



# CONDITIONS OF SALE

## 1. Interpretation

1.1 In these Conditions:

"ACKNOWLEDGEMENT OF ORDER" shall mean the document by which the Seller's authorised representative accepts the Order.

"BUYER" shall mean the purchaser of the Goods from the Seller.

"CONDITIONS" means the terms and conditions of sale set out herein and includes any special terms and conditions included in the Acknowledgement of Order.

"CONTRACT" shall mean the contract for the sale and purchase of the Goods made pursuant to these Conditions.

"DELIVERY" shall mean delivery of the Goods or any part of them in accordance with clause 6.1 of these Conditions.

"DELIVERY DATE" shall mean the date or period for Delivery set out in an Acknowledgement of Order or which is otherwise agreed by the Seller and the Buyer.

"FORCE MAJEURE" shall mean any circumstances beyond the reasonable control of the Seller.

"GOODS" shall mean the goods which the Seller has agreed to supply to the Buyer pursuant to these Conditions.

"INFORMATION" shall mean any and all IPR, technical or commercial data, know-how, show-how, formulae, processes, designs, photographs, drawings, specifications, samples, details of customers and suppliers, pricing information, samples, prototypes and other sensitive business information and any other information of a confidential nature together with any experimental or test data and results produced by the Seller as a result of it carrying out necessary tests for the purposes of performing the Contract which either directly or indirectly is disclosed by or on behalf of the Seller to the Buyer or to any person on behalf of the Buyer orally, in writing, by physical embodiment, by data transmission or in any other way.

"INTELLECTUAL PROPERTY RIGHTS" ("**IPR**") shall mean all patents, trade marks, service marks, design rights (whether patentable, registrable or otherwise), applications for any of the foregoing copyright, know-how, trade or business names, rights in databases, topography rights and other similar rights or obligations whether registrable or not in any country (including, but not limited to the United Kingdom).

"LOSS" shall mean all actions, claims, demands, losses (direct, indirect, consequential or otherwise), expenses, costs, actions and proceedings.

"ORDER" shall mean the Buyer's order for Goods.

"SELLER" shall mean REPLY International Ltd, a company registered in England and Wales under company number 02730556 and having its registered office at REPLY House, Kingstown Road, Swindon SN25 6PB

"SPECIFICATION" shall mean the description of the Goods set out in the Acknowledgement of Order pursuant to clause 3.4.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.

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

1.4 In these Conditions "**Incoterms**" means the international rules for the interpretation of trade terms of the International Chamber of Commerce 2000. Unless the Contract otherwise requires any terms 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.

## 2. Basis of Sale

2.1 These Conditions together with the Seller's Acknowledgement of Order apply to all Contracts between the Seller and the Buyer and shall prevail and be effective notwithstanding any variations or additions whether contained or referred to in the Buyer's order, or other document submitted by the Buyer including without limitation any standard conditions of purchase of the Buyer, acceptance of quotation or in correspondence or elsewhere, or implied by trade, custom, practice or course of dealing, and shall supersede all other and any prior promises, representations or undertakings.

2.2 No variation to these Conditions shall be binding unless agreed in writing by an authorised representative of the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations or recommendations concerning the Goods unless confirmed by a duly authorised representative of the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed. For the avoidance of doubt, nothing herein contained shall be deemed to exclude the Seller's liability due to fraudulent misrepresentation.

2.4 Any typographical clerical or other error or omission in any sales literature quotation price list Acknowledgement of Order invoice or other documentation or information issued by the Seller shall be subject to

correction without any liability on the part of the Seller.

## 3. Orders and Specifications

3.1 Every acceptance by the Buyer of any quotation given by the Seller shall be deemed an offer by the Buyer to purchase Goods from the Seller and will not be deemed to be accepted by the Seller until a duly authorised representative of the Seller has provided an Acknowledgement of Order in relation to such offer by the Buyer.

3.2 No Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed by an Acknowledgement of Order.

3.3 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.4 The quantity quality and description of and any specification for the Goods shall be those set out in the Seller's Acknowledgement of Order.

3.5 If the Goods are to be manufactured by the Seller in accordance with a specification or instructions submitted by the Buyer:

3.5.1 the Buyer shall indemnify the Seller against all Loss suffered by the Seller in connection with any claim by a third party that the manufacture and/or supply of the Goods to such specification or instructions infringes the rights of any third party; and

3.5.2 The Buyer shall be responsible for supplying reliable and accurate information to the Seller (including, without limitation, drawings, plans and designs) to enable the Seller to manufacture the Goods. The Seller shall be entitled to assume that all information supplied by the Buyer is true, accurate, and complete and fit for the purpose for which it is supplied and that the Seller can rely on the same. The Seller shall not be liable for any Loss or delay in Delivery of the Goods which directly or indirectly arises from the Buyer's failure to supply accurate information at all or on time.

3.6 The Seller reserves the right to make any changes in the Specification of the Goods which are required to conform to any applicable UK safety or other statutory requirements and/or where such changes do not materially affect the quality or performance of the Goods. For the avoidance of doubt and subject to clause 10.1, the Seller provides no implied warranties in relation



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to Goods supplied to the Buyer's specification.

3.7 No Order which has been accepted by the Seller by an Acknowledgement of Order may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all Loss incurred by the Seller as a result of cancellation.

### 4. Price of the Goods

4.1 The price shall be the price in the Acknowledgement of Order ("**Price**").

4.2 The Seller reserves the right by giving notice to the Buyer at any time before Delivery to increase the Price to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as without limitation any foreign exchange fluctuation, currency regulation alteration of duties significant increase in the costs of labour materials or other costs of manufacture), any change in Delivery Dates quantities or specifications for the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated in an Acknowledgement of Order all prices are given by the Seller for Delivery as defined in clause 6.1. Where the Seller agrees to deliver the Goods otherwise than as defined in clause 6.1 the Buyer shall be liable to pay the Seller's charges for transport packaging and insurance where requested.

4.4 The price is exclusive of any applicable value added tax (which will be applied in accordance with the legislation in force at the tax point date) and which the Buyer shall be additionally liable to pay to the Seller.

### 5. Terms of Payment

5.1 Subject to any special terms agreed in an Acknowledgement of Order the Seller shall be entitled to invoice the Buyer for the Price on Delivery immediately the Goods have been despatched, when they are ready for despatch but are prevented or delayed from being despatched due to Force Majeure or the day the Goods are put out ready for collection (whichever event occurs the earliest).

5.2 The Buyer shall pay the Price without deduction within 30 days of the date of the Seller's invoice notwithstanding that Delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the Price shall be of the essence of the Contract.

Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment in accordance with clause 5.2 then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:-

5.3.1 Cancel the contract or suspend any Deliveries to the Buyer;

5.3.2 Appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);

5.3.3 charge the Buyer interest on the amount unpaid at the rate of 3 percent per annum above HSBC Bank base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and

5.3.4 demand payment of all outstanding balances from the Buyer whether due or not and/or cancel all outstanding Orders and/or decline to make further Deliveries (under this or any other contract between the Buyer and the Seller) or provision of services.

5.4 Except where insolvency laws provide otherwise the Buyer shall not be entitled to withhold or set off payment for Goods for any reason whatsoever. All Goods for which payment has not been made in accordance with clause 5.2 and which are held by the Seller at its premises are so held at the Buyer's risk.

### 6. Delivery

6.1 Except as otherwise stated in an Acknowledgement of Order delivery shall take place when the Seller places the Goods at the disposal of the Buyer at the Seller's premises and not loaded on any collecting vehicle.

6.2 Any Delivery Date is approximate only. The Seller shall not be liable for any Loss arising from any failure to deliver the Goods on the Delivery Date howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 The Buyer shall not be entitled to change the Delivery Date without the consent of a duly authorised representative of the Seller.

6.4 Where delivery of the Goods is to be made by the Seller, the Seller reserves the right to deliver up to 10 per

cent more or 10 per cent less than the quantity ordered provided that there is a pro rata adjustment to the Price to reflect the Goods actually delivered and the quantity so delivered shall be deemed to be the quantity ordered. Goods delivered in excess of such tolerance may be rejected by the Buyer provided that it serves notice of rejection within 10 working days of Delivery.

6.5 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.6 Subject to clause 10.6 if the Seller fails to deliver the Goods for any reason other than Force Majeure or the Buyer's fault and the Seller is accordingly liable to the Buyer the Seller's only liability shall be limited to the excess (if any) of the cost to the Buyer (having used its best endeavours to replace the Goods by purchasing them in the cheapest available market) of purchasing similar goods to replace those not delivered.

6.7 If the Buyer fails to take Delivery on the Delivery Date then without prejudice to any other right or remedy available to the Seller the Seller may:

6.7.1 Store the Goods until actual delivery and charge the Buyer for the costs (including insurance) of storage; or

6.7.2 Treat the Contract as repudiated by the Buyer and without prejudice to any other right it may have against the Buyer the Seller shall be entitled to resell the Goods and be indemnified by the Buyer for any Loss which it suffers.

### 7. Risk and Property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer on Delivery of the Goods;

7.2 Notwithstanding Delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall remain with the Seller until the Seller has received in cash or cleared funds payment in full of the Price and any other monies due to the Seller in respect of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due under the Contract or any other contract between the Seller and the Buyer (including without limitation costs of Delivery).

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7.3 Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Seller's property.

7.4 Until such time as the property in the Goods passes to the Buyer the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds properly stored protected and insured.

7.5 If the Goods are prior to sale by the Buyer made up or incorporated in or mixed with other goods, then if they remain separately identifiable the Seller shall retain property and title thereof and if they do not remain separately identifiable the Seller shall become a joint owner of the goods in or which the Goods are incorporated or mixed in such proportion as the value of the Goods bears to the value of the Goods in which the Goods are so incorporated or mixed.

7.6 If the Buyer sells the Goods or the goods in which the Goods have been incorporated or mixed the sale shall be on behalf of the Seller as the joint owner thereof as the case may be and the proceeds of any such sale for the Seller's share thereof if the sale is of jointly owned property shall be held on trust for the Seller and in a separate identified account.

7.7 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter the premises of the Buyer or any third party where the Goods are stored and take possession of any Goods in which property remains in the Seller and remove and dispose of them as the Seller thinks fit. The Seller shall apply the proceeds of disposal (after deduction of all expenses) in discharge of the amount unpaid by the Buyer.

7.8 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller without the Seller's consent but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of

the Seller) forthwith become due and payable.

**8. Confidentiality and IPR**

8.1 The Buyer agrees and undertakes that it will keep confidential and will not disclose or use for any purpose (other than to perform its obligations under the Contract) any Information. Any Information supplied to the Buyer by the Seller shall at all times remain the property of the Seller. The Buyer shall not acquire any rights in the Information, which shall be returned to the Seller immediately upon request.

8.2 Unless otherwise agreed in writing all IPR in relation to the Goods including without limitation their method of manufacture shall vest in the Seller and remain the property of the Seller notwithstanding the purchase of the Goods by the Buyer and the Buyer undertakes to do all acts and/or enter into such agreements or deeds as the Seller shall require to vest any such IPR in the Seller.

8.3 Unless otherwise agreed in writing and notwithstanding that the Buyer may have contributed towards the costs of such items all tooling (and all IPR in relation to such tooling) produced or acquired by the Seller in relation to the manufacture of the Goods shall be and remain the property of the Seller.

**9. Lien**

9.1 In addition to any other right or lien to which the Seller may by law or pursuant to these Conditions be entitled, the Seller shall be entitled to a general lien on all the goods and the property of the Buyer in the Seller's possession and a right of sale of such goods and property at the Seller's sole discretion for any unpaid money due under the terms of the same or any other Contract between the Seller and the Buyer.

9.2 In addition and without prejudice to its other rights, the Seller shall have the right on fourteen days notice to the Buyer to put any goods or property over which it has a lien into a saleable state by any means whatsoever and (without prior notice to the Buyer) to sell such goods and shall be deemed the Buyer's agent for the purposes of effecting such sale. Out of the proceeds of the sale the Seller shall be entitled to retain a sum equivalent to all unpaid monies due to it from the Buyer as aforesaid together with the cost of putting the goods into a saleable state and the expenses of sale without prejudice to the Seller's right to recover the balance thereof from the Buyer.

**10. Warranties and Liability**

**10.1 The Seller warrants that at Delivery the Goods will be free from defect in materials, workmanship and design (where designed by the Seller)**

provided that subject as aforesaid and expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute and/or common law are excluded to the fullest extent permitted by law.

**10.2 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.**

**10.3 Any specification supplied by the Seller in any estimate or quotation shall be approximate only and for information and guidance only and shall not form part of the Contract.**

**10.4 Any claim based upon the quality or condition of the Goods or any failure of the Goods to meet the Specification ("Claim") by the Buyer shall (whether or not delivery is refused by the Buyer) be notified to the Seller in writing within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within one month after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability in respect of such a Claim and the Buyer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract. The Buyer shall not be entitled to make any Claim after the expiration of six months from the date of Delivery of the Goods.**

**10.5 Where any valid Claim in respect of any of the Goods is notified to the Seller in accordance with clause 10.4 the Seller shall be entitled to replace the Goods (or the part in question) free of charge or at the Seller's sole discretion refund to the Buyer the Price (or a proportionate part of the Price) but the Seller shall have no further liability to the Buyer and the Buyer shall have no other remedy.**

**10.6 The Seller shall have no liability to the Buyer in relation to non-delivery or short delivery of the Goods unless such non-delivery or short delivery is notified to the Seller in writing within fourteen days of the Delivery Date.**



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10.7 Where any valid claim in respect of the Goods is notified to the Seller in accordance with clause 10.6 the Seller shall be entitled to deliver the Goods or the shortfall of the Goods, but the Buyer shall have no other remedy

10.8 Except in respect of death or personal injury caused by the Seller's negligence the Seller's total liability to the Buyer under these Conditions shall not exceed the total price of all Goods supplied hereunder.

10.9 The Seller shall have no liability to the Buyer under or arising out of or otherwise in connection with the Contract or the supply of Goods by the Seller to the Buyer and/or their use or resale by the Buyer in contract tort (including negligence or breach of statutory duty) or otherwise for loss of profit, business, contracts, revenues or anticipated savings or for any special indirect or consequential damage or loss of any nature or for the costs of recall of any Goods except as may otherwise be expressly provided for in these Conditions.

10.10 Notwithstanding any provision of these Conditions the Seller shall have no liability to the Buyer in respect of any defect in the quality of the Goods or the failure of the Goods to meet Specification where the defect or failure has arisen as a result of improper storage or any act or omission of the Buyer.

10.11 For the avoidance of doubt nothing herein contained shall be deemed to exclude or restrict the Seller's liability for death or personal injury arising due to the Seller's negligence.

10.12 Where any claim is made under this clause 10 the Buyer grants the Seller or its agents the right to enter upon the Buyer's premises to inspect the Goods unless and until the Seller has been afforded an opportunity to examine the Goods no claim will be accepted.

10.13 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods if the delay or failure was due to Force Majeure.

10.14 The Buyer shall indemnify the Seller against all Loss suffered by the Seller which arises as a result of

the breach by the Buyer of any provision of the Contract or the negligence of the Buyer or any of its representatives.

**11. Insolvency of Buyer**

11.1 In the event that:

11.1.1 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);

11.1.2 An encumbrancer takes possession or a receiver or administrator is appointed of any of the property or assets of the Buyer;

11.1.3 The Buyer ceases or threatens to cease to carry on business;

11.1.4 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or

11.1.5 If the Buyer's jurisdiction is not in England and Wales any events similar to those described in clauses 11.1.1 to 11.1.4 occur

then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to suspend further performance of the Contract for such time as it shall in its absolute discretion see fit or treat the Contract as wrongfully repudiated by the Buyer and forthwith terminate the Contract (either with or without notice to the Buyer) without any liability to the Buyer and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**12. Export Terms**

12.1 Where the Goods are supplied for export from the United Kingdom the provision of this clause 12 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

12.2 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. In particular, 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.

12.3 Unless otherwise agreed in writing between the Buyer and the Seller the Goods shall be delivered ex-works and the Seller shall be under no obligation to give the Buyer notice under section 32(3) of the Sale of Goods Act 1979.

12.4 Notwithstanding clause 5.2 payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in the United Kingdom acceptable to the Seller or if the Seller has agreed in writing on or before acceptance of the Buyer's order to waive this requirement for any other agreed method of payment

**13. General**

13.1 The Seller shall be entitled to assign or subcontract all or any of its rights and obligations hereunder. The Buyer shall not be entitled to assign, transfer, subcontract or otherwise delegate any of its rights or obligations hereunder.

13.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be given in writing at its registered office or principal place of business or such other address as may be notified for such purpose to the party giving notice.

13.3 No waiver by the Seller of any breach of Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

13.5 The parties hereto intend that no term of the Contract may be enforced by any person, entity or body that is not a party to the Contract.

13.6 The Contract shall be governed by the laws of England and Wales and the Buyer and the Seller hereby submit to the exclusive jurisdiction of the English Courts save with respect to enforcement where their jurisdiction shall be non-exclusive.