

# RICAL LIMITED

## Conditions of Sale

### 1. Effective Conditions

These Conditions of Sale shall apply to all contracts made between RICAL LTD ("the Company") and any purchaser ("Purchaser") of the Company's products ("the goods" which where the context admits shall mean all or any of the goods or any part of the goods).

### 2. Unfair Contract Terms

The Company has drawn up these Conditions of Sale in the light of the Unfair Contract Terms Act 1977 and considers them to be fair and reasonable and its prices are based on contracts made on these conditions. If the Purchaser considers these terms to be unreasonable, he must inform the Company in writing before any contract is made, otherwise he will be deemed to have accepted that the Company's Conditions are fair and reasonable.

### 3. Variation of Contract

No alteration to this contract or any of these conditions shall be binding on the Company unless agreed to in writing.

### 4. Variation of Prices

The price payable by the Purchaser for each delivery shall be the Company's ruling price as published in its price list current at the date of despatch.

### 5. Delivery

- (1) Any quotation by the Company of a time for delivery is quoted to the best of the Company's ability but is not guaranteed nor does it form a term of the contract and time for delivery is not of the essence of this contract. The Company will endeavour to comply with any dates so quoted but is under no absolute obligation to do so and will not be liable for any failure to meet a delivery date nor for loss or consequential loss of any kind arising from delay in delivery howsoever caused.
- (2) So long as any circumstances whatsoever be beyond the control of the Company may hinder or delay delivery the Company shall not be liable in any way for its inability to make delivery.
- (3) If the Company shall be prevented from performing any of its obligations under the contract by any circumstances whatsoever outside its control including in such circumstances (but not limiting the circumstances thereto) Acts of God, the Queen's enemies, acts of public authorities or government departments, fire, flood, storm and tempest, strikes, lock-outs or industrial disputes, civil or foreign wars, failure or restriction of supplies or transportation then the Company will be released from all obligations to the Purchaser whatsoever and will be in no way liable for any failure to perform the same.

### 6. Terms for Payment

- (1) Unless otherwise agreed in writing the Purchaser is liable to pay for all goods supplied to him by the Company on or before the end of the month following the month in which the Goods are delivered to the Purchaser. Time shall be of the essence of this condition.
- (2) If payment is not made by the end of the month following the month of delivery the Company shall be entitled to charge interest on the amount due from the date of delivery until the date of payment (whether before or after judgment) at a rate which shall be equal to three per centum per annum above the base Rate of Lloyds Bank Plc in force for the time being.

### 7. Risk; and property in the goods

- (1) Notwithstanding any other contract term, risk in the goods shall pass to the Purchaser when the goods are delivered, which shall be the time when they are delivered out of the Company's premises to the carrier (who shall for this purpose be the agent of the Purchaser authorised to take delivery of the goods) or to the Purchaser or any authorised agent of the Purchaser.
- (2) The Property (both legal and equitable) in the goods shall not pass to the Purchaser until:
  - (a) the purchase price (plus VAT) of the goods has been paid in full; and
  - (b) payment to the Company of all monies being any sums of whatsoever nature and howsoever the liability shall have been incurred which are at the date of the contract or may thereafter become due or owing from the Purchaser to the Company.
- (3) Until property in the goods has passed to the Purchaser pursuant to condition 7(2) or until delivery of the goods to a third party pursuant to the permission in condition 7(4) the Purchaser will hold the goods in a fiduciary capacity as bailee for the Company, will not obliterate any identifying mark on the goods or their packaging (and shall ensure that the goods are clearly marked as the Company's property) and will store the goods (at no cost to the Company) separate from any other goods.
- (4) Prior to the property in the goods passing to the Purchaser pursuant to condition 7(2) the Company permits the Purchaser to deliver the goods to a third party pursuant to a bona fide and arms-length agreement in the ordinary course of the Purchaser's business to re-sell the goods at full market value and allows the Purchaser to convert or incorporate the goods into other goods but such liberty will cease upon the termination of the contract between the Company and the Purchaser.
- (5) Where the Company is unable to determine whether any products are the goods the Company shall be deemed to have sold all goods of the kind sold by the Company to the Purchaser in the order in which they were invoiced to the Purchaser.
- (6) The Company will have the right to maintain an action against the Purchaser for the price of the goods notwithstanding that property in the goods has not passed to the Purchaser pursuant to condition 7(2).
- (7) Nothing in the contract between the Company and the Purchaser will constitute the Purchaser the agent of the Company in respect of any re-sale of the goods by the Purchaser so as to confer upon a third party rights against the Company.
- (8) The Purchaser shall not mortgage, pledge, charge by way of security for any indebtedness or otherwise encumber the goods or in any way dispose of them (other than as may be permitted by this condition 7) and if the Purchaser does so, without prejudice to the other rights of the Company, all sums whatever owing by the Purchaser to the Company shall forthwith become due and payable.
- (9) The Purchaser shall insure and keep insured the goods to their full market value (being equivalent to at least the price together with VAT thereon) against all risks to the reasonable satisfaction of the Company, until the date the property in the goods passes to the Purchaser pursuant to condition 7(2) and the Purchaser shall be liable to the Company for any loss or damage to the goods however caused and in the event of non-compliance with this condition 7(9) by the Purchaser all sums whatever owing by the Purchaser to the Company shall forthwith become due and payable.

### 8. Company's right to repossess the goods

- (1) The Company may (and in the circumstances listed in conditions 8(1)(a) - (d) the Purchaser shall cease to be in possession with the Company's consent of the goods):-
  - (a) at any time after payment for the goods has become due and before property in the goods has passed to the Purchaser pursuant to condition 7(2); or
  - (b) if the Purchaser defaults for more than 14 days in making any payment to the Company in respect of any liability whatsoever owed by the Purchaser to the Company; or
  - (c) the Purchaser breaks any term of this contract between the Company and the Purchaser; or
  - (d) if the Purchaser has a receiving order made against him or is made bankrupt or (where the Purchaser is a limited company) enters into liquidation or becomes insolvent or unable to pay its debts or if the goods are seized under any execution or distress or other form of legal process (and if any of the events listed in conditions 8(1)(b) - (d) occur then this contract between the Company and the Purchaser shall automatically determine (but without prejudice to any existing claim which the Company might have against the Purchaser under the terms of this contract between the Company and the Purchaser))take possession of the goods (which for the avoidance of doubt will include the right to stop the goods in transit) and remove them and the Purchaser shall be deemed to have granted irrevocable

authority to the Company to enter upon the Purchaser's premises or other premises where the goods may be by the Company's employees or agents to take possession of the goods and (if necessary) to dismantle the goods from anything to which they are attached.

- (2) If prior to the expiry of 7 days from the date when the Company has taken possession of the goods the Purchaser pays all sums then due or owing to the Company together with the costs of re-taking possession of the goods, the Company will re-deliver the goods to the Purchaser at the Purchaser's expense. If within the 7 day period the Purchaser fails to pay all sums then due or owing to the Company, the Company may re-sell the goods and shall pay to the Purchaser the balance of any sums received upon the re-sale of the goods after deducting all sums due or owing from the Purchaser to the Company and the costs of taking possession of and re-selling the goods save that if the sums so received by the Company do not exceed all sums due or owing from the Purchaser to the Company and the costs of taking possession of and re-selling the goods the Purchaser will pay to the Company any shortfall.

### 9. Guarantee/Warranty

- (1) Any goods or parts of goods sold by the Company which are not manufactured by the Company are sold only under such warranty as the manufacturers of such goods or parts of goods give to the Company and which the Company is able to assign or transfer to the Purchaser or to enforce without legal expense at the Purchaser's request. The Company itself gives no guarantee or warranty in respect of such goods.
- (2) If any goods manufactured by the Company are shown to the satisfaction of the Company to be defective by reason either of faulty manufacture or of bad workmanship by the Company within a period of 12 months from the date of delivery (misuse, deliberate damage and fair wear and tear excepted) the Company will repair or replace them (at its option) free of charge and return them to the Buyer provided that notice of any alleged defect is given by the Purchaser to the Company in writing within 14 days of delivery provided that the defective goods are returned to the Company's works carriage paid.

### 10. Exclusion of liability

- (1) Clause 9 is intended to provide a fair means of resolving disputes about the quality of goods supplied and except as provided therein and except as the law in force for the time being shall otherwise provide the Company shall not be liable for any damage, injury or loss of any kind whatsoever (including without limiting the effect of those words any loss of profit or of contracts or any other consequential loss but excluding damages for death or personal injury caused by negligence for which the Company is responsible) to any property or persons howsoever caused arising out of any defect in the goods.
- (2) Except as provided for in Clause 9 all warranties and conditions (including any warranties or conditions as to quality or fitness for any particular purpose) whether express or implied by statute, common law, or otherwise are excluded and hereby negated.
- (3) The Company's liability for any misrepresentation or breach of any warranty collateral to this contract shall be limited to a liability to repair or replace the goods supplied pursuant to the provisions of Clause 10 hereof to repay the Purchaser the purchase price of the goods provided that the Purchaser shall have first returned the goods to the Company's premises carriage paid.
- (4) In any event the liability of the Company to the Purchaser for any claim arising out of any defect in the goods or otherwise in connection with the use thereof or in connection with the making of the contract shall not exceed the invoiced price of the particular goods in respect whereof complaint is made.

### 11. Carriage

Unless otherwise expressly agreed in writing all goods will be dispatched to the Purchaser at the Purchaser's risk and at the Purchaser's expense. All goods will be sent by the cheapest or most expedient route whether by goods or passenger train or by carrier unless the Purchaser gives other instructions.

### 12. Rights of Company in the event of breach of contract by Purchaser

In the event of the Purchaser being in breach of any of these conditions the Company shall be entitled, if it thinks fit, to cancel all current contracts with him and to refuse to supply him any further goods or to suspend delivery until all breaches have been remedied and to refuse to perform or continue to perform any repairs for him and all invoices for goods supplied to the Purchaser up to the date of discovery of the breach and for goods supplied thereafter shall forthwith become due and payable notwithstanding the terms of Clause 6 hereof, and interest at the rate set out in Clause 6(2) hereof shall become immediately payable thereon. In such circumstances the Company shall be entitled, without prejudice to its rights to claim damages for the breach of contract, to refuse to allow credit or pay to the Purchaser any allowance whatsoever whether accrued or accruing to which he would otherwise have been entitled.

### 13. No right of set-off

The Purchaser shall not be entitled to the benefit of any set-off to which he might be otherwise entitled in law or in equity. All sums payable hereunder shall be payable without any deduction and the Company shall be entitled in the event of non-payment to obtain and enforce judgment thereon without any stay of execution pending the determination of any cross-claim by the Purchaser. The reason for this condition is that the Company has incurred expense in the manufacture preparation or acquisition of the goods for sale and it is not reasonable for the Purchaser to be allowed to withhold payment therefor until such time as the justice of any cross-claim which he may assert shall have been determined.

### 14. Damage in transit or misdelivery

- (1) Both the carrier and the Company must be advised in writing (otherwise than upon any of the carrier's documents) within 7 days after delivery if the goods covered by the invoice have not been delivered in full or within 3 days after delivery in the event of damage, pilferage or shortage occurring in the course of carriage.
- (2) Provided such notice is given, the Company will use its best endeavours to assist the Purchaser to obtain proof of delivery to the carrier and/or admissions of damage, pilferage or short delivery from the carriers. Should the claim fail, the responsibility for payment for the goods so lost or damaged will rest with the Purchaser since the risk in the goods passes to the Purchaser as soon as the goods are delivered by the Company to the carrier.
- (3) If the goods are dispatched in the Company's own vehicles, no claims in respect of goods lost or damaged in transit will be entertained unless received by the Company in writing 3 days from receipt of invoice.

### 15. Right to sub-contract

The Company shall be entitled to sub-contract any part of this Contract.

### 16. Governing Law

The contract shall in every respect be governed by English Law and the English Courts, to whose jurisdiction the Purchaser submits by entering into a contract with the Company on these Conditions, shall have exclusive jurisdiction in the event of any dispute arising out of or in connection with any contract made on these conditions.

### 17. Severability

If any term or condition or part of any term or condition in these contract terms shall in whole or in part be held to any extent to be illegal, invalid or unenforceable under any enactment or rule of law or otherwise, that term or condition or part shall to that extent be deemed not to form part of this contract between the Company and the Purchaser and the enforceability and validity of the remainder of this contract between the Company and the Purchaser and of these conditions shall not thereby be affected.