



## **TERMS AND CONDITIONS OF SALE AND SERVICE**

### **1. Interpretation**

- 1.1 In these Conditions:
- 1.2 "CUSTOMER" means the person who accepts a quotation of the Supplier for the sale and/or supply of the Products and whose order for the Products is accepted by the Supplier.
- "CONDITIONS" means the standard terms and conditions of sale and service set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Supplier.
- "CONTRACT" means the contract for the purchase and sale of the Products.
- "GOODS" means the goods (including any instalment or any part for them) which the Supplier is to supply in accordance with these Conditions.
- "PRODUCTS" means the Goods (including any instalment of the goods or any parts for them) and/or the Services which the Supplier has agreed to supply in accordance with these Conditions.
- "SERVICES" means the services to be provided by the Supplier for the Customer in accordance with these Conditions.
- "SUPPLIER" means Rapid Computers Limited of 138-140 Queens Drive, Childwall Fiveways, Liverpool, L15 6XX, trading as Rapid Technologies.
- "WRITING" includes facsimile transmission, E-Mail and comparable means of communication.
- 1.3 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.
- 1.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### **2. Basis of the Sale and/or Supply of the Products**

- 2.1 The Supplier shall sell and the Customer shall purchase the Products in accordance with any written quotation of the Supplier which is accepted by the Customer, or any written order of the Customer which is accepted by the Supplier, subject in either case to these Conditions, which shall govern the Contract to the exclusion of all other terms and conditions, express or implied, by Statute or otherwise, 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 Customer.

- 2.2 No variation to these Conditions shall be binding unless in Writing and signed by a Director of the Supplier.
- 2.3 The Supplier's employees or agents are not authorised to make any representations concerning the Products unless confirmed by a Director of the Supplier in Writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed in Writing.
- 2.4 Any advice or recommendation given by the Supplier or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Products which is not confirmed in Writing and signed by a Director of the Supplier is followed or acted upon entirely at the Customer's own risk, and accordingly, the Supplier shall not be liable for any such advice or recommendation which is not so 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 Supplier shall be subject to correction without any liability on the part of the Supplier.

### **3. Orders and Specifications**

- 3.1 No order submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed as accepted by the Supplier's authorised representative.
- 3.2 The Customer shall be responsible to the Supplier for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Supplier any necessary information relating to the Products within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of, and any specification for, the Products shall be those set out in the Supplier's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Supplier).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Products by the Supplier in accordance with a specification submitted by the Customer, the Customer shall fully indemnify the Supplier against all losses, damages, costs and expenses awarded against or incurred by the Supplier in connection with, or paid or agreed to be paid by the Supplier 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 as a result of the Supplier manufacturing, or applying such process to, the Goods in accordance with the specification supplied by the Customer.
- 3.5 The Supplier reserves the right to make any changes to the specification of the Products which are required in order to conform with any applicable safety or other statutory requirements or, where the Products are to be supplied to the Supplier's specification, which do not materially affect their quality or performance.
- 3.6 No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in Writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred.

#### **4. Price of the Products**

- 4.1 The price of the Products shall be the Supplier's quoted price or, where no price has been quoted, the Supplier's list price at the time of the quotation.
- 4.2 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Products to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the costs of labour, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Products which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Supplier, and unless otherwise agreed in Writing between the Customer and the Supplier, all prices are given by the Supplier on an ex-works basis, and where the Supplier agrees to deliver the Products otherwise than at the Supplier's premises, the Customer shall be liable to pay the Supplier's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Supplier.
- 4.5 The cost of pallets and returnable containers will be charged to the Customer in addition to the price of the Products, but full credit will be given to the Customer provided that they are returned undamaged to the Supplier before the due payments date.

#### **5. Terms of Payment**

- 5.1 Subject to any special terms agreed between the Customer and the Supplier, the Supplier shall be entitled to invoice the Customer for the price of the Products on or at any time after delivery of the Products, unless the Products are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Products, in which event the Supplier shall be entitled to invoice the Customer for the price at any time after the Supplier has notified the Customer that the Products are ready for collection or (as the case may be) the Supplier has tendered delivery of the Products.
- 5.2 The Customer shall pay the price of the Products within 30 days of the date of the Supplier's invoice, notwithstanding that delivery may not have taken place and the property in the Products has not passed to the Customer. 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 Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
- 5.3.1 cancel the contract and/or suspend any further deliveries to the Customer; and/or
- 5.3.2 appropriate any payment made by the Customer to such of the Products (or the Products supplied under any other contract between the Customer and the Supplier) as

the Supplier may think fit (notwithstanding any purported appropriation by the Customer); and/or

5.3.3 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above AIB (GB) Bank 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).

## **6. Delivery**

6.1 Delivery of the Products shall be made by the Customer collecting the Products at the Supplier's premises at any time after the Supplier has notified the Customer that the Products are ready for collection or, if some other place for delivery is agreed by the Supplier, by the Supplier delivering the Products to that place.

6.2 Any dates quoted for delivery of the Products are approximate only and the Supplier shall not be liable for any delay in delivery of the Products howsoever caused. Time for delivery shall not be of the essence. The Products may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Customer.

6.3 Where the Products are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

6.4 If the Supplier fails to deliver the Products, or any part thereof, for any reason other than any cause beyond the Supplier's reasonable control or the Customer's fault, and the Supplier is accordingly liable to the Customer, the Supplier's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Products to replace those not delivered over the price of the Products.

6.5 If the Supplier fails to deliver any part of the Products for any reason other than any cause beyond the Supplier's reasonable control or the Customer's fault, the Customer shall still be liable to pay for the Products delivered on a pro rata basis.

6.6 If the Customer fails to take delivery of the Products or fails to give the Supplier adequate delivery instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:

6.6.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

## **7. Risk and Property**

7.1 Risk of damage to, or loss of, the Goods shall pass to the Customer:

7.1.1 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

- 7.1.2 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, at the time when the Supplier has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of the price of both the Products and all other goods and services agreed to be supplied by the Supplier to the Customer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Supplier's property. Until that time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Supplier for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Supplier shall be entitled at any time to require the Customer to deliver up the 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 repossess the Goods.
- 7.5 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, 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) forthwith become due and payable.

## **8. Warranties and Liability**

- 8.1 Where the Products are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976), the statutory rights of the Customer are not affected by these Conditions.
- 8.2 Subject to the provisions set out below, the Supplier warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of twelve months from delivery in respect of new Goods and one month in respect of second-hand Goods.
- 8.3 Subject to the provisions set out below, the Supplier warrants that the Services will be provided using reasonable care and skill.
- 8.4 The above warranties are given by the Supplier subject to the following conditions:
- 8.4.1 the Supplier shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Customer;
- 8.4.2 the Supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow

the Supplier's or the manufacturer's instructions (whether oral or in writing) or misuse, alteration or repair of the Products without the Supplier's prior written approval; and

8.4.3 the Supplier shall be under no liability under the above warranties (or any other warranty, condition or guarantee) if the total price for the Products has not been paid by the due date for payment.

- 8.5 The warranty set out in clause 8.2 above does not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer.
- 8.6 Subject as expressly provided in these Conditions, and except where the Products are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.7 Any claim by the Customer which is based on any defect in the quality or condition of the Products or their failure to correspond with their specification shall (whether or not delivery is refused by the Customer) be notified to the Supplier in Writing within seven days from the date of delivery or, where the defect or failure was not apparent on reasonable inspection, within seven days of the discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Supplier accordingly, the Customer shall not be entitled to reject the Products and the Supplier shall have no liability for such defect or failure and the Customer shall be bound to pay the price as if the Products had been delivered in accordance with the Contract.
- 8.8 Where any valid claim in respect of any of the Products which is based on any defect in the quality or condition of the Products or their failure to meet their specification is notified to the Supplier in accordance with these Conditions, the Supplier shall be entitled to replace the Products (or a part thereof) free of charge or, at the Supplier's sole discretion, refund to the Customer the price of the Products (or a proportionate part of the price), but the Supplier shall have no further liability to the Customer.
- 8.9 Except in respect of death or personal injury caused by the Supplier's negligence, or liability for defective products under the Consumer Protection Act 1987, the Supplier shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (and whether caused by the negligence of the Supplier, its employees or agents or otherwise) which arise out of or in connection with the supply of the Products (including any delay in supplying or any failure to supply the Products in accordance with the Contract or at all) or their use or resale by the Customer, and the entire liability of the Supplier under or in connection with the Contract shall not exceed the price of the Products, except as expressly provided in these Conditions.
- 8.10 The Supplier shall not be liable to the Customer 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

Supplier's obligations in relation to the Products, if the delay or failure was due to any cause beyond the Supplier's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Supplier's reasonable control:

- 8.10.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.10.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.10.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority or other body or organisation;
- 8.10.4 import or export regulations or embargoes;
- 8.10.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Supplier or of a third party);
- 8.10.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.10.7 power failure or breakdown in machinery.

## **9. Insolvency of Customer**

- 9.1 This clause applies if:
  - 9.1.1 the Customer makes a voluntary arrangement with its creditors or becomes subject to an 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
  - 9.1.2 an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Customer; or
  - 9.1.3 the Customer ceases, or threatens to cease, to carry on business; or
  - 9.1.4 the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 9.2 If this clause applies then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Products 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. Export Terms**

- 10.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 10.2 Where the Products are supplied for export from the United Kingdom, the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Customer and the Supplier) apply notwithstanding any other provision of these Conditions.

- 10.3 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties thereon
- 10.4 Unless otherwise agreed in Writing between the Customer and the Supplier, the Products shall be delivered fob the air or sea port of shipment and the Supplier shall be under no obligation to give notice under section 32(3) of the Sale of Products Act 1979.
- 10.5 The Customer shall be responsible for arranging for testing and inspection of the Products at the Supplier's premises before shipment. The Supplier shall have no liability for any claim in respect of any defect in the Products which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 10.6 Payment of all amounts due to the Supplier shall be made by irrevocable letter of credit opened by the Customer in favour of the Supplier and confirmed by a bank in the United Kingdom acceptable to the Supplier or, if the Supplier has agreed in Writing on or before acceptance of the Customer's order to waive this requirement, by acceptance by the Customer and delivery to the Supplier of a bill of exchange drawn on the Customer payable 60 days after sight to the order of the Supplier at such branch of AIB (GB) Bank in England as may be specified in the bill of exchange.

**11. General**

- 11.1 The Supplier is a member of the Rapid Group of Companies and accordingly the Supplier may perform any of its obligations or exercise any of its rights hereunder by itself or 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 Supplier.
- 11.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing and 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 Supplier of any breach of the Contract by the Customer 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 the provision in question shall not be affected thereby.
- 11.5 The Supplier reserves the right to amend these Conditions and/or the Contract at any time.
- 11.6 11.6.1 The Supplier will take all reasonable precautions to keep the details of the Contract and payment therefor secure, but, unless the Supplier is negligent, the Supplier will not be liable for unauthorised access to information supplied by the Customer.
- 11.6.2 The Supplier would like to notify the Customer of products and offers that may be of interest to it from time to time. If the Customer does not want to be notified of such products and offers please tick the box below.
- Please do not notify me/us of products and offers

11.6.3 The Customer can correct any information about it or ask for information about it to be deleted by e-mailing the Supplier on [unsubscribe@rapid.co.uk](mailto:unsubscribe@rapid.co.uk)

11.7 The Contract shall be governed by the laws of England and the parties hereto submit to the irrevocable jurisdiction of the English Law Courts.