



ROCKSOLID  
granite

## Standard terms and conditions of sale

### I. Definitions

1.1 In these Conditions (including this Condition 1), the following words and expressions shall, unless the context otherwise requires, have the following meanings:

**“Completion”** means the actual date upon which the Goods are installed by RSG;

**“Contract”** means the contract between RSG and the Customer for the sale and purchase of the Goods and Services (if any), incorporating together the Quotation, these Conditions and the Order Confirmation and any supplemental Order Confirmation issued pursuant to Condition 3.5 and/or issued pursuant to Condition 4.5;

**“Consequential Loss”** means (i) loss of profits; (ii) any other economic loss or loss of production, product, use, turnover, anticipated profits, business opportunity or goodwill; and (iii) all loss or damage to property or equipment of the Customer, or any of its purchasers, or any other third party;

**“the Customer”** means the company, person(s) or organisation whose name(s) and invoice address is set out in the Order Form; 4.5;

**“the Customer’s Obligations”** means the obligations of the Customer which must be met (as appropriate) to enable RSG to make a template at its Pre-Installation Visit and/or to provide any of the Services including without limitation:-

- the provision of appropriate power, air and water supplies at the Site;
- the removal of all existing or temporary work surfaces from the Site;
- the procuring that the Site will be a Safe Site;
- all units upon which the Goods are to be installed are in position, sufficiently secure to take the weight of the Goods and level;
- not to move or change any units upon which the Goods are to be installed or the layout(s) thereof after the Pre-Installation Visit;
- the procuring that all sinks, hobs, ranges and other appliances and any similar worktop infrastructure and/or equipment which is to be adjacent to the Goods will be at the Site and securely in position;
- the procuring that the Customer or someone authorised to give instructions on their behalf shall be at the Site to discuss and authorise any potential design changes or other relevant issues;
- compliance with all appropriate instructions, documents, licences or authorisations and such other obligations as are set out in the Order Confirmation or any supplementary Order Confirmation issued pursuant to condition 4.5, together with any subsequent correspondence or documentation issued by RSG whether following RSG’s Pre-installation Visit or otherwise;
- the provision of additional labour at the time of installation where Goods are more than two linear metres.

**“Delivery Date”** means the estimated date of delivery set out in the Order Confirmation or such other date as is specified pursuant to Condition 5.4.1 as varied in writing by RSG from time to time (the Delivery Date will normally be the same date as the Installation Date where RSG is providing Services);

**“Deposit”** means, in the case of a Retail Customer a non-refundable (subject to condition 3.3) deposit based upon the requirements of the Retail Customer as detailed in the Quotation;

**“Design Parameters”** means the specification and/or the Customer’s requirements for the Goods as detailed in the Quotation;

**“the Goods”** means the granite or other stone worktop(s) and other goods set out in the Order Confirmation to be supplied to the Customer by RSG;

**“Insolvency Event”** means if (i) any party ceases or threatens to cease to carry on its business or a significant part of it (unless as part of a solvent reconstruction) or suspends or threatens to suspend payment of its debts or is unable or is deemed to be unable to pay its debts within the meaning of Section 123 (1) of the Insolvency Act 1986; (ii) a proposal is made, or a nominee or supervisor is appointed, of a party for a composition in satisfaction of its debts or for a scheme of arrangement of its affairs or other arrangement or any proceedings for the benefit of its creditors are commenced under any law, regulation or procedure relating to the reconstruction or re-adjustment of debt; (iii) a petition is made for an administration order under the Insolvency Act 1986 with respect to any party; (iv) any steps are taken by a party or any other person to wind up or dissolve that party or to appoint a liquidator, trustee, receiver, administrator, administrative receiver or similar officer to any such party or any part of such party’s undertaking; (v) any legal process is levied, enforced or sued against a party or its assets or any person validly takes possession of any of the property or assets of a party or steps are taken by any person to enforce any security right against any of the property or assets of such a party;

**“the Installation Date”** means the estimated date for commencement of the provision of the Services (if any) set out in the Order Confirmation or such other date as is specified pursuant to Condition 5.4.1 as varied in writing by RSG from time to time;

**“Intellectual Property Rights”** means copyrights, moral rights, patents, registered or unregistered trade marks, registered and unregistered design rights, database rights, semi-conductor topography rights, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or not)), and other similar intellectual property rights (whether registered or not) and applications for such rights as may exist anywhere in the world;

**“Order Confirmation”** means an order confirmation issued by RSG based upon the requirements of the Customer set out in the Order Form as varied or supplemented by supplementary Order Confirmations issued pursuant to Conditions 3.5 or 4.5;

**“Order Form”** means the order form contained in the Quotation, which the Customer shall complete, setting out the Customer’s requirements in respect of the Goods and the Services;

**“Pre-Installation Visit”** means RSG’s site visit prior to installation at which juncture RSG will survey the Site and produce an actual wooden (or similar material) template of the Goods and such template shall be used in the manufacturing of the Goods;

**“Product Instructions”** means any product instructions and other literature or instructions provided by RSG to the Customer in relation to the Goods and their usage and care once installed;

**“Quotation”** means any quotation provided by RSG to the Customer;

**“Remedial Notice”** means any notice issued by RSG after its Pre-Installation Visit detailing a failure to comply with the Customer’s Obligations;

**“Retail Customer”** means a Customer who is specified as such by RSG in the Order Confirmation;

**“RSG”** means Rock Solid Granite Limited a company registered in England and Wales under number 04873246 whose registered office is at The Granite Workshop Unit 4 Old Council Yard Bypass Road Haltwhistle Northumberland NE49 0ND;

**“the Customer’s Obligations”** means a clear, clean and safe working environment including the following, without limitation:-

- all means and access and egress must be safe including without limitation free from debris, slippery and dangerous materials and substances and all stairs must have safety railings;
- access to the Site and (without limitation) especially the area where installation of the Goods is to take place must be free from trenches and any form of hole or defect in the flooring or stairs or other means of access/egress thereto;

**“the Services”** means any installation services in respect of the Goods set out in the Order Confirmation to be supplied to the Customer by RSG and if no installation services are detailed therein then RSG shall have no obligation to the Customer other than the sale of goods and delivery thereof;

**“Site”** means each of the relevant premises or part thereof where the Goods are to be installed, referred to in the Order Form;

**“Trade Customer”** means a Customer who is specified by RSG as such in the Order Confirmation;

**“Working Days”** means any day which is not a Saturday, a Sunday or a bank or public holiday in England.

- 1.2 In these Conditions:
- 1.2.1. references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;
  - 1.2.2. any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates in that jurisdiction to the English legal term;
  - 1.2.3. any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
  - 1.2.4. the headings will not affect the interpretation of these Conditions; and
  - 1.2.5. where the Customer comprises more than one person then the obligations of such persons shall be joint and several.

## 2. Basis of the Contract

- 2.1 These Conditions shall apply to the exclusion of any other terms and conditions including those supplied by the Customer or implied by trade custom or course of dealing and the completion by the Customer of the Order Form shall be deemed to constitute unqualified acceptance of these Conditions.
- 2.2 No variation to these Conditions shall be binding unless agreed in writing by an authorised representative of RSG. RSG's employees or agents are not authorised to make any representation concerning the Goods or the Services unless confirmed in writing by RSG.
- 2.3 The Order Form will, once accepted by RSG issuing an Order Confirmation, be RSG's authority to incur all expenditure required with regard to the manufacture, supply and installation of the Goods.
- 2.4 Subject to Condition 12.3, the Goods supplied to the Customer:-
  - 2.4.1. may not be identical and probably will differ in terms of grain size and/or uniformity and/or colour and/or veining and/or texture to any samples which have been previously provided to the Customer and the Customer accepts that any such variation is an inherent risk to be borne by the Customer in ordering products of the nature of the Goods (which are either natural products with inherent scope for such variation from time to time (that is variation from the sample provided) or manufactured products which, due to their nature, also have scope for such variation from time to time) and RSG cannot and does not permit cancellation of an Order, or commit to replacement in circumstances where the Customer asserts that there is any such variation between the Goods and any sample;
  - 2.4.2. may have natural pitting in the surface of the Goods or contain filler to an extent which will vary from stone type to stone type and RSG cannot and does not permit cancellation of an Order or commit to replacement in circumstances where the Customer asserts that there is any such pitting or filling whether or not there is a variation in this regard between the Goods and any sample;
  - 2.4.3. as a consequence of being a natural material granite may vary in thickness over the length of each the Goods and RSG shall be entitled to regard such variation as being acceptable to the extent of plus or minus 2mm over either the stated or envisaged thickness;
  - 2.4.4. as a consequence of the natural nature of granite Goods may contain small chips which may have arisen in the course of manufacture, delivery or installation and RSG reserves the right at its discretion to effect repairs thereto using chemical or resinous fillers or at its discretion to replace such affected Goods.

## 3. Quotations and Order Acceptance and Accuracy of Information

- 3.1 Where a Customer wishes to place an order, it shall complete the Order Form found in its Quotation and forward the same to RSG for approval together with the Deposit (For most customers this 75% on templating and 25% on fitting). Where RSG agrees to provide the Goods and Services as set out in the Order Form, RSG shall complete the Order Confirmation on the basis of the requirements of the Customer set out in the Order Form.
- 3.2 No order shall be deemed to be binding until RSG issues an Order Confirmation and without prejudice to the foregoing RSG may at its discretion until then issue an amended Quotation on more than one occasion.
- 3.3 Where RSG does not accept an Order Form and declines to issue an Order Confirmation it will return to the Customer, within a reasonable time, any Deposit received by it.

- 3.4 The Customer warrants to RSG that, prior to placing an Order Form, it has checked the Site and all other plans and information provided to RSG and checked all details in the Quotation including without limitation the Design Parameters and that all the foregoing and the information in the Quotation and Order Form are correct and accurate at the time of submitting the Order Form and will be at the time of installation. Without prejudice to any other rights of RSG, in the event that there is any change in respect of such details then the Customer shall immediately inform RSG. The Customer will indemnify RSG in respect of any loss or liability howsoever relating directly or indirectly to breach of the aforesaid warranty.
- 3.5 In the event that the Customer requests a change to the specification or size of the Goods or there is a change in respect of the details relating to the Site then the Customer shall inform RSG and if such change is acceptable to RSG or if such changes are required due to a breach of warranty in condition 3.4 then in either case a supplemental Order Confirmation detailing the change and the cost thereof shall be issued by RSG. Any such Customer requested change shall not be binding on RSG until a supplementary Order Confirmation has been issued by RSG.

#### 4. Pre-Installation Visit

- 4.1 After the issuance of an Order Confirmation RSG will notify the Customer of the date of RSG's Pre-Installation Visit.
- 4.2 At the time of the Pre-Installation Visit the Customer warrants to RSG that the Customer's Obligations will all be complied with fully.
- 4.3 Without prejudice to any other remedy available to RSG, in the event that (i) there is a breach of any warranty in Condition 4.2 or (ii) if RSG's representative is otherwise of the view that a satisfactory template cannot be taken at the Pre-Installation Visit or (iii) if a Pre-Installation Visit is cancelled without in RSG's opinion sufficient notice or (iv) if RSG cannot obtain access to the Site at the arranged time, then RSG may (at its option), if possible and practicable, effect the Customer's Obligations and add the cost of such works to the price of the Goods and the Services or:-
  - 4.3.1. render a charge for the time spent, travel and attendance by its representative and re-schedule the Pre-Installation Visit for another date and all the foregoing provisions shall apply again in relation thereto and RSG shall notify the Customer of a new Delivery Date; or
  - 4.3.2. forthwith cancel the Contract (without any further liability to the Customer) and charge the Customer for all goods purchased or appropriated by RSG to the Contract up to the date of cancellation together with a charge for work done and expenses incurred by RSG to date including (without prejudice to the generality of the foregoing) all wasted time and expenses of its personnel and representatives in accordance with its then current rates and in accordance with these Conditions.
- 4.4 If RSG cancels the Contract pursuant to Condition 4.3.2 then it shall be entitled to apply the Deposit against sums due pursuant to Condition 4.3.2 such right being without prejudice to any other of its rights pursuant to Condition 4.3.2 or otherwise.
- 4.5 At or following the Pre-Installation Visit if new information is then available and/or further instructions or information are/is received from the Customer then RSG may (without prejudice to its other options) issue a variation to the Contract required as a consequence thereof and such a variation may be to the specification or design of the Goods (including without limitation the positioning of joints in the Goods) and/or the price of the Goods and/or the Services and such variation may be detailed by RSG in a supplementary Order Confirmation to be issued by RSG and if the Customer does not so sign and return such a supplementary Order Confirmation within 7 days of its receipt then RSG may cancel the Contract and return the Deposit after having deducted from the Deposit its costs associated with the Pre-Installation Visit, provision of supplementary Order Confirmation and the Contract generally.
- 4.6 If following a Pre-Installation Visit RSG is of the view that the Customer's Obligations have not been or may not be complied with so as to permit installation of the Goods by the Installation Date then it may issue a Remedial Notice.

## 5. Remedial Notices, Delivery and Customer Obligations and Installation Issues

- 5.1 Prior to the Installation Date the Customer warrants that it shall carry out the Customer's Obligations and comply in full with any Remedial Notice. Without prejudice to any rights of RSG in respect of a failure by the Customer to complete the Customer's Obligations or comply with any Remedial Notice by such time, the Customer shall inform RSG immediately if it becomes aware that it will be unable to complete the Customer's Obligations or any Remedial Notice or any part thereof prior to the Delivery Date or, if different, the Installation Date.
- 5.2 The Delivery Date and any Installation Date are intended to be estimates only and time for delivery and performance of the Services shall not be of the essence in relation to such dates. If no dates are so specified, delivery and where applicable installation will be within a reasonable time having regard to all other commitments of RSG. The Goods may be delivered and/or installed by RSG in advance of the Delivery Date and/or Installation Date upon giving reasonable notice to the Customer.
- 5.3 Subject to Condition 12.3, RSG will not be liable for any direct, indirect or Consequential Loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of or failure to deliver the Goods or perform the Services (even if caused by RSG's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 60 Working Days in which case either the Customer or RSG may terminate the Contract without liability to the other.
- 5.4 If for any reason the Customer will not accept delivery and/or installation (where applicable) of any of the Goods when they are ready for delivery and/or installation, or RSG is unable to deliver and/or install (where applicable) the Goods on the Delivery Date or the Installation Date because the Customer has not complied with the Customer's Obligations or any Remedial Notice, RSG may (at its option), if possible and practicable, effect the Customer's Obligations and add the cost thereof to the price of the Goods and the Services or:
  - 5.4.1. notify the Customer in writing as to an alternative Delivery Date and/or Installation Date and store the Goods until actual delivery/installation and (additionally to the price of the Goods and Services) charge the Customer for the reasonable costs (including insurance) of storage and any wasted time and travelling expenses of RSG's personnel and representatives at its then current rates; or
  - 5.4.2. forthwith cancel the Contract (without any further liability to the Customer) and charge the Customer for all goods purchased or appropriated by RSG for the Contract, up to the date of cancellation, together with a charge for work done and expenses incurred by RSG to date, including (without prejudice to the generality of the foregoing) all wasted time and expenses of its personnel and representatives in accordance with its then current rates and in accordance with these Conditions.
- 5.5 If RSG cancels the Contract pursuant to Condition 5.4.2 then it shall be entitled to apply the Deposit against sums due pursuant to Condition 5.4.2, such right being without prejudice to any other of its rights pursuant to Condition 5.4.2 or otherwise.
- 5.6 It may be necessary in performing the Services to chase out the walls/structure in certain areas and if so it shall not be the responsibility of RSG to make good such areas.
- 5.7 The Goods may break when being installed by RSG through no fault of RSG and where this happens then RSG shall schedule another Installation Date as soon as practicable but in these circumstances RSG cannot be responsible for third party costs (e.g. those of other tradesmen who are then delayed) and the provisions of Condition 5.3 shall apply in full.
- 5.8 Subject to Condition 12.3, where a joint in Goods will be located over a corner unit RSG require that the unit has a solid top so that the joint will have adequate support and, if not, RSG cannot guarantee that the Goods will not break in the future. Where necessary 50mm x 25mm softwood batons should be screwed or properly fitted to the perimeter of walls to distribute the load and it is the Customer's responsibility not that of RSG to ensure that such support exists and RSG will not check and cannot be held liable for any consequences if such support is not provided.
- 5.9 Where RSG is not providing any Services and consequently not installing the Goods then:-
  - 5.9.1. unless detailed to the contrary in the Order Confirmation the Customer shall be responsible for RSG's delivery costs plus applicable VAT in relation to the delivery of the Goods; and
  - 5.9.2. any delivery representative/driver of RSG must be met by adequate persons (at least two others) together with appropriate machinery and such persons must be appropriately trained and able and willing to assist in the unloading at the Site of the Goods; and
  - 5.9.3. under no circumstances must any delivery representative/driver of RSG be asked by the Customer or any of the Customer's agents or contractors to unload or assist in the actual delivery or installation of the Goods or issue advice in relation thereto and no delivery representative/driver of RSG is authorised by RSG to do so.
- 5.10 The Customer warrants to RSG that it will comply fully with its obligations in Condition 5.9 and shall fully indemnify RSG in relation to any loss or liability howsoever relating directly or indirectly to a breach of such warranty.

## 6. Provision of Services

- 6.1 RSG's only obligation with regard to the Services shall be to deliver/install within a reasonable time taking into account the time by which the Customer complied in full with the Customer's Obligations and its other obligations in these conditions.
- 6.2 RSG reserves the right to sub-contract any element of the Services.
- 6.3 It shall be the Customer's sole responsibility to ensure that all persons (other than RSG and its sub-contractors) adhere fully to the Product Instructions and the Customer's obligations in these conditions including, without limitation, the Customer's Obligations.

## 7. Risk/Title

- 7.1 The Goods are at the risk of the Customer from the time of delivery.
- 7.2 Ownership of the Goods shall not pass to the Customer until RSG has received in full (in cash or cleared funds) all sums due to it in respect of:
  - 7.2.1. the Goods;
  - 7.2.2. the Services (if any); and
  - 7.2.3. all other sums which are or which become due to RSG from the Customer on any account.
- 7.3 Until ownership of the Goods has passed to the Customer, the Customer must:
  - 7.3.1. hold the Goods on a fiduciary basis as RSG's bailee;
  - 7.3.2. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - 7.3.3. permit RSG access to the Site (or other location to which the Goods have been delivered) to remove the Goods.
- 7.4 The Customer's right to possession of the Goods shall terminate immediately if the Customer suffers an Insolvency Event.
- 7.5 RSG shall be entitled to recover payment for the Goods and Services notwithstanding that ownership of the Goods or any part of the Goods has not passed from RSG.
- 7.6 On termination of the Contract, howsoever caused, RSG's (but not the Customer's) rights contained in this condition 7 will remain in effect.

## 8. Price

- 8.1 The price of the Goods and the Services shall be the price set out in the Order Confirmation and in addition any additional amount under a supplemental Order Confirmation issued pursuant to Conditions 3.5 or 4.5.
- 8.2 The price for the Goods and the Services shall be exclusive of any value added tax ("VAT") payable in respect thereof which shall be payable in addition by the Customer to RSG at the appropriate lawful rate. The Customer shall, in the Order Form, specify the applicable rate of VAT payable in relation to the Goods and Services in accordance with laws in force on the date of the Order Form and shall fully indemnify RSG in respect of any liability which RSG may incur as a result of the Customer specifying an incorrect rate of VAT to RSG.

## 9. Payment

- 9.1 In the case of a Trade Customer, save where required earlier under these Conditions (including without limitation Condition 9.3) or where detailed to the contrary in the Order Confirmation or otherwise agreed in writing by RSG and subject to Condition 9.3, the balance of the price for the Goods and Services (taking into account any Deposit previously received by RSG) is due on Completion (where Services are being provided) or on delivery where Goods alone are being supplied.
- 9.2 In the case of a Retail Customer, save where required earlier under these Conditions (including without limitation Condition 9.3) or where detailed to the contrary in the Order Confirmation or otherwise agreed in writing by RSG and subject to Condition 9.3, the balance of the price for the Goods and Services (taking into account any Deposit previously received by RSG) is due prior to fabrication (where Services are being provided) or on delivery where Goods alone are being supplied.
  - 9.2.1. Time for payment shall be of the essence. No payment shall be deemed to have been received until RSG has received cleared funds.
- 9.3 All payments payable to RSG under the Contract shall become due immediately upon termination of this Contract despite any other provision.

- 9.4 If the Customer fails to pay RSG any sum due pursuant to the Contract, then, without prejudice to any other rights or remedies that RSG may have, the following shall apply:
- 9.4.1. the Customer will be liable to pay interest to RSG on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. Alternatively, RSG reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and/or
  - 9.4.2. RSG may suspend the design, manufacture, supply and installation of any further instalments or deliveries of Goods and/or Services under this or any other contract; and/or
  - 9.4.3. RSG may sell the Goods or any part thereof in hand or recovered pursuant to Condition 7 to third parties.

## 10. Specification/Samples

- 10.1 All specifications, designs and sketches submitted by RSG, including without limitation those set out in the Quotation, are provided in total confidence and (unless otherwise agreed in writing by RSG) shall not be used by the Customer for any purpose other than the evaluation and use of the Goods and in particular shall not be provided to any third party with a view to such third party manufacturing or supplying goods based upon such specifications, designs and sketches or maintaining, altering or developing the Goods.
- 10.2 Subject to Condition 2.4, the Goods supplied by RSG shall be in accordance with the specification or description (if any) expressly listed or set out in the Order Confirmation or any supplementary Order Confirmation issued hereunder including without limitation pursuant to Conditions 3.5 and 4.5. Subject to Condition 2.4, no other specification (whether in respect of capacity, dimension, output or other detail), sample, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Contract between RSG and the Customer and neither shall any of the foregoing constitute any form of express or implied collateral warranty or condition.

## 11. Quality

- 11.1 Subject to the provisions of Condition 11.2 being met, RSG warrants the Goods will be of satisfactory quality and that the Services will be provided by RSG with reasonable care and skill and (subject to the following provisos and conditions) where there has been a breach of such warranty then RSG will at its cost provide replacement Goods and/or provide any necessary/replacement Services and/or provide rectification of any Services at its cost subject to the following provisos and conditions and shall have no further liability for a breach of the warranty in respect of such Goods or Services.
- 11.2 Subject to Condition 12.3, claims in respect of defects or errors in quality or description or installation shall be made within 5 Working Days of delivery of the Goods or Completion (whichever is the later) where the defect or error is or should have been discoverable on inspection or testing, or if not so discoverable then forthwith upon discovery thereof, in either case by fax backed up by hard copy written notice in the post, and in the absence of such claim the Goods shall be deemed to have been delivered, installed and accepted by the Customer completely and satisfactorily.
- 11.3 Subject to Condition 12.3, the warranty in Condition 11.1 shall not apply where RSG's liability is excluded under Condition 12.5.
- 11.4 Where a complaint or claim has been made by a third party in respect of any of the goods (which are similar to the Goods) then RSG may suspend delivery of any Goods which may have the same or similar defect or alleged defect until the validity of such complaint/claim has been finally determined and in such case any Delivery / Installation date shall be postponed accordingly.
- 11.5 Where RSG replaces any Goods pursuant to Condition 11.1 then title in the part or parts which are the subject of replacement shall pass to RSG.
- 11.6 Where a complaint or claim has been made in respect of the Goods or Services in the event that there is no defect or fault or any defect or fault is not covered by the warranty in Condition 11.1, then RSG shall be entitled to charge the Customer for any time or expenses incurred in considering such complaint or claim, including any call out to the Site.

## 12. Limitation Of Liability

- 12.1 The following provisions and Conditions 5 and 11 set out the entire financial liability of RSG (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 12.1.1. any breach of Contract including these Conditions;
  - 12.2.1. any use made or resale by the Customer of any of the Goods, or any part thereof; and
  - 12.3.1. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 12.2 Except as expressly provided in these conditions, all warranties, conditions or other terms implied by law are excluded to the fullest extent permitted by law.
- 12.3 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statement) Order 1976), the statutory rights of the Customer are not affected by any provision of these Conditions or the Contract and further nothing in these Conditions or the Contract howsoever excludes or limits the liability of RSG:
- 12.3.1. for death or personal injury caused by RSG's negligence;
  - 12.3.2. under section 2(3) Consumer Protection Act 1987;
  - 12.3.3. for any matter which it would be illegal for RSG to exclude or limit or attempt to exclude or limit its liability;
  - 12.3.4. for fraud or fraudulent misrepresentation.;
- 12.4 RSG shall not be liable to the Customer for any Consequential Loss.
- 12.5 Subject to Conditions 12.2, 12.3 and 12.4, RSG shall not be liable to the Customer in respect of:
- 12.5.1. any defects in the Goods which arise directly or indirectly by virtue of any inherent defects in any information, specifications or designs supplied by the Customer including without limitation a breach of the warranty contained in Conditions 3.4 and 5.1;
  - 12.5.2. any defects in the Goods or the Services which arise directly or indirectly as a result of a lack of information being provided to RSG including without limitation a breach of the warranty contained in Conditions 3.4 and 5.1;
  - 12.5.3. any defects in the Goods or the Services which arise directly or indirectly as a result of the Site (at any time whether before or after the delivery or installation of the Goods) not complying with the Design Parameters or the Customer's failure to perform on time the Customer's Obligations;
  - 12.5.4. any defects in the Goods due to, or attributable directly or indirectly to, negligence of any party other than RSG or its authorised representatives, fair wear and tear, accident, misuse or failure to comply with the Product Instructions, or any form of interference with the Goods other than maintenance by RSG or its authorised representatives.
- 12.6 If the Customer operates, uses or sells the Goods in such a manner so as to incur liability to any third party and in particular (without prejudice to the generality of the foregoing) not in accordance with any Product Instructions then such liability shall be the sole responsibility of the Customer which shall indemnify RSG from and against any such liability.
- 12.7 Subject to Conditions 12.2, 12.3, 12.4 and 12.5 RSG'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 Contract shall be limited to the price of the Goods and Services detailed in the Order Confirmation or any supplementary Order Confirmation.

## 13. Third Party Rights

A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## 14. Force Majeure

RSG reserves the right to defer the date of delivery or to cancel the Contract (without liability to the Customer) if it is or becomes unable to manufacture, supply, deliver or install the Goods due to circumstances beyond the reasonable control of RSG including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## 15. Notices

- 15.1 Any notice given under the Contract shall be in writing and signed by or on behalf of the party giving it and may be served by delivering it personally or sending it by pre-paid recorded delivery (or registered airmail in the case of an address for service outside the United Kingdom) or fax or email to the last known relevant physical or electronic address or fax number of a party.
- 15.2 Any notice shall be deemed to have been received if delivered personally, at the time of delivery; in the case of pre-paid recorded delivery, 48 hours from the date of posting; in the case of registered airmail, five days from the date of posting; in the case of fax, at the time of transmission; and in the case of email, at the time that the email is ready for collection via the recipient's or the recipient's internet service provider's mailserver.
- 15.3 The exception to the right to serve notice by email under this condition 15 is in respect of the service of legal proceedings, which shall only be served, in accordance with this condition, by personal delivery or first class post.

## 16. General

- 16.1 Each right or remedy of RSG under the Contract is without prejudice to any other right or remedy of RSG whether under the Contract or not.
- 16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.3 Failure or delay by RSG in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract or a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 16.4 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.