

**TERMS AND CONDITIONS FOR PURCHASE
OF GOODS AND SERVICES**

LRAB/1 (January 2017)



1 Interpretation

1.1 In these Terms:

“**Buyer**” means **Resonate Group Limited**, number 5839985 whose registered office is at Hudson House, 2 Hudson Way, Pride Park, Derby DE24 8HS

“**Contract**” means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services including the requirements of the Order and the Specification;

“**Delivery Address**” means the address stated on the Order;

“**Goods**” means the goods (including any instalment of the deliverables or any part of them) described in the Order;

“**Local Taxes**” means any taxes or duties due to, levied by or payable by the Supplier to authorities in the Supplier’s country of domicile.

“**Order**” means the Buyer’s purchase order to which these Terms are annexed;

“**Price**” means the price of the Goods and/or the charge for the Services;

“**Seller**” means the person so described in the Order;

“**Services**” means the services (if any) described in the Order and anything to be delivered to the Buyer as a result of performance of the Services;

“**Specification**” includes any plans, drawings, data or other information relating to the Goods or Services;

“**Terms**” means the standard terms of purchase set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Buyer and the Seller;

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

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

2 Basis of purchase

2.1 These Terms shall apply to the Order or Contract to the exclusion of any other terms on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

2.2 No variation to the Order or these Terms shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

3 Specifications

3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Terms, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in writing by the Buyer.

3.2 Any Specification, documentation, software or information supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Goods or Services, together with the copyright, design rights and any other intellectual property rights shall be the exclusive property of the Buyer, and the Seller assigns with full title guarantee to the Buyer all such copyright, design rights and other intellectual property for no further consideration, subject only to the payment of the Price. The Seller shall not disclose to any third party or use any such Specification, documentation, software or information except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.

3.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.

3.4 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.

3.5 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within seven days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

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3.6 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

4 Price of the Goods and Services

4.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:

4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and

4.1.2 inclusive of all Local Taxes, charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.

4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.

4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms of sale.

5 Terms of payment

5.1 Unless agreed otherwise in writing, the Seller may invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.

5.2 Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services at the end of the month following the month of receipt by the Buyer of a proper invoice or after acceptance of the Goods or Services by the Buyer.

5.3 The Buyer may set off against the Price any sums owed to the Buyer by the Seller.

6 Delivery

6.1 The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours.

6.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date.

6.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

6.4 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.

6.5 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.

6.6 The Buyer may reject any Goods or Services delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods or Services until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

6.7 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.

6.8 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.

6.9 If stated in the Contract, liquidated damages shall apply if the Goods are not delivered or the Services are not performed on the due date then, without limiting any other remedy, the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller liquidated damage for delay at the rate and up to a maximum amount stated on the Order.

7 Risk and Property

7.1 Risk of damage to or loss of the Goods and Services shall pass to the Buyer on delivery to the Buyer in accordance with the Contract.

7.2 The property in the Goods and Services shall pass to the Buyer on delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

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8 Warranties and liability

8.1 The Seller warrants to the Buyer that the Goods:

- 8.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;
- 8.1.2 will be free from defects in design, material and workmanship;
- 8.1.3 will correspond with any relevant Specification or sample; and
- 8.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.

8.2 The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.

8.3 The Seller warrants that any software supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer will be fully tested to ensure that functionality will not be adversely affected by change of date, and will be free from malicious code of any kind including those likely to be triggered by any particular date.

8.4 Without limiting any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:

- 8.4.1 to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven days; or
- 8.4.2 at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.

THE SELLER'S ATTENTION IS DRAWN TO THE FOLLOWING PROVISIONS IN PARTICULAR:

8.5 The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and

expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

- 8.5.1 breach of any warranty given by the Seller in relation to the Goods or the Services;
- 8.5.2 any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
- 8.5.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;
- 8.5.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and
- 8.5.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services.

8.6 Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or the Services, if the delay or failure is beyond that party's reasonable control if:

- 8.6.1 it promptly gives the other party notice specifying the matters constituting the force majeure; it states its best estimate of the period for which its inability will continue or the period for which performance of its obligations will be delayed; and it uses all reasonable endeavours to remove or minimise the effect of the force majeure.
- 8.6.2 If the force majeure continues, or the carrying out of the contract is delayed, for a prolonged period; or it becomes impossible to perform a material provision of the contract; either party may terminate this agreement by notice to the other party.

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8.6.3 For the purpose of this clause a force majeure is a cause which affects the ability of the party in question to perform a material obligation under this agreement and which arises from circumstances beyond its reasonable control; a prolonged period is one exceeding three months.

8.7 The Supplier shall indemnify and hold harmless the Buyer against liability, loss, damages, costs and expenses (including legal expenses) with any claim, action of fine connected with Local Taxes.

9 Termination

9.1 The Buyer may cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance, in which event the Buyer's sole liability shall be to pay to the Seller the Price for the Goods or Services delivered, or in respect of which the Buyer has exercised its right of cancellation, the reasonable costs incurred or committed by the Seller less the Seller's net saving of cost arising from cancellation.

9.2 The Buyer may terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

9.2.1 The Seller is in material breach or any of its obligations under the Contract or is in breach of any obligation which is capable of remedy which and the Seller fails to remedy that breach within 7 days of being given notice by the Buyer to do so;

9.2.2 the Seller makes any composition or voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) enters into administration or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or a moratorium comes into force in respect of the Seller (within the meaning of the Insolvency Act 1986); or

9.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or

9.2.4 the Seller ceases, or threatens to cease, to carry on business; or



9.2.5 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

10 General

10.1 Provision of Goods and Services under the Contract is subject to the Railway Group Standard GE/RT8070, "Drugs and Alcohol", Network Rail's alcohol and drugs policy, RT/LS/P/051 and to the Buyer's drugs and alcohol policy. When working on Network Rail sites or at the discretion of the Buyer (such discretion not being exercised unreasonably) the Seller, his employees, agents and sub contractors shall be subject to, and if requested, undertake random testing for drugs and alcohol test in accordance with these standards.

10.2 The Seller will not disclose or use or cause to be disclosed or used, at any time during or subsequent to this agreement, any secret or confidential information of the Buyer or any of its clients or customers or any other non-public information relating to the business, financial or other affairs of the Buyer acquired by him as Seller to the Buyer except as required by the Buyer in connection with the Seller's performance of the agreement or as required by law.

10.3 All notes, computer disks and tapes, memoranda, correspondence, records, documents and other tangible items made, used or held by the Seller in the course of providing the Goods and Services will be and remain at all times the property of the Company. At any time, whether prior to or upon the termination or expiration of this agreement, the Seller shall promptly on request deliver to the Buyer return all such tangible items which are in his possession or under his control relating to the Buyer, its business affairs and clients and/or the Goods and Services and he may not make or retain copies.

10.4 All intellectual property conceived or made by the Seller in the course of providing the Goods and Services will belong to the Buyer and the Seller hereby assigns and agrees to assign all his interest therein to the Buyer or its nominee. Whenever requested to do so by the Buyer, the Seller will, at the Buyer's expense, execute any and all applications, assignments or other instruments which the Buyer deems necessary to give effect thereto

10.5 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its

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rights or sub-contract any of its obligations under the Contract.

10.6 A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.

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

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

10.6 This agreement is governed by and to be construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.