

**ROB POND LTD GENERAL TERMS AND CONDITIONS OF SUPPLY****1 DEFINITIONS**

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Specification Document.
- 1.2 "Customer" means the organisation or person who purchases goods and services from the Supplier;
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, knowledge and all other forms of intellectual property wherever in the world enforceable;
- 1.4 "Specification Document" means a statement of work, quotation, order confirmation, or other similar document describing the goods and services to be provided by the Supplier;
- 1.5 "Supplier" means Rob Pond Ltd.

**2 GENERAL**

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of goods and services by the Supplier to the Customer.
- 2.2 Before the commencement of the services the Supplier shall submit to the Customer a Specification Document which shall specify the goods and services to be supplied and the price payable. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Specification Document. All Specification Documents shall be subject to these Terms and Conditions.
- 2.3 The Supplier shall use all reasonable endeavours to complete the services within estimated time frames, but time shall not be of the essence in the performance of any services.

**3 PRICE AND PAYMENT**

- 3.1 The price for the supply of goods and services are as set out in the Specification Document. The Supplier shall invoice the Customer on the day of shipment unless otherwise agreed.
- 3.2 Unless otherwise stated in the Specification Document, all prices are in pound sterling and exclusive of VAT.
- 3.3 The Supplier reserves the right to impose carriage charges to the Customer, in instances whereby minimum order values are not met. The Supplier will communicate this to the Customer prior to the supply of goods and services and will be reflected in the Specification Document.
- 3.4 All prices are subject to alteration, without prior notice from the Supplier, and all orders are accepted on the understanding that the Customer will be invoiced at prevailing prices on the day of despatch, and the Customer shall pay such invoiced prices.
- 3.5 Unless otherwise agreed, payment for the price of goods or services is due in pound sterling and shall be payable not later than 30 days after the last day of the month in which the Supplier invoiced the goods or services.
- 3.6 Time for payment is of the essence of the Agreement. If payment for goods and services is not made in full by the due date, the Supplier reserves the right to suspend the delivery of goods and services, under this or any other Agreement with the Customer.
- 3.7 Should the Customer fail to comply with the Supplier's payment terms, the Supplier shall be entitled to interest on any amount outstanding from the due date until the actual date of payment, at a rate of 5% above the Bank of England base rate in force at the time of payment.
- 3.8 Where the supply of goods and services may be fulfilled in separate instalments, deliveries or parts, payment for each instalment, delivery or part shall be made under sub-clauses 3.1 to 3.7.

**4 SPECIFICATION OF THE GOODS**

All goods shall be required only to conform to the specification in the Specification Document. For the avoidance of doubt no description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the Supplier and no representation, written or oral, correspondence or statement shall form part of the Agreement. The Supplier reserves the right to change the specification of goods and services at any time, without notice.

**5 DELIVERY**

- 5.1 The date of delivery specified by the Supplier is an estimate only. Time for delivery shall not be of the essence of the Agreement and the Supplier shall not be liable for any loss, costs, damages, charges, or expenses caused directly or indirectly by any delay in the delivery of the goods or services.
- 5.2 Delivery of the goods shall be deemed to have taken place:
- 5.2.1 where the Supplier transports the goods, at the time the goods are unloaded from the Suppliers' vehicle or any third-party carrier at the station, port or location specified by the Customer;
- 5.2.2 where the Customer transports the goods, at the time the goods are collected by the Customer or a third party from the Suppliers' premises or pre-arranged location.
- 5.3 Unless the Customer gives written notice to the Supplier, within 5 working days of the date of delivery of goods (as defined under clause 5.2), that the goods are not in conformity with the Specification Document, the Customer shall be deemed to have accepted the goods and shall be bound to make payment thereof on the due date.

**6 RISK AND PROPERTY OF GOODS**

- 6.1 Risk of damage to, or loss of the goods, shall pass to the Customer at the time of delivery by the Supplier, or collection by the Customer or, if the Customer fails to take delivery of the goods, the time when the Supplier has tendered delivery of the goods.
- 6.2 Notwithstanding delivery and passing of risk of goods, or any other provision of these conditions, the property of any goods shall not pass to the Customer until the Supplier has received payment in full of:-
- 6.2.1 the price of those goods;
- 6.2.2 the price of all other goods agreed to be sold by the Supplier to the Customer for which payment in full has not been received by the Supplier.
- 6.3 Until such time as the property of the goods passes to the Customer, the Customer shall, at its own cost, hold the goods:
- 6.3.1 as the Suppliers' fiduciary agent and bailee;
- 6.3.2 separate from those of the Customer and third parties;
- 6.3.3 properly stored, protected and insured;
- 6.3.4 identified as the Suppliers' property.
- 6.4 Until such time as the property of the goods passes to the Customer, and provided the goods are still in existence and have not been sold, the Supplier shall be entitled to require the Customer to deliver up such goods to the Supplier and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the goods are stored and re-possess either:
- 6.4.1 the goods unpaid for;
- 6.4.2 other goods which are the property of the Supplier, up to the value of goods unpaid for.
- 6.5 The Customer shall not make any alterations to the goods or their packaging or alter, remove, or temper with any marks, numbers of other means of identification on or in relation to the goods of the Supplier.
- 7 CUSTOMER'S OBLIGATIONS**
- 7.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:
- 7.1.1 co-operate with the Supplier;
- 7.1.2 provide the Supplier with any information reasonably required by the Supplier;
- 7.1.3 obtain all necessary permissions and consents which may be required before the commencement of the services; and
- 7.1.4 comply with such other requirements as may be set out in the Specification Document or otherwise agreed between the parties.
- 7.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 7.1.
- 7.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the goods and services agreed to in the Specification Document, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed and in respect of cancellations on less than five working days' written notice the full amount of the goods and services contracted for as set out in the Specification Document, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 7.1 shall be deemed to be a cancellation of the goods and services and subject to the payment of the damages set out in this Clause.
- 7.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:
- 7.4.1 the Supplier shall have no liability in respect of any delay to the completion of any project;
- 7.4.2 if applicable, the timetable for the project will be modified accordingly;
- 7.4.3 the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.
- 8 ALTERATIONS TO THE SPECIFICATION DOCUMENT**
- 8.1 The parties may at any time mutually agree upon and execute new Specification Documents. Any alterations in the scope of goods and/or services to be provided under this Agreement shall be set out in the Specification Document, which shall reflect the changed goods and/or services and price and any other terms agreed between the parties.
- 8.2 The Customer may at any time request alterations to the Specification Document by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall, within five working days or such other period as may be agreed between the parties, advise the Customer by

notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.

- 8.3 Where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.
- 8.4 Where the Supplier gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Specification Document shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.

**9 WARRANTY**

- 9.1 The Supplier warrants that as from the date of delivery for a period of 1 year the goods and all their component parts, where applicable, are free from any defects in design, workmanship, construction or materials. In the event of failure, The Supplier will only offer a replacement or refund of the faulty item. The Supplier will not be held responsible for any replacement or re-installation costs, travelling expenses etc.
- 9.2 The Supplier warrants that the services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices. Except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the goods and services to be provided by the Supplier.

**10 RETURNS**

- 10.1 Once despatched, goods may not be returned without written consent from the Supplier. Where such consent is granted, a credit will only be issued at the price originally charged, less a minimum of 20% to cover re-stocking and administration. If the transport of returned goods is arranged by the Supplier, the Supplier reserves the right to deduct the cost from the credit.
- 10.2 The return of goods reported as faulty/defective must be accompanied by a return form, which must be completed and sent to the Supplier before the goods are transported. In instances where goods returned as faulty/defective are found not to be so, the Supplier reserves the right to charge the Customer transport and/or other costs associated with the returned product(s).

**11 INDEMNIFICATION**

- The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any goods and/or services provided by the Supplier in accordance with the Specification Document infringes a patent, copyright or trade secret or other similar right of a third party.

**12 LIMITATION OF LIABILITY**

- 12.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Customer to which the claim relates.
- 12.2 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable, or the Supplier had been made aware of the possibility of the Customer incurring such a loss.
- 12.3 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents, or sub-contractors.

**13 TERMINATION**

- Either party may terminate this Agreement forthwith by notice in writing to the other if:
- 13.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so; the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- 13.2 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- 13.3 the other party ceases to continue its business or substantially the whole of its business; or
- 13.4 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee, or similar officer is appointed over any of its assets.

**14 INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Supplier, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.

**15 FORCE MAJEURE**

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

**16 INDEPENDENT CONTRACTORS**

The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement or any applicable Specification Document.

**17 ASSIGNMENT**

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.

**18 SEVERABILITY**

If any provision of this Agreement is held invalid, illegal, or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed, and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

**19 WAIVER**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

**20 NOTICES**

Any notice to be given by either party to the other may be served by email, personal service or by post to the address of the other party given in the Specification Document or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

**21 ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

**22 NO THIRD PARTIES**

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

**23 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.