

H B Rutherford & Co Limited Conditions of Sale

1. DEFINITIONS

For the purpose of any Contract to which these terms and conditions apply the following words and expressions shall mean:

"Customer" means any party who enters into a Contract with the Supplier;

"Contract" means each order placed by the Customer and accepted by the Supplier in writing together with these Conditions of Sale;

"Delivery Date" means the date on which the Goods are delivered under clause 8.1.1, or are delivered or ought to have been delivered under clause 8.1.2;

"Price" means the price of relevant Goods and Services sold or supplied by the Supplier to the Customer under any Contract; "Force Majeure" means any circumstances beyond a party's reasonable control including, without limitation, acts of god, strikes or other form of industrial action and war;

"Goods" means the Supplier's product as specified in the Contract;

"Intellectual Property Rights" means any inventions, know-how, patents, registered designs, design rights, trade marks, service marks, copyrights, database rights, semi-conductor design rights and topography rights and all other rights of a similar nature, whether or not registered and including any application or right to register the same;

"Services" means such services as the Supplier may provide from time to time ancillary to the supply of the Goods;

"Supplier" means H B Rutherford & Co Ltd, a company incorporated under the Companies Acts (Company No. SC056717) and having its registered office address at Bridge House, 118 Church Street, Broughty Ferry, Dundee, DD5 1EU.

1.2 In these Conditions of Sale, except where the context requires otherwise, words in the singular shall include the plural and vice versa. Headings are for convenience only and shall not affect interpretation.

2. QUOTATION AND CONDITIONS OF SALE

2.1 Each quotation made by the Supplier shall be valid for a maximum period of thirty (30) days from the date the same is issued to the Customer unless otherwise agreed.

2.2 The Supplier shall sell Goods and Services to the Customer subject to these Conditions of Sale only and to the exclusion (to the extent permissible by law) of all other terms, conditions, guarantees and warranties whether express or implied, statutory or otherwise. The terms and conditions contained in any of the Customer's order forms or other documentation shall not apply.

2.3 All orders given by the Customer to the Supplier are subject to individual written acceptance by the Supplier.

3. PRICES

3.1 The Supplier will sell to the Customer Goods and Services in consideration of the Price. The Price for Goods shall include the Supplier's standard packaging but shall exclude carriage and insurance charges.

3.2 The Price is exclusive of any applicable sales tax (including Value Added Tax) and any other taxes, duties and charges levied or assessed in the United Kingdom in connection with the sale/purchase and export/import of the Goods and Services. The Customer shall pay any applicable sales tax and any other taxes, duties and charges in addition to the Price.

The Supplier reserves the right and shall be entitled at any time prior to delivery of the Goods and/or Services on giving written notice to the Customer to increase the Price in the event of the Supplier incurring any extra costs due to increased labour or material costs caused by any change in delivery dates, quantities or specifications for the Goods which are requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give adequate information or instructions. For the avoidance of doubt, any corrections required other than as a result of an error on the part of the Supplier, including the style and cost of additional proofs necessitated by such corrections, will incur costs additional to the Price. Where proofs are submitted to the Customer for approval, the Supplier shall have no liability for any errors not corrected by the Customer. The Customer shall be bound to accept the Goods or Services when they are ready for delivery by the Supplier.

4. TERMS OF PAYMENT

4.1 The Customer will pay the Price for the Goods and Services (together with any applicable sales tax, duties and charges payable) in accordance with the payment terms set out in clause 4.2.

4.2 Payment will be paid in sterling without any withholding, deduction or set-off. All payments are due by the Customer within thirty days of the date of the Supplier's invoice. The Supplier shall submit invoices to the Customer monthly in arrears. Time of payment shall be of the essence of the Contract.

4.3 The Supplier reserves the right to request advance payments for any Goods and Services.

4.4 If the Customer is in default with any payment then, without prejudice to any other right or remedy available to the Supplier:

4.4.1 all sums due from the Customer to the Supplier shall become due and payable immediately without demand; and

4.4.2 the Supplier may suspend the provision of any further Goods and Services to the Customer and/or terminate the Contract; and

4.4.3 the Customer shall pay the Supplier interest on all sums outstanding at 5% above the base lending rate of the Royal Bank of Scotland plc until receipt of cleared funds from the Customer.

5. DELIVERY

5.1 Following receipt of an order from the Customer, the Supplier will advise the Customer of its proposed delivery date(s). The Supplier shall not be deemed to have accepted any order until delivery date(s) have been agreed between the parties.

5.2 If the parties have agreed that part of the Price shall be paid prior to the delivery of the Goods the Supplier will not deliver Goods until it has received such payment from the Customer on or prior to the agreed delivery date.

5.3 Unless otherwise agreed in writing the Supplier may deliver Goods prior to the agreed delivery date and may deliver Goods in instalments.

5.4 Should expedited delivery be agreed to by the Supplier additional cost incurred thereby shall be chargeable to the Customer.

6. POSTPONED DELIVERY

If the Customer requests the Supplier to postpone delivery of the Goods, the Supplier may charge the Customer the reasonable additional costs of handling and storage. The Customer shall remain liable, however, to pay the Price (and any applicable sales tax and any other taxes, duties and charges) in accordance with the payment terms agreed pursuant to clause 4.2.

7. CANCELLATION OF ORDERS

The Customer shall not be entitled to cancel any order for Goods, in whole or in part.

8. PASSING OF RISK AND TITLE

8.1 The risk of loss, damage or destruction of the Goods shall pass to the Customer:

8.1.1 in the case of Goods to be delivered at the Supplier's premises, at the time when the Supplier notifies the Customer that the Goods are available for collection; or

8.1.2 in the case of Goods to be delivered otherwise than at the Supplier's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Supplier has attempted to deliver the Goods.

8.2 Title to the Goods shall pass to the Customer upon receipt by the Supplier of the Price in full.

8.3 Until the Supplier has received the Price in full for the Goods and all other goods agreed to be sold by the Supplier to the Customer for which payment is then due:

8.3.1 the Customer shall keep the Goods in the same condition as when delivered by the Supplier and clearly identified as the property of the Supplier; and

8.3.2 the Customer shall keep the Goods insured against the risk of loss, damage or destruction for their full replacement value with a reputable insurance company and exhibit to the Supplier on request evidence of the Customer's compliance with this clause as often as reasonably requested by the Supplier;

8.3.3 the Customer shall allow or shall procure for the Supplier all access to premises of the Customer or other premises for the purpose of recovering possession of the Goods. The Supplier shall be entitled to recover any Goods in the event of non-payment of the Price in respect of such Goods; and

8.3.4 the Customer shall not in any way charge by way of security for any indebtedness any of the Goods but if the Customer does so all monies owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) become due and payable.

9. SUSPENSION OF PRODUCTION

9.1 The Supplier may suspend or discontinue production of any Goods at any time for any reason, including, without limitation, the unavailability of components, provided that where possible it shall endeavour to give the Customer not less than six (6) months notice of suspension or discontinuance or otherwise shall give such notice as is reasonable if the suspension or discontinuance is due to Force Majeure.

9.2 Where possible the Supplier will:

9.2.1 specify to the Customer the date after which orders for the Goods affected shall no longer be accepted; and

9.2.2 complete the manufacture of relevant Goods ordered by the Customer prior to such date.

10. WARRANTY

10.1 Subject to this Clause 10, the Supplier warrants that, at the time of delivery, the Goods will correspond with any description relating to them, and shall be free from material defects.

10.2 The Supplier shall not be liable for any defects that are attributable to:

10.2.1 any specification or materials supplied by the Customer;

10.2.2 fair wear and tear, wilful damage, negligence, normal working conditions, failure to follow the Supplier's instructions (whether oral or in writing), misuse or alteration of the Goods without the Supplier's approval;

10.2.3 if the Price for the Goods has not been paid in full by the due date for payment.

10.3 Provided the Customer advises the Supplier in writing of any claim under clause 10.1 above within fourteen (14) days of the Delivery Date, the Supplier shall arrange, at its cost, for the return of the defective Goods and (unless a credit or refund is given) the delivery of replacement Goods to the Customer.

10.4 If the Supplier establishes that a reported defect, error or failure is not covered by the warranty given under this clause 10 the Customer shall be liable for the costs of the Supplier's investigative and remedial work and the repair or replacement of the Goods at the Supplier's then current prices, and for all associated carriage and insurance costs.

10.5 The Supplier shall not be liable for any failure of the Goods caused by the use of the Goods in conjunction with any other equipment or software which has not been provided by the Supplier or caused by any use of the Goods other than for the purpose for which they were designed.

10.6 The warranties given under this clause 10 shall be void if any party other than the Supplier or its nominated repair service organisation has modified, altered, or added to or repaired the Goods or has attempted to do so.

10.7 The warranties given under this clause 10 are subject to the Customer complying with the provisions of this clause 10 and are given in lieu of and, to the extent permissible by law, exclude all other guarantees, conditions and warranties implied by law including, without limitation, as to satisfactory quality, fitness for purpose or correspondence to description or sample.

10.8 The remedies provided by this clause 10 are subject to the Customer complying with the provisions of this clause 10 and shall be the Customer's sole remedies in respect of any breach of warranty to the exclusion of all others.

11. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

11.1 Subject to the provisions of clause 11.7 and clause 16, the Supplier shall indemnify the Customer against any direct damages (excluding special, indirect or consequential damages), direct costs and direct expenses which may be finally awarded against the Customer by a court of competent jurisdiction as a result of any claim that any of the Goods or their use by the Customer infringes the Intellectual Property Rights of any third party.

11.2 If any claim is made against the Customer which may give rise to a claim for indemnification under clause 11.1, the Supplier's obligation to indemnify the Customer shall be conditional upon the Customer:

11.2.1 notifying the Supplier in writing of any such claim as soon as reasonably practicable but in the event not later than thirty (30) days from receipt thereof by the Customer;

11.2.2 not making any admission as to liability or agreeing to any settlement or compromise of any such claim without the prior written consent of the Supplier;

11.2.3 allowing the Supplier, at its expense, to conduct and/or settle all negotiations, proceedings and litigation arising from any such claim and, at the Supplier's expense, giving the Supplier all reasonable assistance in connection with the conduct of any such negotiation, proceedings and litigation in accordance with the reasonable instructions of the Supplier in connection therewith; and

11.2.4 the Customer not doing anything which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under such policy or cover (which the Customer shall use its best endeavours to do).

11.3 The obligation to indemnify under clause 11.1 shall not apply:

11.3.1 to any infringement arising as a result of the Goods having been altered, modified or combined with other goods or materials; or

11.3.2 to the extent that such claim relates to aspects of the Goods developed or manufactured to designs or specifications provided by the Customer or which otherwise incorporate documents, materials, ideas, data or other information provided by the Customer; or

11.3.3 where such claim relates to the Goods being used other than for the purpose for which they were supplied.

11.4 Should any of the Goods or their use become, or in the opinion of the Supplier, may become, the subject of a claim in respect of the infringement of the Intellectual Property Rights of a third party the Supplier may:

11.4.1 use all reasonable endeavours to obtain for the Customer a right to use the Goods by procuring a licence or otherwise; or

11.4.2 where technically possible, modify the Goods so as to make them non-infringing; or

11.4.3 replace the Goods with other non-infringing products which are with substantially equivalent.

11.5 The Customer shall notify the Supplier in writing without delay in the event of it being of the opinion that the Goods or their use may infringe the Intellectual Property Rights of any third party.

11.6 Save as provided in this clause 11 the Supplier shall not have any liability in respect of a claim of infringement of any third party Intellectual Property Rights.

11.7 Where the Goods are based on the specification or requirements or incorporate any materials sourced or supplied by the Customer, the Customer shall indemnify and hold harmless the Supplier, its directors, employees and agents, in respect of all and any losses, claims, damages and expenses incurred or suffered by the Supplier as a result of any claim or action by any third party that any of the Goods or their use by the Customer or any third party infringes the Intellectual Property Rights of any third party.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 All Intellectual Property Rights in the Goods and Services shall be the exclusive property of the Supplier, unless the parties agree otherwise in writing.

13. ASSIGNATION AND SUB CONTRACTING

13.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

13.2 The Supplier may assign or sub-contract the Contract or any part of it to any person, firm or company.

14. TERMINATION

14.1 Either party may terminate the Contract with immediate effect if:

14.1.1 the other party commits a material breach of its obligations under the Contract, and, in the case of a breach capable of being remedied, does not remedy the breach in thirty (30) days after receipt of notice in writing from the non-defaulting party requiring it to do so; or

14.1.2 payment of any sum due by one party to the other remains unpaid for a period of thirty (30) days after issue of final demand therefor; or

14.1.3 the other party ceases to trade or to pay its debts in the normal course of business, enters into or proposes to enter into a voluntary arrangement or composition with its creditors, becomes insolvent, bankrupt or goes into liquidation (other than for the purpose of solvent reconstruction or amalgamation) or has a receiver, administrator, trustee or similar officer appointed in respect of all or substantial part of its business and assets or otherwise ceases to be a validly existing corporation.

14.2 The Supplier may terminate the Contract with immediate effect if the Customer suffers a significant change of ownership, or merges or consolidates with any other party with the result that the Control of the Customer (as defined in Section 416 of the Income and Corporation Taxes Act, 1988) vests in a competitor (or vice versa).

14.3 Termination of the Contract shall have no effect on the rights and remedies of either party which have arisen prior to termination.

14.4 The Customer shall return to the Supplier promptly following termination (carriage and insurance paid) or otherwise deal with as the Supplier may request, all Goods in the Customer's possession or control which have not been paid for by the Customer.

15. CONFIDENTIALITY

15.1 The parties undertake on behalf of themselves and undertake to procure that their employees, agents and permitted subcontractors will keep confidential and will not use for their own purposes (other than for fulfilling their obligations under the Contract) nor without the prior written consent of the other disclose to any third party any information of a confidential nature relating to the other (including, without limitation, any trade secrets, confidential or proprietary technical information, trading and financial details and any other information of commercial value) which may become known to the other under or in connection with the Contract.

15.2 This clause shall not apply to any such information which either party can show is public knowledge or was already known to at the time of disclosure or subsequently becomes public knowledge other than by breach of the Contract or subsequently comes lawfully into its possession from a third party who was not restricted from disclosing it. Both parties shall return to the other all confidential information of the other in written or tangible form or any other media on the termination of the Contract. The terms of this clause 15 shall survive the expiry or earlier termination of the Contract.

16. LIABILITY

16.1 Except as provided in clause 16.3 below the Supplier's liability for any loss, damage, cost or expenses under or in connection with the Contract and/or under delict and in connection with the Goods and Services provided by the Supplier howsoever arising, including without limitation, loss, damage, cost or expenses caused by breach of contract, negligence or breach of statutory or any other duty, shall in no circumstances exceed the aggregate value of the Price actually received by the Supplier from the Customer of the Goods and/or Services to which any claims for loss, damage, cost and expenses relate.

16.2 The Supplier shall not under any circumstances be liable for any pecuniary loss of profits, loss or business, loss of contracts, loss or use or loss of data or any special indirect or consequential loss or damage whatsoever and howsoever caused.

16.3 The exclusions and limitations contained in clauses 16.1 and 16.2 shall not apply to any loss, damage, cost and expenses in respect of injury to or death of any person caused by negligence of the Supplier.

17. FORCE MAJEURE

Neither party will be liable to the other party for any delay in or failure to perform or comply with its obligations (except those relating to payment) under this Agreement as a result of Force Majeure. The affected party should promptly notify the other of the commencement and cessation of Force Majeure. If Force Majeure continues for a period in excess of ninety (90) days either party shall be entitled to terminate the Contract forthwith by written notice and without liability for termination. If the Contract is terminated under this clause 15 all orders for Goods and Services placed prior to the date of termination will be deemed to have been cancelled and the Customer shall pay the Supplier for all Goods and Services already supplied, work-in-progress, and the cost of materials reasonably ordered by the Supplier in the expectation of completing the Contract.

18. WAIVER

Any failure or delay by either party to exercise or enforce any right shall not affect its right to exercise or enforce that right against the other party nor shall any waiver of any breach of any provision be taken as a waiver of any subsequent breach or of the provision itself. To be effective any waiver must be in writing, signed by an authorised representative of the waiving party and be delivered to the other party.

19. ENTIRE AGREEMENT AND VARIATION

The Contract embodies the entire agreement between the parties regarding its subject matter to the exclusion of any prior communications. The parties acknowledge that neither has placed any reliance on any prior communications other than those expressly incorporated in the Contract. The parties irrevocably and unconditionally waive any right that they may have to rescind the Contract and/or claim damages for any misrepresentation whether or not contained in the Contract or breach of any warranty was made fraudulently. The Customer also acknowledges that all particulars, descriptions and specifications set out in catalogues, brochures and similar documents are approximate only and intended for general guidance. No variation of the terms and conditions of the Contract shall have effect unless it is agreed to in writing and signed by the parties authorised representative.

20. SEVERABILITY

If any provision of the Contract, including any part of any clause and/or sub-clause, be held as void, contrary to law or unenforceable, the validity and enforceability of the remainder of the Contract shall not be affected.

21. NOTICES

Any notice to be given under the terms of the Contract shall be given by recorded delivery post in writing addressed to the party for whom it is intended at its address stated in the Contract or, in the case of the Customer, at the last address notified by the Customer to the Supplier, or such other address as may be notified in writing subsequently for the receipt of notices. Notices shall be deemed to have been received two working days after posting.

22. LAW AND JURISDICTION

The Contract shall be subject to and interpreted in accordance with Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.

23. NO PARTNERSHIP AGENCY OR JOINT VENTURE

The parties are independent contracting parties and the Contract is not intended to establish or evidence a relationship of partnership, agency or joint venture between the parties.