



# RELIANCE

## PROVIDING TECHNICAL SOLUTIONS SINCE 1925

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### The Reliance Bearing and Gear Company Limited - Terms and Conditions of Sale

The customer's attention is drawn in particular to the provisions of clause 10.

#### 1. BASIS OF CONTRACT

- 1.1 These conditions of sale (the “**Conditions**”) apply to each and every contract for the sale and purchase of goods and/or services between Reliance Bearing and Gear Company Limited (the “**Supplier**”) and the purchaser of such goods and services (the “**Customer**”) to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 1.2 The Customer's order for the goods and/or services or written acceptance of the Supplier's quotation, (the “**Order**”) constitutes an offer by the Customer to purchase the goods (“**Goods**”) and/or services (“**Services**”) set out in the Order (together the “**Deliverables**”) in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate. The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order or, if no written acceptance is issued, dispatches the Goods or commences providing the Services (as applicable), at which point a contract between the Supplier and the Customer for the sale and purchase of the Deliverables (the “**Contract**”) shall come into existence.
- 1.3 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Deliverables referred to in them. They shall not form part of the Contract nor have any contractual force. A quotation for the Deliverables given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

#### 2. SPECIFICATION

- 2.1 The Goods are described in the Supplier's catalogue or the Manufacturer's catalogue (as applicable) as modified by any applicable specification agreed in writing by the Customer and the Supplier and Services are as described in the specification agreed in writing by the Customer and the Supplier (in each case the “**Specification**”). The Customer is responsible for ensuring that the terms of any specification are complete and accurate.
- 2.2 To the extent that Goods are to be manufactured or assembled in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 2.2 shall survive termination of the Contract.

#### 3. DELIVERY OF GOODS

- 3.1 Delivery shall be as set out in the Supplier's acceptance of the Order (or, if the acceptance does not specify delivery as set out in the Order):
  - (a) Delivery at Place: If delivery is at place, the Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready and Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
  - (b) Delivery Ex Works: If delivery is ex works, the Customer shall collect the Goods from the Supplier's premises agreed by the parties at the point of sale within 7 days of the Supplier notifying the Customer that the Goods are ready and delivery is completed on the commencement of the loading of the Goods.
- 3.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Delivery shall be subject to manufacturer lead times.
- 3.3 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 3.4 If the Customer fails to accept delivery of the Goods within 7 days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by an event described in clause 11 (“**Force Majeure Event**”) or the Supplier's failure to comply with its obligations under the Contract:
  - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the seventh day after the day on which the Supplier notified the Customer that the Goods were ready; and
  - (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.5 If 10 days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods which sum shall be a debt due to the Supplier without further proof.
- 3.6 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment. The Customer must notify the Supplier of any short delivery within 5 days of Delivery failing which the Customer will be deemed to have accepted Delivery with the full price of the Order due and payable to the Supplier. Where Delivery is to occur by way of ‘call-off’ by the Customer the entire Order must be drawn down within 12 months of the date of the Order failing which the Supplier may Deliver the balance of the Goods to the Customer and invoice accordingly.
- 3.7 Where Software is supplied with the Goods, the Supplier shall act as the agent of the Manufacturer in relation to the software licence to be entered into by the Manufacturer and the Customer.

#### 4. SUPPLY OF SERVICES

- 4.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 4.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

4.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## **5. QUALITY**

5.1 The Supplier warrants that on delivery, the Goods shall conform in all material respects with the Specification.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier within 30 days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- (d) If the Customer fails to give notice of defect in accordance with clause 5.2(a), it shall be deemed to have accepted the Goods

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## **6. MANUFACTURER GUARANTEE**

6.1 Where in respect of any goods the subject of any sale made by the Supplier, the Supplier delivers to the Customer a guarantee given by a manufacturer or any other supplier of the goods the Supplier shall not be bound by any such guarantee and shall not be liable for the observance of or the failure to observe the terms of any such guarantee. For the purposes of this clause 'guarantee' has the same meaning as in the Sale of Goods and Supply Service Act 1980.

## **7. TITLE AND RISK**

7.1 The risk in the Goods shall pass to the Customer on completion of delivery.

7.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1; and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

7.4 Subject to clause 7.5, until title passes in accordance with clause 7.2, the Customer holds the Goods as bailee of the Supplier. The Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent;
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs; and
- (c) the Customer shall pay all proceeds of sale into a separate account or, otherwise, shall ensure that all the proceeds of sale are kept by or on behalf of the Customer in a separate and identifiable form. The proceeds shall not be paid into an overdrawn bank account. Upon receipt of the proceeds of sale, the Customer shall discharge the debt due to the Supplier and shall not use or deal with the proceeds of sale in any way whatsoever until such debt has been discharged.

7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.1, then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
  - (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
  - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored as licensee in order to recover them.

## **8. PRICE AND PAYMENT**

8.1 The price of the Deliverables shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery. Provided that the Supplier shall have the right to charge a surcharge where the quantity of Goods in an Order does not meet the minimum order value or minimum order quantity of the manufacturer.

- 8.2 The Supplier may, by giving notice to the Customer at any time up to 14 days before delivery, increase the price of the Deliverables to reflect any increase in the cost of the Deliverables that is due to:
- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by the Customer to change the delivery date(s), quantities or types of Deliverables ordered, or the Specification; or
  - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 8.3 The price of the Deliverables:
- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - (b) excludes the costs and charges of packaging, insurance and transport of the Deliverables, which shall be invoiced to the Customer, unless otherwise stated.
- 8.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery. The Supplier may invoice the Customer for the Services on completion of the Services or in such manner as is set out in the Specification, if applicable.
- 8.5 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Payment shall be made in Euro or such other currency as is stated on the invoice. Time of payment is of the essence.
- 8.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the ECB marginal lending rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8.8 Returns and cancellations – Goods supplied pursuant to the Contract cannot be returned without the Supplier's prior written authorisation. Duly authorised returns shall (a) be sent to Supplier's premises at the Customer's expense; (b) may be subject to a handling charge of up to twenty percent (20%) of the invoiced value of the Deliverables, at the Supplier's discretion; and (c) must be in the same condition as originally delivered to the Customer. The Customer may not, without prior written consent of Supplier, cancel an order, including, without limitation, any order for goods that involve special requirements of the Customer, once the order has been accepted by the Supplier. Should the Supplier provide consent to cancel an order, the cancellation will be subject to a handling charge of twenty percent (20%) of the invoiced value of the Deliverables. There are no exchanges, discounts, or cancellations on all "Specially Procured" Goods. Sales of all "Specially Procured" Goods are final at the time the order is placed.

## **9. TERMINATION**

- 9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term 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 to do so;
  - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - (d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - (e) it is not possible for the Supplier to obtain the Goods comprising the Order in sufficient quantities and at a price which allows the Supplier to fulfil the Order without incurring a loss.
- 9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Deliverables under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(a) to clause 9.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 9.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## **10. LIMITATION OF LIABILITY**

10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation; or
- (c) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.2 Subject to clause 10.1:

- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Deliverables.

## **11. FORCE MAJEURE**

- 11.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of a party including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of that party or any other party), failure of a utility service or transport network, act of God, war, riot, civil

commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- 11.2 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for two months, the party not affected may terminate this Contract by giving 30 days' written notice to the affected party.

## **12. CONFIDENTIALITY**

- 12.1 "**Confidential Information**" means all information pertaining to any aspect of a Party's business which either is (i) not known by actual or potential competitors of the Party or (ii) proprietary information of the Party or its customers or suppliers or (iii) proprietary information of third parties in respect of which the Party, its employees or consultants have obligations of confidentiality, whether of a technical nature or otherwise.
- 12.2 During the course of this agreement, the Parties may disclose Confidential Information to each other.
- 12.3 Each Party shall keep the Confidential Information of the other Party strictly confidential and shall, subject to Clause 12.4 not disclose Confidential Information to any third party provided that the Supplier may disclose Confidential Information to any party to whom it has sub-contracted its obligations hereunder to the extent necessary to allow the sub-contractor perform such obligations.
- 12.4 The obligations in Clause 12.2 shall not apply to Confidential Information which (i) is within the public domain, (ii) is required to be disclosed by law or (iii) is lawfully received from a third party free to disclose such information and which the receiving Party can demonstrate and verify in writing was so lawfully received.

## **13. GENERAL**

- 13.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

- 13.2 **Entire agreement.**

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

- 13.3 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 13.4 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy nor prevent or restrict the further exercise of that or any other right or remedy.

- 13.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- 13.6 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid post or other next working day delivery service, commercial courier, or fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.6(a); if sent by pre-paid post or other next working day delivery service, at 9.00 am on the second day (other than a Saturday, Sunday or public holiday) after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, the next day (other than a Saturday, Sunday or public holiday) after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

- 13.7 **Governing law and Jurisdiction.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of Ireland and each party submits to the exclusive jurisdiction of the Irish Courts.