

Limited Conditions of Sales.

RATIONAL UK LTD.



1. Interpretation

1.1 In these Conditions

"BUYER" means the person who accepts a quotation of the Seller for the sale of the Goods and services or whose order for the Goods and services is accepted by the Seller. "GOODS AND SERVICES" means the goods and services (including any instalment of the goods and services or any part for them) which the Seller is to supply in accordance with these Conditions. "SELLER" means RATIONAL UK LIMITED (incorporated in England under 2576032). "CONDITIONS" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

"CONTRACT" means the contract for the purchase and sale of the Goods and services. "WRITING" includes telex, cable, facsimile transmission and comparable means of communication. Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. The headings in these Conditions are convenience only and shall not affect their interpretation.

2. Basis of Sale

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods and services in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorized representatives of the Buyer and the Seller.
- 2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods and services unless confirmed by the Seller in Writing. In entering the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the goods and services which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders Specifications and Drawings

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods and services shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). 3.4 If the Goods and services are to be manufactured or any process is to be applied to the Goods and services by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods and services which are required to conform with any applicable safety or other statutory requirements or where the Goods and services are to be supplied to the Seller's specification which do not materially affect their quality or performance. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and no terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation. The copyright in all drawings, drafts, plans and costing proposals used by the Seller in the manufacture of the Goods and services shall belong absolutely to the Seller.

4. Price of the Goods and Services

- 4.1 The price of the Goods and services shall be the Seller's quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 If the price quoted by the Seller is increased by more than 7% of the original price quoted, then the Buyer shall have 10 days from the date of being notified of such price increase to give notice to the Seller in writing of its wish to withdraw from the Contract. If the Buyer fails to give notice within this time limit, then it is deemed to accept the increased prices. Except as otherwise stated under the terms of any quotation of the Seller and unless otherwise agreed in Writing between the Buyer and the Seller, all prices given by the Seller include standard packaging and delivery of the Goods and services to the ground floor of the Buyer's premises on the mainland of Great Britain. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

5. Terms of Payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods and services on or at any time after delivery of the Goods and services, unless the Goods and services are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods and services, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods and services are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods and services.
- 5.2 The Buyer shall pay the price of the Goods and services (without any deduction or set-off) within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and title to the Goods and services has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to
- 5.3.1 Cancel the contract or suspend any further deliveries to the Buyer
 - 5.3.2 notwithstanding 5.2 above, demand immediate payment of all invoices issued to the Buyer
 - 5.3.3 appropriate any payment by the Buyer to such of the Goods and services for the Goods and services supplied under any other contact between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and 5.3.4 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 5 per cent per annum above Barclays Bank plc base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.4 If the Buyer fails to make any payments on the due date and the Seller has repossessed the Goods and services, then the Buyers shall be liable to pay the Seller liquidated damages of an amount equal to 50% of the price of the Goods and services representing the loss likely to be suffered by the Seller in having to resell the Goods and services as second hand goods and services.

6. Delivery

- 6.1 Delivery of the Goods and services shall be made by the Buyer collecting the Goods and services at the Seller's premises at any time after the Seller has notified the Buyer that the Goods and services are ready for collection or if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods and services to that place.
- 6.2 Any dates quoted for delivery of the Goods and services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods and services howsoever caused. Time for delivery shall not be of essence unless previously agreed by the Seller in Writing. The Goods and services may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods and services are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Seller fails to deliver the Goods and services for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods and services to replace those not delivered over the price of the Goods and services.
- 6.5 If the Buyer fails to take delivery of the Goods and services or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may
- 6.5.1 store the Goods and services until actual delivery and charge the Buyer reasonable costs (including insurance) of storage; or
 - 6.5.2 sell the Goods and services at the best price readily obtainable (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.6 Returns, Transportation Costs and Restocking Fee; Where the Buyer returns Goods and services to the Seller for any reason other than a valid claim accepted by the Seller under Condition 8 (Warranty), the Buyer shall be responsible for all reasonable costs incurred by the Seller in connection with such return, including (without limitation) transportation, handling and insurance costs. In addition, the Seller shall be entitled to charge the Buyer a restocking fee equal to 15% of the price of the returned Goods and services, reflecting the administrative, handling, inspection and re-stocking costs incurred by the Seller. No Goods and services may be returned without the prior written consent of the Seller, and any consent given shall be without prejudice to the Seller's right to recover the costs and charges set out in this Condition 6.6.

7. Risk and Property

- 7.1 Risk of damage or loss of the Goods and services shall pass to the Buyer
- 7.1.1 in the case of the Goods and services to be collected by the Buyer or his agent from the Seller's premises, at the time when the Seller notifies the Buyer that the Goods and services are available for collection; or
- 7.1.2 in the case of the Goods and services to be delivered either at the Seller's premises or elsewhere at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods and services, the time when the Seller has tendered delivery of the Goods and services.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods and services, or any other provision of these conditions, title to the Goods and services shall remain with the Seller and shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and services and where the Buyer is dealing in the course of a business the price of all other Goods and services are to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as title to the Goods and services passes to the Buyer, the Buyer shall hold the Goods and services as the Seller's fiduciary agent and bailee, and shall keep the Goods and services separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. The Buyer shall be entitled to resell or use the Goods and services in the ordinary course of its business. At the Seller's request the Buyer will assign to the Seller any rights which it may have against any purchaser to which the Buyer has sold the Goods and services.
- 7.4 Until such time as title to the Goods and services passes to the Buyer (and provided the Goods and services are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods and services to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods and services are stored and repossess the Goods and services.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods and services which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. Warranty and Liability

- 8.1 The Seller warrants that on delivery and for a period of 12 months from the date of delivery the Goods and services (the "Warranty Period") shall:
- 8.1.1 conform in all material respects with their specification, and
- 8.1.2 be free from material defects in design, material and workmanship.
- 8.2 Subject to 8.7 below, any claim by the Buyer which is based on any defect in the quality or condition of the Goods and services or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller:
- 8.2.1 on delivery; or
- 8.2.2 where the defect or failure was not apparent on immediate inspection, within 6 days after discovery of the defect or failure provided that notice is given to the Seller within the Warranty Period.
- 8.3 If delivery is not refused, and the Buyer does not notify the Seller in accordance with 8.2 above, the Buyer shall not be entitled to reject the Goods and services and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods and services had been delivered in accordance with the Contract.
- 8.4 Subject to 8.5, where any valid claim in respect of any of the Goods and services which is based on any defect in the quality or condition of the Goods and services or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall at its option:
- 8.4.1 repair the Goods and services (or the part in question) free of charge; or
- 8.4.2 replace the Goods and services (or the part in question) free of charge; or
- 8.4.3 in the event that the Seller in its sole discretion determines that the Goods and services (or the part in question) are beyond economic repair, refund to the Buyer the price of the Goods and services (or a proportionate part of the price).
- 8.5 If any Goods and services (or part thereof), during the recommended service life, and if fitted to Goods and services stated in the current catalogue of the Seller is found to be defective, the Seller will accept responsibility for damage to other working parts of the Goods and services solely and directly attributed to a manufacturing defect in the Goods and services (or part thereof), and will restore such working parts to a condition equivalent to the existing condition prior to failure.
- 8.6 If the Seller agrees to replace the Goods and services (or the part in question) and fails to do so within 6 weeks of being notified of the defect by the Buyer then the Buyer shall be entitled to serve a further notice on the Seller demanding replacement within 6 weeks from the date of this notice failing which the Buyer will be entitled to withdraw from the Contract and claim damages from the Seller.
- 8.7 The Seller shall not be liable for the Goods and services' failure to comply with the warranty set out in 8.1 above:
- 8.7.1 in respect of any defect in the Goods and services arising from any drawing, design or specification supplied by the Buyer; and
- 8.7.2 in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods and services without the Seller's approval.

- 8.8 Except as provided in this Condition 8, the Seller shall have no liability to the Buyer in respect of the Goods and services' failure to comply with the warranty set out in 8.1 above.
- 8.9 Except as set out in these Conditions, all warranties, conditions, and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.10 These Conditions shall apply to any repaired or replacement Goods and services supplied by the Seller.
- 8.11 Nothing in these Conditions shall limit the Seller's liability for:
- 8.11.1 death or personal injury caused its negligence, or the negligence or its employees, agents or subcontracts (as applicable);
 - 8.11.2 fraud or fraudulent misrepresentation;
 - 8.11.3 breach of the terms implied by section 12 of the Sale of Goods and services Act 1979;
 - 8.11.4 defective products under the Consumer Protection Action 1987; and
 - 8.11.5 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 8.12 Subject to 8.11 above, the Seller shall under no circumstances 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.
- 8.13 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods and services, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing; the following shall be regarded as causes beyond the Seller's reasonable control
- 8.13.1 Act of God, explosion, flood, tempest, fire or accident;
 - 8.13.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 8.13.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part or any governmental, parliamentary or local authority;
 - 8.13.4 import or export regulations or embargoes;
 - 8.13.5 strikes, lock-outs or other industrial actions or trade disputes (weather involving employees of the Seller or of a third party);
 - 8.13.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 8.13.7 power failure or breakdown in machine

9. Indemnity

- 9.1 If any claim is made against the Buyer that the Goods and services infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property right of any other person, the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that the Seller is given full control of any proceedings or negotiations in connection with such claim;
- 9.1.1 the Seller is given full control of any proceedings or negotiations in connection with such claim;
 - 9.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
 - 9.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
 - 9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavors to do);
 - 9.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
 - 9.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the buyer under this clause.

10. Insolvency of Buyer

- 10.1 If the Customer becomes subject to any of the events listed in 10.2 below then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods and services have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary
- 10.2 For the purposes of 10.1 the relevant events are:
- 10.2.1 the Buyer makes any voluntary arrangements with its creditors or becomes subject to any administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 10.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property of assets of the Buyer; or
 - 10.2.3 the Buyer ceases, or threatens to cease, to carry on business; or
 - 10.2.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly

11. General

- 11.1 RATIONAL AG and accordingly the Seller may perform any of its obligations through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
- 11.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

- 11.3 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of this provision in question shall not be affected thereby
- 11.5 These Conditions shall be governed by and construed in accordance with the laws of England and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the English Court.