

RFC INTERNATIONAL (Registered number: 11668973)

Terms and Conditions of Sale

1. Interpretation

1.1 **Definitions.** In these Conditions, the following definitions apply:

"**Business Day**" a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

"**Conditions**" the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

"**Contract**" the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

"**Customer**" the person or firm who purchases the Goods from the Supplier.

"**Force Majeure Event**" has the meaning given in clause 10.

"**Goods**" the goods (or any part of them) set out in the Order.

"**Order**" the Customer's order for the Goods, as set out in the Customer's purchase order form.

"**Supplier**" is RFC INTERNATIONAL

1.2 **Construction.** In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a statute or statutory provision is a reference to such statute or 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.

1.2.3 A reference to **writing** or **written** includes faxes.

2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the contents of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier enters the Order on to its stock management system, at which point the Contract shall come into existence.

2.4 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

3. Goods

3.1 The Supplier reserves the right to reduce or amend the quantity of Goods ordered if required to by any applicable statutory or regulatory requirements or due to a shortage of stock.

3.2 The Supplier does not deliver Goods on a sale or return basis and the Supplier's representatives are not authorised to accept Orders on a sale or return basis. It is the Customer's responsibility to sell the Goods prior to expiry of any 'Best Before' date. The Supplier will use its best endeavours to ensure that any date marked Goods with a life of more than twelve (12) months are delivered to the Customer with a minimum of

six (6) months remaining life and for other Goods, other than seasonal Goods, twelve (12) weeks remaining life before the 'Best Before' date.

4. Delivery

4.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows, all relevant Customer and Supplier reference numbers and the type and quantity of the Goods (including the code number of the Goods, where applicable).

4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (the "**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. The Customer shall inspect the Goods prior to signing any delivery documentation.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to take delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third(3rd) Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and

4.6.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

5. Quality

5.1 The Supplier warrants that on delivery the Goods shall:

5.1.1 conform in all material respects with their description; and

5.1.2 comply with the Food Safety Act 1990 and all relevant UK food law in force from time to time. No warranty is given that the Goods comply with any legislation in countries outside the UK or that they do not infringe any third party rights.

5.2 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing to the Supplier within three (3) Business Days of Delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and

- 5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
the Supplier shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- 5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- 5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage of the Goods or (if there are none) good trade practice regarding the same;
- 5.3.3 the Goods have exceeded their shelf life; or
- 5.3.4 the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions.
- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any replacement Goods supplied by the Supplier.

6. Title and risk

- 6.1 The risk in the Goods shall pass to the Customer on delivery under clause 4.3.
- 6.2 Notwithstanding delivery, title in the Goods shall not pass to the Customer until the earlier of:
- 6.2.1 the Supplier receiving payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- 6.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer:
- 6.3.1 holds the Goods as the Supplier's fiduciary agent and bailee;
- 6.3.2 stores the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.3 will not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.4 will not pledge or in any way charge by way of security for any indebtedness any of the goods;
- 6.3.5 maintains the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 6.3.6 will notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2;
- 6.3.7 will give the Supplier such information relating to the Goods as the Supplier may require from time to time;
- 6.3.8 will deliver up the Goods if required by the Supplier; and
- 6.3.9 hereby grants to the Supplier a licence to enter upon any premises of the Customer and of any third party where the Goods are stored and repossess the Goods.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier

receives payment for the Goods. However, if the Customer resells the Goods before that time:

- 6.4.1 it does so as principal and not as the Supplier's agent; and
- 6.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, then, without limiting any other right or remedy the Supplier may have:
- 6.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- 6.5.2 the Supplier may at any time:
- 6.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- 6.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 6.6 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier or allow any lien to arise thereon or use or process any Goods other than in the ordinary course of the Customer's business.

7. Price and payment

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 7.2 Notwithstanding clause 7.1 and subject to clause 7.3, the Supplier reserves the right to amend its prices published in any price list without prior notice.
- 7.3 Following confirmation of the Order, the Supplier may, by giving notice to the Customer at any time up to three (3) days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 7.3.1 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
- 7.3.2 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions; or
- 7.3.3 any increase in the cost of the Goods that is due to a factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs).
- 7.4 The Supplier may, at its sole discretion, charge any and all expenses, costs, export duties, rates and charges incurred by the Supplier in the performance of its obligations under this agreement to the Customer, unless the Supplier has expressly agreed in advance in writing to pay such expenses, costs, export duties, rates and charges.
- 7.5 The price of the Goods is exclusive of amounts in respect of value added tax ("**VAT**"). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.6 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery. Any cash paid on delivery must be receipted by the Supplier.

- 7.7 The Customer shall pay the invoice in full and in cleared funds within thirty (30) days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier or on other such terms agreed between the Supplier and the Customer in writing. Time of payment is of the essence.
- 7.8 If the Customer fails to make any payment due to the Supplier by the due date for payment, then the Supplier may, without limiting any other rights or remedies it may have under the Contract:
- 7.8.1 charge interest on the overdue amount at the rate of four per cent (4%) per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount;
- 7.8.2 withdraw any credit facilities given to the Customer;
- 7.8.3 set-off any payment made by the Customer against any outstanding invoices as the Supplier may deem fit; or
- 7.8.4 suspend the supply of Goods to the Customer.
- 8. Termination and suspension**
- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- 8.2.1 the Customer 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, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 8.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 8.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 8.2.4 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 8.2.5 (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- 8.2.6 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 8.2.7 (being an individual) the Customer is the subject of a bankruptcy petition or order;
- 8.2.8 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
- 8.2.9 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 8.2.10 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 8.2.11 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 8.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 9. Limitation of liability**
- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 9.1.2 fraud or fraudulent misrepresentation;
- 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 9.1.4 defective products under the Consumer Protection Act 1987; or
- 9.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- 9.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss, loss of profit, loss of opportunity, loss of reputation, loss of contract, loss of goodwill or similar economic loss arising under or in connection with the Contract; and
- 9.2.2 the Supplier's total liability to the 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 an amount equal to the price of the Goods, the subject of the breach.
- 10. Force majeure**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. General

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11.1 Assignment and other dealings.

Date

11.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Notices.

11.2.1 Any notice or other communication 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, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax.

11.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second(2nd) 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, one Business Day after transmission.

11.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.

11.4 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

11.5 **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 in writing and signed by the Supplier.

11.6 **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.

11.7 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

We hereby confirm and accept that we are bound by these terms and conditions.

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Signed by

For and on behalf of