driver and entrant, such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Client shall be joint and several obligations of such persons.

8.5 I agree to make no claim against the supplier or its officers or agents in respect of any loss or injury suffered by the client arising from the MINI CHALLENGE and to indemnify the supplier against their costs and losses arising out of any claim made against them by anyone to the extent that such costs and losses are attributable directly or indirectly to the clients participation in the MINI CHALLENGE.

## **9. Force Majeure**

9.1 Neither the Supplier nor the Client shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Services, if the delay or failure was due to any cause beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:-

9.2 Act of God, pandemic, explosion, flood, tempest, fire or accident;

9.3 War or threat of war, sabotage, insurrection, civil disturbance or requisition;

9.4 Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

9.5 Import or export regulations or embargoes;

9.6 Strikes, lock-outs, or other industrial actions or trade disputes (whether involving employees of either the Supplier or the Client or of a third party);

9.7 Difficulties in obtaining raw materials, labour, fuel, parts or machinery;

9.8 Power failure or breakdown in machinery.

## **10. Waiver**

10.1 No waiver by the Supplier of any breach of these terms and conditions by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of this agreement shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which the waiver is given.

10.2 No failure or delay on the part of any party in exercising any right, power or privilege under this agreement shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

## **11. Severance**

11.1 If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected thereby.

## **12. Copyright**

12.1 The Supplier reserves all copyright and any other rights (if any) which may subsist in the products of, or in connection with, the provision of the Supplier's services or facilities. The Supplier reserves the right to take such actions as may be appropriate to restrain or prevent infringement of such copyright.

## **13. Notices and Service**

13.1 Any notice or other information required or authorised by this Agreement to be given by either party to the other shall be given by sending via pre-paid registered post, email, facsimile transmission or other comparable means of communication.

13.2 Any notice or information given by post which is not returned to the sender as undelivered shall be deemed to have been given on the 10th day after the envelope containing it was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that the notice or information has been duly given.

13.3 Any notice or information sent by e-mail, telex, cable, facsimile transmission or comparable means of communication shall be deemed to have been duly given on the date of transmission, provided that a confirming copy of it is sent to the other party 24 hours after transmission.

13.4 Service of any document for the purposes of any legal proceedings concerning or arising out of this Agreement shall be effected by either party by causing such document to be delivered to the other party at its registered or principal office, or to such other address as may be notified to one party by the other party in writing from time to time.

## **14. Applicable Law and Jurisdiction**

These terms and conditions shall be governed and construed in accordance with English and Welsh law and the parties shall submit to the non-exclusive jurisdiction of the English and Welsh courts.