

# Fulfilment By RWB - Terms and Conditions

## 1. Interpretation

1.1 In these terms and conditions, the following words have the meanings or shall be interpreted as stated below:

- Agreement: the Agreement for the provision of Services by the Company to the Customer of which these terms and conditions form part;
- Business Day: any weekday (Monday to Friday) excluding public holidays in The Republic of Ireland or the United Kingdom;
- Company: Red Wire Blue Limited (company no. 474565);
- Conditions: these terms and conditions;
- Customer: the person, firm or company who purchases Services from the Company; Goods: the goods and/or materials which are the subject of the Services;
- Insolvency Event where: a) a receiver, administrative receiver, administrator, manager or official receiver is appointed over the Customer's affairs; b) the Customer goes into liquidation, unless for the purpose of a solvent reconstruction or amalgamation; c) distress, execution, sequestration levied or issued against any part of the Customer's assets and is not paid within seven days;
- Services: the services in relation to Goods of storage, warehousing, order processing and/or dispatch to be provided by the Company under any Agreement together with any other services which the Company provides or agrees to provide to the Customer;
- VAT: value added tax at the rate in force from time to time.

1.2 All references to a statutory provision include references to any statutory modification, consolidation or re-enactment of it and all instruments or orders made pursuant to it.

1.3 Words denoting the singular include the plural and vice versa; words denoting any gender include all genders; and words denoting persons include corporations, partnerships, other unincorporated bodies and all other legal entities and vice versa.

1.4 The condition headings are inserted for ease of reference only and do not affect their construction.

## 2. Application of Conditions

2.1 These Conditions:

2.1.1 apply to and are incorporated into the Agreement; and

2.1.2 prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order or acceptance of an estimate or which are implied by law, trade custom, practice or course of dealing.

2.2 An estimate given by the Company constitutes an offer to supply the Services on these Conditions. No offer made by the Company may be accepted by the Customer and no contract between the parties will come into force other than:

2.2.1 by a written acknowledgement issued by the Customer; or

2.2.2 (if earlier) by the Company starting to provide the Services at the request of the Customer when a contract for the supply and purchase of those Services on these Conditions will be established. The Customer's standard terms and conditions, if any, attached to, enclosed with or referred to in any purchase order or other documents will not govern this Agreement.

2.3 Estimates are given by the Company on the basis that no Agreement will come into existence except in accordance with condition

2.4. Any estimate is valid for a period of 30 days from its date (provided that the Company has not previously withdrawn it) and will then automatically lapse.

### 3. Company's obligations

3.1 The Company will use reasonable endeavours to provide the Services.

3.2 The Company shall be free to use such subcontractors or agents as it may at its absolute discretion choose to appoint.

### 4. Customer's obligations

4.1 The Customer will co-operate with the Company in all matters relating to the Services.

4.2 The Company will not accept or deal with any noxious, dangerous, hazardous, inflammable or explosive Goods or any Goods likely to cause damage. The company will also not accept or handle goods deemed illegal for sale or distribution or are subject to specific controls within the UK in accordance with UK laws pertaining to the product/goods delivered by the client. It is the client's responsibility to ensure that their products are deemed permissible for sale/storage/distribution within the UK before delivering goods to the company. The company will also not dispatch goods internationally where laws applicable in the destination country deem the product/goods illegal for sale or receipt or are subject to specific controls. It is the responsibility of the client to ensure that such goods are not made available for sale where international law prevents the sale/receipt of such products/goods. Should the Customer nevertheless deliver any such Goods to the Company or any subcontractor or agent of the Company or cause the Company or any subcontractor or agent of the Company to handle or deal with any such Goods, the Customer will be liable for all loss or damage caused by or in connection with such Goods however arising and will indemnify the Company against all losses, damage, liabilities, costs, claims, and expenses whatsoever arising in connection with such Goods and the Goods may be destroyed or otherwise dealt with at the sole discretion of the Company, so long as the Goods are in the custody or under the direction of the Company.

4.3 The Customer will indemnify the Company in respect of all costs, charges, demands, liabilities or losses sustained or incurred by the Company arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement or arising from the contents of any of the Goods, including any loss of profit, loss of reputation, loss or damage to property, loss arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere and including any costs, changes or losses resulting from any claim that any of the Goods do not belong to the Customer or that the Customer is not authorised to instruct the Company in relation to them.

### 5. Charges and Payment

5.1 The Customer will pay each invoice submitted to it by the Company, in full and in cleared funds, no later than the final Business Day before the due date.

5.2 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company on the due date, the Company may:

5.2.1 charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds Bank Plc accruing on a daily basis and compounded quarterly until payment is received, whether before or after any judgment and the Company; and/or

5.2.2 suspend all Services until payment has been made in full.

5.3 Time for payment to the Company is of the essence of this Agreement.

5.4 The Company will have a general lien over the Goods in the possession of the Company as security for any sums owed to it by the Customer under this Agreement or otherwise. Storage will be charged for any goods detained under lien. If any lien is not satisfied within a reasonable time the Company may at its absolute discretion sell the Goods concerned and apply the proceeds in or towards discharge of the lien and the expenses of the sale.

5.5 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.

5.6 The Company reviews its charges regularly and reserves the right to increase them at its absolute discretion at any time. Any changes will become effective immediately upon notification to the Customer.

## 6. Confidentiality and data protection

6.1 The Company will treat as confidential all information disclosed to it by the Customer. The information will only be disclosed by the Company to any subcontractor, agent or other third party to the extent that such disclosure is necessary for the performance of the Services. This obligation of confidentiality will not apply to any information which was known to the Company prior to its disclosure by the Customer, is disclosed to the Company by a third party without any obligation of confidentiality or enters into the public domain other than by a breach of this condition by the Company.

6.2 The Customer will comply with its obligations under the EU General Data Protection Regulation 2016 in relation to all personal data provided to the Company and will keep indemnified the Company in respect of all costs, claims, demands, actions, liabilities, damages and expenses which it may suffer or incur as a result of any breaches of such Act.

6.3 The Company will process any personal data (as defined in the EU General Data Protection Regulation 2016) solely for the purpose of performing the Services and no other purpose. Upon completion of the Services the Customer will provide the Company with instructions for the return or destruction of personal data.

6.4 The Customer shall ensure that any computer data supplied, by whatever method, to the Company is clean, uncorrupted and capable of being processed and does not contain any computer viruses. In the event of computer data being received by the Company corrupt or containing viruses the Company may, at its own option, return the data to the Customer or decontaminate it at the Customer's expense. For the avoidance of doubt, corruption occurring during any form of electronic transmission to the Company shall be at the Customer's risk.

## 7. Limitation of liability

7.1 This condition sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

7.1.1 any breach of this Agreement;

7.1.2 any use made by the Customer of the Services; and

7.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

7.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

7.3 Nothing in these Conditions limits or excludes the liability of the Company: 7.3.1 for death or personal injury resulting from negligence; or

7.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company; or

7.4 Subject to conditions 7.2 and 7.3:

7.4.1 the Company will not be liable, whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation or otherwise however for: (a) loss of profits; (b) loss of business; (c) depletion of goodwill and/or similar losses; (d) loss of anticipated savings; (e) loss of goods; (f) loss of contract; (g) loss of use; (h) loss of corruption of data or information; or (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

7.5 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement will be limited to the price paid for the Services.

7.6 If the Company's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer or any agent, subcontractor or employee of the Customer, the Company will not be liable for any costs, charges or losses whatsoever sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

7.7 By entering into the Agreement, the Customer acknowledges and agrees that it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of the Company or any person who is not a party to the Agreement, relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

7.8 No legal proceedings (including any counterclaim) may be brought against the Company unless they are issued and served within nine months of the event giving rise to the claim.

7.9 Guarantee and Indemnity - The consideration for this Guarantee and indemnity is the agreement of RWB to supply or continue to supply goods and services and to give credit to the Applicant Company. I/We the undersigned as Director(s) of the Applicant Company (jointly and severally where more than one) GUARANTEE to RWB and accept responsibility for the Applicant Company's obligation to pay to RWB for goods and services supplied to the Applicant Company and AGREE irrevocably to compensate RWB in full on demand for all losses costs and expenses suffered or incurred by RWB arising as a result of or in connection with any such failure or as a result of any provision of any agreement under which the Applicant Company's obligations or the guarantee given

above are or become void voidable invalid or unenforceable. This guarantee and indemnity shall be a continuing guarantee notwithstanding any change in the officers of the Applicant Company

## 8. Insurance

8.1 The Goods are stored and dispatched by the Company at the entire risk of the Customer and the Company accepts no liability for any loss or damage to the Goods however such damage may be caused.

8.2 The Customer should arrange suitable insurance cover for the Goods. However, at the written request of the Customer, the Company will endeavour to introduce the Customer to a suitable Commercial Insurance Broker for an all-risks insurance policy quotation for the Goods at the cost of the Customer. The terms of the policy and details of the insured risks are available from the Company upon written request.

8.3 The Company will not be responsible for ascertaining whether or not the Customer requires the Company to arrange insurance for the Goods and the Customer should ensure that notification of this is given to the Company as soon as possible. If no notification is received, the Company will assume that the Customer does not wish the Company to insure the Goods under clause 8.2 and that it will be making its own arrangements.

8.4 If the Customer wishes the Company to insure the Goods, the Customer must specify a total estimated value in respect of the Goods.

8.5 Until the Company has notified the Customer that insurance cover has commenced, the Customer should ensure that it has made its own insurance arrangements.

8.6 The Company will not be liable to make any payment to the Customer to the extent that, in the event of a claim, the full value of the Goods cannot be recovered by the Customer for any reason.

## 9. Termination

9.1 The Company may terminate the Agreement with immediate effect at any time by notice in writing to the Customer if:

9.1.1 the Customer fails to pay any amount due under this Agreement on or before the due date;

9.1.2 the Customer is in material or persistent breach of any provisions of this Agreement and the breach, if capable of remedy, has not been remedied within 10 Business Days after receipt by the Customer of notice requiring the breach to be remedied;

9.1.3 the Customer suffers an Insolvency Event;

9.2 Either party may give not less than two months' notice that they wish to terminate this Agreement at the end of which period the obligation of the Company to supply the Services will cease.

9.3 On termination of this Agreement for any reason:

9.3.1 the Customer will immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which will be payable immediately on receipt;

9.3.2 the Customer will procure that any Goods being stored by the Company at the date of termination are removed from the Company's premises at the cost of the Customer. If the Customer

fails to remove them within seven days, the Company may dispose of them in such manner as it sees fit at its absolute discretion at the cost of the Customer;

9.3.3 the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, will not be affected.

9.4 If this Agreement is terminated, all the rights and obligations of the parties will cease immediately, except for those provisions expressly stated to survive termination of this Agreement. Termination of this Agreement will not affect any rights or liabilities arising prior to termination.

## 10. Force majeure

The Company will have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company 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, a breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

## 11. General

11.1 No variation of this Agreement or these Conditions will be valid unless it is in writing and signed by or on behalf of each of the parties.

11.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

11.3 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

11.4 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

11.5 Each of the parties acknowledges and agrees that, in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

11.6 The Customer will not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

11.7 The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

11.8 This Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

11.9 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, will be governed by, and construed in accordance with, the law of the United Kingdom.

11.10 The parties irrevocably agree that the courts of The United Kingdom will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

11.11 The company may from time to time, increase their charges in line with CPI advice and supplier increases etc. The company will notify the customer in advance of any such increase.