

Serck Services, Inc. Terms and Conditions of Service

1. GENERAL.

a) Serck Services, Inc., a Delaware corporation, trading as Serck Motorsport ("Provider"), and the customer ("Customer") named on the Instrument of Retention (as defined below), agree that unless otherwise expressly agreed to in writing by Provider, these terms and conditions for provision of services ("Terms and Conditions of Service") apply to the services (collectively, the "Services") listed in any accepted service or work order from Customer or ordered pursuant to any contract between Provider and Customer. For purposes of these Terms and Conditions of Service, "Instrument of Retention" shall mean Provider's quotation, work order acknowledgment or invoice, or the contract between Provider and Customer, in which these Terms and Conditions of Service are referenced, or with which these Terms and Conditions of Service are provided.

b) Each order or acceptance of a quotation for services shall be deemed to be an offer by Customer to purchase Services in accordance with these Terms and Conditions of Service. A contract is formed when the order is accepted by Provider, by way of a written acknowledgment. No contract shall come into existence until a written acknowledgment of order is issued by Provider.

2. ACCEPTANCE/SOLE TERMS.

a) The provisions set forth herein together with the provisions of the Instrument of Retention constitute all of the terms and conditions of Customer's work order/contract with Provider. Provider's performance of Services is expressly made conditional on Customer's assent to these Terms and Conditions of Service. Any and all terms, conditions or provisions specified by Customer in any purchase order, work order or otherwise (whether oral, typed, written or printed) that in any way change, modify, amplify, differ from or add to these Terms and Conditions of Service, or Instrument of Retention, are null and void and of no effect, even if (i) Provider does not expressly object to such terms, conditions or provisions, or (ii) such terms, conditions or provisions are specified subsequent to such other documents. Customer is hereby put on notice that no terms additional to or deviating from these Terms and Conditions of Service shall become part of the contract unless and until written acceptance of such additional or deviating terms, signed by an authorized officer of Provider, has been issued to Customer. Customer's acceptance of any Services supplied by, or on behalf of, Provider shall, without limitation, constitute acceptance of these Terms and Conditions of Service.

b) Notwithstanding anything to the contrary contained in these Terms and Conditions of Service, Provider may, from time to time, change the Services without consent of Customer provided that such changes do not materially affect the nature or scope of the Services, the fees, or any performance dates set forth in the Instrument of Retention.

3. SUPPLY OF SERVICES. Provider shall supply the Services in accordance with the applicable service specification in all material respects. Notwithstanding the foregoing, Provider reserves the right

to amend the service specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services.

4. **CUSTOMER OBLIGATIONS.** Customer shall (i) ensure that the order and any information provided in the service specification is complete and accurate; (ii) cooperate with Provider in all matters relating to the Services; (iii) obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the Services are to start; (iv) comply with all applicable laws, including health and safety laws; and (v) comply with any additional obligations as set out in the service specification.

5. **PRICE/PAYMENT.**

a) The price payable by Customer for Services will be that of Provider's price list in effect at the date of service unless otherwise noted in the Instrument of Retention. All prices are stated in United States dollars and are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Customer, unless otherwise noted in the Instrument of Retention. Provider reserves the right to increase the price for Services and/or amend these Terms and Conditions of Service at any time prior to the expected or requested performance date, provided that written notice of such change or price increase is sent to Customer at least ten (10) days prior to performance. Customer shall be deemed to have accepted such change or increase unless Customer cancels the order, subject to reasonable charges for expenses incurred and work executed by Provider or its suppliers, at least five (5) working days prior to the expected or requested performance date. Any such change in price shall be charged to Customer's account. No discount will be allowed unless specifically set forth in the Instrument of Retention.

b) Written quotations automatically expire thirty (30) days after the date the quotation is issued and are subject to termination by Provider upon notice to Customer within such thirty (30) day period.

c) Payment is due in the currency shown on Provider's invoice thirty (30) days from the date of invoice. A credit account may be established subject to Customer providing two (2) trade references and a Bank reference to Provider's satisfaction. Provider may, in its sole discretion, set and alter Customer's credit limit or withdraw credit terms at any time. Provider may decide not to perform Services ordered if the price of those Services increases the amount owed by Customer to Provider beyond Customer's credit limit. Customer agrees to pay a delinquency charge of one and one half percent (1.50%) per month on the invoiced amounts not paid within thirty (30) days of the invoice date or, if such rate shall exceed the maximum rate permitted by applicable law, then a delinquency charge calculated at such maximum rate permitted by applicable law. Interest shall be payable monthly in arrears on the first day of each month. Terms of payment include those appearing on Provider's order acknowledgment or invoice. In the event of any order cancellation, Provider reserves the right to charge Customer, and Customer shall pay, all of Provider's costs through the date of cancellation, including costs of labor or currency commitments. All outstanding payments shall immediately become due and owing should Customer fail to make any payment when due or should a receiver be appointed for all or any substantial part of Customer's property or assets, or should a petition in bankruptcy,

arrangement or reorganization be filed by or against Customer pursuant to a provision of any bankruptcy act or any amendments thereto or any insolvency or receivership statute. Provider reserves the right to suspend performance of Services until any and all outstanding payments have been received by Provider.

d) Provider may appropriate any payment made by Customer to the Provider to such invoices as Provider deems fit without regard to any purported appropriation by Customer.

e) Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Provider, whether relating to Provider's breach, bankruptcy or otherwise.

f) All work orders shall at all times be subject to the approval of Provider's credit department. If, subsequent to the confirmation of order, circumstances arise with respect to the financial condition of Customer which in the opinion of Provider threaten Customer's ability to make payments when due hereunder, or should Customer fail to make payments when due or otherwise fail to perform its outstanding obligations, then Provider may refuse to perform further hereunder unless Customer makes payment in full or provides sufficient security in a form acceptable to Provider within a period of ten (10) business days from receipt of notice therefor by Provider. Should Customer fail to comply with Provider's request contained in such notice within the aforementioned period, then Provider may terminate the contract, defer or cancel the work order and/or recover damages based on Customer's breach and, in such event, Provider shall not be liable for breach or nonperformance of this contract in whole or in part.

g) If, at any time, Provider or its affiliates, successors or assigns incur any legal expenses or other costs or expenses in connection with any attempt to enforce any of their rights against Customer or any other person which may be obligated to them hereunder then the expenses and costs (including attorney's fees) relating to any of the foregoing events or actions shall be payable by Customer on demand. Provider reserves the right to revoke any credit extended to Customer at any time because of Customer's failure to pay for any Services when due or for any reason deemed good and sufficient by Provider.

h) Any sales, use or similar taxes, export or custom charges, tariffs, fees or other levies, taxes, duties, governmental charges or surcharges now or hereafter imposed under any present or future law in connection with the provision of the Services, including without limitation any provision of equipment, accessories, and attachments (including replacements thereof or spare or replacement parts thereof), any installation, repair, maintenance and instructional services, and any processes or know-how (whether patentable or otherwise) and software, shall be payable by Customer, and if such taxes or fees are paid or are required to be paid by Provider, the amount thereof shall be added to and become part of the price payable by Customer hereunder, unless Customer provides Provider with a valid tax exemption certificate.

6. **CONDITIONS OF PERFORMANCE.** Provider will use reasonable endeavors to perform each of Customer's accepted orders within the time agreed when the order is placed and, if no time is agreed, then within a reasonable time, but the time of performance will not be of the essence. If Provider is, for any reason, unable to fulfill any performance on the specified date, Provider will not be deemed to be in breach of the contract between Provider and Customer, nor will Provider

have any liability to Customer for direct, indirect or consequential loss (all of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of good will and like loss) howsoever caused (including as a result of negligence) by any delay or failure of performance. Any delay in performance will not entitle Customer to cancel the order unless and until such delay exceeds a reasonable time as determined by the parties.

7. WARRANTY DISCLAIMER.

a) Provider warrants to Customer that Provider will perform the Services using personnel of required skill, experience, and qualifications and in a professional, workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations to Customer. NEITHER PROVIDER, NOR ANY OF ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR ASSIGNEES WARRANT THAT THE SERVICES WILL BE ERROR FREE, NOR DO THEY MAKE ANY WARRANTY OR REPRESENTATION AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE SERVICES OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION SERVICE CONTAINED IN OR PROVIDED THROUGH THE SERVICES, UNLESS OTHERWISE EXPRESSLY STATED IN THESE TERMS AND CONDITIONS OR THE INSTRUMENT OF RETENTION. PROVIDER DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES RENDERED BY ITS PERSONNEL OR THE RESULTS OBTAINED FROM THEIR WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE MINIMUM PERIOD PERMITTED BY APPLICABLE LAW. NO AFFIRMATION OF PROVIDER, BY WORDS OR ACTION, OTHER THAN AS SET FORTH IN THESE TERMS AND CONDITIONS, SHALL CONSTITUTE A WARRANTY.

b) Provider shall not be liable for a breach of the warranties set forth in Section 5(a) unless: (i) Customer gives written notice of the defective Services, reasonably described, to Provider within fourteen (14) days of the time when Customer discovers or ought to have discovered the defect; and (ii) Provider reasonably verifies Customer's claim that the Services are defective.

8. LIMITATION OF LIABILITY. PROVIDER'S LIABILITY (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) FOR ITS SERVICES SHALL BE LIMITED TO RE-PERFORMING THE SERVICES OR TO REFUNDING THE PURCHASE PRICE OF SUCH SERVICES, AT THE OPTION OF PROVIDER. THE PARTIES HERETO EXPRESSLY AGREE THAT CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AGAINST PROVIDER SHALL BE FOR THE RE-PERFORMANCE OF THE DEFECTIVE SERVICES OR THE REFUND OF THE PURCHASE PRICE OR ALLOWANCE THEREOF, AT THE OPTION OF PROVIDER. CUSTOMER HEREBY AGREES THAT THIS EXCLUSIVE REMEDY SHALL NOT BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE SO LONG AS PROVIDER IS WILLING AND ABLE TO RE-PERFORM THE DEFECTIVE SERVICES IN THE PRESCRIBED MANNER OR REFUND THE PURCHASE PRICE OR GIVE CUSTOMER AN ALLOWANCE THEREOF.

9. DISCLAIMER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES. IN NO CASE WILL PROVIDER BE LIABLE FOR REMOVAL OR INSTALLATION COSTS, DOWNTIME, DAMAGE TO OTHER PROPERTY,

LOSS OF BUSINESS OR PROFITS, LOSS OF PRODUCTION, LOSS OF USE OR ANY OTHER SIMILAR OR DISSIMILAR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHICH CUSTOMER OR ANY OTHER PERSON, CORPORATION, COMPANY OR OTHER ENTITY MAY SUFFER OR CLAIM TO SUFFER OR INCUR OR CLAIM TO INCUR AS A RESULT OF ANY DEFECT IN THE SERVICES OR IN ANY CORRECTION OR ALTERATION THEREOF MADE OR FURNISHED BY PROVIDER OR OTHERS. CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT OR LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON OR LOSS OF OR DAMAGE TO PROPERTY (INCLUDING, WITHOUT LIMITATION, PROPERTY HANDLED OR PROCESSED IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES). CUSTOMER SHALL INDEMNIFY PROVIDER AGAINST ALL LIABILITY, COST AND EXPENSE WHICH MAY BE SUSTAINED BY PROVIDER ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY.

10. FORCE MAJEURE.

a) Provider will be not be liable for any damage, loss, fault, or expenses arising out of delays in performance or other nonperformance of these Terms and Conditions of Service or the Instrument of Retention caused by or imposed by (i) strikes, fires, disasters, riots, terrorist act or acts of God, (ii) acts of Customer, (iii) shortages of labor, fuel, power, materials, supplies, transportation or manufacturing facilities, (iv) governmental action, (v) subcontractor or supplier delay including, but not limited to, failure by subcontractor or supplier to make timely delivery, (vi) pandemics, epidemics, or any other public health emergencies, or (vii) any other cause or condition beyond Provider's reasonable control.

b) If Provider's performance of its obligations under the contract is affected by a force majeure event, then: (i) Provider will give written notice to Customer specifying the nature and extent of the force majeure event as soon as reasonably practicable after becoming aware of such event; and (ii) subject to the provisions of Section 8(c), the date for performance of such obligation will be deemed suspended only for a period equal to the delay caused by such event.

c) If the force majeure event in question continues for more than three (3) months, Provider may give written notice to Customer to terminate the contract without any further liability to Customer.

11. TERMINATION, CANCELLATION AND CHANGES. Notwithstanding anything to the contrary set forth in Section 3(a), work orders cannot be terminated, cancelled or modified, or deferred after acceptance of Customer's work order by Provider, except with Provider's written consent and subject to reasonable charges for expenses incurred and work executed by Provider or its suppliers.

12. CONFIDENTIALITY. All files records, documents, drawings, specifications, data, equipment, intellectual property, know-how and other similar items relating to the business of Provider, including, but not limited to employee training information, customer lists and contacts, marketing methods, identity of vendors and suppliers, cost of materials, manufacturing processes and techniques, computer data, scientific studies, analysis, and conclusions, performance and other technical data, and sales and pricing information, (collectively "Confidential Information"),

is, and shall remain, the sole and exclusive property of Provider. Customer shall not misappropriate, disclose, divulge, communicate, or otherwise misuse, directly or indirectly, any Confidential Information in any fashion, form or manner to any person, firm, partnership, corporation, or other entity, unless expressly authorized by Provider in writing.

- 13. INDEMNIFICATION.** Customer shall hold harmless, defend, save, and indemnify Provider, its parent, subsidiary(ies), and affiliated companies, and its and their agents, employees, officers, directors, and its and their respective heirs, assigns, successors and executors from and against any and all liability, claims, demands (whether groundless, false or fraudulent), costs (including expert and attorney's fees and any costs from enforcing this indemnification), damages, losses, judgments or awards, arising out of or in any way connected with any act or omission of Customer. The duty to defend as provided herein is separate and distinct from the duty to indemnify, and shall arise immediately upon the tender of any third party claim or demand, and shall continue until it is conclusively proven that there is no possibility for indemnity.
- 14. INSURANCE.** Customer expressly agrees to name Provider as an Additional Insured on Customer's Commercial General Liability (CGL) insurance policy, as well as on any other liability or excess (umbrella) liability insurance policy(ies) maintained by Customer, as requested by Provider in its sole discretion. Such insurance shall be in a form and with an insurer acceptable to Provider, and must insure Provider, without limitation, for claims, liabilities and losses referred to in Section 7 (Disclaimer of Consequential and Incidental Damages) and Section 11 (Indemnification), and for claims and/or losses arising from the negligence of Provider and its employees. Such insurance must specify that its coverage is primary and non-contributory. Customer hereby waives the right of subrogation. Customer agrees to furnish Provider promptly a certificate from its insurance broker(s) or agent(s) showing that it carries adequate CGL insurance coverage and, as requested by Provider in its sole discretion, any other liability or excess (umbrella) liability insurance policy(ies). Each certificate must show Provider as an additional insured, the amount of coverage, the policy number and the date of expiration, and must require the broker or agent to give Provider thirty (30) days prior written notice of any lapse or cancellation of any policy and, if possible, any material change that affects coverage. Unless otherwise expressly set forth in the Instrument of Retention, Provider is neither providing, nor offering to provide, directly or indirectly, any first or third party insurance coverage in connection with the provision of the Services to Customer.
- 15. TITLE; SECURITY INTEREST.** Provider retains possession of any and all equipment supplied by Customer in connection with the provision of Services (the "Collateral"), and a security interest therein until all payments under these Terms and Conditions of Service and the Instrument of Retention, including deferred payments and any extensions thereof, shall have been made. In the event of any default by Customer, Provider and its affiliates, successors and assigns shall have all rights, remedies and privileges in and to the Collateral as provided by the applicable sections of the Uniform Commercial Code as presently in effect and as amended from time to time. Provider and its affiliates, successors and assigns are hereby given a power of attorney to sign and file all necessary financing statements on behalf of Customer with respect to the Collateral. Provider and its affiliates, successors and assigns may authorize any third party to do such acts on their behalf as they are authorized to do under this provision.

- 16. COMPLIANCE WITH THE FOREIGN CORRUPT PRACTICES ACT.** Customer agrees to comply in all respects with the U.S. Foreign Corrupt Practices Act of 1977 (“FCPA”), as amended, which makes it unlawful for any U.S. company or any officer, director, employee, agent or stockholder thereof acting on behalf of such U.S. company to directly or indirectly offer to pay any bribe, gift or thing of value to any foreign official, candidate for foreign office, foreign political party or party official to influence any act or decision of such persons or entities in their official capacity. Additional information concerning the FCPA can be found at the following web address: <http://www.usdoj.gov/criminal/fraud/docs/dojdocb.html>. Customer hereby acknowledges that Customer is familiar with the FCPA and understands its provisions. If requested by Provider, Customer will from time to time execute Certificates of Compliance with the FCPA. If requested by Provider, Customer shall have its subcontractors, consultants, agents and representatives, as applicable, execute an FCPA compliance statement containing substantially the same provisions as set forth in this Section, and shall promptly provide written evidence thereof to Provider. Customer’s failure to comply in all respects with the requirements of this Section and the provisions of the FCPA shall constitute a material breach of the Instrument of Retention and these Terms and Conditions of Service entitling Provider to immediately suspend or terminate the same; provided, however, that for purposes of the foregoing, Provider’s “good faith” belief that Customer has failed to comply in all respects with the requirements of this Section and the provisions of the FCPA shall be sufficient cause for Provider to suspend or terminate the Instrument of Retention and these Terms and Conditions of Service.
- 17. IMPORTER OF RECORD.** Customer shall be the “Importer of Record” of any and all equipment or property to be supplied by Customer from outside the U.S. for service by Provider (the “Imported Goods”). As the Importer of Record, Customer shall be responsible for all aspects of the Imported Goods including, without limitation: (i) customs and other regulatory clearance of Imported Goods; (ii) payment of all taxes, tariffs, duties, customs, fees, expenses and charges payable in connection with the importation and delivery of the Imported Goods; and (iii) keeping all records, documents, correspondence and tracking information required by applicable laws, rules and regulations arising out of or in connection with the importation or delivery of the Imported Goods.
- 18. EXPORT LAWS.** The Collateral may be subject to export controls under the laws and regulations of the United States. The parties agree that Provider will not export, directly or indirectly, the Collateral to any country or foreign national for which the United States Department of Commerce, Department of State or Department of Defense, or any other agency of the United States, at the time of export requires an export license, permit, authorization or other governmental approval, without first obtaining such license, permit, authorization or other governmental approval from the applicable agency. Customer hereby acknowledges that Customer is familiar with the export laws and regulations referenced in this paragraph and shall inform Provider if its Collateral requires an export license prior to its shipment out of the U.S.
- 19. INTELLECTUAL PROPERTY.** Any trademarks, drawings, designs, know-how and all other intellectual property rights of Provider embodied in, displayed on, or otherwise provided in connection with, the Services or the Instrument of Retention, shall remain the sole property of Provider. Without Provider’s express prior written permission, no reproduction, use or communication to third parties of any such intellectual property are permitted.

- 20. NO WAIVER.** Forbearance or failure of Provider to enforce any of the terms and conditions stated herein, or to exercise any right accruing from default of Customer, shall not affect or impair Provider's rights arising from such defaults; nor shall forbearance or failure be deemed a waiver of Provider's rights in case of any subsequent default of Customer.
- 21. SEVERABILITY.** If any provision of these Terms and Conditions of Service is unenforceable or invalid, these Terms and Conditions of Service shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.
- 22. ASSIGNMENT.** These Terms and Conditions of Service shall be binding upon and shall inure to the benefit of the successors and assigns of Customer and Provider provided, however, that Customer may not assign or transfer the Instrument of Retention or these Terms and Conditions of Service, in whole or in part, except upon the prior written consent of Provider. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under these Terms and Conditions of Service.
- 23. RELATIONSHIP OF THE PARTIES.** The relationship between the parties is that of independent contractors. Nothing contained in these Terms and Conditions of Service or the Instrument of Retention shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 24. GOVERNING LAW; VENUE.** Unless otherwise specified in the Instrument of Retention, the Instrument of Retention and these Terms and Conditions of Service shall be construed in accordance with and governed by the laws of the State of North Carolina, without regard to its conflicts-of-laws rules or principles. All actions or proceedings arising directly or indirectly herefrom or related hereto shall be litigated only in the courts of Iredell County in the State of North Carolina. The parties hereby consent to the jurisdiction and venue of such courts. The parties acknowledge and agree that the UN Convention on International Sale of Goods ("CISG") shall not apply.
- 25. NOTICES.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Instrument of Retention or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), e-mail (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in these Terms and Conditions of Service, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

ENTIRE CONTRACT. PROVIDER AND CUSTOMER HEREBY AGREE THAT THESE TERMS AND CONDITIONS OF SERVICE ALONG WITH THE INSTRUMENT OF RETENTION SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN PROVIDER AND CUSTOMER AND NO PRIOR OR CONTEMPORANEOUS ORAL OR WRITTEN STATEMENT, CORRESPONDENCE, SAMPLE OR OTHER TERMS, QUOTATIONS OR UNDERSTANDINGS SHALL MODIFY, ALTER OR IN ANY WAY AFFECT THE TERMS THEREOF.