

## Red Splash Terms & Conditions

1.1 In the context of these conditions –

(a) The term “Seller” shall be construed as meaning Red Splash Consultancy Limited.

(b) The term “Buyer” shall be construed as meaning the person, firm or company named in the order form or the person, firm or company who or which issues an order to the seller for the supply of goods and all references to “him” and “his” hereafter shall be construed accordingly.

(c) The term “Goods” shall be construed as meaning any item, article or thing supplied by the Seller to the Buyer.

1.2 These conditions form the whole of the contract between the Seller and the Buyer and shall prevail over any conditions or terms of trading of the Buyer whether or not notified to the Seller before or after the date hereof. All or any business undertaken by the Seller is transacted on the terms set out in these conditions and are deemed to be between the Seller and the Buyer. No variation of these terms is capable of being binding unless signed by a director of the Seller. No person has the authority on behalf of the Seller to make any representation or give any collateral warranty in respect of the subject matter of this contract. Except as specifically provided herein all terms of conditions warranties guarantees undertakings or representations whether expressed or implied by statute common law or otherwise or arising from conduct or a previous course dealing or trade or custom or usage or agreed or offered orally or in correspondence or otherwise are hereby excluded.

2. This is a firm contract and is binding on both the Seller and the Buyer save that the Seller can rescind this contract at any time upon investigation of the Buyer’s financial or trade status. The seller shall give immediate written notice of any such rescission to the Buyer and shall not be liable to make any payment to him by way of compensation or damages.

3. The seller reserves the right to alter the specification of the goods or the prices which are given to the Buyer without prior notice up and until receipt of a correct and valid order, following acceptance of the order. All goods will be supplied and charged according to the specification and prices stated.

4. (a) The Seller will use all reasonable endeavours to deliver the goods by the agreed date but time of delivery shall not be of the essence of the contract nor shall the Seller be liable for damages for late delivery (whether direct or consequential) for loss of profit or otherwise.

(b) The Buyer will accept all goods on the date on which they are delivered by the Seller. The Seller will not store any goods on behalf of the buyer after such date.

(c) The Seller will have no liability if it fails to deliver the goods for any reason whatsoever beyond its control.

(d) A carriage charge will be levied where the value of the goods supplied is below £75 or where delivery overnight or by courier is requested by the Buyer.

5. All prices quoted are exclusive of Value Added Tax.

6. Unless otherwise stated in writing terms of payment will be :-

(a) For approved account holders 30 days from date of invoice. Time is of the essence with regard to such payment.

(b) For non-account holders payment is required by Pro-forma invoice.

(c) If payment is not made by the due date interest of 3% above HSBC base rate will apply.

(d) If the buyer makes payment of any goods by way of cheque and such cheque is not honoured upon first presentation the Seller shall be entitled to claim from the Buyer all bank charges incurred as a result of such dishonour together with the Seller's own administrative charges incurred by the Buyer's bank failing or refusing to honour such cheque on its presentation and all – presentations. Such sums shall be paid in addition to the amount due in respect of the goods and interest shall continue to be charged in accordance with sub-clause (c) of this clause until value is received by the Seller in full.

(e) Each and every sub-clause of this clause is separate and several from the remainder of the contract.

7. It shall be a pre-condition to the making of any claim of any kind against the Seller that written notice of such a claim shall have been given to the Seller by the Buyer within three days of delivery of the goods or where a claim is sought to be made in respect of goods which have not been delivered within three days of the date of despatch of the invoice relating to those goods.

8. If goods prove to be defective by reason of any breach of contract on the part of the Seller the Seller's liability shall extend only to the repair and replacement of the defective goods whichever shall be necessary or in the sole discretion of the Seller the replacement cost of the defective goods should the Seller be unable to repair or replace them. In order that the Seller might meet such a liability the Buyer shall afford the Seller reasonable opportunity to repair or to replace the defective goods as the Seller sees fit.

9. In no case shall the Seller's liability for any breach exceed the replacement cost of the defective goods nor shall the Seller be liable for any consequential loss or damage howsoever caused.

10. These conditions apply with any necessary modification where goods are to be delivered in instalments. Failure to deliver any instalment shall not entitle the Buyer to cancel or refuse subsequent instalments. The Buyer shall accept and pay for each instalment delivered as if the same had been sold under a separate contract such payment shall be a pre-condition to the Buyer's entitlement to delivery of further goods.

11. Complaints by the Buyer in respect of goods alleged to be defective shall not be grounds for the Buyer to withhold payment of accounts due to the Seller.

12. The Buyer shall determine the suitability of products for his intended use and shall not rely on the skill of the Seller or on any presentation made by the Seller or its servants or agents.

13. (a) The ownership of the goods to be delivered by the Seller will only pass to the Buyer when the Buyer has paid the full price for all goods the subject of this contract and any other contract between the parties (including interest on any sums not paid on the due date) and until such payment the goods are held by the Buyer as bailee for the Seller.

(b) If the Buyer shall sell or purport to sell such goods so as to purport to pass a valid title thereto to a third party the proceeds of such sale shall be held by the Buyer on trust for the Seller and shall if not forthwith paid to the Seller be placed in a separate designated bank account.

(c) The goods shall be held by the Buyer in such a manner as to distinguish them from goods not owned by the Seller and shall be separately identified in such a manner as approved of or directed by the Seller.

(d) Until payment of the whole of the price has been paid by the Buyer to the Seller including interest (if applicable) the Seller shall have the right to require the immediate return of the goods and a Licence is hereby granted to the Seller and its representatives to enter the Buyer's premises where the goods are being kept and to remove the goods.

(e) The right to trace any money unpaid for goods or for any proceeds of the purported sale thereof into whomsoever's hands the same may pass is expressly reserved to the contract.

14. The goods shall be at the risk of the Buyer from the time of delivery and the Buyer shall be responsible for insuring the same against all usual risks in the full value thereof. Until such time as payment for the goods has been made in full any sums received by the Buyer from any insurance company in connection with any claims relating to the goods sold shall be held on trust for the Seller as if it had been a payment by a third party under Clause 13 and upon receipt thereof the Buyer shall immediately remit the proceeds of such insurance claim to the Seller.

15. The Buyer and the Seller exclude any warranty condition or other terms including any fundamental terms as to the merchantable quality fitness for purpose or other attribute as to the quality of the goods. This contract is not a contract for the sale of goods by sample and if and insofar as the Buyer may have inspected a sample of the goods the same is for the purposes of the Buyer's information as to the general nature of the goods and did not and was not intended to have any contractual effect and any description of the goods is by way of identification only.

16. The Seller shall have the right to suspend deliveries under this and/or any other contract it may have with the Buyer if the Buyer fails to make payment on the due date for any goods delivered or (although the Buyer is not in arrears of any payment) where the Seller considers that the amount outstanding on the Buyer's account to be the limit which the Seller is prepared to allow credit.

17. Any claims by the Buyer against the Seller in respect of the goods shall not entitle the Buyer to withhold payment for any part of the goods or other goods purchased by the Buyer from the Seller nor shall the Buyer be entitled to set-off any such claim against any claim by the Seller for the price nor shall the Buyer be entitled to claim a Stay of execution on any judgement in reliance upon such a claim.

18. This contract shall be construed and governed according to the Laws of England and the Buyer hereby agrees to submit to the sole and exclusive jurisdiction of the Courts of England.