

**1. Interpretation**

1.1 In these Conditions, the following definitions apply:

- Conditions** the terms and conditions set out in this document are amended from time to time in accordance with clause 24.
- Contract** the contract between us and you for the sale and purchase of the Goods and/or Services in accordance with these Conditions.
- Delivery** completion of delivery of Goods specified in an Order in accordance with clause 8.3
- Goods** the Goods (or any part of them) set out in the Order.
- Intellectual Property Rights** Patents, rights to inventions, copyright and related rights, trademarks, business and domain names, rights in designs, databases and use, confidential information and all other intellectual property rights, whether registered or unregistered.
- Media Order** Any of our catalogues, brochures or website content. your order for the Goods set out in a purchase order form.
- Quote** Our quotation for the Goods in response to your enquiry.
- Services** Services offered at an extra cost, as detailed on the quote, may include but are not limited to; Onsite commissioning, Electrical Installation, Site Acceptance Test, Load Bank Tests, Factory Acceptance Tests, Maintenance Contracts and Extended Warranties.
- Us / We / Our** Riello UPS Ireland Limited (company registration number 727263).
- You / Your** the person, firm or company who purchases the Goods from us.

1.2 In these Conditions, the following rules apply:

- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, partners, employees, customers, successors or permitted assignees.
- 1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.4 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.
- 1.2.5 A reference to **writing** or **written** includes emails.

**2. Basis of the Contract**

- 2.1 These Conditions apply to the Contract and all other contracts for the sale of Goods and / or supply of Services between us and you and exclude your terms.
- 2.2 The Contract constitutes the entire agreement between you and us. You acknowledge that you have not relied on any statement given by or on our behalf which is not set out in the Contract.
- 2.3 Each Contract shall be regarded and treated in law as being separate from any other arrangement between us and you.

**3. Orders**

- 3.1 A Quote is only valid for 30 days from the date on the Quote.
- 3.2 A Quote for the Goods or Services given by us is not an offer by us to sell or supply the Goods or Services to you.
- 3.3 An offer to buy the Goods or supply the Services is made by you when you accept our Quote and provide us your Order.
- 3.4 You must ensure that the quantity, part number and description of the Goods and / or Services required are clearly set out in the Order.
- 3.5 The Order is only accepted by us when we give to you a written acceptance of the Order, at which point the Contract shall come into existence.

**4. Goods and Services**

- 4.1 Any description or pictures of Goods or Services contained in our Media is for information purposes only. The description is not part of the Contract.
- 4.2 We may amend the design or description of the Goods or Services if we are required to by any legal requirement or to make minor amendments to the Goods or Services which do not affect the use for their intended purpose or the nature or quality of the Services. We will notify you of any material variation.

**5. Price**

- 5.1 The price of the Goods and, or Services is set out in the Order.
- 5.2 We may decide to offer you a discount from the price if we believe it is justified.
- 5.3 We will give you notice if we increase or decrease the price of the Goods and, or Services before Delivery of the Goods or commencement of the Services if the cost changes because:
  - 5.3.1 of something out of our control (including changes in foreign exchange rates, increases in taxes, increases in labour, materials and other manufacturing costs);
  - 5.3.2 you need to change the Delivery date, amount or types of Goods ordered, or the description or design of the Goods;
  - 5.3.3 You need to change the Services we are providing; or
  - 5.3.4 you fail to give us accurate information or instructions and this causes a delay.
- 5.4 The price of the Goods includes the cost of packaging and insurance within the Republic of Ireland unless we tell you otherwise.
- 5.5 The price of the Goods does not include Delivery costs, which we will add to the price.
- 5.6 The price of the Services includes the cost ;of insurance and transport, unless we tell you otherwise.
- 5.7 The price of the Goods or Services does not include value added tax (VAT), which we will add to the price.

**6. Payment**

- 6.1 We are entitled at our discretion to require you to make payment with your order or to pay a deposit for an amount we consider appropriate.
- 6.2 We may invoice you for the Goods and / or Services on or after the acceptance of your Order unless we agree otherwise.
- 6.3 You will pay the price minus any deposit paid within 30 days of the last working day of the calendar month stated on the invoice.
- 6.4 We will inform you of our bank account details for your payment.
- 6.5 We reserve the right to add the equivalent of 4% of the price of the Goods if we incur a transaction fee because of your payment.
- 6.6 If you fail to pay the invoice by the due date for payment, we may do any or all of the following:
  - 6.6.1 Charge you interest on any unpaid amount of the Contract from and including the final payment date until payment is received at a rate of 3% per calendar month on a daily basis.
  - 6.6.2 Cancel the contract and require you to return the Goods to us at your expense.
  - 6.6.3 Suspend Delivery of the Goods or performance of the Services.
- 6.7 You must 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).
- 6.8 We may at any time, without limiting any other rights or remedies we may have, set off any amount owing to us by you, against any amount payable by us to you.

**7. Quality**

- 7.1 We warrant that, unless otherwise stated, for 24 months beginning on the date of Delivery, Goods within the the Republic of Ireland will:
  - 7.1.1 materially conform with their description and any applicable specification;
  - 7.1.2 be free from material defects in design, material and workmanship;
  - 7.1.3 be of satisfactory quality (); and
  - 7.1.4 be fit for any purpose that we have stated to you in writing.
- 7.2 We will supply the Services to you in accordance with the Contract apart from any minor difference caused by unforeseen circumstances.
- 7.3 We may choose to engage an independent electrical contractor to perform the Services.
- 7.4 We will use our reasonable endeavours to meet any performance dates specified in the Contract and agreed between the parties. If no timescale is agreed the performance will be within a reasonable time. Dates are estimates only and time is not of the essence for performance of the Services.
- 7.5 We warrant to you that the Services will be provided using reasonable competence.
- 7.6 Subject to this clause 7, if:
  - 7.6.1 you give notice in writing to us during the warranty period and within 30 days from the discovery of a defect that any of the Goods do not comply with clause 7.1;
  - 7.6.2 we are given a reasonable opportunity of examining the Goods; and
  - 7.6.3 if asked, you return the Goods to our premises at our cost, we may choose to either repair or replace the defective Goods or refund the price of the defective Goods in full.

- 7.7 If you fail to notify us of any defect or complaint in accordance with Clauses 7.7:
- 7.7.1 we may refuse any return of the Goods;
  - 7.7.2 you will not be entitled to reject the Goods; and
  - 7.7.3 we will not be liable for the defect.
- 7.8 You will notify us in writing of any complaint regarding the performance of the Service without delay. On receipt of your complaint, we will:
- 7.8.1 investigate the complaint as soon as it is reasonably practicable to do so;
  - 7.8.2 inform you of the conclusion of our investigation; and
  - 7.8.3 take such action as we consider appropriate to deal with the matter as soon as practicable.

## 8. Delivery and Collection of Goods

- 8.1 We will deliver the Goods to your premises or anywhere else we agree to in writing during your normal business hours.
- 8.2 You may collect the Goods at any time (by appointment only) after we have notified you that the Goods are available for collection.
- 8.3 Delivery is deemed completed:
- 8.3.1 on the arrival of the Goods at the delivery location specified in accordance with clause 8.1; or
  - 8.3.2 when you collect the Goods in accordance with clause 8.2.
- 8.4 We may deliver the Goods by instalments, which are to be invoiced and paid for separately. Each instalment is a separate Contract. If there is a delay in Delivery or defect in one instalment, you will not be entitled to cancel any other instalment.
- 8.5 Any dates stated for Delivery are approximate only. The time of Delivery is not of the essence. We will not be liable for any delay in Delivery of the Goods that is caused by an event beyond our reasonable control or by your failure to provide us with adequate or relevant Delivery instructions.
- 8.6 If you fail to take Delivery of the Goods or give us adequate instructions, we will store the Goods at our premises or elsewhere until Delivery can take place. We will charge for storage, re-delivery and other costs incurred by us as a result.
- 8.7 We will use reasonable endeavours to comply with all relevant laws in force in respect of the carriage, labelling and packaging of the Goods.
- 8.8 We reserve the right to request any further information or assurances if the Goods are to be delivered outside of the United Kingdom.

## 9. Return of Goods

- 9.1 Any return of Goods which are no longer required or wanted must be notified to us in writing and returned to our premises within 14 days of deemed Delivery of the Goods,
- 9.2 Return of the Goods will incur an administration and restocking charge of 15% of the value of the Goods.
- 9.3 All returns will be at your cost and risk.
- 9.4 Any damage to the Goods or missing parts will be charged for separately over and above the 15% administration and restocking charge.

## 10. Your Obligations

- 10.1 You will:
- 10.1.1 ensure that the Order is complete and accurate;
  - 10.1.2 co-operate with us in all matters relating to the Goods and / or Services;
  - 10.1.3 provide us with any information and materials as we may reasonably require in order to supply the Services, and ensure that the information is complete and accurate;
  - 10.1.4 provide us with access to your premises or other facilities as we reasonably require;
  - 10.1.5 prepare your premises for the Delivery of Goods or supply of the Services;
  - 10.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to commence;
  - 10.1.7 comply with all applicable laws, including health and safety laws; and
  - 10.1.8 keep all of our materials, equipment, documents and other property safely at your premises at your own risk, maintain them in good condition until returned to us, and not dispose of or use our materials without our authorisation and in line with our instructions.
- 10.2 If the performance of any of our obligations under the Contract is prevented or delayed by any act, omission or failure by you to perform any relevant obligation (**Default**):
- 10.2.1 without limiting our rights or the remedies available to us, we have the right to suspend Delivery of the Goods or performance of the

- Services until you resolve your Default and attribute any delay in us performing any of our obligations to your Default;
- 10.2.2 we will not be liable for any costs or losses incurred by you caused directly or indirectly from our failure or delay to perform any of our obligations; and
- 10.2.3 you will reimburse us for any costs or losses incurred by us caused directly or indirectly from your Default if we make a request to you in writing.

## 11. Risk and Title to Goods

- 11.1 The risk in the Goods will pass to you on completion of Delivery or collection of the Goods or if you fail or refuse to take Delivery.
- 11.2 If you believe that loss or damage to the Goods has occurred in transit before Delivery, you must notify us within 5 days of the Delivery, giving details of the nature of the alleged loss or damage.
- 11.3 We will inspect the Goods at either our premises or elsewhere as soon as practicable and inform you of the results of our investigation. We may require you to return the Goods for inspection at our premises at your costs. We will inform you if it is concluded that any Goods or part of them are missing or damaged and if any loss has occurred that was not caused by you. We may choose to replace the Goods with Goods identical or similar in character, quality and price at our cost.
- 11.4 Title to the Goods will not pass to you until we receive full payment as cleared funds for the Goods.
- 11.5 Until title to the Goods has passed to you, you will:
- 11.5.1 store the Goods separately from all other Goods held by you so that they remain identifiable as our property;
  - 11.5.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 11.5.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of Delivery;
  - 11.5.4 notify us immediately if you become subject to any of the events listed in clause 14.4; and
  - 11.5.5 give us any information that we require relating to the Goods.
- 11.6 Subject to clause 11.7, you may resell or use the Goods in the ordinary course of your business (but not otherwise) before we receive payment for the Goods. However, if you resell the Goods before that time:
- 11.6.1 you do so as principal and not as our agent; and
  - 11.6.2 title to the Goods shall pass from us to you immediately before the time at which resale by you occurs.
- 11.7 If you become subject to any of the events listed in clause 14.4 before title to the Goods passes to you, we may:
- 11.7.1 require you to deliver all Goods to us in your possession which have not been resold or permanently incorporated into another product; and
  - 11.7.2 enter any place that the Goods are stored in order to recover them, if you fail to deliver them to us promptly at any time, without limiting any other right or remedy we may have.

## 12. Warranty, Repair and Maintenance.

- 12.1 All Goods come with our standard two-year warranty. Extended warranties may be offered and purchased and will be detailed on the quotation or separate agreement.
- 12.2 You may purchase a maintenance plan from us, the terms for which will be set out in a separate agreement.
- 12.3 If the Goods are portable and located within the Republic of Ireland, we will substitute the Goods at our expense or reimburse you for the reasonable costs of returning the Goods to our premises. If the Goods are not located within the Republic of Ireland and / or are not portable, at our discretion you will allow us or someone authorised by us to have access to your premises, or at our discretion, return the Goods to us at your expense.
- 12.4 We will attempt to inspect and repair any Goods within 5 working days of your enquiry.
- 12.5 We are entitled to replace any failed, defective or malfunctioning Goods or parts of Goods with refurbished items of a similar age or newer.
- 12.6 You will be entitled to any unexpired warranty period on the substituted Goods outlined in Clause 12.4.

## 13. Limitation of liability

- 13.1 Nothing in these Conditions limits or excludes our liability for:
- 13.1.1 death or personal injury caused by our negligence; or
  - 13.1.2 any matter where it would be unlawful to limit or exclude our liability.
- 13.2 Subject to clause 13.1 we will not be liable to you for:
- 13.2.1 any loss of profit, data, business or opportunity, or any indirect or consequential loss due to or in connection with the Contract;

- 13.2.2 any representation (unless fraudulent) in respect of the Goods or Services, the Quote, the Contract or the Delivery;
- 13.2.3 any failure by you to disclose information we may reasonably require to provide the Quote, Goods or Services;
- 13.2.4 any failure of you to request information or make enquiries about the Goods or Services;
- 13.2.5 any implied warranty, condition or term.
- 13.3 Our total liability to you in respect of all losses arising in connection with the Contract will not exceed the lower of:
  - 13.3.1 the price of the Goods and / or the Services; and
  - 13.3.2 the amount recoverable under our product liability insurance cover or professional liability insurance cover (as applicable) on the date any claim is made.
- 13.4 We will not have any liability to you:
  - 13.4.1 for any defects due to the positioning, installation, functioning or commissioning of Goods or arising from designs or instructions provided by you or any other person not certified by us as competent to perform the work.
  - 13.4.2 due to fair wear and tear, wilful damage or negligence on your part, abnormal working conditions, your failure to follow our instructions or any misuse, modification, alteration or repair of the Goods without our prior approval in writing.
  - 13.4.3 if any of the price has not been paid by the due date of payment.
  - 13.4.4 due to any cause or circumstances beyond our control.
  - 13.4.5 for any defects in the Goods which have already been corrected by us.
  - 13.4.6 for any parts, accessories or components manufactured by and purchased by us from any third party manufacturer, unless we agree otherwise.
- 13.5 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.6 This clause 13 shall survive termination of the Contract.

#### **14. Termination and suspension**

- 14.1 Without affecting any other right or remedy available to them, either party may terminate the Contract by giving the other party 7 days written notice from the date of the Contract unless:
  - 14.1.1 the price is subject to change as a result of something outside of our control;
  - 14.1.2 the Goods have been made to a specification, drawing or design supplied to us by you.
- 14.2 You have no right to terminate the Contract if we have performed or commenced performance of the Services with your agreement.
- 14.3 If you become subject to, or we reasonably believe that you are about to become subject to any of the events listed in clause 14.4, we may terminate or suspend performance of the Contract with immediate effect by giving written notice to you.
- 14.4 For the purposes of clause 14.2, the relevant events are:
  - 14.4.1 you commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within 14 days of you being notified in writing to do so;
  - 14.4.2 you suspend or threaten to suspend payment of your debts, you are unable or admit an inability to pay your debts as they fall due or you are deemed unable to pay your debts as and when they fall due
  - 14.4.3 you take any step or action in connection with you entering, any form of protection under Law such as Examinership, SCARP etc, liquidation (provisional or otherwise) or any composition or arrangement with your 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 your assets or ceasing to carry on business;
  - 14.4.4 you suspend or threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or
  - 14.4.5 your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.
  - 14.4.6 you are adjudicated bankrupt.
  - 14.4.7 you have any undischarged Court Judgements against you.
  - 14.4.8 you undergo a change of control.
- 14.5 Without limiting our other rights or remedies, we may suspend supply of the Goods or Services under the Contract or any other Contract between you and us if you fail to pay any amount due under the Contract on the due date for payment.
- 14.6 On termination of the Contract for any reason you must immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of

- Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt.
- 14.7 You shall return all of our materials and any items produced for you for the carrying out of the Services which have not been fully paid for. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 14.8 Termination of the Contract shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued at termination.
- 14.9 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

#### **General**

- 15. **Force majeure**  
Neither party shall be in breach of the Contract nor liable for delay in performing or a failure to perform any of its obligations if such a delay or failure is caused by a circumstance beyond its reasonable control.
- 16. **Intellectual Property**  
All Intellectual Property Rights in or arising out of or in connection with the Goods will remain owned by us, unless stated otherwise in writing.
- 17. **Assignment and other dealings**  
17.1 We may at any time assign, transfer, subcontract or deal in any other manner with any or all of our rights or obligations under the Contract.  
17.2 Your rights and responsibilities under the Contract may not be assigned by you without our written consent.
- 18. **Confidentiality**  
18.1 Each party undertakes that it will not at any time disclose any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 18.2.  
18.2 Each party may disclose the other party's confidential information:
  - 18.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that the persons to whom it discloses the other party's confidential information comply with this clause 18; and
  - 18.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 18.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 19. **Entire agreement**  
The Contract constitutes the entire agreement between the parties and supersedes all previous agreements and understandings between them relating to its subject matter.
- 20. **Notices**  
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 or its principal place of business or such other address as that party may have informed the other party of in writing.
- 21. **Severance**  
If any 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 shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause will not affect the validity and enforceability of the rest of the Contract.
- 22. **Waiver**  
A failure or delay by a party to exercise any right or remedy provided under the Contract or by law does not constitute a waiver of that or any other right or remedy. It does not prevent or restrict the further exercise of that or any other right or remedy. A single or partial exercise of such right or remedy does not prevent or restrict the further exercise of that or any other right or remedy.
- 23. **Third party rights**  
A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 24. **Variation**  
No variation of the Contract, including the introduction of any additional conditions, shall be effective unless it is in writing and signed by us.
- 25. **Governing law and Jurisdiction**  
The Contract, and any dispute or claim or dispute in connection with it or its subject matter or formation, shall be decided by Arbitration under the UNCITRAL rules in force at the time the arbitrator is installed. The appointment of the Arbitrator shall be made by Riello UPS Ireland Ltd at its discretion and the decision of the Arbitrator shall be final and binding on the parties.