

## 1 Definitions

- 1.1 In these Conditions the following terms have the following meanings:
- "Business Day"**: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
- "Company"**: Roxtec Limited (company number 05267114) of Unit C1, Waterfold Park Business Park, Bury, Lancashire, BL9 7BQ;
- "Conditions"**: the conditions of sale set out in this document;
- "Delivery Address"**: the address specified by the Purchaser in the Order;
- "Goods"**: the goods detailed in the Order;
- "Law"**: any statute, regulation, by-law, ordinance, codes of practice or subordinate legislation of any government or governmental authority or body in force from time to time which is applicable to any performance by either party of its obligations under any contract to which these Conditions apply, including the common law and any applicable judgment of a relevant court of law which creates or changes a binding precedent;
- "Order"**: an order for the Goods and/or Services placed by the Purchaser and subject to these Conditions;
- "Purchaser"**: the company, firm or individual who has bought, or agreed to buy the Goods whose details are set out in the Order;
- "Price"**: the price for the Goods and/or Services detailed in the Order or otherwise calculated in accordance with clause 4.1 (Price and Payments) in respect of the Goods [and clause 4.2 in respect of any Services];
- "Quotation"**: the quotation addressed to the Purchaser by the Company; and
- "Services"**: the services detailed in the Order, which may comprise either or both of the Training Services and the Validation Services;
- "Site"** any premises including but not limited to the Purchaser's own premises at which the Purchaser required delivery or collection of the Goods and/or the performance of any Services.
- "Training Services"** training of the Purchaser's personnel in the proper installation, use and/or maintenance of the Goods.
- "Transits"** frames, combinations of frames, modules, stay plates, wedges and round sealings and their openings.
- "Validation Services"** validation, inspection and/or supervision of goods which shall be carried out by a visual inspection only of the readily accessible features of those goods and provide a "snap-shot" of those goods at the time of performance of the Validation Services..
- "Warranty Period"** the period (if any) identified as the warranty period in the Order, or 24 months from the date of delivery or collection or 12 months from the date of installation, whichever is earlier.
- 1.2 In these Conditions, the headings are included for convenience only; the singular includes the plural and vice versa; and references to persons include all legal persons.
- 1.3 Save as expressly provided in these Conditions, the provisions of the INCOTERMS 2015 shall not apply.

## 2 General

- 2.1 These Conditions apply to all contracts for the sale of goods and/or services entered into by the Company.
- 2.2 By placing an Order the Purchaser agrees to deal with the Company on these Conditions to the exclusion of all other terms, conditions, warranties or representations (unless made fraudulently) including, without limitation, any conditions appearing on the Purchaser's purchase order or implied by trade, custom, practice or a course of dealing.
- 2.3 Each Order contains all the terms agreed by the Purchaser and the Company in relation to its subject matter and supersedes all prior agreements, understandings and arrangements whether oral, in writing or arising from a course of dealing.
- 2.4 The Purchaser should not assume that, if it buys goods or services from the Company on more than one occasion, these Conditions will be the same for each purchase. The Purchaser is reminded of the need to periodically check these Conditions for changes.
- 2.5 If there is a conflict between these Conditions and an Order, the terms of the Order shall take precedence but only to the extent that a term is unambiguously and expressly stated to vary these Conditions.

## 3 Placing Orders

- 3.1 The Purchaser shall request the Goods and Services in writing by issuing an Order. The Company shall perform the Services and/or deliver the Goods under the accepted Order but only subject to these Conditions.

- 3.2 The Orders issued by Purchaser for the purchase of Goods shall:
- in respect of Goods give their specification, quantity and the Site at which they are to be delivered or collected; and
  - with respect of Services, give their specification, the estimated hours of work required by Company personnel, and the Site at which performance is to occur.

The Company shall confirm such Orders in writing, including estimated time for delivery.

- 3.3 An Order constitutes an offer to purchase the Goods and/or Services. A Quotation does not constitute an offer to supply and the Order (or any part of it) is not binding until it is expressly accepted by the Company (at its discretion) in writing by way of an order confirmation. The Company shall be entitled to reject Orders (without notice) for any reason and without liability.
- 3.4 Unless otherwise specified in writing, Quotations are valid for 30 days from the date of issue, after which date the Quotation shall automatically be deemed to have been withdrawn and the Company is free to alter any pricing previously quoted
- 3.5 The Purchaser may not cancel or change accepted Orders without prior consent from the Company. [The Company reserves the right to charge Customer all costs associated with the cancelled or changed Order and, in addition, a reasonable cancellation fee].

## 4 Prices and Payments

### Prices

- 4.1 Unless stated otherwise in the Order, the Price for the Goods shall be in accordance with [the Company's price list from time to time] and Ex Works (Incoterms 2015), and exclude freight, insurance, carriage and packing charges, specialist equipment, VAT and all applicable taxes and duties, the costs of which shall be determined as at the date of the Company's invoice and shall be payable by the Purchaser.
- 4.2 [Unless stated otherwise in the Order, the Price of Services shall be shall be calculated on a time and materials basis as follows:
- in accordance with the Company's standard daily fee rates, as notified to the Purchaser from time to time (and calculated on the basis of [an eight-hour day from [08:00 to 17:00] with a one hour break] worked on Business Days ("**Working Hours**"));
  - where applicable, an overtime rate of [PERCENTAGE]% of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by any Company personnel outside Working Hours];
  - the reasonable documented costs for travel, food, accommodation and other expenses incurred by Company personnel in connection with the Services;
  - the reasonable costs of any training materials.
- 4.3 The Company shall be entitled to adjust the Prices whether before or after acceptance of the Order in the event of any increase howsoever arising in the cost to the Company of supplying the Goods and/or Services.

### Payments

- 4.4 An invoice for Goods shall be raised on the earlier of the day of dispatch or notification the Goods are ready for collection.
- 4.5 An invoice for the Services will be raised on the earliest date of performance.
- 4.6 The Purchaser shall, except where other payment arrangements are specifically agreed in writing, make full payment in the currency stated on the invoice within 30 days of the date of the invoice. Any banking costs incurred due to payment being in any currency other than sterling will be paid by the Purchaser.
- 4.7 The Purchaser shall not be entitled to make any deductions from the Price in respect of any set-off or counterclaim without the prior written consent of the Company.
- 4.8 The Company may, at its discretion, impose a credit limit for the Purchaser.
- 4.9 Without prejudice to any other remedy to which the Company may become entitled, the Company may charge interest on any overdue amount until payment, at the rate of four per cent per annum above the base rate of National Westminster Bank plc from time to time in force, and interest shall be compounded at monthly intervals from the due date of payment until payment is made. Time of payment shall be of the essence.
- 4.10 Any failure to pay the Price (or any part of it) and/or other monies payable by the Purchaser under these Conditions when due will also

entitle the Company, without any liability to the Purchaser, to refuse to make delivery of any further consignment of Goods / perform any applicable Services under the Order or any other contract.

## 5 Delivery

5.1 The Company shall deliver the Goods to the Purchaser using one of the following methods:

(a) Goods delivered by the Company: The Company shall use reasonable efforts to deliver the Goods to the Delivery Address on or before the delivery date given in the Order or otherwise notified to the Purchaser by the Company. Delivery shall occur when the Goods arrive at the Delivery Address. Delivery will be as is specified by the Incoterm on the Order.

(b) Goods collected by the Purchaser: The Company shall use reasonable efforts to make the Goods available for collection from the Site at the address stated on the invoice on or before the collection date. The Purchaser shall be given twenty four (24) hours' notice of availability. The Purchaser must collect the Goods within five (5) Business Days of being given notice of their availability. Collection shall occur when the Purchaser (or its nominated carrier) lifts the Goods for loading onto its vehicle.

5.2 The delivery date provided is an approximate only. The Company will use reasonable endeavours to notify the Purchaser of any delay.

5.3 Unless otherwise stated in writing the date for delivery shall run from the date on which acceptance of the Order for Goods is communicated to the Purchaser. Time of delivery or of availability for collection shall not be of the essence.

5.4 It is the Purchaser's responsibility to prepare for delivery or provide the labour and equipment required for the collection, loading and transportation of the Goods.

5.5 The Purchaser shall inspect the Goods on delivery and shall notify the Company in writing within five (5) Business Days of the date of delivery if any of the Goods are damaged or if more or less than the correct amount has been received. A comment made on the Company's delivery note or other associated paperwork shall not be considered sufficient notice for the purpose of this clause 5.5.

5.6 Where the Goods are collected, the Purchaser shall inspect the Goods on collection. If any of the Goods are damaged or more or less than the correct amount has been readied for collection, the Purchaser shall notify the Company before it takes the Goods and the Purchaser shall not take any damaged Goods or excess Goods.

5.7 Without prejudice to any other rights of the Company under these Conditions, if the Purchaser shall fail to give on or before the agreed date of delivery all instructions reasonably required by the Company or fail to provide all necessary documents, licences, consents and authorities (which the Purchaser is obliged under these Conditions or by Law to obtain) for forwarding the Goods or shall otherwise cause or request delay in delivery, the Purchaser shall pay to the Company all storage costs incurred arising from such delay.

5.8 If, within five (5) Business Days of the Company's first attempt to make delivery or the first date for collection, the Purchaser has still failed to take delivery of/collect the Goods, the Company shall be entitled to cancel the Order.

5.9 The Company may make partial deliveries or deliveries by instalments and to determine the route and manner of delivery of the Goods. Each instalment shall be construed as constituting a separate contract to which all the provisions of these Conditions shall (with any necessary alterations) apply. Subsections 32(2) and (3) of the Sale of Goods Act 1979 shall not apply to any Order or contract entered into pursuant to these Conditions.

5.10 Any deviations in the Goods delivered from the particulars of the Goods stated in the contract will not be a ground for rejecting the Goods and such rejection shall be deemed as a repudiation of the contract.

## 6 Performance of Services

6.1 The Company will use reasonable endeavours to perform the Services in accordance with any timescales specified in the Order but time of performance shall not be of the essence.

6.2 The Company will perform the Services with reasonable skill and care. The Purchaser's only remedy in respect of a breach of this clause 6.2 will be (at the Company's sole discretion): (i) re-performance of the affected Service; or (ii) a refund of the proportion of the Price relating to the affected Services together with any other costs or expenses invoiced by the Company in respect of those Services under clause 4 (Prices and Payments).

### Installation

6.3 Where the Services include the installation of Goods or any other items, the Purchaser shall be responsible for providing appropriate power, telecommunication and other supplies required for the installation of the Goods in accordance with any instructions issued by the Company.

### Validation Services

6.4 Where the Services include Validation Services these shall be performed only in relation to Transits provided by the Company and identified in any Order and the Company shall have no liability in tort (including negligence), contract or otherwise for any Validation Services that are (whether by error of the Company, lack of information provided by the Purchaser, or any other reason) performed in relation to any other Transits.

### Training Services

6.5 No personnel delegated by the Purchaser to receive Training Services shall be evaluated by the Company. The Company makes no representation or warranty that Purchaser personnel attending the Training Services shall become competent to install, inspect or supervise any Goods, simply by virtue of their attendance and the Company not have any liability for any losses caused by incorrect use or installation of the Goods by Purchaser personnel

## 7 Access, Security and Preparation of the Site

7.1 Subject to clause 7.2 below, where required for the performance of any Services or delivery of any Goods, the Purchaser shall grant the Company all reasonable access to the Site and to any relevant information.

7.2 The Purchaser shall, at its own expense and prior to allowing access to the Site to any Company personnel, provide any training to Company Personnel necessary to ensure the Purchaser's compliance with clause 7.3(a) below.

7.3 Where Company Personnel are required to attend the Purchaser's premises or any other premises at the Purchaser's direction for whatever reason:

- (a) the Purchaser shall be wholly responsible for the health and safety of such Company Personnel; and
- (b) without prejudice to clause 6.2 (Performance of Services), the Company shall have no liability for damage (except where such damage is due to the Company's own negligence) to tangible property arising in relation to such attendance by the Company Personnel.

7.4 The Purchaser shall use best efforts to make all reasonable preparations at the Site for receipt of the Goods or Services including without limitation clearing the Transits of dust, paint or other obstacles, and providing necessary apparatus for access (such as ladders or scaffolding). Prior to the performance of any Validation Services, the Purchaser shall provide complete information on each Transit at the Site, including drawings and confirmation of their exact location.

7.5 Without prejudice to clause 7.3(a) above, the Company reserves the right at any time and without liability to the Purchaser to suspend the Services where, in the sole opinion of the Company, the Purchaser is in default of or likely to default on its obligations under clause 7.3(a).

## 8 Risk and Title

8.1 The risk of loss or damage to the Goods will pass to the Purchaser on delivery or on collection (as applicable).

8.2 Title to the Goods will pass to the Purchaser when the Company receives payment of the Price and all other sums due to the Company in full and cleared funds. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership remains with the Company.

8.3 Until title to the Goods passes to the Purchaser:

- (a) the Purchaser shall hold the Goods as the Company's fiduciary agent and bailee and shall keep them properly stored, insured and marked as the Company's property (and shall not remove, cover or deface any identification marks applied by the Company);

- (b) the Purchaser shall not use the Goods (or any of them) as security for any mortgage, debt or charge, or otherwise encumber them;
  - (c) the Purchaser shall be entitled to sell or use the Goods at its own risk in the ordinary course of its business and in its own capacity; and
  - (d) providing that the Goods are still in existence and have not been re-sold or incorporated into other goods, the Company shall be entitled to require the Purchaser to return the Goods and, if the Purchaser fails to do so, to enter upon the Site where the Goods are kept to re-possess the same.
- 8.4 Without prejudice to clause 8.1 above, the Company may opt in its own name to insure the Goods up to their full value against all reasonable risks and to invoice the costs of such insurance to the Purchaser in accordance with clause 4.1 (Prices and Payments). Any insurance monies received shall be applied towards replacement or repair of the Goods.
- 8.5 In addition to any lien over the Goods to which the Company may otherwise be entitled, the Company shall, in the event of the Purchaser being insolvent or failing to pay the Price due under any contract with the Company, be entitled to a general lien on all goods of the Purchaser in the Company's possession for the unpaid Price of the Goods sold and delivered to the Purchaser by the Company under any contract.

## 9 Liability

### 9.1 Save as provided in clause 9.2:

- (a) the Company's total aggregate liability to the Purchaser in respect of any and all causes of action or continuing causes of action arising under or in connection with an Order, whether in contract, tort (including, but not limited to, negligence), strict liability or otherwise shall not exceed the total Price paid or payable under such Order; and
- (b) the Company shall not be liable to the Purchaser for any costs, claims, losses or expense to the extent that it relates to:
  - i) loss of profits, goodwill, business opportunity or anticipated savings;
  - ii) injury to reputation;
  - iii) third party losses; or
  - iv) indirect, consequential or special loss or damage,

regardless of whether the Company knew or had reason to know of the possibility of the loss or damage in question.

### 9.2 Nothing in these Conditions or an Order shall exclude or limit the Company's liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) damage suffered as a result of the breach of the warranties as to title and quiet enjoyment implied under English law; or
- (d) any other loss or damage the exclusion or limitation of which is prohibited by English law.

### 9.3 The Purchaser is relying on its own skill and judgement in relation to the Goods supplied by the Company and the Company accepts no liability whatsoever for any knowledge it or its servants or agents may possess as to the purpose for which the Goods are supplied.

### 9.4 Unless otherwise stated in writing, any statements, recommendations and advice given by the Company or the Company's servants or agents to the Purchaser or its servants or agents as to any matter relating to the Goods or Services are given without responsibility and without anticipation by the Company of reliance upon them by the Purchaser, and shall not give rise to any liability whatsoever on the part of the Company. The Purchaser acknowledges and agrees that in placing an Order, it has not relied upon any statement, representation or promise except as set out in the accepted Order or these Conditions.

### 9.5 All warranties, conditions, guarantees and representations that may be implied into these Conditions or an Order by statute, common law or otherwise are hereby excluded to the fullest extent permitted by Law.

## 10 Indemnities

### 10.1 The Purchaser shall indemnify and hold the Company harmless in respect of any costs, expenses, losses and/or third party liability that the Company may suffer or incur in connection with:

- (a) the Goods, where this is caused in whole or in part by any act or omission of the Purchaser or Purchaser personnel (whether or not the Company or such personnel has received any Training Services);
- (b) the condition of the Site and in particular any default by the Purchaser of any of its obligations under clause 7.3(a) (Access, Security and Preparation of the Site);
- (c) re-delivery, collection, storage and/or insurance of the Goods where the Purchaser fails:
  - i) to take delivery of the Goods or to collect the Goods on time; or
  - ii) to comply with its obligations under clause 12 (Export Controls);
- (d) any re-possession or attempted re-possession of the Goods in accordance with clause 8.3(d) (Risk and Title).

## 11 Warranty

### 11.1 The Company warrants that Goods shall correspond in all material respects with any specification provided by the Company (or otherwise agreed between the Company and Purchaser) and will be free from major defects in material and workmanship for the Warranty Period, provided that:

- (a) any defect that would have been apparent to the Purchaser on reasonable inspection is notified to the Company in writing (together with documentary evidence) within 5 Business Days of delivery;
- (b) all other defects are notified to the Company in writing immediately upon discovery and in any event within 48 hours of the expiry of the Warranty Period;
- (c) the Company is given a suitable opportunity to examine the allegedly defective Goods and the Purchaser shall return the Goods to a Site nominated by the Company for such inspection;
- (d) the Company shall be under no liability in respect of any defects arising from:
  - i) the Purchaser's failure to install the Goods in accordance with the manufacturer's guidelines;
  - ii) any drawing, design or specifications supplied by the Purchaser;
  - iii) fair wear and tear;
  - iv) wilful damage or negligence by the Purchaser or persons using the Goods;
  - v) the condition of the Site, abnormal working conditions or misuse of the Goods;
  - vi) use of the Goods in conjunction with any similar goods that are not Goods supplied by the Company;
  - vii) alteration or repair of the Goods without the Company's prior approval; and
  - viii) the Purchaser's (or users') failure to follow the Company's instructions and recommendations (whether oral or in writing); to comply with relevant operating instructions handbooks manuals provided by the Company or the manufacturer or to use the Good in accordance with their specification (if any);
- (e) the Purchaser does not make any further use of such Goods after giving written notice of an alleged breach of warranty; and
- (f) the warranty in this clause 11 does not extend to parts, materials or equipment that are not manufactured by the Company, in respect of which the Purchaser shall only be entitled as against the Company to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company and which the Company is able to assign to the Purchaser.

### 11.2 The Purchaser's only remedy in respect of a breach of this clause 11 will be (at the Company's sole discretion): (i) repair or replacement of the defective Goods; or (ii) a refund of the proportion of the Price relating to the defective Goods together with any other costs or expenses invoiced by the Company in respect of those Goods.

### 11.3 The Purchaser shall be responsible for the costs of carriage and insurance for returning Goods to the Company for repair and subsequent redelivery to the Purchaser.

### 11.4 All returns of Goods must be with the consent of the Company and may be subject to a reasonable handling fee.

### 11.5 The Purchaser shall be responsible for the cost of carrying out repairs to any Goods at the Site where the damage to or deficiency

of such Goods is found by the Company to be due to incorrect or negligent use or operation of the Goods.

- 11.6 [Title to any defective Goods replaced by the Company shall transfer to the Company on delivery to or collection by the Purchaser of their replacements. The Purchaser shall carry out any dismantling and re-installation of defective Goods at its own risk and cost.]

## 12 Export Controls

- 12.1 The Purchaser is solely responsible for all applicable requirements and restrictions imposed by Law, government or other regulatory bodies relating to the transport, import, export or resale of the Goods. It is the Purchaser's obligation to ensure that no Goods are exported or imported in violation of the Laws of any jurisdiction into or through which the Goods are transported during the course of reaching a Delivery Address which is outside the United Kingdom.
- 12.2 Where the Delivery Address is outside the United Kingdom, all import duties, charges and assessments shall be paid by the Purchaser and the obtaining of any necessary export and import licences in respect of the Goods shall be the sole responsibility of the Purchaser and the Company shall be under no liability whatsoever to the Purchaser in respect of Goods exported without the necessary export and import licences.
- 12.3 The Company shall not be liable for any failure to perform any obligation under the contract if and to the extent such performance is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

## 13 Intellectual Property Rights

- 13.1 The intellectual property rights in the Goods (and in their designs, specifications, packaging and promotional and other associated materials such as, but not limited to, the Company's catalogues, brochures and price lists) or arising from the performance of the Services, whether developed by the Company (i) independently of any contract with the Purchaser, (ii) in relation to the performance of any such contract, or (iii) for the Purchaser's (sole or otherwise) benefit shall be and remain the property of the Company or the manufacturer (as the case may be). The Purchaser may use such intellectual property rights solely to the minimum extent necessary for the proper use of the Goods or Services in the ordinary course of its business and not, amongst other things, to itself manufacture the Goods or have them manufactured by a third party.
- 13.2 The Purchaser shall notify the Company immediately upon becoming aware of any infringement of or actual or alleged claim in relation to the intellectual property rights in the Goods or Services. The Purchaser shall not make any admissions in respect of any claim and Company shall be entitled to conduct all negotiations and take all necessary proceedings relating to such claim in its own name and in the name of the Purchaser and the conduct of all proceedings and negotiations shall be completely in the discretion of the Company.
- 13.3 The Company is entitled to inform third parties that it provides, or has provided, the Goods and/or Services to the Purchaser. For this sole purpose, the Purchaser grants the Company a licence to use its corporate name and any logo.
- 13.4 Nothing in these Conditions will be construed as any representation or warranty by the Company that the design, manufacture, use or sale of the Goods or provision of the Services will not infringe any third party intellectual property rights.

## 14 Termination

- 14.1 The Company shall be entitled to terminate an Order if a Purchaser makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any similar process or event whether in the United Kingdom or otherwise.
- 14.2 If the Company becomes aware following acceptance of an Order, of circumstances which bring the creditworthiness of the Purchaser into doubt, or if the agreed payment terms are not observed, the Company is entitled, at its absolute discretion, to consider all outstanding claims against the Purchaser as due for payment immediately or to require the lodging of the appropriate securities or to withdraw from the Order.

- 14.3 If the Company is entitled to terminate an Order all outstanding elements of the Price shall become immediately due and payable. The termination of an Order shall be without prejudice to the Company's rights and obligations accrued at the date of termination.

## 15 Sub-contracting & Assignment

- 15.1 The Company reserves the right to sub-contract the performance of the contract or any part of it.
- 15.2 The Purchaser shall not assign or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any person whatsoever without the prior written consent of the Company.

## 16 General

- 16.1 A party's failure to enforce or rely on or delay in enforcing or relying on any right that it may have under these Conditions will not prevent that party from later enforcing or relying upon that or any other right.
- 16.2 If a court or other regulatory body finds that any part of these Conditions is invalid or unenforceable, the remainder shall not be affected and shall be construed as if such invalid or unenforceable part did not exist.
- 16.3 Nothing in these Conditions shall confer any right upon any person who is not a party to it, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 16.4 These Conditions and each Order (and any associated non-contractual claims or disputes) shall be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.
- 16.5 The United Nations Convention on the International Sale of Goods shall not apply to any Order or contract entered into pursuant to these Conditions.