



## 8. Warranties and liability Limitation

liability: THE BUYER'S ATTENTION IS

PARTICULARLY DRAWN TO THIS CLAUSE.

8.1 Subject to the conditions set out below the Seller warrants that:

8.1.1 The Goods will correspond in all material respects with their specification and will be free from material defects in material and workmanship at the time of delivery; and

8.1.2 The Services will be provided using reasonable care and skill.

8.2 The Seller has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The Seller has been unable to obtain insurance in respect of certain types of loss at a commercially viable price. The limits and exclusions in this clause reflect the insurance cover the Seller has been able to arrange and the Buyer is responsible for making its own arrangements for the insurance of any excess loss.

8.3 The restrictions on liability apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence),

8.4 Nothing in these Conditions limits any liability which cannot legally be limited, including liability for:

8.4.1 Death or personal injury caused by negligence;

8.4.2 Fraud or fraudulent misrepresentation;

8.4.3 Breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and

8.4.4 Defective products under the Consumer Protection Act 1987.

8.5 Subject to clause 8.4, the Seller's total liability to the Buyer shall not exceed the aggregate price of the Goods and Services supplied under the Contract.

8.6 8.6 sets out specific heads of excluded loss and exceptions from them:

8.6.1 Subject to clause 8.4, clause 8.6.3 identifies the kinds of loss that are not excluded. Subject to that, clause 8.6.2 excludes specified types of loss.

8.6.2 The following types of loss are wholly excluded:

1. Loss of profits;
2. Loss of sales or business;
3. Loss of agreements or contracts;
4. Loss of anticipated savings;
5. Loss of use or corruption of software, data or information;
6. Loss of or damage to goodwill; and
7. Indirect or consequential loss.

8.6.3 The following types of loss and specific loss are not excluded:

1. Sums paid by the Buyer to the Seller pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the Contract;
2. Wasted expenditure;
3. Additional costs of procuring and implementing replacements for, or alternatives to, Goods or Services not provided in accordance with the Contract. These include but are not limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials;
4. Losses incurred by the Buyer arising out of or in connection with any third party claim against the Buyer which has been caused by the act or omission of the Seller. For these purposes, third party claims shall include but not be limited to demands, fines, penalties, actions, investigations or proceedings, including but not limited to those made or commenced by subcontractors, the Seller's personnel, regulators and Buyers of the Buyer; and anticipated savings.

8.7 The warranties in clause 8.1 are given by the Seller subject to the following conditions:

8.7.1 The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

8.7.2 The Seller 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 Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval in writing;

8.7.3 The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.7.4 The above warranty does not extend to parts, materials or equipment not manufactured by or on behalf of the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller;

8.7.5 The above warranty does not apply to the application of or use and treatment of the Goods including the manner of storage after leaving the Seller's premises which are not in accordance with the recommendations of the Seller or the Manufacturer or as established by known custom and practice.

8.8 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 and sections 3, 4 and 5 of the supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.9 This clause 8 shall survive termination of the Contract.

8.10 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods 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 had been delivered in accordance with the Contract.

8.11 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.12 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer 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 any indirect, special or consequential loss or damage (whether for payments to customers or loss of profit or third party clause or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

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, 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 of 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 (whether 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 machinery;

8.13.8 Pandemic or lockdown (including but not limited to arising in connection with Covid 19).

8.14 In any Conditions or Warranties (whether expressed or implied by statute common law or arising from conduct or a previous course of dealing or trade custom or usage) as to the quality or fitness of the Goods for any particular purpose even if that purpose is made known expressly or by implication to the Seller are hereby expressly negative.

8.15 Insofar as the Seller's obligations under the Contract are carried out by any of its agents servants or sub-contractors the provisions of this clause 8 are stipulated for their benefit as well as the Seller and each of them shall be exempted accordingly.

8.16 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

8.16.1 The other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 10 days after receipt of notice in writing to do so;

8.16.2 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), obtaining a moratorium, 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;

8.16.3 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; or

8.16.4 The other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

8.17 Without affecting any other right or remedy available to it, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

8.18 Without affecting any other right or remedy available to it, the Seller may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer fails to pay any amount due under the Contract on the due date for payment, the Buyer becomes subject to any of the events listed in clause 8.16, or the Seller reasonably believes that the Buyer is about to become subject to any of them.

8.19 On termination of the Contract:

8.19.1 The Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;

8.19.2 The Buyer shall return all of the Seller's materials and any Deliverables or Goods which have not been fully paid for. If the Buyer fails to do so, then the Seller 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.

8.20 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, 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.

8.21 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## 9. Force Majeure Event

9.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a Force Majeure Event). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

## 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 Goods 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 Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

10.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

10.4 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered fob the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

10.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

## 11. Intellectual property rights

11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Buyer) shall be owned by the Seller.

11.2 The Seller grants to the Buyer, or shall procure the direct grant to the Buyer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Buyer) for the purpose of receiving and using the Services and the Deliverables in its business.

11.3 The Buyer shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.

11.4 The Buyer grants the Seller a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Buyer to the Seller for the term of the Contract for the purpose of providing the Services to the Buyer.

## 12. Data protection

12.1 The following definitions apply in this clause 12:

12.1.1 Controller; Processor; Data Subject; Personal Data; Personal Data Breach; processing and appropriate technical and organisational measures; as defined in the Data Protection Legislation.

12.1.2 Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

12.1.3 Domestic Law: the law of the United Kingdom or a part of the United Kingdom.

12.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

12.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Seller is the Processor.

12.4 Without prejudice to the generality of clause 12.2 the Buyer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Seller and/or lawful collection of the Personal Data by the Seller on behalf of the Buyer for the duration and purposes of the Contract.

## 13. Confidentiality

13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, suppliers, clients or customers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.

13.2 Each party may disclose the other party's confidential information:

13.2.1 To its employees, officers, representatives, contractors or subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers whom it discloses the other party's confidential information comply with this clause 13; and

13.2.2 As may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 14. General

14.1 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.

14.2 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.

14.3 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.

14.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.

14.5 For the purpose of the Unfair Contract Terms Act 1977 the parties hereto acknowledge that the Terms and Conditions hereof are reasonable as between two commercial parties of independent bargaining strengths.

14.6 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English court.

Conditions of Supply of Goods and Services - Updated November 2021 by: Rowe Hanks Ltd. Registered in England Number: 2021691 Registered office address: Power House, Mason Street, Bury, Lancashire BL9 0RH, UK.