

Rack Systems (Engineering) Limited: General Terms and Conditions for the Sale of Goods, 2018 Edition

Buyer's attention is drawn to the limitations of liability contained in this Agreement and in particular to the provisions of Clauses 3, 6.4, 7, 10, 12 and 13 below. Buyer's attention is also drawn to the provisions of Clauses 14 and 15 below pursuant to which Buyer should examine the Goods promptly after delivery.

1. **Definitions:** In this Agreement:
- 1.1 "Rack" means Rack Systems (Engineering) Limited (registered in England under number 02331441) whose registered office is at 1 Wits End, Kirkby Mills Industrial Estate, Kirkbymoorside, York, YO62 6PG.
- 1.2 "Buyer" means the person, partnership, company, authority or other undertaking who buys the Goods.
- 1.3 "Clause" means a clause of this Agreement.
- 1.4 "Contract" means any particular individual contract for the supply of Goods by Rack to Buyer.
- 1.5 "Goods" means the goods or materials supplied or sold by Rack to Buyer as specified in the Order Acknowledgement.
- 1.6 "Order Acknowledgment" means the document entitled "Order Acknowledgment" or with a similar title in any such case as generated by Rack and sent by post, fax or e-mail by Rack to Buyer.
- 1.7 "Purchase Order" means an order placed by or on behalf of Buyer for the Goods.
- 1.8 (a) the headings are for convenience only and shall not affect the interpretation (b) the use of the plural shall include the singular and the use of the singular shall include the plural and (c) references to the masculine, feminine or neuter genders shall include each and every gender.
2. **Applicability of Terms**
- 2.1 Unless otherwise expressly agreed in writing by Rack every Contract shall be governed in all respects by this Agreement. This Agreement shall apply to any services that Rack supplies which are ancillary to the supply of the Goods to the maximum extent feasible.
- 2.2 Any quotation or similar document is not to be taken as an offer and no Contract shall take effect unless and until a Purchase Order is accepted by Rack in an Order Acknowledgement. Any acceptance by Rack shall always be on the provisions of this Agreement.
- 2.3 Where Buyer transmits a Purchase Order or any other document by telephone, fax or e-mail, Buyer is solely responsible for any error or omission in the transmission thereof.
- 2.4 Rack shall be entitled to rely in all respects and in all circumstances on the contents of the Order Acknowledgement as stating the quantity and description of the Goods that are to be supplied. Accordingly, it shall be Buyer's sole responsibility to check the Order Acknowledgement and to notify Rack forthwith after the receipt of the same where the Goods are not properly stated in the Order Acknowledgement.
- 2.5 This Agreement shall always apply to the exclusion of any terms and conditions contained in or referred to in a Purchase Order or any other document submitted by Buyer and shall supercede any previous course of dealing between Buyer and Rack.
3. **Publications and Representations**
- 3.1 Without prejudice to the provisions of Clause 12.1, all descriptions, illustrations and information contained in (i) Rack's catalogues, price lists, web site, advertising matter and other publications and (ii) labels attached or affixed to Rack's containers and packaging or any other collateral item relating to the Goods shall be regarded as approximate only and are to present merely a general idea of the goods described in them and shall not form part of the Contract or be deemed to import any warranty regarding the Goods.
- 3.2 Buyer acknowledges that in entering into the Contract, it has not relied upon any representation made by or on behalf of Rack save to the extent that any such representation is set forth in writing and expressly included in the Contract.
- 3.3 Nevertheless nothing in this Contract shall be taken to exclude Rack's liability for a fraudulent misrepresentation made by Rack.
4. **Prices**
- 4.1 The price of the Goods will be that stated in the Order Acknowledgment. Save to the extent that the contrary may be stated in the Order Acknowledgment, the price of the Goods shall exclude transportation, delivery and insurance during delivery.
- 4.2 Save as expressly stated otherwise by Rack in writing, prices are quoted by Rack exclusive of Value Added Tax and any other sales tax, which Rack shall add to the invoice (and which Buyer shall be liable to pay for) at the appropriate prevailing rate. Buyer is solely responsible for all customs duties, import duties or similar duties and taxes.
- 4.3 Rack shall be entitled to charge Buyer simple interest on any sums paid late pursuant to a Contract from the due date until the date of payment. Such interest shall be calculated on a daily basis at the rate of three per cent (3%) above the base lending rate of Barclays Bank plc from time to time prevailing, as well after as before any judgment.
5. **Reservation of Title – Risk and Property**
- 5.1 Risk of damage to or loss of the Goods shall pass to Buyer at the time at which the Goods are ready for unloading by or on behalf of Buyer.
- 5.2 Notwithstanding delivery and the passing of risk in the Goods, the property in the Goods shall not pass to Buyer until Rack has received in cash or cleared funds payment in full for the price of the Goods.
- 5.3 Until such time as the property in the Goods passes to Buyer, Buyer shall hold the Goods as Rack's fiduciary agent and bailee and shall keep the Goods separate from those of Buyer and third parties and properly stored, protected and insured and identified as Rack's property. Notwithstanding the previous sentence, Buyer shall be entitled to resell or use the Goods or integrate the Goods with other products provided that Buyer does so in the ordinary course of its business.
- 5.4 Until such time as the property in the Goods passes to Buyer (and provided the Goods are still in separate identifiable existence and have not been resold) Rack shall be entitled at any time to require Buyer to deliver up the Goods to Rack and, if Buyer fails to do so forthwith, to enter upon any premises of Buyer or any third party where the Goods are stored and repossess the Goods.
- 5.5 Buyer 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 Rack, but if Buyer does so all monies owing by Buyer to Rack shall (without prejudice to any other right or remedy of Rack) forthwith become due and payable.
6. **Payment**
- 6.1 Rack shall be entitled to submit an invoice to Buyer at any time on or after the Goods leave the premises of Rack or are otherwise despatched.
- 6.2 Buyer shall pay Rack's invoice in full within thirty days of the end of the month in which the invoice is dated.
- 6.3 Notwithstanding the provisions of Clauses 6.1 and 6.2 Rack reserves the right (in Rack's absolute discretion) to require payment in full for the Goods at any time or otherwise to change any credit facility from time to time given to Buyer.
- 6.4 Buyer shall make no deduction from the invoice price on account of any set-off, claim or counter-claim unless both the validity and the amount thereof have been admitted by Rack in writing.
7. **Delivery**
- 7.1 Where Rack agrees or states a specified delivery date, Rack shall use reasonable endeavours to deliver on or before the relevant date, but Rack shall be under no obligation to do so. Rack shall not be liable in respect of any loss incurred by Buyer arising from any delay in delivery of the Goods or performance of any service.
- 7.2 Time shall not be of the essence with respect to any of Rack's obligations arising pursuant to a Contract.
- 7.3 Rack shall be entitled to deliver the Goods by instalments. Each instalment shall be treated as if it constituted a separate and distinct contract between Rack and Buyer.
- 7.4 Any failure, suspension or delay by Rack in respect of any part-delivery of the goods or the discovery of any defect in any of the Goods so delivered shall not entitle Buyer to cancel the remainder of the contract and shall not affect the obligations of Buyer in respect of the remainder of the Goods or the remainder of the Contract.
8. **Suitability of Storage and Offloading Facilities**
- 8.1 Rack reserves the right at any time to refuse to make delivery of the Goods if in its sole opinion the storage and offloading facilities proposed by Buyer are inadequate or unsuitable.
- 8.2 Notwithstanding the provisions of Clause 8.1, where the Goods are delivered by or on behalf of Rack such delivery shall in no way constitute a commitment or representation by Rack as to the adequacy or suitability of Buyer's storage or offloading facilities. Buyer shall at all times be solely responsible and liable to ensure that Buyer's storage and offloading facilities are adequate and suitable.
9. **Failure to Accept Delivery when Tendered**
- 9.1 Where any delay in delivery of the Goods is caused by Buyer, Rack shall be entitled to charge Buyer all proper costs arising out of such delay including without limitation the cost of returning the Goods to Rack's premises, of storing the Goods and of re-delivering the Goods.
- 9.2 Where any delay in delivery of any services is caused by Buyer, Rack shall be entitled to charge Buyer all proper costs arising out of such delay including without limitation the wasted cost of having men and materials ready to deliver the service.
10. **Force Majeure**
- 10.1 In this Clause 10, "Force Majeure Event" means an event beyond the reasonable control of the party claiming the benefit of the Clause (including its sub-contractors) including, without limitation, act of God, war, riot, civil commotion, compliance with a law or governmental order, rule, regulation or direction, fire, flood, storm, riot, strike or other industrial action (including without limitation strike or other industrial action by the employees of the party claiming the benefit of the Clause), failure in the supply of a utility or a significant price increase of power, fuel, raw material, component or transport.
- 10.2 Neither party shall be under any liability to the other party in respect of any failure to perform or delay in performing any of its contractual obligations to the other party (other than an obligation to pay monies) attributable to any Force Majeure Event and no such failure or delay shall be deemed for any purpose to constitute a breach of contract.
- 10.3 The party claiming the benefit of a Force Majeure Event shall (i) give the other party notice as soon as reasonably practicable of the said Force Majeure Event; and (ii) use and continue to use its reasonable endeavours to overcome the said Force Majeure Event and to minimise the effect of the Force Majeure Event.
11. **Suspension**
- 11.1 For the purposes of this Clause 11, an "Insolvency Event" means where: (a) Buyer makes any voluntary arrangement with its creditors or (being a company) goes into liquidation or has an administrator or administrative receiver appointed over the whole or any part of its assets or (b) Buyer ceases, or threatens to cease, to carry on business or (c) any event takes place in any jurisdiction other than England which is analogous to any of the above provision of this Clause 11.1 or (d) Buyer is in breach of any material provision of this Contract and fails to remedy such breach within thirty days of a notice from Rack indicating the breach and requiring Buyer to remedy the same.
- 11.2 Where an Insolvency Event occurs then, without prejudice to any other right or remedy available to Rack, Rack shall be entitled to suspend any further deliveries under the Contract.
- 11.3 Where an Insolvency Event occurs and whether or not the Goods have been delivered, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
12. **Limited Guarantee**
- 12.1 Rack's only responsibility shall be to ensure that when the Goods are supplied they are substantially in accordance with any sample provided. If a sample has not previously been supplied to Buyer, Rack will supply a sample to Buyer on request.
- 12.2 Rack guarantees that the Goods when supplied are substantially in accordance with the sample save that where the supplier of a component used in the Goods provides a lesser guarantee, then Rack's guarantee in respect of that component is solely to use its reasonable endeavours to pass on that lesser guarantee to Buyer.
- 12.3 Rack shall not be liable under this guarantee or otherwise, howsoever arising, for any misuse of the Goods by Buyer (or any third party).
13. **Liability**
- 13.1 Save as expressly provided in this Agreement or in any individual Contract, all terms, conditions and warranties implied by statute, common law or otherwise howsoever arising are excluded to the fullest extent permitted by law. Buyer is solely responsible for satisfying itself and others as to the suitability of the Goods for any particular purpose and Buyer acknowledges that it is relying solely on Buyer's own skill and judgment and not Rack's in determining such suitability. Rack's only warranty is that the Goods when supplied are substantially in accordance with any sample, as further provided for in Clause 12 above.
- 13.2 The charges levied by Rack on Buyer pursuant to this Agreement are determined on the basis of the exclusions from and limitations of liability contained in this Agreement. Buyer expressly agrees that these exclusions and limitations are reasonable because of (amongst other matters) the possibility that the amount of damages awardable to Buyer for a breach by Rack of this Agreement may be disproportionately greater than the price of the Goods.
- 13.3 The following provisions in this Clause 13 set out Rack's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to Buyer in respect of (a) a breach of Rack's contractual obligations or (b) a tortious act or omission for which Rack is liable or (c) an action arising out of a misrepresentation made by or on behalf of Rack; arising in connection with the performance or contemplated performance of this Agreement or out of an act done or omission made as a consequence of the entry into by Rack of this Agreement.
- 13.4 The total liability which Rack shall owe to Buyer and in respect of all claims howsoever arising pursuant to this Agreement shall not exceed an amount equal to two and a half times the price of the Goods.
- 13.5 The total liability which Rack shall owe to Buyer and in respect of all claims howsoever arising in any one calendar year shall not exceed the sum of one hundred and twenty five thousand pounds (£125,000.00).
- 13.6 Rack shall in no circumstances be liable to Buyer for any pure economic loss, loss of profit, loss of business and like loss. Rack shall in no circumstances be liable to Buyer for any indirect loss.
- 13.7 Buyer shall only be entitled to bring a claim against Rack where Buyer issues legal proceedings against Rack within the period of twenty four (24) months commencing on the date upon which the Goods are despatched by Rack.
- 13.8 The exclusions from and limitations of liability referred to in this Clause 13 do not apply so as to exclude or limit Rack's liability for (a) death or personal injury resulting from the negligence of Rack, its servants or agents or (b) damage for which Rack is liable to Buyer under Part I of the Consumer Protection Act 1987 and where Buyer acts as a consumer pursuant to that Act or (c) breach of Rack's implied undertaking as to title to the Goods; Buyer save that nothing in this Clause 13 shall confer a right or remedy upon Buyer to which Buyer would not otherwise be entitled.
- 13.9 The exclusions from and limitations of liability set out in this Clause 13 shall be considered severably. The validity or unenforceability of any one part of this Clause 13 shall not affect the validity or enforceability of any other part of this Clause 13.
14. **Inspection**
- 14.1 Buyer shall inspect the Goods for any defect, shortage, damage or loss whilst in transit as soon as is practicable after actual delivery and shall give to Rack and the carrier notice in writing before the end of the third working day after actual delivery of any claim for any such defect, shortage, damage or loss. If Buyer fails to do so, the Goods shall be conclusively presumed to have been received and accepted by Buyer without any claim for any defect, shortage, damage or loss in transit. The provisions of this Clause 14.1 shall only apply where any such claim for any defect, shortage, damage or loss to the Goods is apparent on visual inspection.
- 14.2 Buyer shall properly inspect and test the Goods to ensure that they are in compliance with any sample and for all other purposes within thirty days of delivery and shall give Rack notice in writing promptly after such inspection and testing of any claim that the Goods are not in compliance with any sample. If Buyer fails to do so, the Goods shall be conclusively presumed to have been received and accepted by Buyer without any claim that the Goods are not in compliance with any sample.
15. **Defects:** Buyer shall be liable to compensate Rack in respect of any claims or proceedings resulting from any injury, loss or damage caused by the use to which the Goods are put or a misuse of the Goods.
16. **Assignability:** Buyer shall not be entitled to assign the benefit or burden of the whole or any part of any Contract without the prior written consent of Rack. Rack may sub-contract the performance of its obligations as it sees fit, provided always that Rack shall remain responsible for the acts and omissions of its subcontractors.
17. **Waiver:** Save in respect of a waiver granted in writing, the failure of Rack at any time to enforce a provision of this Contract shall not be deemed a waiver of such provision or of any other provision of this Contract or of Rack's right thereafter to enforce that or any other provision of this Contract.
18. **Third Party Rights:** A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement.
19. **Proper Law:** Every Contract to which this Agreement applies shall be construed and take effect in accordance with the laws of England. The parties hereby accept the non-exclusive jurisdiction of the English Courts in connection with any dispute relating to the formation, construction or performance of a Contract or this Agreement or any related tortious claim.