



MARCH 1, 2021

# RED ROCK AUTOMATION LTD

## TERMS AND CONDITIONS OF SALE

UNIT 7B CARTSIDE AVENUE, INCHINNAN BUSINESS PARK, INCHINNAN, RENFREWSHIRE PA4 9RX

RRA-POL-008 V1 01/03/2021

# Standard Terms and Conditions of Sale

## DEFINITIONS

1.1 The following terms shall have the following meanings:-

“Seller” means Red Rock Automation Ltd

“Buyer” means the company, firm, person or body of persons from whom an Order is received;

“Contract” means the contract between the Seller and the Buyer for the sale and purchase of the Equipment, incorporating these Conditions;

“Order” means an order placed by the Buyer with the Seller to purchase the Equipment; “Equipment” means the plant, machinery, apparatus, articles or items set out in the contract;

“Conditions” means these sale terms and conditions may be amended from time to time in accordance with clause 2.3.

## ACCEPTANCE

2.1 All the Seller’s quotations, all acceptances by the Seller of an Order and all other contracts between the Seller and the Buyer, are subject to these Conditions, which supersede any arrangements, agreements, statements, representations or negotiations made between the Buyer and the Seller.

2.2 These conditions apply to the Contract and to the exclusion of any other terms and conditions that the Buyer seeks to impose or incorporate (whether or not in its Order), or which are implied by trade, custom or practice or course of dealing.

2.3 No variations of these Conditions will be valid unless agreed upon in writing by a Director of the Seller.

## QUOTATIONS

3.1 Any quotation given by the Seller shall be subject to these Conditions, but shall not constitute an offer and unless previously withdrawn by the Seller shall remain open for a period of 30 days from its date of issue.

3.2 Any clerical, typographical or other omission in any website information, sales literature, price list, quotation, acceptance offer, commercial invoice or any other documents issued by the Seller shall be subject to correction without any liability on the Seller.

3.3 All prices quoted are exclusive of Value Added Tax and of costs and charges incurred by the Seller in packaging, insurance, transport and shipping of the Equipment, all of which shall be invoiced to the Buyer.

3.4 The Seller reserves the right at any time prior to the delivery of the Equipment to adjust the stated price to take account of any increase in the cost of the Equipment due to:

- a) any factor beyond the Seller’s control (including foreign exchange rate fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- b) any requests by the Buyer to change delivery date(s), quantities or types of Equipment ordered; or
- c) any delay caused by any instructions of the Buyer and failure of the Buyer, to give the Seller adequate or accurate information or instructions.

## PAYMENT

4.1 Unless the seller otherwise notifies the Buyer in writing, payment in full is due on the date the Buyer places the Order (“Payment Due Date”) The Seller reserves the right to dispose of the Equipment to another buyer at any time prior to receiving payment in full.

4.2 Time for payment shall be of the essence.

4.3 The Seller reserves the right to charge interest at 8 per cent per month above the Bank of England Base Interest Rate prevailing from time to time, on all sums overdue such interest being deemed to accrue on a daily basis from the Payment Due Date.

4.4 The Seller shall be entitled to appropriate any payments made by the Buyer in settlement of such invoices or accounts as the Seller may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Buyer.

4.5 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall have no rights of set-off counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part.

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4.6 Without prejudice to the provisions of clause 7.1 the Seller shall be entitled to commence proceedings against the Buyer for the price of the Equipment if payment is not made by the Payment Due Date.

4.7 The Buyer agrees to indemnify the Seller against any legal fees incurred by the Seller in obtaining payment for the Equipment as a result of the Buyer's failure to comply with clause 4.1.

4.8 Unless the Seller notifies the Buyer in writing, payment in accordance with clause 4.1 shall be made in Pounds Sterling and shall be paid by electronic transfer to the Seller's account.

## DELIVERY

5.1 Whilst the Seller will endeavour to observe any dates quoted for delivery of the equipment, such dates shall be estimates only. Accordingly, time of delivery shall not be of the essence.

5.2 The Seller shall not be liable for any loss whatsoever or howsoever arising caused by non-delivery of Equipment or by failure to deliver Equipment on the date(s) quoted.

5.3 The Seller reserves the right to make delivery by instalments and to tender a separate invoice in respect of each such instalment. Each instalment shall constitute a separate Contract.

5.4 When delivery is made by instalments whether in accordance with clause 5.3 or otherwise, delay or defect in any one or more of the instalments will not entitle the Buyer to treat the Contract as repudiated or to claim damages.

5.5 The Buyer shall not be entitled to reject the Equipment or to claim damages if the seller delivers up to 10% more or 10% less than the quantity of the Equipment ordered, but a pro rata adjustment will be made to the Order invoice on written confirmation from the Buyer that the wrong quantity of Equipment was delivered.

5.6 The Seller reserves the right to withhold delivery of part or all of the Equipment:

(a) if at the time when delivery is due there shall be any outstanding invoice issued by the Seller to the Buyer which has not been paid in full in accordance with the provisions of clause 4.1; or

(b) upon the occurrence of any of the events specified in clause 9.2.

5.7 Delivery will be deemed to have been effected when the Equipment leaves the premises of the Seller or other specified premises.

## RISK

6.1 Risk in the Equipment shall pass to the Buyer at the time of deemed delivery in accordance with clause 5.7.

6.2 All Equipment is sold "Ex Works" unless otherwise agreed by the Seller. If the Seller is instructed to undertake the transportation / shipping of the Equipment beyond the deemed despatch premises (as referred to in clause 5.7) then such costs will be to the Buyer's account, and shall not affect the provisions of the Contract as to the passing of risk. Risk will pass not later than when the Equipment is handed over to the first carrier.

6.3 From the moment of deemed delivery the Buyer shall promptly effect and maintain in the joint names of the Buyer and the Seller comprehensive insurance cover on the Equipment for its full invoice price until payment in full has been made in accordance with clause 4.

## PASSING OF TITLE

7.1 Notwithstanding the passing of risk in accordance with clause 6.1, title in the Equipment shall not pass to the Buyer until payment in full has been received by the Seller.

7.2 Until title to the Equipment passes, the Buyer shall:

(a) subject to clause 7.2, keep the Equipment separate and distinct from all other property of the Buyer or of any third party and stored in such a way as to be clearly identifiable as belonging to the Seller;

(b) notify the Seller immediately if it becomes subject to any of the events listed in clause 9.2;

(c) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment; and

(d) promptly give the Seller such information relating to the Equipment as the Seller may require from time to time.

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7.3 If before title to the Equipment passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 9.2, or the Seller reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the equipment has not been resold, or irrevocably incorporated into another product, and without limiting any other right of remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Equipment and, if the Buyer fails to do so promptly, the Seller may enter any premises of the Buyer or of any third party where the Equipment is stored in order to recover it.

7.4 Where the Buyer is acting as agent for the Seller, the Buyer is hereby licensed by the Seller to use or to agree to sell the Equipment subject to the express conditions that:

(a) any sale by the Buyer of the Equipment whether or not incorporated into other goods or equipment, shall be made as agent on behalf of the Seller -; and

(b) the percentage of the proceeds of any sale made pursuant to clause 7.4(a) which is equivalent to the Seller's invoice price of the Equipment sold shall be paid into a separate bank account and at all times held in trust for the Seller and shall not be mixed with other monies or paid into an overdrawn bank account and shall at all times be identifiable as the Seller's monies.

### **DEFECTIVE EQUIPMENT**

8.1 All equipment is sold "as seen" and "as is" unless otherwise agreed in writing by the Seller. Therefore the Buyer is under a duty to carry out whatever tests and inspections it deems necessary in order to ascertain whether the Equipment is in a condition satisfactory to the Buyer prior to making an Order or any other offer to purchase.

8.2 The Seller takes no responsibility for the information provided and gives no undertaking whatsoever as to its previous use or the suitability of the Equipment for the purposes of the Buyer and it is incumbent upon the Buyer to ascertain in advance of making an Order or any other offer to purchase that the Equipment will meet its specific needs.

The Buyer must take particular care when intending to use the Equipment for a purpose other than that for which it was originally manufactured to ensure that it will be both safe and feasible to do so; in such cases the original manufacturer or distributor should always be consulted.

8.3 The Buyer should be aware that the Equipment may have been modified from its original specification by a previous owner and the Buyer should therefore conduct a thorough examination of the Equipment to ensure it is fit for the intended purpose, if the Buyer instructs the Seller to make any modifications or repairs to the Equipment it is the Buyer's responsibility to ensure that it meets the Buyer's specification and requirements prior to delivery and installation.

8.4 If the Buyer believes the Equipment may have been damaged in transit it must inform the Seller immediately upon receipt and confirm this in writing within 48 hours of receipt, failure to do so will invalidate any claim against the Seller or its agents.

8.5 Statutory Inspection and Certification of Equipment is the sole responsibility of the Buyer prior to placing in service. Any specific requirements particularly "Hydrostatic Pressure Tests, Pressure Vessel Tests and Eddy Current Tests" on used equipment should be requested in writing by the Buyer to the Seller when placing the Order. These results do not however imply any warranty of future serviceability, nor the quality of manufacture, assembly or function of the items tested. It is the responsibility of the Buyer to ensure legislative compliance during the installation and commissioning period.

### **BUYER'S INSOLVENCY OR INCAPACITY**

9.1 If the Buyer becomes subject to any of the events listed in clause 9.2 or the Seller reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Seller without incurring any liability to the Buyer, and all outstanding sums in respect of Equipment delivered to the Buyer shall become immediately due.

9.2 For the purposes of clause 9.1, the relevant events are:

(a) the buyer 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 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 his 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 whom any of the foregoing apply;

(b) the Buyer 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 the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;

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(c) (being a company) 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 the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;

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

(e) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a diligence, 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;

(f) (being a company) 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 Buyer;

(g) (being a company) a floating charge holder over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;

(h) a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;

(i) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(a) to clause 9.2 (h) (inclusive);

(j) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;

(k) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

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

9.3 Termination of the Contract, however arising, shall not affect any of the rights of the Seller or the Buyer and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract, shall continue in full force and effect.

## WARRANTY

10.1 No warranty is given or implied in relation to any Equipment supplied by the Seller unless confirmed in writing by the Seller to the Buyer.

10.2 Where the Seller does provide a written warranty in respect of the Equipment, if any defect is discovered during the period stated in the warranty commencing with the deemed date of delivery of the Equipment by the Buyer that could not have been discovered under the provisions of clause 8.1, the Seller shall at its option repair the Equipment found to be defective, or replace the Equipment or refund the purchase price provided that performance by the Seller of any one of the preceding options shall constitute an entire discharge of the Seller's liability under this clause.

10.2 The foregoing warranty (where offered) is conditional upon:-

(a) the Buyer giving written notice to the Seller of any alleged defect in the Equipment within seven days of discovering it;

(b) the Buyer affording the Seller a reasonable opportunity to inspect the Equipment;

(c) the Buyer not processing or making any further use of the Equipment;

(d) such defects not being caused by normal wear and tear or by any carelessness, incompetence or unauthorised or improper use;

(e) the Buyer if so required by the Seller returning at the Buyer's expense the faulty Equipment to a place specified by the Seller;

(f) the defect not arising because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same; and

(g) the Buyer not altering or repairing the Equipment without the written consent of the Seller.

10.3 In consideration for receiving the benefit of this clause the Buyer agrees that no other terms whether conditions, warranties or innominate terms express or implied statutory or otherwise shall form part of the Contract (except where the Buyer deals as consumer within Section 12 of the Unfair Contract Terms Act 1977 when the terms implied by Sections 13, 14 and 15 of the Sale of Goods Act 1979 ("SOGA") shall be implied into the Contract).

10.4 The Warranty for replacement parts is 3years (36 calendar months from the date of the initial delivery) for New Equipment only. This Warranty covers parts only – freight and labour costs are not included. Faulty parts must be returned properly packaged with transportation charges prepaid to Red Rock Automation Ltd at their registered office. Any return transportation charges will be FOB from Red Rock Registered Office. Failing which will forfeit the warranty claim. In such an instance, the customer must notify Red Rock Automation Ltd, in writing without delay, of any damages which occur during shipment or defects that appear thereafter, and seek replacement of parts and/or repair under warranty. All

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claims must be submitted in writing with photographic proof. For damages which occur during shipment, photographs must be taken before unstuffing of any item; failure to do so may give rise to grounds for denial of any claim. Red Rock Automation Ltd reserves the right to investigate all reported defects to determine if the defect should be repaired or replaced.

10.5 Red Rock Automation Ltd is not responsible for products which have been subjected to misuse, accident, improper maintenance, incorrect installation, alteration or repair carried out without Red Rock's consent in writing.

10.6 Red Rock Automation Ltd will not be liable for any loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.

10.7 Warranty only applies to customers who have purchased equipment directly from Red Rock Automation Ltd.

## LIABILITY

11.1 Nothing in this clause 11 shall be deemed to exclude or restrict the Sellers' liability for:

- (a) death or personal injury resulting from its negligence-, or the negligence of its employees agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of SOGA;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

11.2 Each of the sub-clauses in clause 11 is to be treated as separate and independent

11.3 The Seller is willing to undertake liability additional to that provided by clause 11 in exchange for a higher price.

11.4 The Seller shall under no circumstances whatsoever be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises from breach of statutory duty,

in contract or delict or in any other way (including loss arising from the Seller's negligence).

11.5 Illustrations of consequential or indirect loss include but are not limited to, loss of profits, loss of revenue, loss of production, loss of use or business interruption, loss of contract, damage to property of the Buyer or anyone else, and personal injury to the Buyer or anyone else (except so far as such injury is attributable to the Seller's negligence).

11.6 The Seller's total liability to the Buyer under the Contract for any one claim or for the total of all claims arising from any one act or default of the Seller (whether breach of statutory duty, in contract or delict or in any other way including arising from the Seller's negligence or otherwise) shall in no circumstances exceed £50,000 or the price of the Equipment whichever is the lower.

## INTELLECTUAL PROPERTY RIGHTS

12.1 The Seller shall not be liable for the infringement of any intellectual property rights arising from:

- a) Compliance with the Buyers design instructions except to the extent that the infringement arises from the engineering process employed by the Seller; or
- (b) Any combination of the Equipment with any other product whether or not supplied by the Seller or any method or process in which the Equipment may be used.

## FORCE MAJEURE

13.1 The Seller shall not be liable for any delay or failure to deliver the Equipment or perform any of its obligations under the Contract arising from circumstances outside the Seller's control.

13.2 It should be noted the illustrations of such circumstances include but are not limited to acts of God, war or hostilities, riot or civil commotion, explosion, abnormal weather conditions, fire, flood, accidents, strikes, lock-outs or industrial action, Government action or regulations (UK or otherwise), delay by suppliers or breakdown of transport or machinery.

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13.3 Should the Seller be delayed or prevented from delivering the Equipment due to circumstances outside its control it shall give the Buyer written notice of this fact as soon as reasonably practicable after becoming aware of such circumstances.

13.4 If the circumstances preventing delivery continue for more than three months after the Buyer receives the Seller's notice, the Seller shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the other Buyer.

13.5 If the Contract is cancelled pursuant to clause 13.4 the Seller will refund any payment which the Buyer has already made on account of the price (subject to deduction of any amount the Seller is entitled to claim from the Buyer) but the Seller will not be liable to compensate the Buyer for any further loss or damage caused by the failure to deliver.

## SALES PROMOTION DOCUMENTATION

Whilst the Seller takes reasonable precautions in the preparation of its catalogues, technical circulars, web site, price lists and other literature ("Promotion Documents"), the Promotion Documents are for the Buyer's general information and guidance only and the particulars contained in the Promotion Documents shall not constitute representations by the Seller and the Seller shall not be bound thereby.

## EXPORT

15.1 The Seller's terms for the international shipment of goods shall be in accordance with ICC Incoterms 2010 or future updates. Unless agreed otherwise, the Seller's standard term shall be "Ex Works", whether or not either party contracts for common carriage of the Equipment. Equipment sold "Ex Works" is considered delivered when loaded on the first carrier.

15.2 The Buyer shall be responsible for ensuring (at its own cost) that it holds all necessary permits, licences and clearances for any Equipment that is to be exported outside the United Kingdom.

15.3 Costs associated with export packaging, container or flat rack stuffing and securing will be charged to the Buyer.

15.4 When the Equipment is being exported, zero rating of Value Added Tax may apply. It is the Buyer's responsibility to ensure that the Equipment is despatched from the United Kingdom within 90 days of the Order invoice date, if not the Buyer will make payment to the Seller at the appropriate rate of Value Added Tax.

15.5 The Seller reserves the right to subcontract freight forwarding and shipping services in part or whole and will not accept claims for breakages or in transit damage on the grounds of unsuitable securing or packing.

15.6 Unless otherwise agreed in writing, insurance of the Equipment during carriage and shipping is the Buyer's responsibility.

## NOTICES

16.1 Any notice to be served under these Conditions shall be in writing and shall be sent by pre-paid recorded delivery or registered post to the addressee's registered office (if a company) or (in any other case) its principal place of business, or sent by facsimile transmission and shall be deemed to have been received by the addressee by 12 noon on the day following the day of posting or at the end of the relevant transmission if sent by facsimile transmission to the correct facsimile number of the addressee.

16.2 The Buyer shall give notice to the Seller of the change or acquisition of any address or facsimile or similar number at the earliest possible opportunity but in any event within 7 days of such a change or acquisition.

16.3 This clause 16 shall not apply to the service of any proceedings or other documents in any legal action. For the purpose of this clause, "writing" shall not include e-mails and for the avoidance of doubt, notice given under the Contract shall not be validly served if sent by e-mail.

## ASSIGNATION

17.1 The Seller may at any time assign, transfer, charge or 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 other person.

17.2 The Buyer shall not assign, transfer, subcontract or deal in any other manner with all of any of its rights under the Contract and may subcontract or deal in any other manner with all of any of its rights and obligations under Contract to any other person without the prior written consent of the Seller.

## **SEVERANCE**

18.1 If a court or any other 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 deleted, and the validity and enforceability of the other provision of the Contract shall not be affected.

18.2 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 legal, valid and enforceable.

## **NO PARTNERSHIP**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor except where expressly stated constitute either party agent of the other party for any purpose. Except where expressly stated, neither party shall have authority to act as agent for, or to bind, the other party in any way.

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