

Conditions of Sale

1. DEFINITIONS

In these Conditions of Sale (“Conditions”) the following terms shall have the following meanings:

Definition	Meaning
Buyer	the person, firm or company who purchases the Goods and/or Services from the Company.
Company	RJD Engineering Company Ltd
Contract	The contract between the Company and the Buyer for the supply of Goods and/or Services in accordance with these Conditions
Goods	The goods which are the subject of the Proposal or the Order as the case may be.
Order	The Buyer's order for the supply of Goods and/or Services.
Proposal	The quotation, budget or tender document formally issued to the Buyer by the Company
Services	Any services specified in the Order to be provided by the Company to the Buyer.
Specification	The specification for the Goods agreed in writing between the company and the Buyer.

2. APPLICATION

- 2.1** The Company will only supply the Goods and/or Services on the basis of these Conditions which shall apply to and be incorporated in the Contract to the entire exclusion of all other terms and conditions.
- 2.2** No terms or conditions endorsed upon, delivered or contained in the Buyer's confirmation of Order, specification or similar document shall form part of the Contract and the Buyer waives any right which it otherwise might have to rely on such terms and conditions.
- 2.3** Any Proposal shall not constitute an offer, and is only valid for a period of [30] days from its date of issue or such other period as may be specified in the Proposal.
- 2.4** Each Order shall be deemed to be an offer by the Buyer to buy the Goods and/or Services subject to these Conditions. An Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.5** The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract.

Conditions of Sale

3. SPECIFICATION

- 3.1 The Goods are as described in the Proposal as may be modified by any Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Specification.
- 3.3 The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 3.4 The Company reserves the right to claim additional costs and/or program adjustments for which the Buyer would be liable associated with but not limited to scope and program changes associated with the Company's change control procedures through Technical Queries, Early Warning and Variation Processes.

4. DELIVERY

- 4.1 The Buyer shall collect the Goods from the Company's premises at [ADDRESS] or such other location as may be advised by the Company before delivery (**Delivery Location**) within [three] Business Days of the Company notifying the Buyer that the Goods are ready.
- 4.2 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.3 [Delivery of the Goods shall be completed on [the Goods' arrival at the Delivery Location **OR** the completion of loading of the Goods at the Delivery Location]
- 4.3.1 If the Buyer fails to accept or take delivery of the Goods on the date the Company notifies the Buyer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods, the Buyer shall become liable to pay the full price for the Goods immediately.
- 4.4 The Company shall inform the Buyer in writing of the readiness to ship. Within five working days of such notification of readiness to ship the client shall complete such inspection failing which such inspection shall be deemed as completed and the contractor shall have the right to invoice and receive payment in accordance with the agreed terms.
- 4.4.1 The Buyer agrees to issue 1 off signed copy of each delivery note within 2 working days of the delivery to date to the Company Address. Failure by the Buyer to provide these signed documents within these timescales shall indemnify the Company of all obligations associated with damaged or missing products.
- 4.4.2 In the event that the Buyer is unable to accept delivery of equipment following inspection or deemed inspection, the Company shall arrange for the storage of

Conditions of Sale

the equipment and have the right to charge the cost of shipment and storage, including insurance, for the duration of any such storage. Storage of the equipment shall not alleviate the responsibility of the Buyer to make payments in accordance with the agreed contract terms.

Conditions of Sale

QUALITY

- 4.5** The Company warrants that on delivery, and for a period of 12 months from the date of delivery or such other period if different as may be stated in the Proposal (**warranty period**), the Goods shall:
- 4.5.1** conform in all material respects with their description and any applicable Specification;
- 4.5.2** be free from material defects in design, material and workmanship.
- 4.6** Subject to clause 4.7 if:
- 4.6.1** the Buyer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.5;
- 4.6.2** the Company is given a reasonable opportunity of examining such Goods; and
- 4.6.3** the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the [Company's **OR** Buyer's] cost, the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 4.7** The Company shall not be liable for the Goods' failure to comply with the warranty in clause 4.5 if:
- 4.7.1** the Buyer makes any further use of such Goods after giving a notice in accordance with clause 4.6;
- 4.7.2** the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 4.7.3** the defect arises as a result of the Company following any drawing, design or Specification supplied by the Buyer;
- 4.7.4** the Buyer alters or repairs such Goods without the written consent of the Company;
- 4.7.5** the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- 4.7.6** the Goods differ from their Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 4.8** Except as provided in this clause 0, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 4.5.
- 4.9** The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Company under clause 4.6.

5. TITLE AND RISK

- 5.1 The risk in the Goods shall pass to the Buyer on completion of delivery in accordance with clause 4.3.
- 5.2 Title to the Goods shall not pass to the Buyer until:
 - 5.2.1 the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Buyer 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; or
 - 5.2.2 the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer immediately before the time at which resale by the Buyer occurs.
- 5.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
 - 5.3.1 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company'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 the Company's behalf from the date of delivery;
 - 5.3.4 notify the Company immediately if it becomes subject to any of the events listed in clause 10.1.2 to clause 10.1.4.
 - 5.3.5 give the Company such information relating to the Goods as the Company may require from time to time.
- 5.4 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 10.1.2 to clause 10.1.4 then, without limiting any other right or remedy the Company may have the Company may:
 - 5.4.1 require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - 5.4.2 if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

6. PRICING AND PAYMENT

- 6.1 The Proposal is based on the Company's materials and labour costs in force at the date of the Proposal which will be the basis for the pricing of any Goods or Services.
- 6.2 The Company may increase the price of the Goods and/or Services, by giving notice to the Buyer at any time before delivery, to reflect any increase in the applicable costs to the Company that is due to:
 - 6.2.1 any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 6.2.2 overtime or other production costs incurred as a result of a request from the Buyer or any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - 6.2.3 any delay caused by any instructions of the Buyer in respect of the Goods or failure of the Buyer to give the Company adequate or accurate information or instructions in respect of the Goods.
- 6.3 The Company shall invoice the Buyer on or at any time after completion of delivery and the Buyer shall pay each invoice submitted by the Company before the end of the month following the month of delivery unless stated otherwise in the Proposal.
- 6.4 All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any

Conditions of Sale

taxable supply for VAT purposes is made under the Contract by the Company to the Buyer, the Buyer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

- 6.5 If the Buyer fails to make any payment due to the Company under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of [4]% per annum above [FULL NAME OF BANK]'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 Buyer shall pay the interest together with the overdue amount.
- 6.6 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any amount payable by the Company to the Buyer.
- 6.7 The Company reserves the right to suspend the work without risk of breach of contract should the Buyer fail to honour their obligations under the contract. In such circumstance the contract work shall not recommence until such breach has been rectified and the Buyer has agreed to the reimbursement of any costs incurred by Company in respect of such delay.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 All intellectual property rights in or arising out of or in connection with the Services shall be owned by the Company.
- 7.2 All materials, equipment, documents and other property of the Company that may be used in connection with the Contract ("Company Materials") are the exclusive property of the Company.

8. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been 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. 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.

9. LIMITATION OF LIABILITY-PLEASE PAY PARTICULAR ATTENTION

- 9.1** Nothing in these Conditions shall limit or exclude the Company's liability for:
- 9.1.1** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 9.1.2** fraud or fraudulent misrepresentation;
 - 9.1.3** breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - 9.1.4** defective products under the Consumer Protection Act 1987.
- 9.2** Subject to clause 9.1:
- 9.2.1** the Company shall under no circumstances whatever be liable to the Buyer, 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
 - 9.2.2** the Company's total liability to the Buyer 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 £[AMOUNT].
- 9.3** 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.

10. TERMINATION

- 10.1** Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 10.1.1** the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within [NUMBER] days of that party being notified in writing to do so;
 - 10.1.2** the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 10.1.3** the other party takes any step or action in connection with the Company being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
 - 10.1.4** the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 10.2** Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 10.3** Without limiting its other rights or remedies, the Company may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Company if the Buyer fails to pay any amount due under this Contract on the due date for payment, the Buyer becomes subject to any of the events listed in clause 10.1.2 to clause

Conditions of Sale

- 10.1.4 <http://uk.practicallaw.com/2-422-3883?q=&gp=&qo=&qe=-a1036107>, or the Company reasonably believes that the Buyer is about to become subject to any of them.
- 10.4** On termination of the Contract for any reason:
- 10.4.1** the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
- 10.4.2** the Buyer shall return all of the Company Materials it has in its possession or control and any Goods which have not been fully paid for. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 10.4.3** 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 or expiry.
- 10.5** Clauses that expressly or by implication survive termination of the Contract shall continue in full force and effect. The obligations set forth in clause 8 (Confidentiality), clause 9 (Limitation of Liability) and clause 10 (Termination) shall survive termination of the Contract for any reason or completion of performance of the Contract.

11. FORCE MAJEURE

- 11.1** For the purposes of the Contract, **Force Majeure Event** means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company 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 suppliers or subcontractors.
- 11.2** The Company shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 11.3** If the Force Majeure Event prevents the Company from providing any of the Services and/or Goods for more than [NUMBER] weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.

12. ASSIGNMENT

- 12.1** The Purchaser may at any time assign, transfer, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
- 12.2** The Company may not assign, transfer, subcontract 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 Purchaser.

Conditions of Sale

13. NOTICES

- 13.1** Any notice or other communication given to a party under or in connection with this 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].
- 13.2** A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working 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 working day after transmission.
- 13.3** The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14. VARIATION

- 14.1** 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 and signed by the Company.

15. SEVERANCE

- 15.1** 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.

16. WAIVER

- 16.1** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not
- 16.1.1** waive that or any other right or remedy; or
- 16.1.2** prevent or restrict the further exercise of that or any other right or remedy.

17. THIRD PARTY RIGHTS

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

18. GOVERNING LAW & JURISDICTION

- 18.1** 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.

- 18.2** 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).