

**ROTORK GENERAL CONDITIONS OF SALE ("GCS")****PRODUCTS AND RELATED SERVICES****1. Interpretation**

The definitions and rules of interpretation set out in Schedule 1 apply to these GCS.

**2. Applicable Terms**

2.1 The Contract shall comprise of the following and, in the event of conflict between any of the following, except where expressly stated otherwise in these GCS, the document mentioned first shall take priority:

- (a) any terms expressly set out (not referenced) in the Acknowledgement;
- (b) subject to clause 2.2 below, those terms expressly set out (not referenced) in the Purchase Order that either describe the Products and/or Services or are specific to the Products and/or Services;
- (c) these GCS;
- (d) any other terms referenced in the Acknowledgement (not including the Purchase Order itself);
- (e) any other terms set out or referenced in Rotork's quotation (provided (and to the extent that) such quotation is referenced in either the Acknowledgement or the Purchase Order);
- (f) the default terms of the Uniform Commercial Code as in effect in the State of New York; and
- (g) subject to clause 2.2 below, any other terms referenced in the Purchase Order.

2.2 **Any general terms and conditions or pre-printed terms that are set out or referenced in the Purchase Order and are either: not specific to the Products and/or Services to be supplied by Rotork; or are routinely incorporated in all (or substantially all) the Customer's purchase orders with its suppliers are expressly rejected, excluded in full and will have no effect. Fulfillment of the Customer's order does not constitute acceptance of any of such terms and conditions and does not serve to modify or amend these GCS.**

**3. Purchase Orders and Specification**

3.1 The Customer will provide Rotork with all information reasonably required by Rotork in connection with the Products or Services or their intended application.

3.2 Rotork reserves the right to amend the Specification of the Products to ensure their continued compliance with law. Rotork will notify the Customer of any material amendments made.

**4. Delivery**

4.1 Rotork will deliver the Products to the Customer on a 'FCA' basis (Incoterms 2010) to the location specified in the Contract or such other address as agreed by the Parties in writing or, in no such location or address is agreed, the Rotork facility where the Products are finally assembled (the "**Delivery Location**"). The Products will be delivered on the Scheduled Delivery Date for such Products or earlier if agreed by the Parties.

4.2 Delivery of a Product will be completed when Rotork places the Product at the Customer's disposal at the Delivery Location.

4.3 If Rotork is either unable to fulfill any delivery of the Products by their Scheduled Delivery Date or perform the Services by the agreed date, then after a grace period of ten Business Days, the Customer may (except to the extent to which the failure results, either directly or indirectly, from any act or omission of the Customer or a Force Majeure Event) claim the following as liquidated damages from Rotork:

- (a) such rate (expressed as a percentage of the price of the Product or Service delayed and to apply in respect of any delay after the end of the grace period) and for such a maximum period as is agreed between the Parties and stated in the Contract; or
- (b) where no such rate has been expressly agreed, a rate of 0.5% of the price of the Product or Service delayed for each week of delay after the end of the grace period, up to the maximum of 5%.

4.4 Any claim by the Customer for liquidated damages is conditional on the Customer submitting such a claim to Rotork in writing within 30 days from the delivery of the delayed Product or Service or, if applicable, the date on which the Customer exercises its right of termination under clause 10.2.

4.5 The Customer's right to claim the amounts set out in clause 4.3 are, in addition to the Customer's right to terminate in accordance with clause 10.1 or 10.2, the Customer's sole remedy and Rotork's sole liability for the delay in the delivery of Products or Services.

4.6 Where Rotork is providing Services, the Customer will provide Rotork with access to its facilities as necessary to allow Rotork to perform the Services in a timely manner.

**5. Price and Payment**

5.1 The price of the Products and Services will be as set out or referenced in the Acknowledgement, or failing that, in the Purchase Order. If no price is set out in such documents, the price will be the price set out in Rotork's published price list as at the date of Delivery.

5.2 Rotork will be entitled to submit invoices for any Product on or after its Delivery and for any Service on or after its performance. All invoices must be paid in full by the Customer in cleared funds within 30 Business Days of the date of the invoice. Payment will be made to the bank account nominated in writing by Rotork.

5.3 If the Customer fails to make any payment due to Rotork under the Contract by the due date for payment, then the Customer will pay interest (both before and after judgment) on the overdue amount at a rate of the lesser of (i) 4% per annum above the Federal Funds Rate and (ii) the highest rate allowable under applicable law. Such interest will accrue on a daily basis

- from the due date until actual payment of the overdue amount. The Customer will pay the interest together with the overdue amount.
- 5.4 All payments made by the Customer under the Contract will be made without (and free and clear of any deduction for) set-off, counterclaim abatement or withholding.
- 5.5 The Customer will make all payments without any Tax Deduction, unless law requires a Tax Deduction to be made. If a Tax Deduction is required by law to be made by the Customer:
- (a) the amount of the payment due to Rotork will be increased to an amount which (after making the Tax Deduction) leaves an amount paid free and clear of Tax equal to the payment which would have been due if no Tax Deduction had been required;
  - (b) the Customer will make the minimum Tax Deduction allowed by law, and will make any payment required in connection with it within the time allowed; and
  - (c) The Customer will, if available, deliver to Rotork an official receipt or other evidence satisfactory to Rotork (acting reasonably) that the Tax Deduction has been made or, as applicable, any appropriate payment has been paid to the relevant taxing authority.
- 5.6 Unless expressly stated otherwise in the Contract, any amount payable by the Customer pursuant to the Contract is exclusive of any value added tax, use tax, goods or services tax, sales or turnover tax or any other tax of a similar nature. The Customer will, on receipt of a valid invoice from Rotork, pay to Rotork such additional amounts in respect of such taxes as are chargeable on the supply or products and services.
- 6. Title, Risk and Acceptance**
- 6.1 Title to, and all risk of loss or destruction of, or damage to, a Product passes from Rotork to the Customer on its delivery in accordance with clause 4.
- 6.2 The Customer shall promptly determine whether it has received the correct quantity of Products ordered. If Customer has received a higher quantity of Products than ordered, the Customer shall notify Rotork of such fact as soon as practicable and arrange with Rotork for the prompt return of such excessive Products at Rotork's expense.
- 6.3 If any Products are Defective, whether accepted or not, the Customer shall have the remedy available under clause 7.2 in lieu of any default remedies under the Uniform Commercial Code or other applicable law.
- 7. Warranties and Defective Goods**
- 7.1 Rotork warrants that all Products sold by Rotork to the Customer pursuant to the Contract will, on Delivery:
- (a) conform in all material respects with the Specification, provided that in respect of any Product performance characteristics or parameters set out in the Specification, in the absence of any express provisions in the Specification to the contrary, such Product is only warranted to perform in accordance with those performance characteristics or parameters in those conditions (including pressure, humidity or temperature) existing in Rotork's relevant facility responsible for assembling the finished Product;
  - (b) be free from material defects in material and workmanship; and
  - (c) subject to the Customer's compliance with clause 3.1, will be fit for any specific purpose expressly set out in the Acknowledgement or Purchase Order as being the purpose for which the Products will be used.
- 7.2 **If any Products are shown to be Defective before the end of a period of 18 months from Delivery or 12 months from commissioning, whichever is sooner (the "Warranty Period"), then Rotork will, as its sole liability and the Customer's sole remedy for such a Defect, either (at Rotork's sole discretion):**
- (a) **subject to clause 7.9, exchange or repair the Defective Product within a reasonable period of time (taking into account the Customer's business priorities) and at no charge; or**
  - (b) **credit the Customer in respect of the original purchase price of the Defective Product.**
- 7.3 Where any Product is replaced in accordance with clause 7.2 or 7.7, the unexpired balance of the Warranty Period applicable to the Product will apply to the replacement Product.
- 7.4 Rotork will not be liable for a Product's failure to comply with the warranty set out in clause 7.1 in any of the following events:
- (a) the Defect arises as a result of Rotork following any drawing, design or specification supplied by the Customer;
  - (b) the Customer alters such Products without the written consent of Rotork; or
  - (c) the Defect arises as a result of fair wear and tear, willful damage, negligence or any failure by anyone but an Affiliate of Rotork to follow the Product's technical documentation (including any instructions or procedures for installation, commissioning, operation or maintenance).
- 7.5 The Customer's remedy under clause 7.2 is conditional on the Customer notifying Rotork of the Defect during the relevant Warranty Period. Failure to do so will invalidate the relevant warranty claim.
- 7.6 Rotork warrants to the Customer that, where Rotork is providing the Customer with Services under the Contract, such Services will be performed with reasonable care and skill.
- 7.7 If Rotork breaches clause 7.6, then as the Customer's sole remedy and Rotork's sole liability for any defects in the Services, Rotork will:
- (a) re-perform the relevant Services or, if it is not practicable to re-perform such Services, refund the Customer the amounts paid by the Customer in respect of such Services; and
  - (b) subject to clause 7.9, repair or replace, on a free of charge basis, any Products damaged as a result of Rotork's breach of clause 7.6.
- 7.8 The Customer's remedy under clause 7.7 is conditional on the Customer notifying Rotork of the breach of clause 7.6 within the shorter of:

- (a) 180 days of the Service in breach being performed; or  
 (b) 14 days of the date the Customer discovered, or should reasonably have discovered, the breach.
- 7.9 It will be the Customer's responsibility to remove and then deliver the Products subject to any claim under sub-clause 7.2(a) or 7.7(b) to the Delivery Location on a 'DDP' basis (Incoterms 2010). Rotork will then deliver any repaired or replaced Products to the Delivery Location on an 'FCA' basis (Incoterms 2010). Provided that
- (a) the Customer's claim under sub-clause 7.2(a) or 7.7(b) is valid; and  
 (b) the Customer has consulted with Rotork in advance of incurring such expenses (allowing Rotork to waive the requirement for the Products to be returned and/or send personnel to assess any potentially remedy any issue in situ) and such expenses are not significantly above the average costs for transporting similar goods (as part of a consignment of other goods) a similar distance by paved highway or rail in the relevant country,  
 Rotork will reimburse the Customer for any reasonable road or rail transportation expenses the Customer incurs in transporting the Products subject to the claim to and from the Customer's site where such Products are operating.
- 7.10 If Rotork determines that any claim made in respect of the warranties in this clause 7 is invalid, Rotork will stop all work in respect of such a claim and provide the Customer with a statement of costs for the work already performed (including any assessment work) and a quote for the work to be performed. If the Customer does not accept the quote it will, in any case, promptly reimburse Rotork for the costs Rotork has incurred for work already performed in respect of such a claim.
- 7.11 Subject to clause 7.1(c), the Customer acknowledges that it is solely responsible for choosing which Products and/or Services to purchase and warrants and represents that it both has requested and obtained all the information it needs and has analyzed such information appropriately, in making the decision as to what Product and/or Service to purchase.
- 8. Limitation of Liability**
- 8.1 **Subject to clause 8.3, Rotork's total liability (if any) to the Customer and the Customer's remedies in respect of:**
- (a) **a delay in the Delivery or performance of, or non-Delivery or performance of, Products or Services will be limited to those remedies set out in clause 4 and the Customer's right to terminate, as set out in clause 10.1(c) and 10.2;**  
 (b) **claims for infringement of Third Party IPR will be limited to those remedies set out in clause 11;**  
 (c) **the performance, quality or fitness for purpose of any Product (including any Defect or non-conformance) will be limited to clause 7.2;**  
 (d) **the performance, quality or fitness for purpose of any Service performed will be limited to clause 7.7**  
**The total liability of Rotork to the Customer in respect of all other matters arising under or in connection with the Contract (including under any indemnity) will be limited to the total price of the Products to be supplied and the Services to be performed under the Contract. This clause 8.1 will apply notwithstanding the failure of any agreed or other remedy of its essential purpose.**
- 8.2 Rotork assumes no collateral duty in tort or negligence to the Customer with respect of the supply of Products or Services.
- 8.3 Nothing in the Contract will limit or exclude a Party's liability for fraud (including fraudulent misrepresentation), death or personal injury, gross negligence, willful misconduct or to the extent such limitation or exclusion is not permitted by law. To the extent any part of the Contract has such effect, the Parties agree to replace such part of the Contract with provisions modified to the extent necessary to ensure such exclusion or limitation is permissible by law, but no further.
- 8.4 **IN NO EVENT SHALL ROTORK BE LIABLE TO CUSTOMER FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT ROTORK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
- 8.5 If any Information provided by the Customer to Rotork is either incorrect, incomplete or misleading and Rotork uses such Information, the Customer will:
- (a) waive any claims it has against Rotork (including under clauses 4.3 and 7) for any losses the Customer incurs as a result of Rotork not performing its obligations correctly due, directly or indirectly, to the incorrect, incomplete or misleading information; and  
 (b) indemnify Rotork in full against all losses, costs or liabilities Rotork incurs in connection with a Third Party claim Rotork receives, to the extent that Rotork would not have suffered such losses, expenses, costs or liabilities if the Information provided by the Customer had not been incorrect, incomplete or misleading.
- 8.6 The Customer will indemnify Rotork for all losses, costs or liabilities, including attorneys' fees, Rotork incurs in connection with any claim that Rotork receives from any Affiliate of the Customer in connection with the Contract.
- 9. Confidentiality**
- 9.1 Subject to clause 9.2 to 9.3, each Party will hold in confidence any Information which it acquires directly or indirectly from the other Party and will protect such Information with a reasonable degree of care and at least the same degree of care used to protect its own Information and not use such Information other than for the purposes of performing or exercising its rights under the Contract it was provided under.
- 9.2 The provisions of clause 9.1 do not apply to Information which is:
- (a) already in the public domain;  
 (b) subject to an obligation to disclose under law, or is required to be disclosed by any court of competent jurisdiction or competent regulatory authority, by subpoena, notice or otherwise; or

- (c) received, without restriction, from a Third Party who was without an obligation of non-disclosure at such time such Information was received.
- 9.3 Each Party may disclose the other Party's Information to its employees, agents, advisors, insurers, Affiliates or subcontractors ("**Representatives**") for the purpose of carrying out the Party's obligations under the Contract, provided that they ensure that their Representatives' comply with the confidentiality obligations set out in this clause.

## 10. Termination and Suspension

- 10.1 Either Party may terminate the Contract immediately on written notice to the other Party if:
- (a) it becomes unlawful in any applicable jurisdiction for either Party to perform any of its obligations under the Contract
  - (b) the other Party suffers an Insolvency Event; or
  - (c) a Force Majeure Event stops Rotork performing its obligations under the Contract for three consecutive months.
- 10.2 If the maximum amount of liquidated damages is reached under clause 4.3, the Customer may terminate, immediately on written notice to Rotork, the Contract in respect of the delayed Products, and if the Customer is not able to use any other Products delivered or to be delivered under the Contract as a result of not receiving the delayed Products, the Customer may also terminate the Contract in respect of those related Products. To the extent any Products terminated under this clause 10.2 have been delivered by Rotork and/or paid for by the Customer, then within 30 days:
- (a) the Customer will promptly return such Products to Rotork on FCA basis at the Delivery Location; and
  - (b) Rotork will refund the price of those Products to the Customer.
- 10.3 Rotork may terminate the Contract immediately on written notice to the Customer if the Customer is in breach of any obligation to make payment under the Contract or any other contract with Rotork and such a breach continues for a period of ten days from the due date.
- 10.4 Without limiting its other rights and remedies, Rotork may suspend performance under the Contract or any other contract between the Customer and Rotork if:
- (a) the Customer becomes subject to an Insolvency Event;
  - (b) the Customer fails to make a payment under the Contract by the due date or any other contract with Rotork; or
  - (c) Rotork reasonably believes the events listed in (a) and (b) of this clause 10.4 are about to occur.
- If Rotork has suspended performance and the circumstances entitling Rotork to suspend performance subsequently cease (and Rotork has not elected to terminate the Contract in accordance with its other rights and remedies), Rotork will resume performance but any time limits for such performance will be extended by the duration of the suspension.
- 10.5 Termination of the Contract, however arising, will not affect any of the Parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 10.6 The Customer's right to terminate the Contract as set out in this clause 10 represents its only rights to terminate the Contract.

## 11. Intellectual Property Rights

- 11.1 Subject to clause 11.2, the Customer will not acquire any title, right or interest in or to any IPR belonging to, licensed to or developed by Rotork relating to the Products or Services provided under the Contract.
- 11.2 The Customer will have a non-exclusive, irrevocable, perpetual, worldwide, royalty-free license to use any IPR in any written documentation provided to the Customer by Rotork as a deliverable in accordance with the Contract, solely for the purpose of installing, commissioning, operating and maintaining the Products.
- 11.3 Rotork will have a non-exclusive, irrevocable, perpetual, worldwide, royalty-free license to use any Product configuration and performance data obtained during the provision of Services to help improve its products and services generally.
- 11.4 **Subject to 11.5, the sole liability of Rotork to the Customer in respect of any claims for infringement of a Third Party's IPR, will be to indemnify the Customer against any reasonably and properly incurred liabilities resulting from a Third Party claim that the use by the Customer of any of the Products or Services provided by Rotork under the Contract infringes any IPR owned by such Third Party.**
- 11.5 **The indemnity contained in clause 11.4 will not apply for claims for infringement in respect of:**
- (a) any use of the Products in a manner not permitted by the Specifications or requirements of the Products;
  - (b) any modification to the Products which is carried out by or on behalf of the Customer, if such modification is not authorized by Rotork in writing;
  - (c) any Products manufactured to the specific instructions of the Customer;
  - (d) losses resulting from the Customer failing to observe its obligations under any Contract; and/or
  - (e) losses that the Customer could have mitigated but did not.

## 12. Export Terms

- 12.1 The Party which is exporting, in the case of exports, or the Party which is importing, in the case of imports, will be responsible for obtaining all necessary licenses, or other governmental authorizations required in connection with any export, re-export, or imports, as the case may be, under the Contract. The Parties will co-operate with each other in securing any such licenses or authorizations as may be required and each will provide such statements, certificates and assurances regarding transfer, use, disposition, end-use, source of supply, nationalities and re-export of the Products as may be required in connection with each Party's application for any required license or governmental authorization.
- 12.2 Any government fees or charges in connection with obtaining such licenses or authorizations will be the responsibility of the Party which is exporting, in the case of exports, and the Party which is importing, in the case of imports, the Products.
- 12.3 The Customer will, in connection with the Products and Services, abide by all applicable export legislation and any export license restrictions and, in addition, will not:
- (a) offer the Products for resale in any country or to any national of any country where the Customer knows the export of the Products is prohibited by the United States, UK Government, the UN, the EU or any other relevant governmental authority or organization; or
  - (b) offer to sell the Products to any person the Customer knows or suspects will subsequently resell the Products into a country where export of the Products is prohibited by a relevant organization, including, without limitation, a



national or a country listed in Country Groups D:1 or E:2 as set forth in 15 C.F.R. Part 740, Supplement No. 1 and as amended.

- 12.4 The Customer will indemnify Rotork for all liabilities, loss, damages, costs and expenses awarded against or incurred by Rotork arising out of or in connection with any breach of the Customer's obligations contained in clause 12.3.
- 12.5 The Customer agrees to provide Rotork with any information Rotork reasonably requires concerning the destination and use of the Products, to allow Rotork to comply in full with any relevant export legislation or to meet or minimise its tax obligations.

### 13. Miscellaneous

- 13.1 Any notice given to a Party under or in connection with the Contract will be in writing and addressed to that other Party at its registered office or its principal place of business.
- 13.2 Nothing in the Contract will:
- (a) constitute a partnership or joint venture between the Parties;
  - (b) constitute any Party the agent of any other Party; or
  - (c) create any fiduciary obligations between the Parties.
- 13.3 The rights of each Party under the Contract may be exercised as often as needed, are cumulative and apply (except where expressly stated in the Contract) in addition to its rights under law and may be waived only in writing and specifically. Not exercising or a delay in exercising any right is not a waiver of that right.
- 13.4 Clauses 7, 8, 9, 11, 12, 13, 14, 15, 16 and 17 (and any other provision which expressly or impliedly survives termination or expiration of the contract) will survive the expiration or termination of the Contract and will continue in full force and effect after expiration or termination.

### 14. Entire Agreement

- 14.1 The Contract constitutes the entire agreement between the Parties with respect to its subject matter.
- 14.2 Neither Party has placed any reliance on and will have no remedies in respect of any representations, agreements, statements, understandings or warranties (whether made innocently or negligently) that is not set out in the Contract whether orally or in writing, relating to the sale of Products or Services other than those expressly incorporated in the Contract.
- 14.3 **ROTORK ASSUMES NO CONTRACTUAL OBLIGATION WITH RESPECT TO THE PROVISION OF THE PRODUCTS OR SERVICES OTHER THAN AS EXPRESSLY SET OUT IN THE CONTRACT, WHETHER ARISING UNDER ANY TERM, CONDITION OR WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR PARTICULAR PURPOSE OR WARRANTY OF SATISFACTORY QUALITY OR ANY OTHER CONTRACTUAL TERM, CONDITION OR WARRANTY EXPRESS OR IMPLIED BY STATUTE OR OTHERWISE AND ALL SUCH TERMS, CONDITIONS AND WARRANTIES ARE EXCLUDED AND DISCLAIMED.**
- 14.4 The only remedies available for breach of any representation or statement which was made before the entry into the Contract and which is expressly set out in the Contract will be for breach of contract.

### 15. Anti-Bribery and Corrupt Gifts

- 15.1 Neither Party will:
- (a) resort to fraudulent practices in relation to the obtaining or execution of the Contract especially by deceit concerning the nature, quality or quantity of the Products either supplied or to be supplied, or the methods or processes of manufacture employed;
  - (b) offer to give or agree to give to any employee of the other Party, any gift or consideration of any kind as an inducement or reward for doing or omitting to do or for having done or omitted to do any act in relation to the obtaining or execution of the Contract; or
  - (c) commit any offence in connection with the Contract under the Ethical Legislation.

### 16. Nuclear Liability

- 16.1 This clause shall only apply in the event that the Products are used on or as a component or part of a Nuclear Installation.
- 16.2 **The Customer will indemnify and hold harmless Rotork, its directors, officers, employees, contractors, Affiliates and suppliers in full against any liability arising out of:**
- (a) **any Third Party claim, (regardless of the jurisdiction the claim arises or was filed in) where such claim arises out of or in connection with a Nuclear Incident or a Precautionary Evacuation, as those terms are defined in the Atomic Energy Act of 1954 as amended, and any implementing regulations; and/or**
  - (b) **any claim, including any claim from the Customer or any Third Party claim, (regardless of the jurisdiction the claim arises or was filed in) where such claim arises out of or in connection with:**
    - (i) **ionising radiation from a Nuclear Installation or contamination by radioactivity from any nuclear fuel, nuclear waste or any other nuclear material at a Nuclear Installation; and/or**
    - (ii) **any precautions taken against the possibility of ionising radiation from a Nuclear Installation or contamination by radioactivity from any nuclear fuel, nuclear waste or any other nuclear material at a Nuclear Installation,****regardless of whether the liability arises out of or in connection with damage, costs or losses of any kind occurring on or off a Nuclear Installation.**
- 16.3 The Customer will not use the Products and shall procure that the Products shall not be used at, or enter onto a Nuclear Installation, at any time, including through any re-transfer, without the prior written consent of Rotork.

**17. Law and Jurisdiction**

- 17.1 The Contract, and any non-contractual obligations arising out of or in relation to the Contract, will be governed by and construed in accordance with the laws of the State of New York, United States of America. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Products does not apply to the Contract or any transaction under it.
- 17.2 Any dispute, controversies or claims arising out of or in connection with the Contract ("**Dispute**"), whether arising in contract, tort, equity, for breach of statutory duty or otherwise, will be finally resolved in accordance with the Rules of the International Court of Arbitration of the International Chamber of Commerce ("**ICC**"). The seat and place of any such arbitration will be New York, United States of America and the language of the arbitration will be English.
- 17.3 There will be one arbitrator, selected and appointed by the Parties, except where:
- (a) the Dispute involves an amount in excess of US\$1,000,000 or equivalent (exclusive of costs and fees); or
  - (b) the Parties are unable within 30 days to agree the identity of an arbitrator,
- in which cases three arbitrators will be appointed. In such instance, each Party will select one arbitrator within 30 days after giving or receiving the demand for arbitration (or failing to agree the identity of an arbitrator under sub-clause (b) above), and the two arbitrators so selected will jointly select the third arbitrator. If the two arbitrators fail to select the third arbitrator within 30 days, then the ICC will make the relevant appointment.
- 17.4 The Parties agree that the appointed arbitrators will assign responsibility for the costs and fees of the arbitration, including administrative costs and fees and legal, witness and expert costs and fees, in light of its determination on the merits and taking into consideration the conduct of the arbitration proceedings, including the conduct of the Parties.
- 17.5 This clause 17 does not limit the right of any Party at any time to seek interim measures of protection including equitable remedies in any appropriate courts of competent jurisdiction. Such preservation of rights will not be construed as a waiver or limitation of either Party's consent to arbitration.

## SCHEDULE 1 INTERPRETATION

### 1. Definitions

In these terms and conditions and the Contract:

**"Acknowledgement"** means Rotork's written acknowledgement of the Customer's Purchaser Order (which shall be considered as an express rejection of the Customer's Purchase Order and a counter-offer by Rotork if it is not in strict accordance with the Customer's Purchase Order).

**"Affiliate"** means as to any person, any other person that is in Control of, is Controlled by, or is under common Control with, such person.

**"Business Day"** means a day when banks are open for business in Rotork's jurisdiction of incorporation.

**"Contract"** shall have the meaning given to it by clause 2.1.

**"Control"** means the power, directly or indirectly, either to: (a) vote 50% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such person; or, (b) direct or cause the direction of the management and policies of such person, whether by contract or otherwise.

**"Customer"** means the person placing the Purchase Order.

**"Defect"** means a Product which fails to conform to the warranty in clause 7.1 and **"Defective"** shall be construed accordingly.

**"Delivery"** means the delivery of a Product in accordance with clauses 4.2.

**"Delivery Location"** means as set out in clause 4.1.

**"Dispute"** means as set out in clause 17.2.

**"Ethical Legislation"** means: (a) any legislation enacted in Rotork's or the Customer's jurisdiction of incorporation, or in any other jurisdiction where the Product or Service is delivered, to enforce or implement either the United Nations Convention against Corruption (being the subject of General Resolution 58/4 of 31 October 2003 of the General Assembly of the United Nations) or the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted on 21 November 1997; and (b) the United Kingdom Anti-Terrorism, Crime and Security Act 2001, the United Kingdom Proceeds of Crime Act 2002, the United Kingdom Bribery Act 2010, the Singapore Prevention of Corruption Act (Chapter 241) and the United States Foreign Corrupt Practices Act (15 U.S.C. Section 78dd-1, et. seq.).

**"FCA"** means as set out in the Incoterms 2010.

**"Federal Funds Rate"** on any day means the per annum rate of interest (rounded upward to the nearest 1/100 of 1%) which is the weighted average of the rates on overnight federal funds transactions arranged on such day or, if such day is not a Business Day, the previous Business Day, by federal funds brokers computed and released by the Federal Reserve Bank of New York (or any successor) in substantially the same manner as such Federal Reserve Bank currently computes and releases the weighted average it refers to as the "Federal Funds Effective Rate".

**"Force Majeure Event"** means an event that is any or all of the following: (a) beyond the reasonable control of Rotork; and/or (b) an act of God, compliance in good faith with any applicable foreign or domestic law, introduction of essential modifications; any other government or other legal or regulatory authority action or inaction, fires, flood, war or threat of war, riots, accidents, national labor disputes, sabotage, malicious damage, acts of terrorism or terrorist activities, disruption to essential services such as electrical power, unusually severe weather, quarantine or any precautions against contagious disease epidemics or pandemics.

**"ICC"** means the International Chamber of Commerce.

**"Information"** means any commercial, financial, technical or operational information, know-how, trade secrets or other information of or in the possession of a Party in any form or medium which has been or may be disclosed or otherwise made available to the other Party, whether orally or in written, electronic or other form, including the provisions and subject matter of the Contract and any other agreements or documents executed by the Parties in connection with the Contract.

**"Insolvency Event"** for a Party occurs when: (a) pursuant to or within the meaning of any United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a **"Bankruptcy Law"**), such Party (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against it in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official; (iv) makes an assignment for the benefit of creditors; or (v) admits in writing its inability to pay its debts as they become due; or (b) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against such Party in an involuntary case; (ii) appoints a trustee, receiver, assignee, liquidator or similar official for such Party or substantially all of the such Party's properties, or (iii) orders the liquidation of such Party, and in each case the order or decree is not dismissed within 60 days; or (c) any event occurs, or proceeding is taken, with respect to such Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in sub-clause (a) to (b) above (inclusive); or (d) such Party suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business.

**"IPR"** means patents, registered designs, trademarks, service marks (whether registered or not), domain names, copyright, design rights, database rights, moral rights, trade secrets, know-how, metatags, design patents, utility patents, provision patents, patent applications, petty patents, utility models and all similar or equivalent property rights including those subsisting in any part of the world in inventions, designs, drawings, computer programs, semiconductor topographies, business names, IP addresses, goodwill, 'get-up' and the style and presentation of goods or services and in applications for protection of the same and any continuations, re-issues or division relating to them in any part of the world.

**"Nuclear Installation"** means: (a) in the United States: (i) a facility licensed by the U.S. Nuclear Regulatory Commission or (ii) a facility owned by the U.S. Department of Energy that possesses or handles nuclear materials; or (b) outside the United States, anything defined as a "Nuclear Installation" in the Paris Convention (Convention on Third Party Liability in the Field of Nuclear Energy of 29th July 1960, as subsequently amended), the Vienna Convention (Vienna Convention on Civil Liability for Nuclear Damage), or the national nuclear liability law of the country in which the facility is located; and whether inside or outside the United States, (c) any vessel or means of transport incorporating a nuclear reactor; or (d) any other facility or site containing a nuclear reactor or storing or handling any nuclear material or nuclear waste.

**"Party"** means a party to the Contract and **"Parties"** means the parties to the Contract.

“**Products**” means those goods which Rotork is to supply in accordance with the Contract.

“**Purchase Order**” means the order placed by the Customer with Rotork for the Products.

“**Representatives**” means as set out in clause 9.3.

“**Rotork**” means the supplying party named in the Contract.

“**Scheduled Delivery Date**” means the date for delivery of the Products as set out in a Contract.

“**Services**” means those services which Rotork is to perform in accordance with the Contract

“**Specification**” means the technical specification of the Products: (i) as set out or referenced in the Contract; (ii) as otherwise subsequently agreed between the Parties, or (iii) if no technical specification is agreed, Rotork’s specification for such Products.

“**Tax Deduction**” means a deduction for or on account of any Tax.

“**Third Party**” means any legal or natural person other than the Parties to the Contract.

“**Warranty Period**” means the period set out in clause 7.2.

## **2. Construction**

2.1 In these terms and conditions and the Contract unless the context otherwise requires a reference to:

- (a) “include”, “includes”, “including” or similar terms will not be construed as exclusive or limiting examples of matters in question and will mean “including, without limitation”;
- (b) a Party or any other person includes its successors in title, permitted assigns and permitted transferees;
- (c) words imparting the singular include the plural and vice versa; and
- (d) unless the context otherwise requires, a reference to one gender will include a reference to the other genders.