

# TERMS AND CONDITIONS OF SALE & SERVICES

## For use in the United Kingdom

Version date February, 2023

**General Terms:** These terms and conditions ("Terms and Conditions") herein written shall govern the legal relationship between buyer ("Buyer") and provider ("Seller") and shall supersede all previous communications, agreements or contracts, and no term, condition or trade custom in conflict or inconsistent herewith shall be binding upon Seller unless agreed to in writing. All orders are subject to acceptance by Seller in the form of a written acknowledgment from Seller or commencement of performance. Seller's failure to enforce any right it may have under the Terms and Conditions shall not be construed as a waiver thereof, nor shall such failure or failures be deemed to establish any custom, usage, course of dealing or course of performance. These Terms and Conditions may be enforced at any time, in whole or in part. Any provision hereof which is prohibited or unenforceable in any applicable jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability in any other jurisdiction. Seller may assign, mortgage, subcontract, charge, declare trust over or deal in any other manner with any or all rights under these Terms and Conditions. Buyer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare trust over or deal in any other manner with any of its rights under these Terms and Conditions without prior written approval from Seller. **These Terms and Conditions apply to the exclusion of any other terms that Buyer seeks to impose or incorporate, or which are implied by law, trade, custom, practice or course of dealing.**

**Payment:** Services and Products may require full or partial payment in advance or upon rendering or delivery, other security for payment or performance, or may impose such other credit or payment terms as Seller deems appropriate in its sole discretion. Product prices are subject to change without notice and the price for the product shall be the prices in effect at the time of shipment. Costs associated with Services shall be set forth on an applicable Statement of Work or other written agreement between the Parties. Prices are exclusive of VAT and all other taxes which shall be Buyer's responsibility (other than taxes on Seller including net income or gross receipts). In the event Buyer claims an exemption from any tax, a valid tax exemption certificate must be furnished to Seller upon placing an order. Invoices are due for payment 30 days after date of invoice unless otherwise agreed in writing. Sums not paid when due shall accrue interest each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. Buyer may not withhold or set-off payment for products delivered for any reason whatsoever. Seller reserves the right, among other remedies, either to terminate the Services or sale and/or to suspend future performance and/or deliveries upon failure of Buyer to make any payment pursuant to these Terms and Conditions or any other contract between the parties hereto. Buyer shall reimburse Seller in full for all damages, costs and expenses, including reasonable legal fees, which Seller incurs with respect to Buyer's breach of these Terms and Conditions or any collection efforts by Seller to recover past due amounts from Buyer.

Where these Terms and Conditions amount to a **"construction contract"** for purposes of the Housing Grants, Construction and Regeneration Act 1996 ("Construction Act") the following payment terms (a) to (f) shall apply (and shall prevail if inconsistent with any other provision of the Terms and Conditions):

(a) Seller shall submit to Buyer an invoice for each instalment of the charges due for the Services together with any supporting documents that are reasonably necessary to check the invoice. The invoice and supporting documents (if any) shall specify the sum that Seller considers will become due on the payment due date in respect of the instalment of the charges and the basis on which that sum is calculated. Seller shall be entitled to submit to Buyer invoices on a monthly basis.

(b) Payment shall be due on the date Customer receives each invoice ("**Due Date**").

(c) Not later than five (5) days after the Due Date, Buyer shall notify Seller of the sum that Customer considers to have been due at the Due Date in respect of the payment and the basis on which that sum is calculated ("**Payment Notice**"). If a Payment Notice is not given then the amount of the relevant payment instalment shall, subject to any notice given under (f), be the sum stated as due in the application for that payment instalment.

(d) The final date for payment shall be 28 days after the Due Date ("**Final Date for Payment**").

(e) Unless Customer has served a notice under (f) below, it shall pay Supplier the sum referred to in the Payment Notice (or if Customer has not served a Payment Notice, then the sum referred to in the invoice referred to in (a) above shall be the sum stated as due in the application for that payment instalment) ("**Notified Sum**") on or before the Final Date for Payment.

(f) Not less than seven (7) days before the Final Date for Payment Buyer may give Supplier notice that it intends to pay less than the Notified Sum ( "**Pay Less Notice**"). Any Pay Less Notice shall specify (i) the sum that Buyer considers to be due on the date the notice is served; and (ii) the basis on which that sum is calculated. Where a Pay Less Notice is given, the obligation to pay the Notified Sum applies only in respect of the sum specified in that Pay Less Notice.

**Risk and Title:** The risk in the Products shall pass to Buyer in accordance with the method of delivery selected in the "Shipping/Freight costs" section below. Title to the Products shall not pass to Buyer until i) Seller receives payment in full (in cash or cleared funds) for the Products and any other Products that Seller has supplied to Buyer in respect of which payment has become due, in which case title to the Products shall pass at the time of payment of all such sums, or, if applicable ii) Buyer resells the Products, in their ordinary course of business, as principal and not as Seller's agent, in which case title to the Products shall pass to Buyer immediately before the time at which Buyer resells the Products.

Until title in the Products passes to Buyer, Buyer shall not encumber, charge or grant security over the Products and shall store the Products separately from all other Products held by Buyer so they remain identifiable as Seller's property, not remove deface or obscure any identifying mark or packaging relating to the Products, maintain the Products in satisfactory condition and keep them insured from all risk for their full price from the date of delivery, give Seller such information as they may reasonably require from time to time relating to i) the Products and ii) the ongoing financial position of Buyer.

At any time before the title in the Products passes to Buyer, Seller may terminate Buyer's right to resell the goods or use them in its ordinary course of business. Seller may also require Buyer to deliver all of the Products in its possession that have not been resold or irrevocably incorporated into another product and if Buyer fails to do so promptly Seller may enter, or instruct its agents to enter on its behalf, any of Buyer's premises or any third party premises where the Products are stored in order to recover them.

**Credit Terms:** If applicable, credit terms are subject to Seller's continuing approval of Buyer's credit, and if, in Seller's sole judgment, Buyer's credit or financial standing is impaired so as to cause Seller to deem Buyer insecure, Seller may withdraw the extension of credit and require other payment terms and any amount outstanding on the Buyer's credit shall become immediately due and payable in full. Buyer agrees to submit such financial information, from time to time, as may be reasonably requested by Seller for the establishment and/or continuation of credit terms.

**Changes:** Any request to change any order with respect to Services or the quantity or packaging of Products must be communicated in writing and in the case of Products, prior to shipment. If such changes result in increased cost or time to complete the Services or manufacture of the Product(s) or if there is a decrease in the quantity of the Product or materials needed for the Services requested which invalidates any discounts offered by Seller, then the price and timing of the original order or SOW shall be adjusted accordingly. Buyer agrees to pay any increased costs associated with the changes. Once orders have been accepted by Seller, no changes with respect to specifications will be made or allowed unless they are requested and accepted in writing and the resulting new price and delivery time are agreed upon in writing by both Parties. Additional costs for changes, including any costs for additional engineering, will be reflected in the new price. Cancellations are subject to Seller's agreement and reasonable cancellation charges which are determined in the sole discretion of the Seller.

**Shipments/Freight Costs:** Seller will confirm in writing on which basis the shipment is made, typically this will be FCA (Incoterms 2020) OR FOB shipping point (Incoterms 2020) OR DDP (Incoterms 2020) OR DAP (Incoterms 2020). In absence of express agreement all shipments will be EXW (Incoterms 2020). A minimum shipping charge may be applicable for orders. Shipping and/or delivery

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dates are estimates only and Seller shall not be liable for any delay or discrepancy in the shipping or delivery of Products. Seller reserves the right to make deliveries in installments. Delay in delivery of one installment shall not entitle Buyer to cancel other installments. Any applicable freight costs will be added to the invoice unless customer specifies collect on purchase order.

**Services:** Services shall be described in a Statement of Work ("SOW") or other written agreement between the Parties. Nothing herein shall be construed to create an employee, agent, distributor, partner, fiduciary, or joint venture relationship between the Parties.

**Scope of Services:** Buyer is responsible for determining that the scope of Services is appropriate for Buyer's needs and shall cooperate with Seller and/or its subcontractors in the performance of the Services. Seller may rely on information and data provided by Buyer, or on behalf of Buyer, without audit or verification. Seller's performance is dependent on Buyer's timely decisions and approvals and Seller shall not be liable for any delay in the provision of Services due to Buyer's failure to timely respond. Buyer will provide reasonable access to areas necessary for a visual inspection of the service location and for Seller and/or subcontractor to perform the Services. Buyer hereby grants Seller and/or subcontractor permission to enter the service location to perform the Services. In the event that concealed conditions are revealed which would materially change the nature of the Services, Seller and/or subcontractor is entitled to cease its performance until such time as the Parties have agreed on the costs of such material change. Unless otherwise agreed to in writing, Seller is not responsible for any repair or maintenance upon completion of the Services. Upon completion of the Services Seller and/or subcontractor shall make all necessary arrangements to have any excess Products or material removed. Seller reserves the right to amend the SOW if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Seller shall notify Buyer in any such event.

**Service Dates:** All dates given by Seller or specified by Buyer for Services are intended for planning and estimating purposes only and are not contractually binding. Notwithstanding the foregoing, Seller will use reasonable efforts to perform the Services in accordance with any timetable and specifications referred to in the SOW or otherwise specified by the Parties in writing.

**Insurance:** Where applicable and upon written request, Seller shall furnish to Buyer certificates of insurance evidencing its coverage and limits.

**Cancellation of Services:** Cancellation of Services may result in a cancellation fee as set forth in the applicable SOW or other written agreement between the Parties.

**Effect of Default on Services:** In the event Buyer defaults on any of its obligations in these Terms and Conditions or in any other written agreement between the Parties related to Services, Seller shall have the right to stop work and invoice Buyer for any work rendered up to the date of stoppage and for Products and materials shipped to the service location.

**Field Service:** Any applicable field service, technical support, installation supervision, or related service shall be governed by a separate written agreement.

**Product Back Orders:** Seller reserves the right to cancel Product back orders.

**Return of Products:** Written authorization is required from Seller prior to any return shipment, which may be granted or denied by Seller in its sole discretion. In certain circumstances no more than ten percent (10%) of any one item may be eligible for return. Custom colors, special orders, or limited-shelf-life materials are not returnable. Authorized returns must be shipped using the carrier selected by Seller and routed to the location of Seller's choice. Buyer is responsible for all freight charges. Returns must be shipped in their original unopened cartons. A minimum 25% re-stocking fee will be charged on all authorized returns. Obsolete, discontinued, and/or merchandise over six months old is not eligible for return in any instance. Likewise, excess product due to Buyer's overestimate of requirements or need is not subject to return.

**Claims:** Claims resulting from losses, shortages or damage in transit must be acknowledged on the delivery papers at receipt. Buyer shall further promptly notify Seller of any delivery of any damaged Product(s) purchased from Seller, or of any complaint whatsoever Buyer may have concerning delivery. Buyer's failure to give such notice and to note such damage constitutes a waiver of any claim against Seller relating to the damaged Product. Any claim for any other cause not

specifically set forth in these Terms and Conditions shall be deemed waived and released by Buyer unless made in writing within five (5) business days after Buyer's receipt of the Product(s).

**Product Warranty:** Seller warrants that on delivery the materials purchased by Buyer are free from material defects in design, material and workmanship and of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and further guarantees to replace any material which is determined by Seller, in its sole discretion, to be defective or not in conformity with Seller's most current published specifications. If applicable, additional warranty terms are stated on the Product label/data sheet or on a separate warranty document and supersede the terms herein. Any general technical or production data, performance figures, descriptions, properties, photographs, illustrations, drawings, or other general information provided or made available by Seller with respect to the Products (whether via a website or in any catalogues or publications) are provided for the purpose of giving approximate information pertaining to the products and shall not form part of the Terms and Conditions nor have any contractual force. No claims will be considered until the Product in question has been inspected by a Seller representative. All claims for allegedly non-conforming, defective or damages Products shall be made by Buyer in writing within thirty (30) days of receipt of shipment of Products, after which the Products shall be deemed accepted for all purposes and Seller shall have no liability for the same. **SELLER MAKES NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND DISCLAIMS EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS TO THE EXTENT PERMITTED BY LAW.** The warranty set forth on the product label shall be void, and shall not apply to any Products (i) which have been altered, modified or combined with any other materials other than materials as specified on the Products' labeling, (ii) which have been subject to improper storage or handling, or (iii) which have been exposed to conditions beyond the operating constraints specified by Seller in its labeling, or iv) which Buyer makes further use of after Buyer becomes aware, or should have become aware of any non-conformance, defect or damage. With the exception of the warranty terms set forth herein or, if applicable, on the Product label, it is Buyer's sole responsibility to test the Product to ensure that it is fit for the use intended by Buyer or any end user.

### **Service Warranty:**

Seller warrants to Buyer that the Services will be provided using reasonable care and skill. Seller disclaims all other warranties related to the Services, express or implied, to the extent permitted by law.

**Limited Liability: SELLER SHALL NOT BE LIABLE TO BUYER, BUYER'S CUSTOMERS OR ANY PERSON OR ENTITY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES (INCLUDING, WITHOUT, LIMITATION LOST PROFITS, LOSS OF SALES OR BUSINESS, LOSS OF AGREEMENTS OR CONTRACTS, LOSS OF ANTICIPATED SAVINGS, LOSS OF USE OR CORRUPTION OF SOFTWARE, DATA OR INFORMATION, BUSINESS INTERRUPTION LOSSES, LOSS OF GOODWILL, LOSS OF OPPORTUNITY). AS A RESULT OF SUPPLYING PRODUCT TO CUSTOMERS OR OTHERS AND WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, RESTITUTION, CONTRACT OR OTHERWISE. NOTHING IN THESE TERMS SHALL LIMIT OR EXCLUDE SELLER'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR FRAUD OR FRAUDULENT MISREPRESENTATION. SELLER'S EXCLUSIVE LIABILITY AND BUYER'S SOLE REMEDY IN THE EVENT OF A NON-CONFORMING PRODUCT SHALL BE REPLACEMENT OF THE DEFECTIVE PRODUCT WITH CONFORMING PRODUCT. IN NO EVENT SHALL SELLER'S TOTAL LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCT AND/OR SERVICES AT ISSUE.** Buyer agrees that in the performance of any Services by Seller and/or subcontractor, Seller and/or any subcontractor shall not be liable to Buyer for any claim in excess of the amounts paid by Buyer to Seller for the Services. To the fullest extent possible under applicable law, no Seller affiliate will have any liability to Buyer and Buyer will not bring any claim against any affiliate in any way in respect of, or in connection with, the Services rendered. All Seller affiliates are hereby intended third-party beneficiaries. Any complaints with respect to non-performance in the provision of Services shall be brought forward by Buyer in a timely fashion.

**Time Limitation:** No dispute, claim or other legal action, regardless of form, may be brought by Buyer for any breach by Seller or any other claim relating to or

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arising out of the Product or Services, including negligence or any other tort-based claims, after one year from the date of delivery of the Product or rendition of the Services, as the case may be, unless otherwise agreed to in writing by both Parties.

**Force Majeure:** Seller shall not be liable for any failure or delay in performance if such failure or delay is due to an act of God, , flood, earthquake, storm or other adverse weather event or natural disaster, war (or threat of war), civil disturbance, riot, act of terrorism (or threatened act of terrorism), labor difficulties, factory capacity, fire, other casualty, accident, inability to obtain containers or raw materials, supply chain failure or inability to perform, governmental acts, regulations, guidance or restrictions, including shutdowns and inability to perform due to epidemics or pandemics, or any other cause of any kind whatever beyond the reasonable control of Seller. Seller shall have the right at its option and without liability to apportion its supply of Product among its customers, including its affiliated divisions and companies, in such a manner as Seller, in its sole discretion, believes equitable. In no event shall Seller be obligated to purchase Products from others in order to enable it to deliver Products to Buyer.

**Indemnity:** Buyer shall assume full responsibility for the use of the Products and shall defend, indemnify and hold harmless Seller and its respective affiliates, officers, directors, shareholders, employees, agents and representatives from and against any and all losses, liabilities, claims, damages, demands, costs and expenses (including without limitation legal fees and court costs on a full indemnity basis) arising out of or relating to same. Buyer shall indemnify and hold harmless Seller for any and all losses incurred in connection with any third-party claim related to the Services, except to the extent judicially determined to have resulted from negligence or willful misconduct of Seller.

**Governing Law:** All sales are governed by the law of England and Wales without application of conflict of law principles and Buyer irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of England and Wales.

**Adjudication:** Where these Terms and Conditions amount to a “construction contract” for the purposes of Section 104 of the Construction Act either Buyer or Seller may refer a dispute arising in relation to the Terms and Conditions to adjudication at any time and Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 shall take effect as if it was incorporated into this clause.

**Compliance with Instructions:** Buyer shall comply with all applicable written instructions or labels furnished by Seller relating to the installation, maintenance and use of the Product(s) and Buyer agrees not to misuse, modify or misapply such Product in any manner. Seller shall not be liable for Buyer’s failure to apply or use the Product in accordance with such instructions. Buyer agrees to indemnify and hold Seller harmless from any and all claims, costs, liability, damages and expenses, including attorneys’ fees, against or incurred by Seller due to injuries to persons or property in connection with Buyer’s application or use of the Product(s). Buyer acknowledges receipt of and familiarity with Seller’s labeling and literature concerning the Product(s) and will forward such information to its employees who handle, process or sell such product(s) and to customers of such Product(s), where applicable.

**Compliance with Applicable Law:** Buyer shall comply with all applicable laws and regulations, including but not limited to the Bribery Act 2010. Buyer shall not sell, export, re-export, transmit, divert or otherwise transfer any goods or Products into or through Cuba, Iran, Sudan, Syria, North Korea, Crimea or any other prohibited jurisdiction, or with or to any party listed on any United States Government, United Kingdom Government or European Union blocked-persons list, as amended from time to time. Buyer represents that it is not on any restricted persons list maintained by the U.S., Canada, UK or any member of the European Union.

**Compliance with Applicable Policies:** Buyer shall comply with all applicable Seller policies including but not limited to Seller’s Values & Expectations of 168 which can be accessed at the following URL <https://www.rpminc.com/pdf/CodeGuidelines.pdf> and Seller’s Distributor Code of Conduct which can be accessed at the following URL <https://www.rpminc.com/distributors-and-applicators-code-of-conduct/>

**License:** Nothing in these Terms and Conditions is intended or shall be construed to grant any license or other permission by Seller to Buyer to use any trademarks,

trade names, copyrighted materials, patents or other intellectual property rights or interest of Seller at any time. In the event the Parties have entered into a separate License Agreement, that agreement is hereby incorporated by reference and made part hereof, to the extent applicable. If any inconsistency shall exist between these Terms and Conditions and the separate License Agreement, the terms of the License Agreement shall prevail.

**Entire Agreement:** These Terms and Conditions represent the entire agreement between the parties hereto, and there are no understandings, representations, or warranties of any kind except those expressly set forth herein.