

These terms may have changed since you last reviewed them

Definitions

Authorised Officer – a director of the Company

Contract Sum – the price quoted by the Company for the Goods and/or Services specified and it shall only apply to orders for those quantities or those Services without alteration or amendment.

Company : Roché Systems Limited.

The Customer: the person, firm or company placing an order or otherwise dealing with the Company

End User – any third party by whom the Customer is engaged

Goods: the goods ordered by the Customer from the Company

Order Acknowledgment; Quote Confirmation / Receipt

The Parties: together the Company and the Customer

Services – the services ordered by the Customer from the Company

The Terms: these terms and conditions which shall apply to all contracts between the Parties which shall supersede and override any other terms proposed or stipulated by the Customer regardless of when those terms are proposed or stipulated.

Working Days: a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the UK where the company is registered

The Terms

1.1. These terms shall be interpreted according to the following provisions:

1.1.1. A person includes a natural person, corporate or unincorporated body;

1.1.2. A reference to a party includes its personal representatives, successors or permitted assigns;

1.1.3. A reference to a statute or statutory provision is a reference to such statute or statutory 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; and;

1.1.4. Any phrase introduced by these Terms including any similar expression shall be construed as illustrative and shall not limit the sense of any words preceding where

these Terms are used in this document.

2. General

2.1. Each Contract shall be governed and interpreted according to the laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English Courts.

2.2. The headings in these Conditions are for convenience only and shall not affect their interpretation.

2.3. Except as provided otherwise in these Terms the Company shall not be deemed to be in breach of contract nor liable for any delays or failures to perform any of the Company's obligations under any Contract due to any cause beyond the Company's reasonable control including but not limited to industrial action, import or export regulations or embargoes, restraints or delays affecting carriers, difficulties in obtaining materials, parts, components, labour or fuel, power failure or breakdown in machinery. Should any such event occur the Company reserve the right to cancel or suspend by notice in writing all or any part of the Contract without incurring any liability and The Customer will be liable to pay for any Goods delivered or Services performed prior to any such cancellation.

2.4. The waiver by The Company of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.

2.5. Any written notice to be given under these Terms shall be sent by the Customer to the Company's Registered Office and by the Company to the Customer at The Customer's trading address.

2.6. Nothing in these Terms or a Contract is intended to or will create any benefit for or right to enforce any of these Terms to any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

2.7. Termination of a Contract shall not affect rights and obligations which have already accrued at the time of termination.

2.8. The Customer may not assign or deal in any way with all or any part of the benefit of The Customer's rights or benefits under a Contract.

2.9. The Company is entitled at any time to assign or deal with the benefit of any Contract or sub-contract any work relating to any Contract.

2.10. If any Condition or part of this Contract is found by any court, tribunal or administrative body to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from these Terms or a Contract and will be ineffective without, as far as is possible, modifying any other Condition or part of a Contract and

this will not affect any other provisions of these Terms or a Contract which will remain in full force and effect.

3. The Contract

3.1. All orders are accepted by the Company under these Terms and may not be altered except with the written agreement of a director of the Company. Any contrary or additional terms are excluded unless so agreed so that these terms shall govern the entire agreement between the parties and shall supersede any prior agreement, understandings or arrangements between the Parties. The Customer shall not be entitled to rely on any statement, promise or representation made or given by the Company which is not set out in the Contract.

3.2. Placing of an order by the Customer order shall constitute unqualified acceptance of these Terms.

3.3. Quotations and estimates do not constitute offers and shall lapse on expiry of the stated period or, if no such period is stated, 20 Working Days from the date of the quotation or estimate. The Company reserves its right to withdraw or revise a quotation or estimate at any time before accepting an order.

3.4. The Company's acceptance of an order shall become an effective contract where the Company's Order Acknowledgment is received by the Customer and the quantity and description of the Goods or Services shall be as set out in the Order Acknowledgment.

3.5. Except where the Contract provides that the Company will undertake design work the Customer shall be responsible for ensuring the accuracy and completeness of any order including quantities, any delivery dates and applicable design, drawing dimensions, measurements, weights or specification provided by the Customer and for giving the Company any necessary information relating to the Goods or Services within a sufficient time to enable the Company to perform the Contract in accordance with its Terms. If the Customer fails to notify the Company of any error within forty eight hours of receipt of the order specification the Company accepts no responsibility for any losses or delays incurred by the Customer.

3.6. The Company may make changes to the specification of the Goods or Services necessary to conform to any applicable statutory, regulatory or EU requirements or where Goods or Services are supplied to the Company's specifications which do not materially affect their quality or performance.

3.7. The Contract or any part of it may be extended, delayed or cancelled only with the written agreement of a director of the Company. If an order is extended, delayed or cancelled by the Customer whether or not with the agreement of the Company the Customer will indemnify the Company against all losses, damages, costs and expenses that the Company incurs as a result of the extension, delay or cancellation including but not limited to the cost of any material, plant or tools used or allocated to

the Contract, the cost of storage, the cost of labour and other overheads including a percentage of anticipated profit on the Contract and the Company reserves the right to resell the Goods without notice to the Customer.

3.8. All of these terms shall apply to the supply of both Goods and Services except where application to one or the other is specified.

4. Price

4.1. The Company's quotation and priced are exclusive of VAT which will be added at the applicable rate. Delivery costs will be paid by the Customer. The Company shall be entitled to adjust the price of the Goods or Services or the delivery thereof as at the time of delivery or performance by such amount as may be necessary to cover any increases in taxes or duties; any increase sustained by the Company after the date of acceptance of the order in any direct or indirect costs of making, obtaining, handling or supplying the Goods or Services; and/or any costs and expenses howsoever arising which result from the Customer's failure to comply with any of its obligations under these Terms or any change in the Customer's instructions to the Company.

5. Payment

5.1. Prior to the Company's acceptance of a Customer's Order deposit will be payable to the Company. The amount of the deposit will be 50% of the Contract Sum.

5.2. Unless a director of the Company has agreed in writing to grant the Customer credit, the balance of the Contract Sum must be paid upon delivery of the Goods or Performance of the Services.

5.3. The time for payment is of the essence of the Contract. The Company will be entitled to suspend the provision of Goods and/or Services where any sums are overdue under any contract between the Parties until all such amount have been received as clear funds by the Company.

5.4. The Customer may not withhold payment of any invoice or other amount due to the Company by reason of any right of set off or counterclaim which the Customer may allege to have.

5.5. Any amount that is outstanding to the company under the Contract the Company will be able to recover these sums as a debt due and owing to the Company. The Company will be able to claim interest at the rate of 8% above the Bank of England Base rate which prevails on the date upon which payment was due to be made to the Company.

5.6. The Company may require that the Customer immediately returns all goods as title has not yet passed to the Customer by virtue of Clause 8 of these Terms. The

Customer agrees to reimburse the Company for all costs and expenses incurred with the recovery of Goods on demand by the Company.

6. Delivery

6.1. Unless otherwise agreed in writing with a director of the Company, delivery of any Goods shall be ex-works. If the delivery is not ex-works the Customer shall pay the Company's charges for delivery including unloading and any other associated costs. If Goods are collected, delivery shall be completed when loading is completed at the Company's premises. If the Company deliver the Goods then delivery will occur on arrival at the delivery address which shall be the location set out in the Contract or such other location as agreed in writing.

6.2. Delivery dates are estimates only. Time for delivery of Goods or performance of the Services shall not be of the essence. The Company will endeavour to deliver Goods and perform Services at the times and dates given however the Company does not accept any liability whether consequential or otherwise for any losses or additional costs incurred by the Customer which results from any delay in delivery of Goods or in performance of Services. Any default or breach by the Company shall not entitle the Customer to treat the Contract as repudiated.

7. Installation

7.1. If the Contract specifies that the Company will be responsible for installing the Goods the Company has the right to use its employees or agents to perform such installation.

7.2. The Customer will obtain all necessary permissions to allow the Company to have full and free access to the site at which installation is to take place and free availability of all necessary utilities and services for the purpose of installing the Goods. The Customer is responsible for undertaking any preparatory work which the Company specifies is necessary when notified to the Customer in writing. The Customer will compensate the Company for any and all additional costs which the Company incurs as a result of the Customer's failure to properly undertake any such preparatory work.

7.3. The Company shall procure that its employees and/or agents will comply with all reasonable health and safety, security and other regulations which are in force or apply at the Delivery Address and the Customer shall indemnify and hold the Company harmless against any loss, damage, cost and/or expense which the Company may suffer or incur as a result of any injury to the Company's employees or agents or damage to or loss of the Company's property whilst at the Delivery Address resulting from anything other than the Company's employees or agents negligence or any non-compliance by the Goods with the warranty set out in Clause 10 below.

8. Title and Risk

8.1. Risk in the Goods shall pass to the Customer when the Good are delivered. The title to the Goods (whether separate and identifiable or incorporated or mixed in with other goods) shall remain with the Company until the Customer has paid the price of the Goods (together with any accrued interest) and has paid any other sums outstanding between the Parties whether in respect of the current Contract or any other agreement.

8.2. Until title passes the Customer shall hold the Goods as the fiduciary agent and bailee of the Company. The Customer will store the Goods separately from any other goods and will ensure the Goods remain identifiable as those of the Company. The Customer shall not interfere with any identification marks, labels, batch numbers or serial numbers on the Goods.

8.3. The Customer will notify any End User that the Company remains the legal owner of the Goods until title passes in accordance with Clause 8.1 and the Company reserves the right to label the Goods accordingly.

8.4. The Company agrees that the Customer may use or agree to sell the Goods as principal rather than as the Company's agent subject to such sale being effected in the ordinary course of the Customer's business at full market value. The entire proceeds of any sale or insurance proceeds received in respect of the Goods will be held by the Customer in trust for the Company and not mixed with any other monies or paid into an overdrawn bank account and shall at all times be identifiable as the Company's money.

8.5. The Company agrees that the Customer may convert or incorporate the Goods into or mix the Goods with other goods or materials (the product of such conversion, incorporation or mixture being "the New Goods") on condition that the title to the New Goods shall remain with the Company until title passes in accordance with Clause 8.1.

8.6. The Customer agrees that it will, at the Company's request and at the Customer's expense, assign to the Company all rights that the Customer may have against any End User.

8.7. From the time of the delivery until title in the Goods passes to the Customer in accordance with Clause 8.1 the Customer shall store the Goods in reasonable conditions so as to maintain the quality of the Goods and the Customer shall insure the Goods for their full value with a reputable insurer and, if the Company so requests, ensure that the Company's name is noted on the insurance policy. Until title in the Goods passes to the Customer the Customer shall hold the proceeds of any claim on such insurance policy on trust for the Company and shall immediately account to the Company with the proceeds.

9. Intellectual Property Rights

9.1. All Intellectual Property Rights in or arising out of in connection with the Goods or Services shall be owned by the Company.

1.

10. Liabilities

10.1. Nothing in these Terms shall exclude or restrict the Company's liability for death or personal injury resulting from the Company's negligence or the Company's liability for fraudulent misrepresentation or any other liability which cannot be excluded or restricted by law.

10.2. Subject to Clause 10.1 the Company is not liable to the Customer in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise for any of the following losses or damages, whether direct or indirect and even if such losses and/or damages were foreseen, foreseeable or known or the Company was advised of them in advance:

10.2.1. Loss or damage incurred by the Customer as a result of third party claims;

10.2.2. Loss of actual or anticipated profits;

10.2.3. Loss of business opportunity;

10.2.4. Loss of anticipated savings;

10.2.5. Loss of goodwill; and

10.2.6. Any indirect, special or consequential loss or damage howsoever caused.

10.3. The Company's entire liability under or in connection with the use, supply or failure to supply the Goods or Services whether for tort (including negligence), breach of contract, breach of statutory duty, misrepresentation or otherwise is limited in respect of each event or series of connected events, in the case of the Goods to the repair of the Goods or supply of replacement Goods or the net amount invoiced to the Customer of the defective, damaged or undelivered Goods which gave rise to such liability or in the case of the Services to the re-performance of such Services.

10.4. Subject to Conditions 10.7- 10.9.2 inclusive, where The Company supply Goods only (and not, for the avoidance of doubt, where The Company provide any Services in respect of any Supplies), The Company warrant that:

10.4.1. The Company have legal title to sell the Goods;

10.4.2. the Goods will be substantially free from defects in materials and workmanship; and

10.4.3. the Goods will comply with their specification.

10.5. Subject to Conditions 10.7 to 10.10 inclusive, where the Company provides Services in relation to any Supplies (but does not supply any goods), The Company warrants that the Services will be performed with reasonable skill and care.

10.6. The Company does not warrant that the Goods will be fit for any particular purpose even if The Customer advises the Company of any purpose for which they may be used in advance.

10.7. The Company will not be liable under the Contract:

10.7.1. if a defect in the Goods or failure in the provision of the Services would have been apparent on a reasonable inspection under Condition 7.1 at the time of loading or unloading (as appropriate) unless the Customer give the Company notice in accordance with Condition 7.2;

10.7.2. unless a defect in the Goods or failure in the provision of the Services other than is covered by Condition 10.7.1 is discovered within 12 months of the date of delivery of the Goods or failure in the provision of the Services and the Company are given written notice of such defect or failure in the provision of the Services within 15 Working Days of it being discovered;

10.7.3. unless after discovery of the defect the Company are given a reasonable opportunity to inspect the Goods or to review the Services before they are used fixed or in any way interfered with. The Customer may not continue to use the Goods once the Customer has discovered any defect in the Goods or failure in the provision of the Services;

10.7.4. If the defect arises as a result of the Goods being used for a purpose or in a manner other than that specified to and agreed by the Company or specified by the Company;

10.7.5. if the defect arises from wear and tear;

10.7.6. if the defect arises as a result of a defect in any Supplies; and/or

10.7.7. if the defect arises from the Customer or a third party's negligence, mis-use, alteration or repair of the Goods or the Supplies or the Services, failure to follow British Standard or industry or The Company's instruction relevant to the Goods or the Supplies or the Services, storage of the Goods or the Supplies in unsuitable conditions or use of the Goods or the Supplies or the Services in abnormal working conditions.

10.8. If the Goods are not manufactured by the Company or have been processed by a third party whether or not at the Company's or the Customer's request the Company's liability in respect of any defect in or arising from the Goods will be limited to such rights against the manufacturer or the third party as the Company may have in respect of those Goods.

10.9. If the Goods are supplied manufactured or processed or the Services are performed to a drawing, design, measurement, calculation or specification provided by or approved by the Customer or any third person nominating or specifying the Goods whether as provided in Condition 6.4 or otherwise then:

10.9.1. subject to Condition 10.1, the Company shall not be liable for any defect in such Goods or the performance of Services except in the event of:

10.9.1.1. misrepresentation where the representation was made or confirmed in writing by the Company;

10.9.1.2. non-compliance with such drawing, design, measurement, calculation or specification; or

10.9.1.3. breach of a separate written warranty signed by the Company that the Goods or the Supplies are fit for a particular purpose.

10.9.2. The Customer will unconditionally fully and effectively indemnify the Company against all losses, damages, costs on an indemnity basis and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any intellectual property rights of any other person.

10.9.3. If the Goods are supplied or the Services are performed to a drawing, design, measurement, calculation or specification provided in writing by The Company then subject to Condition 10.1 The Company shall not be liable except in the proportion and to the extent that such damages have resulted primarily from The Company's breach of Contract or negligence provided that The Company will not be liable under this Condition 10.9.2 if:

10.9.4. material information is withheld concealed or misrepresented by The Customer; and/or;

10.9.5. the drawing, design, measurement, calculation or specification provided by The Company is not in writing signed by one of The Company's Authorised Officers.

10.10. The Customer will fully indemnify the Company against all losses, damages, penalties, costs on an indemnity basis and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim by any third party arising from the supply or use of the Goods or the Supplies.

10.11. Except as expressly provided in these Terms all warranties, conditions of other terms implied by statute or common law are excluded to the fullest extent permitted by law.

10.12. Where the Customer resell the Goods or the Supplies to a third party and the third party brings any claim against the Company, the Customer will provide all reasonable assistance to the Company at the Customer's cost to enable the Company

to defend the claim and the Customer will not make any admission, negotiate or settle any claim without the Company's prior written consent thereto.

11. Default and Termination

11.1. "Insolvent" means the Customer becoming unable to pay the Customer's debts within the meanings of Section 123 (Company) or Section 268 (Individual) of the Insolvency Act 1986 or the Customer ceasing to pay the Customer's debts in the ordinary course of business or being unable to pay the Customer's debts as they become due or the Customer ceasing or threatening to cease to carry on the Customer's business.

11.2. "Associated Company" means a subsidiary or holding company as defined in Section 1159 of the Companies Act 2006 or a subsidiary of such holding company, or any company over which the Company's or the Customer's directors or shareholders have control as defined in Section 416 of the Income and Corporation Taxes Act 1988.

11.2.1. If The Customer fails to pay any invoice or sum due to the Company or to any of the Company's Associated Companies under any Contract on the due date; or

11.2.2. If The Customer's credit limit is withdrawn or reduced to a level below the amount then outstanding to the Company; or

11.2.3. If The Customer's or the Customer's Associated Company become Insolvent; or

11.2.4 there is a material change in The Customer's or The Customer's Associated Company's constitution; or

11.2.5. The Customer pledges by way of security for any of the Customer's indebtedness any Goods for which title still remains with the Company in accordance with clause 8; or

11.2.6. The Customer commits a material breach of the Contract which is not capable of remedy or commits a material breach of the Contract that is capable of remedy but fail to remedy that breach within 7 Working Days after being requested to do so, then all sums outstanding between the Customer and the Company under this and any other Contract between the Customer and any of the Company's Associated Companies shall become immediately due and payable and the Company shall be entitled to do any one or more of the following (without prejudice to any other right or remedy the Company may have):

a) require immediate payment in cleared funds of any outstanding of the Company's invoices;

b) require payment in cleared funds in advance of further deliveries of Goods or performance of Services;

- c) suspend or cancel any further deliveries of Goods or performance of Services to the Customer under any Contract without liability on the Company's part;
- d) resell any Goods ordered by the Customer to any other person;
- e) without prejudice to the generality of Clause 8 exercise any of the Company's rights pursuant to that Clause; and/or
- f) terminate this or any other Contract with the Customer without liability on the Company's part;
- g) charge the Customer interest on any sum due or overdue under these Terms at the interest rate set out in Clause 5.5;
- h) require the return of the Goods in accordance with Clause 8.7.

11.3. The Customer shall reimburse The Company's costs including legal costs on an indemnity basis which The Company incur in enforcing The Company's rights under the Contract including but not limited to recovery of any sums due.