



Construction Supplement for: Terms & Conditions of Purchase Spirotech SRD Group Limited Terms and Conditions of Purchase

1.0 Definitions and Interpretation

1.1 The following words or phrases have the following meanings in these Terms & Conditions:

"Company" means Spirotech SRD Group Limited (Company number 05021065) whose registered office is Jade works, brookside Industrial estate, Sawtry, Cambs, PE28 5SB United Kingdom;

"Contract" means any contract between the Company and the Seller for the purchase of Goods and/or supply of Services incorporating these Terms & Conditions and the Order;

"Deliverables" means the deliverables set out in the Order, produced by the Seller for the Company;

"Delivery Time" means the hours between 9.00 am and 4.00 pm on any day which is not a Saturday, Sunday or a statutory public holiday in England;

"Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to 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 third parties or subcontractors.

"Goods" means any products ordered by the Company from the Seller or to be supplied by the Seller to the Company;

"Intellectual Property Rights" all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Liability" means costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), expenses, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses or liabilities;

"Order" means an order placed by the Company with the Seller for the supply of the Goods and/or provision of the Services;

"Seller" means the person or organisation who provides the Company with the Goods and/or the Services;

"Services" means the services and/or work to be performed by the Seller for the Company;

"Specification" means the quantity, quality and/or description of the Goods and/or Services as attached to the Order or as otherwise agreed in writing between the parties;

"Terms & Conditions" means the terms and conditions set out in this document as amended from time to time; and

"Working Day" means the hours between 8.30 am and 4.30 pm on any day which is not a Saturday, Sunday or a statutory public holiday in England.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a party includes its personal representatives, successors or permitted assigns. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms. A reference to writing or written includes faxes and e-mails unless the latter have been expressly excluded.

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2.0 Formation of Contract

2.1 These Terms & Conditions shall:-

2.1.1 apply and be incorporated into the Contract; and

2.1.2 prevail over any inconsistent terms or conditions contained or referred to, in the Seller's quotation, confirmation of order, addendum or any other document supplied by the Seller or implied by law, trade, custom, practice or course of dealing.

2.2 Any quotation by the Seller shall constitute an offer by the Seller to supply the Goods and/or provide the Services on the basis of these Terms & Conditions. No offer placed by the Seller shall be accepted by the Company other than by the Company issuing an Order at which point a Contract for the supply of Goods and/or the provision of the Services on the basis of these Terms & Conditions will be established. The Seller's standard terms and conditions (if any) attached to, enclosed with or referred to in any quotation, specification or other document shall not govern the Contract.

2.3 The Company reserves the right to require modifications to the design or composition of the Goods to be delivered or the nature of the Services to be supplied. Such modifications shall thereafter be considered to be incorporated in the Contract. A pro rata adjustment to the total Contract price shall only be agreed by the parties in writing prior to.

3.0 Specification



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3.1 The quantity, quality and description of the Goods and/or Services shall be as specified in the Order and/or in any Specification provided to the Seller by the Company or any other document approved by the Company in writing.

3.2 Any Specification, moulds, materials, data and/or equipment together with the Intellectual Property Rights contained therein whether supplied by the Company to the Seller or specifically produced and/or used by the Seller for the Company in connection with the Contract, shall:

3.2.1 be the exclusive property of the Company;

3.2.2 not be disclosed to any third party, used or disposed of except to the extent required for the purpose of the Contract; and

3.2.3 be held by the Seller at its own risk in safe custody until returned to the Company in good condition upon request or termination of the Contract.

3.3 The Seller acknowledges that conformity with the Specification is a condition of this Contract and the Company shall be entitled to reject any of the Goods and/or Services which are not in conformity with the Specification.

3.4 At any time prior to delivery of the Goods the Company shall be entitled and the Seller shall provide the Company with all access and facilities reasonably required to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party.

3.5 If as a result of inspection or testing the Company is not satisfied that the Goods will comply in all respects with the Contract and the Company so informs the Seller, the Seller shall advise the Company of the steps it intends to take to ensure compliance. Upon written approval of such steps by the Company, the Seller shall immediately implement the agreed steps. If the Seller does not take such steps within 7 days of receipt of the Company's written approval, the Company shall be entitled to cancel the relevant Order without any further Liability to the Seller. The Seller shall indemnify and keep indemnified the Company in full against any and all Liability (including legal costs on a full indemnity basis) awarded against, incurred and/or suffered by the Company as a result of or in connection with the cancellation of an Order by the Company pursuant to this clause 3.5.

3.6 The Services shall be performed by appropriately qualified and trained personnel with due care and diligence to such high standard of quality as it is reasonable for the Company to expect in all the circumstances. The Company shall have the right to review the qualifications of the Seller's personnel involved in the performance of the Services. Furthermore, the Company shall be entitled to request the removal of any personnel which the Company in its sole discretion deems unsuitable for the performance of the Services and for such personnel to be replaced with suitable personnel at no extra costs to the Company.

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3.7 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and/or the performance of the Services.

3.8 The Goods shall be marked in accordance with the Company's instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

4.0 Delivery

4.1 The dates and address for delivery of the Goods and/or performance of the Services shall be as stated in the Order unless the parties have agreed otherwise in writing. Delivery and/or performance shall take place during the Delivery Time or as otherwise specified in the Order.

4.2 The Delivery Time shall be of the essence of the Contract.

4.3 A packing note and labels quoting the number of the Order shall be prominently displayed on the Goods or as set out in the Specification where such Specification has been provided to the Seller.

4.4 Unless otherwise agreed, if the Goods are to be delivered and/or the Services are to be performed in instalments the Contract will be treated as a single contract and not severable.

4.5 The Company shall be entitled to reject any Goods delivered which are not in accordance with the Contract and/or Goods which are not accompanied by correct and appropriate documentation including but not limited to delivery notes, instruction manuals, health and safety advice, certificates or any other documents which the Company may have requested. The Company shall not be deemed to have accepted any Goods until the Company has had a reasonable time to inspect them following delivery or if later within a reasonable time after any latent defect in the Goods has become apparent.

4.6 The Seller shall supply the Company in good time with any instructions or other information required to enable the Company to accept delivery of the Goods.

4.7 The Company shall not be obliged to return to the Seller any packaging or packing materials for the Goods whether or not any Goods are accepted by the Company.

5.0 Price

5.1 The price of the Goods and/or Services shall be as stated in the Order.

5.2 All prices of the Goods and/or Services shall be:

5.2.1 exclusive of any applicable value added tax (which shall be payable by the Company subject to receipt of a VAT invoice); and



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5.2.2 inclusive of all charges for packaging packing shipping carriage insurance and delivery of the Goods and any duties imposts or levies other than value added tax unless otherwise agreed between the parties.

5.3 No increase in the price may be made (whether on account of increased material labour or transport costs fluctuation in rates of exchange or otherwise) without the prior consent of the Company in writing.

5.4 The Company shall be entitled to any discount for prompt payment bulk purchase or volume of purchase customarily granted by the Seller whether or not notified to the Company.

6.0 Payment

6.1 The Company will pay for the Goods and/or Services no later than 75 days following the month in which the Goods are delivered and/or the Services are performed provided that the Seller has issued an invoice in respect of such Goods and/or Services unless otherwise agreed in writing.

6.2 The Company shall be entitled to set off any amount owing to the Company by the Seller against any amount payable by the Company to the Seller.

6.3 If the Company fails to pay any amount properly due and payable by it under the Contract, the Seller shall have the right to charge interest from the due date until payment in full is made (both before and after judgment) on the amount unpaid at 4% per annum over the base lending rate of the Bank of England from time to time. This clause shall not apply to payments that the Company disputes in good faith.

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7.0 Risk

Risk in the Goods and of damage to or loss of the Goods shall pass to the Company upon completion of offloading the Goods from the carrier or upon completion of assembly of the Goods as specified in accordance with the Order without prejudice to any right of rejection the Company may have and subject to full and satisfactory inspection by the Company of the Goods to verify their compliance with the Order.

8.0 Title

8.1 Title in the Goods shall pass to the Company upon full or partial delivery of the Goods or upon full or partial payment for the Goods whichever the earlier. If title in the Goods passes in accordance with this clause whilst the Goods are still in possession of the Seller or a third party, the Seller shall and shall procure that the third party shall:

8.1.1 clearly identify such Goods as the property of the Company and store the Goods separately from all other goods held by the Seller so that they are readily identifiable as the Company's property;

8.1.2 hold the Goods on a fiduciary basis as the Company's bailee;

8.1.3 maintain the Goods in a satisfactory condition and keep them insured against all risks for their full price until completion of delivery to the Company

8.1.4 notify the Company immediately if it becomes subject to any of the events listed in clause 14.1.3 to 14.1.3; and

8.1.5 give the Company such information relating to the Goods as the Company may require from time to time.

9.0 Intellectual Property Rights

9.1 In respect of the Goods that are transferred to the Company under this Contract, including without limitation the Deliverables or any part of them, the Seller warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Company, it will have full and unrestricted rights to transfer all such items to the Customer.

9.2 Unless otherwise agreed in writing, the Seller assigns to the Company, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.

9.3 The Seller shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

9.4 The Seller shall, promptly at the Company's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Company may from time to time require for the purpose of securing for the Company the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Company in accordance with clause 9.2.

10.0 Confidentiality

10.1 The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to it by the Company, its employees, agents or subcontractors, and any other confidential information concerning the Company's business or its products or its services which the Seller may obtain. The Seller shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging its' obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Seller. This clause 10.0 shall survive termination of the Contract.

10.2 All information including without limitation documents, drawings and plans supplied by the Company shall remain the property of the Company and shall not be disclosed to any third party, without prior written authority from the Company.



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10.3 In the event of the Company providing or making available any such information to the Seller, the Seller hereby undertakes to hold all documents, drawings, plans and any other information supplied

10.4 Non-solicitation;-The seller shall not approach, offer or employ a person or persons who currently work for the company or its associated companies during the sellers current commercial dealings with the company or its associated companies and for a period of 12 months after any supply of goods or services has ceased.

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by the Company to the Company's order and to return the same to the Company immediately on request.

11.0 Anti-Bribery Compliance

The Seller shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010. The Seller shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK. The Seller shall have and shall maintain in place its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, and shall enforce them where appropriate.

12.0 Warranties and Liability

12.1 If the Seller is not the manufacturer of the Goods, the Seller shall use best endeavours to transfer to the Company the benefit of any warranty or guarantee given to the Seller.

12.2 Subject to Clause 12.3 below, the Seller warrants to the Company that the Goods and/or Services will be free from all defects in design, materials and/or workmanship for a period of at least 12 months from:

12.2.1 in the case of Goods, the date of delivery of the Goods to the Company; and/or

12.2.2 in the case of Services, the date of completion of the performance of the Services.

12.3 Subject to clause 12.4, the Seller shall have no Liability under the warranty in Clause 12.2 above in respect of:

12.3.1 any defect in the Goods and/or Services arising from the Seller's compliance with any instructions and/or Specification supplied and/or approved by the Company;

12.3.2 any faults and/or defects caused by wilful damage or misuse on the part of the Company.

12.4 Nothing in these Terms and Conditions shall limit or exclude either party's liability for:

12.4.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

12.4.2 fraud or fraudulent misrepresentation;

12.4.3 breach of the terms implied by the Sale of Goods Act 1979 and/or the Supply of Goods and Services Act 1982;

12.4.4 defective products under the Consumer Protection Act 1987; or

12.4.5 any matter in respect of which it would be unlawful for either party to exclude or restrict liability.

12.5 If any of the Goods and/or Services are defective and are covered by the warranty in Clause 12.2 above the Seller shall at the Company's sole option either repair the Goods or supply replacement Goods and/or Services or refund the price which has been paid by the Company for the defective Goods and/or Services.

12.6 Such repair, replacement or refund shall be provided by the Seller within 14 days of the Seller being notified of the defect.

12.7 Subject to clause 12.4, the Company's Liability to the Seller under this Contract shall not exceed the amount payable by the Company to the Seller in respect of the relevant order to which the claim relates.

12.8 The Seller shall indemnify and keep indemnified the Company in full against any and all Liability (including legal costs on a full indemnity basis) awarded against, incurred and/or suffered by the Company as a result of or in connection with:

12.8.1 breach of any warranty given by the Seller in relation to the Goods and/or Services;

12.8.2 any claim that the Goods infringe or their importation, use or resale infringes the patent, copyright, design right, trade mark or other intellectual property rights of any other person except to the extent that the claim arises from compliance with any Specification supplied and/or approved by the Company;

12.8.3 any act or omission of the Seller or its employees, agents or permitted sub-contractors in supplying, delivering and/or installing the Goods; and/or



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12.8.4 any act or omission of any of the Seller's personnel in connection with the performance of the Services.

12.9 The Company shall be entitled to demand the Seller to hold liability insurance at a specified minimum amount and the Seller shall provide to the Company on demand full particulars of all relevant insurance held as well as proof of payment of the then current premium.

13.0 Cancellation

13.1 The Company shall be entitled to cancel the Order in respect of all or part only of the Goods and/or Services by giving notice to the Seller at any time prior to delivery or performance:-

13.1.1 in the event of cancellation up to 1 month prior to delivery or performance with no Liability to the Seller;

13.1.2 in the event of cancellation between less than 1 month and up to and including 14 days prior to delivery or performance the Company's sole Liability shall be the payment of 50% of the price for the Goods and/or Services in respect of which the Company has exercised its right of cancellation less the Seller's net saving of costs arising from the cancellation; and

13.1.3 in the event of cancellation of less than 14 days prior to delivery or performance, the Company's sole Liability shall be to pay to the Seller the price for the Goods and/or Services in respect of which the Company has exercised its right of cancellation less the Seller's net saving of costs arising from cancellation.

The Seller shall at all times be under a duty to mitigate its losses in the event of a cancellation of an Order by the Company.

14.0 Termination

14.1 Either party may immediately terminate this Contract by written notice if the other party:

14.1.1 commits a material breach of the Contract (and if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach;

14.1.2 persistently breaches any one or more terms of this Contract;

14.1.3 suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

14.1.4 commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

14.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

14.1.6 (being an individual) is the subject of a bankruptcy petition or order;

14.1.7 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

14.1.8 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

14.1.9 a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

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14.1.10 an event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1.2 to clause 11.1.9 (inclusive);

14.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

14.1.12 (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation, or

14.1.13 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party.

15.0 Force Majeure

Neither party shall 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.

15.1 If the Force Majeure Event prevents the Seller from delivery of the Goods and/or performance of the Services for more than 6 weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Seller.



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16.0 General

16.1 Assignment and Sub-Contracting

16.1.1 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

16.1.2 The Seller shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2 Notices

16.2.1 Any notice required to be given to a party under or in connection with this Contract shall be in writing and addressed to such party at its registered company address or such other address as may be stated in the Order for such party and shall be deemed to have been duly received either:

- (a) if delivered personally, when left at the address referred to above;
- (b) if sent by fax, on the next Working Day after transmission;
- (c) if sent by pre-paid first class post or recorded delivery, on the second Business Day after posting; or
- (d) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

16.2.2 This clause 16.2 shall not apply to the service of any proceedings or other documents in any legal action. For the purpose of this clause, notice given under these Terms & Conditions shall not be validly served if sent by email. However, for the avoidance of doubt, other communication between the parties that is not deemed a notice pursuant to these Terms & Conditions may be sent by email.

16.3 Waiver

16.3.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16.3.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

16.4 Severance

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16.4.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

16.4.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.5 Third Party Rights

16.5.1 Except as otherwise agreed between the parties in writing, a person who is not a party to the Contract shall not have any rights under or in connection with it.

16.6 Variation

16.6.1 Except as set out in these Terms & Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Company

16.7 Governing Law and Jurisdiction

16.7.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods. The parties