

PERFORMANCE FACTOR PLATFORM TERMS

Fédération Internationale de l'Automobile, an association declared in conformity with the Swiss Civil Code, having its office at 2 Chemin de Blandonnet, 1214 Vernier (Geneva), Switzerland (the "**FIA**"). The FIA operates the website: <https://performancefactor.fia.com> (the "**Platform**").

1. Understanding these terms

- 1.1 These terms and conditions ("**Terms**") describe how you may: (i) access and use the Platform and the content on it; and (ii) interact with the Platform by (for example) submitting material to the Platform. By using the Platform you confirm that you accept these Terms and that you agree to comply with them.
- 1.2 When certain words and phrases are used in these Terms, they have specific meanings (these are known as "**defined terms**"). You can identify these defined terms because they start with capital letters (even if they are not at the start of a sentence). Where a defined term is used, it has the meaning given to it in the section of these Terms where it was defined (you can find these meanings by looking at the sentence where the defined term is included in brackets and speech marks).
- 1.3 In these Terms, when we refer to "**we**", "**us**" or "**our**" or similar, we mean the FIA; and when we refer to "**you**" or "**your**" or similar we mean:
 - 1.3.1 if you are acting for purposes that are wholly or mainly outside your trade, business, craft or profession, an individual acting as a "**Consumer**"; or
 - 1.3.2 if you are acting for purposes relating to your trade, business, craft or profession (for example, if you are a professional racing driver), an individual acting in the course of a "**Business**".
- 1.4 Please note that: (i) the Platform uses cookies, the use of which are governed by our privacy notice; and (ii) we only use your personal information in accordance with our privacy notice (our privacy notice is available here: <https://www.fia.com/data-privacy-notice>).

2. The Platform

- 2.1 We do not guarantee that the Platform, or any content on it, will always be available or be uninterrupted. Access to the Platform is permitted on a temporary basis. We may suspend, withdraw, discontinue or change all or any part of the Platform without notice. We will not be liable to you if for any reason the Platform is unavailable at any time or for any period. We may update the Platform and/or change the content on it at any time.
- 2.2 You are responsible for making all arrangements necessary for you to have access to the Platform. You are also responsible for ensuring that all persons who access the Platform through your internet connection are aware of these Terms and that they comply with them.
- 2.3 The Platform and the content on it are provided for general information purposes only. They are not intended to amount to advice on which you should rely.
- 2.4 If you are a Consumer, you may only use the Platform for your own domestic, private and non-commercial use.

3. Your account and password

- 3.1 You will need to register an account with us on the Platform in order to access certain services available on the Platform ("**Account**"). In order to register an Account, you must:
 - 3.1.1 be aged 18 or over; and

- 3.1.2 pay the registration fee as set out on the Account registration page of the Platform (the "**Registration Fee**").
- 3.2 If you register an Account, you will be asked to provide certain information (such as your email address) and to create a password, as part of our security procedures. You must treat the password as confidential and you must not disclose it to any third party.
- 3.3 Your request to register an Account on the Platform is an offer to enter into a contract with us for the provision of the services made available to Account holders on the Platform (a "**Contract**", and such services being the "**Services**"). A Contract is formed once we confirm acceptance of your Account registration by email and receive payment for the Registration Fee. Once you register an Account (and enter into a Contract), you will be a "**Registered User**".
- 3.4 If you are a Consumer resident in the UK or an EU Member State, you have a legal right to change your mind and cancel the Contract between you and us within 14 days of the Contract being concluded without giving a reason. However, by submitting a request to register Account you are requesting that we provide the Services to you immediately on formation of the Contract and acknowledge and agree that by doing so you waive your right to cancel. Please note that the Registration Fee is non-refundable.
- 3.5 You agree that:
- 3.5.1 all the information that you provide to us in connection with your Account is complete and accurate;
- 3.5.2 you are the person whose details you have provided; and
- 3.5.3 you will notify us immediately if there are any changes to the information you have provided to us.
- 3.6 We have the right to disable any Accounts and/or passwords, at any time, if in our reasonable opinion you have failed to comply with any of the provisions of these Terms.
- 3.7 If you know or suspect that anyone other than you knows your Account login details, you must immediately notify us at pf@fia.com.
- 3.8 You are responsible for any unauthorised use of your Account login details.

4. Acceptable use

General

- 4.1 You agree not to:
- 4.1.1 use the Platform in any way that breaches these Terms or any applicable local, national or international law or regulation;
- 4.1.2 copy, or otherwise reproduce or re-sell any part of the Platform unless expressly permitted to do so in these Terms; or
- 4.1.3 do any act or thing that might damage, disrupt or otherwise interfere with the operation of the Platform or any equipment, network or software used in operating the Platform.

User Generated Content

- 4.2 If it is the case that you supply/upload any content to the Platform – whether it be pictures, text, sound recordings or whatever – the content you supply ("**User Generated Content**") must comply with the following rules:

- 4.2.1 it must not be obscene, abusive, offensive or racist and it must not promote or propose hatred or physical harm against anyone;
 - 4.2.2 it must not harass or bully another person;
 - 4.2.3 it must be true and honest so far as you know;
 - 4.2.4 it must not: (i) constitute pornography; or (ii) be sexual or sexually suggestive involving minors;
 - 4.2.5 it must not be defamatory of anyone;
 - 4.2.6 it must not be unlawful;
 - 4.2.7 it must not use the material or content or infringe the rights or privacy of anyone else; for example you should not use images of well-known characters, footage or music (unless it is your own or you have permission to use it);
 - 4.2.8 it must not contain someone else's personal details or confidential information relating to other people;
 - 4.2.9 it must not promote discrimination, whether based on ethnicity, race, sex, religion, nationality, disability, sexual orientation or age;
 - 4.2.10 it must not promote or condone terrorism, violence or illegal behaviour;
 - 4.2.11 it must not be harmful to minors in any way;
 - 4.2.12 it must not impersonate any person, or misrepresent your identity or affiliation with any person;
 - 4.2.13 it must not give the impression that it emanates from or is endorsed by us, if this is not the case; and
 - 4.2.14 it must not violate these Terms.
- 4.3 We reserve the right to refuse to accept or refuse or cease to use any User Generated Content supplied by any person that we think contravenes clause 4.2 above. If you become aware of any User Generated Content that breaches clause 4.2 above, please contact us on pf@fia.com, providing your full name and address, along with details of: (i) the date on which it was posted and where it can be found on the Platform; (ii) the username of the person who posted it; (iii) reasons why the content should be deleted; and (iv) copies of any communication with the person who posted it (if any).
- 4.4 In addition, we may from time to time provide interactive services on the Platform that shall enable you to upload User Generated Content, including, without limitation:
- 4.4.1 comment facilities;
 - 4.4.2 chat rooms; and/or
 - 4.4.3 bulletin boards,
- (together "**Interactive Services**").
- 4.5 Where we provide an Interactive Service, we will use reasonable endeavours to provide information to you about the kind of service offered and if it is moderated. However, we are under no obligation to oversee, monitor or moderate any Interactive Service we provide.

Viruses

- 4.6 We do not guarantee that the Platform will be totally secure or free from bugs or viruses. You are responsible for configuring your information technology, computer programmes and platform in order to access the Platform and we recommend that you use your own virus protection software.
- 4.7 You must not misuse the Platform by knowingly introducing viruses, trojans, worms, logic bombs or other material which is malicious or technologically harmful. You must not attempt to gain unauthorised access to the Platform, the server on which the Platform is stored or any server, computer or database connected to the Platform. You must not attack the Platform via a denial-of-service attack or a distributed denial-of service attack. By breaching this provision, you would commit a criminal offence under the Swiss Criminal Law, in particular Article 147 of the Swiss Criminal Code. We will report any such breach to the relevant law enforcement authorities and we will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use the Platform will cease immediately.

5. Intellectual property

- 5.1 We are the owner or licensee of all intellectual property rights in the Platform and its content, including (without limitation) each of the 'FIA' and 'Performance Factor' name and logo, data, text, designs, graphics, images, photographs, links, icons, illustrations ("**Materials**"). Those Materials are protected by intellectual property laws and treaties around the world. All such rights are reserved.
- 5.2 You are not granted any right to use, and may not use, any of our intellectual property rights other than as set out in these Terms. You must not use the Platform (or any part of it or its Materials) for commercial purposes, in connection with any product or service that is not offered by the FIA, in any manner that is likely to cause confusion with customers, or in any manner that disparages the FIA.
- 5.3 No part of the Platform, including the Materials contained in it, may be copied, reproduced, republished, uploaded, re-posted, modified, transmitted or distributed or otherwise used in any way for any non-personal, public or commercial purpose without our prior written consent.
- 5.4 Any communications or materials you send to us through the Platform by electronic mail or other means will be treated as non-proprietary and non-confidential (other than communications relating to your personal data and the performance of the Services if you use the Platform to access to the Services offered). We are free to publish, display, post, distribute and otherwise use any ideas, suggestions, concepts, designs, know-how and other information contained in such communications or material for any purpose, including, but not limited to, developing, advertising and marketing.

6. Our liability

- 6.1 Nothing in these Terms excludes or limits our liability for:
- 6.1.1 death or personal injury caused by our negligence;
 - 6.1.2 fraud or fraudulent misrepresentation; and
 - 6.1.3 any matter in respect of which it would be unlawful for us to exclude or restrict our liability.
- 6.2 If you are a Consumer:
- 6.2.1 we agree to provide the Services with reasonable care and skill;
 - 6.2.2 if we fail to comply with these Terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breach of these Terms or our negligence, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if

it was an obvious consequence of our breach or if it was contemplated by you and us at the time that you accessed the Platform or, in the case of a Contract, at the time that the Contract became binding;

6.2.3 nothing in these Terms affects your statutory rights;

6.2.4 we only supply the Platform for domestic and private use. You agree not to use the Platform, or any content on the Platform, for any commercial or business purposes and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity; and

6.2.5 subject to clauses 6.1, our total liability to you for any loss or damage arising out of or in connection with these Terms or any Contract, whether in contract (including under any indemnity), tort (including negligence) or otherwise shall be limited to a sum equal to the Registration Fee.

6.3 If you are a Business:

6.3.1 these Terms are in place of all warranties, representations, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise (including implied undertakings of satisfactory quality, conformity with description and reasonable fitness for purpose) relating to these Terms, any Contract and/or the Services, all of which are hereby excluded by us to the maximum extent permitted by law;

6.3.2 you shall indemnify us and keep us indemnified for any and all losses, expenses and liabilities resulting from all claims, demands, liabilities, damages, costs and expenses incurred by us or by any of our contractors, agents, employees or affiliates which arise out of: (i) your breach of these Terms; and/or (ii) any third party claims made against us arising out of the provision of the Services other than due to our breach of these Terms or our negligence;

6.3.3 subject to clause 6.1, in no event shall we be liable to you for any loss of profits, loss of revenue, loss of contracts, failure to realise anticipated savings or for any indirect or consequential loss, whether arising from negligence, breach of contract or otherwise; and

6.3.4 subject to clauses 6.1 and 6.3, our total liability to you for any loss or damage arising out of or in connection with these Terms or any Contract, whether in contract (including under any indemnity), tort (including negligence) or otherwise shall be limited to a sum equal to the Registration Fee.

6.4 The Platform may from time to time contain links to third party websites. You are responsible for deciding whether to access a third party website and your use of third party websites will be governed by the terms and policies of that third party website. We assume no responsibility for the content of websites linked to from the Platform (including links to our commercial sponsors and partners). Such links should not be interpreted as endorsement by us of those linked websites. We will not be liable for any loss or damage that may arise from your use of them.

7. Suspension and termination

7.1 If you breach any provision of these Terms, we may immediately do any or all of the following (without limitation):

7.1.1 issue a warning to you;

7.1.2 temporarily or permanently remove any User Generated Content uploaded by you to the Platform;

- 7.1.3 temporarily or permanently withdraw your right to use the Platform;
- 7.1.4 suspend or terminate your Account;
- 7.1.5 terminate any Contract;
- 7.1.6 issue legal proceedings against you for reimbursement of all costs resulting from the breach (including, but not limited to, reasonable administrative and legal costs);
- 7.1.7 take further legal action against you; and/or
- 7.1.8 disclose such information to law enforcement authorities as we reasonably feel is necessary to do so.

8. Changes to these Terms and Conditions

We may make changes to these Terms from time to time (if, for example, there is a change in the law that means we need to change these Terms) but if you have entered into a Contract, the Terms applicable at the time that such Contract was entered into shall apply to that Contract. Please check these Terms regularly to ensure that you understand the Terms that apply at the time that you access and use the Platform and the Services.

If you are a Registered User, we will provide you with at least [thirty (30)] days' advance notice of any changes to these Terms, unless the change is due to a change in law or for security reasons (in which case we may need to change these Terms on shorter notice). If you do not wish to continue using the Platform following the changes to the Terms, you can cancel your agreement to the Terms by cancelling your Account.

9. Other important information

- 9.1 Each of the clauses of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining clauses will remain in full force and effect.
- 9.2 If we fail to insist that you perform any of your obligations under these Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 9.3 If you are a Business:
 - 9.3.1 the Contract contains the entire agreement between you and us and supersede all prior written or oral agreements and understandings pertaining to the subject matter of the Contract. Both you and we acknowledge that in entering into the Contract each of you and us has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other in relation to the subject-matter of the Contract at any time before its coming into effect (together "**Pre-Contractual Statements**"), other than those which are set out in the Contract, provided that nothing in this clause 9.3.1 shall exclude or restrict the liability of either you or us arising out of our or your (as applicable) fraudulent misrepresentation or fraudulent concealment;
 - 9.3.2 no person other than you or us may enforce any of the provisions of any Contract;
 - 9.3.3 you may not assign, novate, transfer, sub-licence, declare a trust of, mortgage, charge or deal in any other manner with your obligations under any Contract, or with any of its rights or obligations under it, without our prior written consent; and

- 9.3.4 we may assign, novate, or transfer any of our rights or obligations under any Contract to another legal entity by giving written notice to you.
- 9.4 If you wish to have more information on online dispute resolution, please follow this link to the website of the European Commission: <http://ec.europa.eu/consumers/odr/>. This link is provided as required by Regulation (EU) No 524/2013 of the European Parliament and of the Council, for information purposes only. We are not obliged to participate in online dispute resolution.
- 10. Governing law and jurisdiction**
- 10.1 These Terms and Conditions are governed by Swiss law. This means that your access to and use of the Platform, your use of the Services, and any dispute or claim arising out of or in connection therewith (including non-contractual disputes or claims) will be governed by Swiss law.
- 10.2 If you are a Business, any dispute (contractual or non-contractual) arising out of or in connection with these Terms or any Contract, including any question regarding its existence, validity or termination, shall be subject to the exclusive jurisdiction of the courts of Geneva, Switzerland.
- 10.3 If you are a Consumer resident in an EU Member State or the UK:
- 10.3.1 you may bring any dispute which may arise under these Terms or any Contract to, at your discretion, either the competent court of Switzerland, or to the competent court of your country of habitual residence if this country of habitual residence is within the UK or is an EU Member State, which courts are (with the exclusion of any other court) competent to settle any of such a dispute. We shall bring any dispute which may arise under these Terms or any Contract to the competent court of your country of habitual residence if this is within the UK or is an EU Member State or otherwise to the courts of Geneva, Switzerland; and
- 10.3.2 and are resident in the UK or the European Union and we direct the Platform to (and/or pursue our commercial or professional activities in relation to the Platform in) the country in which you are resident, you will benefit from any mandatory provisions of the law of the country in which you are resident. Nothing in these Terms, including clause 10.1, affects your rights as a Consumer to rely on such mandatory provisions of local law.

11. Contacting us

- 11.1 Should you have any reasons for a complaint, please contact us by using the following details:

Address: 2 Chemin de Blandonnet, 1214 Vernier (Geneva), Switzerland

Email address: pf@fia.com

Thank you.

Terms last updated 1st February 2023