

## RIGHT TRACK ENTERPRISES LTD

### TERMS & CONDITIONS OF SALE

#### **01 - INTERPRETATION**

1.1 In these Conditions, the following words shall have the following meanings: "Catalogue" means the Seller's regular advertising material produced including but not limited to the Catalogue, flyers, website and all other advertising promotion and selling documentation produced by the Seller. "Buyer" means the person whose order is accepted by the Seller. "Conditions" means the standard terms and conditions of sale set out in this document and including any special terms and conditions agreed in writing between the Buyer and the Seller. "Contract" means the contract between the Seller and the Buyer for the purchase and sale of the Goods which will be subject to these Conditions. "Goods" means all goods which are supplied to the Buyer by the Seller under the Contract between them. "Seller" means Right Track Enterprises Ltd, Trading As "Brantz", 34 Union Road, Macclesfield, Cheshire, SK11 7BN, United Kingdom. Registered Number 07279485.

#### **02 - BASIS FOR SALE**

2.1 Nothing contained in the Catalogue constitutes an offer and the Seller reserves the right to withdraw or revise the Catalogue and any other material at any time prior to the Seller's acceptance of the Buyer's order.

2.2 An order for the Goods shall be deemed to be an offer by the Buyer to purchase Goods subject to the Conditions.

2.3 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any order of the Buyer, which is accepted by the Seller. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative or, in the absence of any such written confirmation, unless or until the Goods are delivered to the Buyer in accordance with its order.

2.4 By placing an order for Goods the Buyer shall be deemed to have accepted these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions including those howsoever proposed by the Buyer and shall supersede any other conditions appearing in this or any previous Catalogue of the Seller or any conditions agreed in any previous course of dealing between the Seller and the Buyer.

2.5 No material or information of any nature whatsoever contained in the Catalogue or otherwise communicated to the Buyer, other than these Conditions shall form part of the conditions governing the Contract.

2.6 No variation to the Contract shall be binding unless agreed in writing by the authorised representatives of the Buyer and the Seller.

2.7 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract, the Buyer acknowledges that the Contract constitutes the whole agreement between the parties and that it does not rely on, and waives any claim for breach of, any such representation, which is not so confirmed.

2.8 The Seller shall not be liable for any advice given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods unless such advice is confirmed in writing by the Seller.

#### **03 - SPECIFICATIONS**

3.1 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements, or where the Goods are to be supplied to the Buyer's specification, which do not materially affect the quality or performance of the Goods.

3.2 In the event that the Seller agrees to supply Goods in accordance with the Buyer's specification, the Buyer shall provide the Seller with its specification in writing.

3.3 The Buyer shall indemnify and keep indemnified the Seller fully on demand against any and all losses, damages, costs and expenses incurred by or awarded against the Seller as a result of the carrying out of any work required to be done to the Goods in accordance with the requirements or specifications of the Buyer involving an infringement or alleged infringement of any rights of any third party.

3.4 No order which has been accepted by the Seller may be cancelled by the Buyer except with the prior agreement in writing of the Seller and on terms that the Buyer shall indemnify and keep the

Seller indemnified in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of the cancellation.

#### **04 - PRICE**

4.1 If no price is quoted, the price of the Goods shall be the price listed in the Seller's Catalogue or any published price list (with any amendments), whichever is current at the date of acceptance of the Buyer's order by the Seller.

4.2 Unless otherwise agreed in writing, all prices are given by the Seller on an ex-works basis and, where the Seller delivers the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

4.3 The Seller tries to ensure that the prices displayed in the catalogue or other promotional materials are accurate, but the price on the Buyer's order will be validated as part of the acceptance procedure (see Condition 2 above). The Seller will inform the Buyer if the correct price is higher than that stated and the Buyer may cancel the order and decide whether or not to order the Goods at the correct price.

4.4 The price is exclusive of Value Added Tax and all other taxes and duties, which shall be payable by the Buyer.

4.5 Any written quotations are valid for thirty days but may be withdrawn without notice.

4.6 The seller shall be entitled to adjust the price, whether before or after acceptance on the event of any increase in the cost to the seller or supplying the goods for any reason whatsoever, including (without prejudice to the generality of the foregoing) increases in the cost of materials, wages, packing, insurance, freight or duty or changes in the exchange rates or action of any government or authority.

4.7 Orders for scheduled delivery will be charged at the rate applicable to quantity called off and not to overall quantity unless by prior arrangement.

#### **05 - PAYMENT**

5.1 Unless otherwise agreed in writing, the Seller shall be entitled to invoice the Buyer for the price of the Goods, including any transport, packaging and insurance charges, prior to, on, or at any time after dispatch of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 The Buyer shall pay the price of the Goods in full by one of the methods set out in the payment options available, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. Seller makes available certain payment processes through which Buyer can provide payment information to Seller when Buyer pays for an order (our "Authorized Payment Processes"). Examples of Seller's Authorized Payment Processes include providing payment information by telephone, or using an established Electronic Data Interchange (EDI). Seller has implemented physical, technological and administrative safeguards intended to protect the information that Buyer provides using one of the Authorized Payment Processes. These safeguards include, for example, encryption of Internet communications. If Buyer does not use an Authorized Payment Processes, and submits payment information through some other method (such as via email or fax), then the safeguards provided by the Authorized Payment Processes will not protect Buyer's payment information, and Buyer provides such information at Buyer's own risk. Seller expressly disclaims all responsibility regarding the collection, use and protection of information that Buyer does not submit through an Authorized Payment Process.

5.3 Payment is due on delivery of the invoice or Pro-forma invoice, except that in the event that the Buyer has an open account with the Seller, it shall pay the price of the Goods on the 25th day of the month (or the next business day if the 25th day is not a business day) following the month of delivery of the Goods.

5.4 The Buyer shall not be entitled to make any deduction from such payment or exercise any right of set-off or contribution howsoever arising.

5.5 If in the opinion of the Seller the credit-worthiness of the Buyer shall have deteriorated prior to delivery or collection (as the case may be), the Seller may require full or partial payment of the price prior to delivery or collection (as the case may be) or the provision of security for payment by the Buyer in a form acceptable to the Seller.

5.6 If the Buyer fails to make payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall (at its option) be entitled to:

5.6.1 treat the Contract as repudiated by the Buyer and suspend any further deliveries to the Buyer, claim damages from the Buyer and charge the Buyer interest (both before and after any judgment) and/or compensation for reasonable debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002, the Late Payment of Commercial Debts Regulations 2013 and the Late Payment of Commercial Debts (No.2) Regulations 2013; or

5.6.2 affirm the contract, claim damages from the Buyer and charge the Buyer interest (in accordance with Condition 5.6.1).

5.7 The time of payment of the price shall be of the essence of the Contract.

## **06 - DELIVERY**

6.1 Delivery of the Goods shall be at the Buyer's premises unless otherwise agreed between the parties.

6.2 Any dates quoted for delivery of the Goods are approximate only. The Seller shall not be liable for failure to deliver by such date or dates or for any damage or loss arising directly or indirectly out of delay in delivery; nor shall the Buyer be entitled to refuse to accept goods because of late delivery. Time for delivery shall not be of the essence unless otherwise agreed between the parties.

6.3 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver more or less than the quantity ordered and in such event the Buyer shall pay for the actual quantity delivered.

6.4 Subject to Condition 6.3, if the Seller is satisfied that the Goods have been short delivered, the Seller shall at its option:

6.4.1 make up any short delivery by despatching to the Buyer such Goods as the Seller is satisfied were not delivered; or

6.4.2 allow the Buyer credit in respect thereof and the Seller's liability shall be limited to making up the delivery or allowing credit as above.

6.5 The Seller reserves the right to make deliveries by instalments and to render a separate invoice in respect of each such instalment.

6.6 Where the Goods are to be delivered in instalments in accordance with Condition 6.5 above, then each delivery shall constitute a separate contract and defective delivery by the Seller of any one or more of the instalments in accordance with these Conditions shall not entitle the Buyer to cancel any other instalment or treat the Contract as a whole as repudiated.

6.7 If the Seller fails to deliver the Goods for any reason (other than any cause specified in Condition 14 or the Buyer's fault) and the Seller is liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.8 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

6.8.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including handling and insurance) of storage; or

6.8.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.9 In the event that the Goods are delivered to the Buyer in a damaged condition, the Buyer shall notify the Seller within [24] hours of discovering such damage. The Buyer must not return the Goods to the Seller without first contacting the Seller and obtaining delivery instructions.

6.10 No goods may be returned without the Seller's written consent.

## **07 - RISK**

7.1 The risk of loss and damage to the Goods shall pass to the Buyer immediately upon dispatch unless the Goods are to be collected by the Buyer when the risk of loss and damage to the Goods shall pass to the Buyer upon the Seller notifying the Buyer that the Goods are ready for collection.

## **08 - TITLE**

8.1 Notwithstanding delivery and the passing of risk in the Goods, full legal and equitable title in the Goods shall not pass to the Buyer and shall remain in the Seller until the Seller has received payment in full (in cash or cleared funds) for:

8.1.1 the Goods; and

8.1.2 all other sums which are due to the Seller for sales of the Goods to the Buyer.

8.2 Until title to the Goods has passed to the Buyer, the Buyer shall:

- 8.2.1 hold the Goods on a fiduciary basis as the Seller's bailee;
- 8.2.2 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- 8.2.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 8.2.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 8.2.5 give the Seller such information relating to the Goods as the Seller may require from time to time, but the Buyer may resell or use the Goods in the ordinary course of its business.

8.3 In a case where the Buyer has credit terms with the Seller, and without prejudice to any rights or remedies arising out of any breach of contract by the Buyer, the Seller shall be entitled to repossess all or any Goods should the Buyer fail to make payment in full of any invoice upon expiry of the date for which payment becomes due.

8.4 The price of the Goods becomes payable immediately in the event that the Buyer becomes insolvent. The Seller reserves the right to repossess the Goods immediately in such event or where the Seller reasonably believes such an event is about to happen.

8.5 In order to exercise the rights specified in Conditions 8.3 and 8.4 above the Buyer agrees to allow the Seller entry into its premises (or the premises of any third party where the Goods are stored) in order to recover the Goods.

## **09 - LIEN**

9.1 The Seller shall in respect of all unpaid debts due from the Buyer under the same or any other contracts have a general lien on all Goods and property of the Buyer in its possession (although such Goods or some of them may have been paid for) and shall after the expiration of fourteen days written notice to the Buyer be entitled to dispose of such Goods and property as it deems fit and apply the proceeds towards such debt.

## **10 - LIABILITY**

10.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with the Seller's specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of delivery of the Goods to the Buyer. The Seller reserves the right to make without notice, variations to the specification of the Goods. Where such variations do not affect the capacity of the goods to satisfy the Buyers requirements for use, the Buyer shall not be entitled to terminate the contract.

10.2 The Seller shall be under no liability in respect of any defect in the Goods:

- 10.2.1 arising from or attributable to any drawing, design or specification supplied by the Buyer;
- 10.2.2 arising from fair wear and tear, neglect, failure to follow the Seller's instructions, misuse or improper alteration or repair of the Goods;
- 10.2.3 if the total price for the Goods and all other sums due from the Buyer to the Seller has not been paid by the due date for payment;
- 10.2.4 if the Buyer fails to notify any claim in respect of any of the Goods which is based on a breach of the warranty in Condition 10.1 within 14 days after the discovery of the breach; or 10.2.5 if the Buyer fails to notify the Seller of any damaged parcel by not signing the delivery note as "damaged."

10.3 The warranty in Condition 10.1 does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee given by the manufacturer to the Seller, and which the Seller will, so far as possible, assign to the Buyer upon the written request of the Buyer.

10.4 Where any valid claim in respect of any of the Goods which is based on a breach of the warranty in Condition 10.1 is notified to the Seller within the warranty period set out in Condition 10.1, the Seller shall be entitled to repair or replace the Goods (or the part in question) free of charge or, at the Seller's discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price). The Buyer must not return the Goods to the Seller without first contacting the Seller and obtaining delivery instructions.

10.5 Nothing in these Conditions shall limit or exclude the Seller's liability for:

- 10.5.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 10.5.2 breach of the terms implied by section 12 of the Sale of Goods Act 1979 and in case of consumer transactions (as defined by the Unfair Terms in Consumer Contracts Regulations 1999 as amended) terms implied as to conformity of Goods with description or sample or as to their quality or fitness for purpose under such legislation;
- 10.5.3 defective products under the Consumer Protection Act 1987;
- 10.5.4 fraud or fraudulent misrepresentation; or
- 10.5.5 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

10.6 Subject to Condition 10.5:

- 10.6.1 the Seller shall not be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss (including,

without limitation pure economic loss, loss of business, depletion of goodwill or similar loss) damage or injury direct or indirect resulting from defective material faulty workmanship or otherwise howsoever arising under or in connection with the Contract; and  
10.6.2 the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the price of the Goods.

## **11 - THE CATALOGUE**

11.1 The Seller is the owner of the copyright in the Catalogue and no part of the Catalogue may be reproduced in any material form (including, without limitation, photocopying or storing it in any medium by electronic means) without the Seller's prior written permission.

11.2 The Catalogue and all advertising, promotion and selling materials supplied by the Seller to the Buyer shall remain the property of the Seller and the Buyer shall not permit any other person to make use thereof.

11.3 The Seller reserves the right at any time, to make any changes to the Catalogue, including, without limitation, changes in the specification of the Goods and the price of Goods.

11.4 All information, details and illustrations in the Catalogue have been carefully prepared to avoid error but the accuracy of such information is not warranted and such information, details and illustrations do not form part of this Contract. The Seller shall not be liable for any loss or damage resulting from any errors, omissions or typographical errors in the Catalogue.

11.5 Any recommendation or suggestion relating to the use of the Goods whether given orally or in writing, is given in good faith by the Seller but the Buyer is solely responsible for satisfying itself as to the suitability of the Goods for its own particular purpose and it shall be deemed to have done so.

11.6 Unless specifically stated to the contrary in the Catalogue, nothing in the Catalogue constitutes a representation as to the source of country of origin, manufacture or production of the Goods.

## **12 - THIRD PARTY RIGHTS**

12.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the rights of any third party, the Seller may (at its option) either secure the Buyer's right to continue to use the Goods or replace or modify the Goods to make them non-infringing, or if neither of these alternatives is reasonably available to the Seller, refund the purchase price.

## **13 - TRADE MARKS**

13.1 The Goods are sold subject to any intellectual property rights (including without limitation, patents trademarks and copyright) which the Seller or any third parties may have in the Goods. The Buyer will not do or authorise any third person to do any act which would or might damage or be inconsistent with any such intellectual property rights or any intellectual property rights of the Seller or any other third party in relation to the Goods or to the goodwill associated therewith and, in particular, will not do or authorise the alteration, obliteration, covering up or incorporation of marks (in whole or in part) on to the Goods.

## **14 - FORCE MAJEURE**

14.1 The Seller shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond Seller's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

14.2 If the circumstances outlined above in Condition 14.1 continue for a continuous period of more than six months, the Seller may terminate the Contract by written notice to the other Party.

14.3 If due to such circumstances or events the Seller has insufficient stocks to meet all its commitments the Seller may apportion available stocks between its customers at its sole discretion.

## **15 - LICENCES AND CONSENTS**

15.1 If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the Goods by the Buyer, the Buyer shall obtain the same at its own expense, and if necessary produce evidence of the same to the Seller on demand. Failure to do so shall not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Seller resulting from such failure shall be for the Buyer's account.

## **16 - EXPORT TERMS**

16.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

16.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 16 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

16.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

16.4 The Seller shall arrange for the Goods to be transported F.C.A. to the premises specified by the Buyer;

16.5 The Seller shall, on the Buyer's behalf and at the Buyer's expense, procure contracts for the carriage and insurance of the Goods to the premises specified by the Buyer; and

16.6 Risk in the Goods shall pass to the Buyer upon delivery of the goods to the carrier. For the avoidance of doubt the Buyer shall bear the risk for loss of or damage to the Goods together with any costs expenses or liabilities arising after the delivery of the Goods by the Seller to the carrier and shall indemnify the Seller accordingly

## **17 - GENERAL**

17.1 Failure by the Seller to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

17.2 If any provision or part of a provision of these Conditions shall be, or be found by any court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these Conditions, all of which shall remain in full force and effect.

17.3 The Contract shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

17.4 Notwithstanding Condition 17.3, the Seller may sue the Buyer in the courts of any country, such proviso being for the sole benefit of the Seller.

17.5 Any notice required or permitted to be given by either party to the other under these Conditions or the Contract shall be given in writing and addressed to the other party at its registered office, principal place of business or at such other address as may be notified to the other party from time to time.

17.6 The Seller shall be entitled to sub-contract the whole or any part of its obligations under the Contract to any third party which it may at its absolute discretion determine but any sub-contract shall not relieve the Seller of its obligations hereunder.

17.7 In performing the Contract, the Seller shall comply in all respects with the Data Protection Act 1998 as amended and all related legislation and guidance relevant to the protection of personal data so far as the same relates to the Contract.

17.8 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 as amended to enforce or enjoy the benefit of any term of this Contract.