

RSR LIMITED

TERMS AND CONDITIONS OF SUPPLY (GOODS AND SERVICES)

1. DEFINITIONS

In these Conditions:

Business Day means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Conditions means these terms and conditions of supply;

Contract means the contract between RSR and Customer for the supply of Goods and/or Services in accordance with these Conditions;

Customer means the company, firm or other person who purchases the Goods and/or Services from RSR;

Delivery Location means the location set out in the Order or such other location as the parties may agree;

Force Majeure Event has the meaning given to it in clause 14.1;

Goods means the goods (or any part of them) identified in the Order and confirmed in RSR's written acceptance of the Order;

Goods Specification means any description of or specification for the Goods published by RSR that is current at the time of the Order, or that is contained in manuals or instructions supplied by RSR with the Goods, or that is agreed in writing by Customer and RSR;

Order means Customer's order for the supply of Goods and/or Services;

RSR means RSR Ltd registered in England and Wales with company number 03766047;

Services means the services (or any part of them) set out in the Order and confirmed in RSR's written acceptance of the Order;

Service Specification means any description of or specification for the Services published by RSR that is current at the time of the Order, or that is agreed in writing by Customer and RSR;

Warranty Period has the meaning given to it in clause 11.1.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by Customer to purchase the Goods and/or Services in accordance with these Conditions.

- 2.2 The Order shall only be deemed to be accepted when RSR issues written acceptance of the Order. At that time the Contract shall come into existence.
- 2.3 The Contract constitutes the entire agreement between the parties in relation to its subject matter. Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of RSR which is not set out in the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by RSR shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. **GOODS**

- 3.1 The Goods are identified in the Order and described in the Goods Specification.
- 3.2 RSR reserves the right to amend the Goods Specification if required by any applicable law or regulation.
- 3.3 All instructions for use of Goods and other documentation or written information concerning Goods (including information relating to safety), will be in the English language. Translation thereof into languages other than English (if required by Customer) shall be the sole responsibility of Customer.

4. **DELIVERY OF GOODS**

- 4.1 RSR shall deliver the Goods to the Delivery Location. Delivery of the Goods shall be completed on arrival of the Goods at the Delivery Location.
- 4.2 RSR shall use all reasonable endeavours to meet any dates for delivery of the Goods specified in the Order or otherwise agreed in writing by RSR but any such dates shall be estimates only and time shall not be of the essence for delivery of the Goods.
- 4.3 RSR may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle Customer to cancel any other instalment.

5. **TITLE AND RISK**

- 5.1 The risk in the Goods shall pass to Customer on completion of delivery.
- 5.2 Title to the Goods shall not pass to Customer until RSR receives payment in full (in cash or cleared funds) for the Goods and any other goods that RSR has supplied to Customer in respect of which payment has become due.
- 5.3 Until title to the Goods has passed to Customer, Customer shall:

- 5.3.1 store the Goods separately from all other goods held by Customer so that they remain readily identifiable as RSR's property;
 - 5.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 5.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on RSR's behalf from the date of delivery;
 - 5.3.4 notify RSR immediately if it becomes subject to any of the events listed in clause 13 that would entitle RSR to terminate the Contract; and
 - 5.3.5 give RSR such information relating to the Goods as RSR may require from time to time.
- 5.4 If before title to the Goods passes to Customer Customer becomes subject to any of the events listed in clause 13 that would entitle RSR to terminate the Contract , then, without limiting any other right or remedy RSR may have:
- 5.4.1 all Customer's rights to the Goods cease immediately; and
 - 5.4.2 RSR may at any time: (a) require Customer to deliver up all Goods in its possession; and/or (b) enter any premises of Customer or of any third party where the Goods are stored (or are believed by RSR to be stored) in order to recover them.

6. **SUPPLY OF SERVICES**

- 6.1 RSR shall provide the Services to Customer in accordance with the Service Specification in all material respects.
- 6.2 RSR shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order or otherwise agreed in writing by RSR but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7. **CUSTOMER'S OBLIGATIONS**

- 7.1 Customer shall:
 - 7.1.1 ensure that the terms of the Order are complete and accurate;
 - 7.1.2 co-operate with RSR in all matters relating to the Services;
 - 7.1.3 provide RSR with such information and materials as RSR may reasonably require to supply the Services and ensure that such information is accurate in all material respects;
 - 7.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

- 7.2 If RSR's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by Customer or failure by Customer to perform any relevant obligation (**Customer Default**):
- 7.2.1 RSR shall without limiting its other rights or remedies have the right to suspend performance of the Services until Customer remedies the Customer Default and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays RSR's performance of any of its obligations;
 - 7.2.2 RSR shall not be liable for any costs or losses sustained or incurred by Customer arising directly or indirectly from RSR's failure or delay to perform any of its obligations as set out in this clause 7.2; and
 - 7.2.3 Customer shall reimburse RSR on written demand for any costs or losses sustained or incurred by RSR arising directly or indirectly from Customer Default.

8. **CHARGES AND PAYMENT**

- 8.1 The price for Goods shall be the price quoted by RSR or set out in RSR's written acceptance of the Order. The price of the Goods is EX WORKS (Incoterms 2010) RSR's premises and therefore in particular is exclusive of all costs and charges for packaging, insurance, transport of the Goods and any costs or duties related to export or import, all of which shall be paid by Customer in addition when it pays for the Goods.
- 8.2 The charges for Services shall be the price quoted by RSR or set out in RSR's written acceptance of the Order.
- 8.3 RSR reserves the right to increase the price of the Goods, by giving notice to Customer at any time before delivery, to reflect any increase in the cost of the Goods to RSR that is due to:
- 8.3.1 any factor beyond the control of RSR (including foreign exchange fluctuations, increases in taxes and duties, increases in labour, materials and other manufacturing costs and increased costs associated with regulatory compliance);
 - 8.3.2 any request by Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - 8.3.3 any delay caused by any instructions of Customer in respect of the Goods or failure of Customer to give RSR adequate or accurate information or instructions in respect of the Goods.
- 8.4 In respect of Goods, RSR will normally invoice Customer on or at any time after completion of delivery. In respect of Services, RSR will normally invoice Customer on or at any time after completion of the Services.

- 8.5 However RSR reserves the right to require payment prior to delivery of Goods or commencement of performance of Services. Subject to that, Customer shall pay each invoice submitted by RSR:
- 8.5.1 within 30 days of the date of the invoice; and
 - 8.5.2 in full and in cleared funds to a bank account nominated in writing by RSR.

Time for payment shall be of the essence of the Contract.

- 8.6 All amounts payable by Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by RSR to Customer, Customer shall, on receipt of a valid VAT invoice from RSR, pay to RSR such additional amounts in respect of VAT as are chargeable on the supply of the Goods or Services at the same time as payment is due for the supply of the Goods or Services.
- 8.7 If Customer fails to make any payment due to RSR under the Contract by the due date for payment, then without limiting RSR's other rights or remedies Customer shall pay interest on the overdue amount at the rate from time to time prescribed by or pursuant to the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. Customer shall pay the interest together with the overdue amount.
- 8.8 Customer shall pay all amounts due under the Contract in full, without any set-off, counterclaim, deduction or withholding except as required by law. RSR may, without limiting its other rights or remedies, set off any amount owing to it by Customer against any amount payable by RSR to Customer.

9. **INTELLECTUAL PROPERTY RIGHTS**

- 9.1 All intellectual property rights in the Goods and all intellectual property rights in or arising out of or in connection with the Services, are and shall remain owned by RSR.
- 9.2 Nothing in the Contract transfers from either party to the other any rights in or to any intellectual property rights.

10. **CONFIDENTIALITY**

Each party (**receiving party**) shall keep in strict confidence all technical or commercial information of a confidential nature disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain pursuant to or in connection with the Contract. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be

disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction, provided that (if it lawfully can) it first informs the disclosing party in writing of the requirement to make such disclosure and at the disclosing party's request provides to the disclosing party reasonable assistance in any lawful attempts to prevent or limit the disclosure. This clause shall survive any termination of the Contract.

11. QUALITY OF GOODS AND SERVICES

Goods

11.1 RSR warrants that the Goods shall:

11.1.1 conform in all material respects with the applicable Goods Specification; and

11.1.2 be free from material defects in material and workmanship.

Such warranty applies: (a) for the stated shelf life of the applicable Goods (i.e. until the expiry date stated on their container or packaging) or (b), in respect of Goods that do not have a stated shelf life, for a period of 12 months from delivery (in any such case, the **Warranty Period**).

11.2 Subject to clause 11.3, if:

11.2.1 Customer gives notice in writing during the applicable Warranty Period and within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 11.1;

11.2.2 RSR is given a reasonable opportunity of examining such Goods; and

11.2.3 Customer (if asked to do so by RSR) returns such Goods to RSR's place of business at Customer's cost;

RSR shall repair or replace the defective Goods, or (instead, at RSR's option) refund the price of the defective Goods.

11.3 RSR shall not be liable for the Goods' failure to comply with the warranty in clause 11.1 if:

11.3.1 Customer makes any further use of such Goods after giving a notice in accordance with clause 11.2;

11.3.2 the defect arises because Customer failed to follow RSR's oral or written instructions as to the transportation, storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

11.3.3 the defect arises during shipping of the Goods due to delays or high ambient temperature;

11.3.4 Customer alters or repairs such Goods without the written consent of RSR;

- 11.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- 11.3.6 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

Services

- 11.4 RSR warrants to Customer that the Services will be provided using reasonable care and skill. If RSR is in breach of this warranty and Customer gives notice in writing thereof within one month of completion of the applicable Services then RSR shall at no charge re-perform the defective Services, or (instead, at RSR's option) refund the price of the defective Services.

Goods and Services

- 11.5 Except as provided in this clause 11, RSR shall have no liability to Customer in respect of the Goods' or Services' failure to comply with the applicable warranty set out in this clause 11.
- 11.6 The terms of these Conditions shall apply to any repaired Goods or replacement Goods or parts of Goods or re-performed Services supplied by RSR under this clause 11.

12. LIMITATION OF LIABILITY: CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 12.1 Nothing in these Conditions shall limit or exclude RSR's liability for:
 - 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 12.1.2 fraud or fraudulent misrepresentation;
 - 12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 12.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 12.1.5 defective products under the Consumer Protection Act 1987.
- 12.2 Subject to clause 12.1:
 - 12.2.1 RSR shall under no circumstances whatever be liable to Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 12.2.2 RSR's total liability to Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no

circumstances exceed (a) the total amount payable by Customer (excluding VAT) in respect of Goods and Services comprised in the applicable Order or (b), if less, £1000.

- 12.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.4 This clause 12 shall survive any termination of the Contract.

13. **TERMINATION**

- 13.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving written notice to the other party having immediate effect if:

13.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 28 days after receipt of notice in writing to do so;

13.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;

13.1.3 the other party commences negotiations with all or any class of its creditors with a view to re-scheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

13.1.4 a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party; or

13.1.5 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.

- 13.2 Without limiting its other rights or remedies, RSR may terminate the Contract by giving written notice to Customer having immediate effect if:

13.2.1 Customer fails to pay any amount due under this Contract on the due date for payment; or

13.2.2 Customer's financial position deteriorates to such an extent that in RSR's opinion Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 13.3 Without limiting its other rights or remedies, RSR may, in circumstances that it is entitled to terminate the Contract under clause 13.2, instead suspend the supply of Services and/or all further deliveries of Goods under the Contract and/or any other contract between Customer and RSR.

- 13.4 On any termination of the Contract:

- 13.4.1 Customer shall immediately pay to RSR all of RSR's outstanding unpaid invoices and interest and, in respect of Goods or Services supplied but for which no invoice has yet been submitted, RSR shall submit an invoice which shall be payable by Customer immediately on receipt;
- 13.4.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- 13.4.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. **FORCE MAJEURE**

- 14.1 For the purposes of the Contract, **Force Majeure Event** means an event beyond the reasonable control of RSR including strikes, lock-outs or other industrial disputes (whether involving the workforce of RSR or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of RSRs or subcontractors.
- 14.2 RSR shall not be in breach of the Contract or liable to Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.3 If the Force Majeure Event prevents RSR from providing any of the Services and/or Goods for more than 4 weeks, RSR shall, without limiting its other rights or remedies, have the right to terminate the Contract by giving written notice to Customer having immediate effect.

15. **GENERAL**

- 15.1 **Construction.** In these Conditions: (a) a **person** includes a natural person, a firm or a corporate or unincorporated body (whether or not having separate legal personality); (b) a reference to a **party** includes its successors or permitted assigns; (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and (e) a reference to **writing** or **written** includes faxes and e-mails.
- 15.2 **Assignment and other dealings.**
 - 15.2.1 RSR may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

- 15.2.2 Customer shall not, without the prior written consent of RSR, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 15.3 **Notices.**
- 15.3.1 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
- 15.3.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.3.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- 15.3.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action
- 15.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 15.5 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.7 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 15.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective

unless it is agreed in writing (excluding e-mail) and signed by a duly authorised representative of RSR.

- 15.9 **Governing law.** The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 15.10 **Jurisdiction** The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).