



## 1. Definitions

**Seller** RSP UK Suction Excavators Ltd of Unit 1, High Barns Farm, Bedford Road, Roxton, Bedfordshire MK44 3ET.

**Accessory Equipment** means the equipment to be supplied in addition to the Basic Construction as set out in the Order Confirmation.

**Basic Construction** means the RSP Suction Excavator basic construction as set out on the Order Confirmation

**Buyer** the name and address of the purchaser as specified in the Order Confirmation.

**Conditions** the terms and conditions of sale as set out in this document and any special terms and conditions agreed in writing by the Seller.

**Contract** means the contract between the Seller and the Buyer consisting of these Conditions and the Order Confirmation.

**Force Majeure Event** has the meaning set out in clause 11.

**Goods** the Basic Construction and Accessory Equipment and any other items which the Buyer agrees to buy from the Seller as set out in the Order Confirmation including Spare Parts.

**Insolvency Event** means the circumstances set out in clause 13.1 in relation to a Buyer;

**Order Confirmation** means the order confirmation form which is to be completed by the Seller and acknowledged by the Buyer.

**Price** the price for the Goods, excluding VAT and any carriage, packaging and insurance costs.

**RSP Germany** means RSP Germany GMBH.

**RSP Service Standards** means (1) compliance with RSP Germany's manufacturer's instructions and guidelines for operation and service in the operation and service handbook and (2) the requirement that service and

maintenance is carried out and documented by the Seller, or RSP GmbH or other authorised service workshops.

**Spare Parts** means parts purchased separately from the Seller to replace old, failed or broken parts.

## 2. Conditions

2.1 These Conditions and the Order Confirmation shall form the contract between the Buyer and the Seller, to the exclusion of all other terms and conditions including the Buyer's standard conditions of purchase or any other conditions which the Buyer may purport to apply under any purchase order or confirmation of order or any other document.

2.2 The Contract between the Seller and the Buyer is formed when the Buyer signs and returns the Order Confirmation to the Seller.

2.3 These Conditions may not be varied except by the written agreement of a director of the Seller.

## 3. Price

3.1 The Price shall be the price quoted on the Seller's Order Confirmation.

3.2 The Seller reserves the right to increase the Price if there is a period of more than 4 months between the Order Confirmation and delivery of the Goods where:

3.2.1 increases in manufacture or production costs occur; or

3.2.2 additional costs are incurred by the Seller in relation to customs duties and other transaction costs as a result of the United Kingdom's exit from the European Union.

3.3 The Buyer is entitled to cancel the Order if a price increase is 20% or more above the price quoted on the Seller's Order Confirmation.

## 4. Payment and Interest

4.1 Payment of the Price and VAT (additional at the rate ruling on the date of invoice) shall be due as follows:

4.1.1 A non-refundable deposit payable at the point of order, as per the Order Confirmation.



4.1.2 In addition to the deposit, the Seller is entitled to require the Buyer to provide payment security, such as the guarantee of an internationally recognised financial institution, for the balance of the Price and VAT.

4.1.3 The remaining balance to be paid two weeks prior to despatch of the Goods from RSP Germany.

4.2 Interest on overdue invoices shall accrue from the date when payment becomes due calculated on a daily basis until the date of payment at the rate of 8% per annum above the Bank of England base rate from time to time in force. Such interest shall accrue after as well as before any judgment.

4.3 The Buyer shall pay all accounts in full and not exercise any rights of set-off or counter-claim against invoices submitted by the Seller.

#### **5. Goods**

5.1 The Goods are described in the Order Confirmation.

5.2 The Seller reserves the right to amend or change the specification of the Goods if required by any applicable statutory or regulatory requirements.

5.3 The Seller also reserves the right to make changes to the construction, the choice of materials, the specifications and the type of construction after sending an Order Confirmation where these changes have no material impact. Where any proposed changes go beyond the foregoing the Buyer will be asked to agree the changes in writing.

5.4 Partial deliveries, which do not impair the functional capability of the whole unit and are deemed reasonable by the Seller, are permitted.

#### **Spare Parts**

5.5 The Buyer may order Spare Parts from time to time for their own use.

5.6 The Seller warrants the Spare Parts for a period of 12 months following delivery of the Spare Parts.

5.7 Unless otherwise agreed the Buyer may return spare parts to the Seller. The Seller shall not be obliged to accept returned spare parts if the value of the goods is less than £100.00, or if the item(s) are special parts which were produced according to the Buyer's requirements, or the (technical) durability of the parts has elapsed. The Buyer may return all other spare parts at their expense within one

month of shipment from the Seller (date of despatch). In the case of erroneous delivery by the Seller, the Seller will pay the cost of returning the items. The Seller has the right to inspect returned spare parts at the Buyer's expense. In addition, the Seller is entitled to charge for such returns a re-stocking fee of 20% of the net sale price (minimum £50.00; maximum £500.00). The re-stocking fee and inspection costs will be deducted from the amount to be reimbursed to the Buyer.

#### **6. Warranties**

Suction Excavator Basic Construction and Accessory Equipment

6.1 The Seller warrants that the Basic Construction and Accessory Equipment shall for a period of 12 months following delivery of the Goods (the Warranty Period) be free from defects in design, material and workmanship.

6.2 The Seller shall repair any part of the Basic Construction or repair or replace any Accessory Equipment that does not comply with clause 6.1, provided that the Buyer serves a written notice on the Seller during the Warranty Period. The cost of transportation to the Seller or to RSP Germany is not included in the warranty.

6.3 Any labour or part fitted pursuant to a warranty claim made during the Warranty Period will be warranted for the remainder of the Warranty Period only.

6.4 The Seller shall not be liable for any failure of the Basic Construction or Accessory Equipment caused by the following:

6.4.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use;

6.4.2 to the extent caused by the Buyer's failure to comply with the Seller's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;

6.4.3 to the extent caused by the Seller following any specification or requirement of the Buyer in relation to the Goods; or

6.4.4 where the Buyer modifies any Goods without the Seller's prior written consent or, having received such consent, not in accordance with the Seller's instructions.



6.5 The Seller shall not be liable for any claims or defects on any consumables and wear parts, such as suction hoses, hydraulic hoses, filter cartridges, oils and sealing elements.

Chassis cab or carrier vehicle

6.6 Warranty on the chassis cab or carrier vehicle is limited to the manufacturer's terms and conditions.

Services and repairs

6.7 In the case of service and repair on Goods carried out after the Warranty Period the following warranties apply:

6.7.1 any replacement part fitted by the Seller is warranted for a period of 12 months from when the replacement part was fitted. This service warranty period will be reduced to 6 months if the Buyer has not complied with RSP Service Standards;

6.7.2 any service work is warranted for a period of 6 months from the completion of the service.

6.8 The cost of transportation to the Seller or to RSP Germany is not included in the warranty.

6.9 Warranty claims for any defects, made either during the Warranty Period or after the Warranty Period under clause 6.7, will not be met if the Buyer has not complied with RSP Service Standards.

6.10 If on investigation the Buyer is partly responsible for causing the defect, particularly owing to the non-compliance with 6.9 above and its general responsibility to avoid or minimise damage, the Seller is entitled to claim the cost of repair or replacement from the Buyer.

Telematics

6.11 The vehicles may have a tracker installed. This tracker will provide remote monitoring of the vehicle superstructure. No personal data will be collected from the tracker and all information collated will be kept confidential.

6.12 If the Seller requests the Buyer to remedy a defect and it turns out that there was in fact no defect at all then the Buyer is obliged to reimburse the incurred costs and expenses of the Seller.

## 7. Delivery & Termination

7.1 Delivery shall be ex works RSP GmbH, Germany and not the Seller's premises in Roxton Bedfordshire unless otherwise specified in the Order Confirmation. The Buyer shall make all arrangements necessary to take delivery on the day notified by the Seller for delivery.

7.2 The delivery date shown in the Order Confirmation is indicative only and non-binding. It is provided solely to demonstrate the current status of production scheduling by RSP GmbH.

7.2.1 Build slots will be confirmed once the Order Confirmation has been signed and the deposit monies have cleared.

7.2.2 Build slots are subject to availability and chassis cab delivery at the time of placing the order.

7.3 The Seller shall use its reasonable endeavours to deliver the Goods on an agreed delivery date, but does not guarantee to do so. Time of delivery shall not be of the essence of the contract unless previously agreed by the Seller in writing. The Seller shall not be liable to the Buyer for any loss or damage whether arising directly or indirectly for any delay in delivery.

7.4 If the Buyer fails to take delivery on the agreed delivery date or, if no specific delivery date has been agreed when the Goods are ready for despatch, the Seller shall be entitled to store and insure them and to charge the Buyer the reasonable costs of so doing.

7.5 The Buyer does not have the right to cancel the contract on economic or financial grounds, for which the Buyer has to bear the risk. In particular, the Buyer shall not be entitled to withdraw from or cancel the contract if its' economic or financial situation has deteriorated or the possibilities of utilisation and application of the Goods have changed.

7.6 If the Buyer purports to cancel the Order then the Seller will have the option, exercisable in its absolute discretion, of electing to accept flat rate damages in the amount of 10% of the net order value as a genuine pre-estimate of the Seller's losses and costs or alternatively claiming the balance of the Price.



**8. Acceptance of the Goods**

8.1 The Buyer shall be deemed to have accepted the Goods on delivery to the Buyer.

8.2 The Buyer shall additionally carry out a thorough inspection of the vehicle before delivery and shall give notice in writing to the Seller if the vehicle does not comply with the agreed specification. The Buyer must return the vehicle to the Seller at the Buyer's cost and the Seller shall, at its option, repair or replace any elements that are defective.

8.3 Where the Buyer has accepted, or has been deemed to have accepted, the Goods the Buyer shall not be entitled to reject the Goods as not being in accordance with the Contract.

**9. Title risk and insurance**

9.1 Risk shall pass on delivery of the Goods to the Buyer ex works RSP GmbH in Germany in accordance with clause 7.1 above.

9.2 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Seller and shall not pass to the Buyer until the amount due under the invoice(s) for the Goods (including interest and costs, if appropriate) has been paid in full.

9.3 Until title passes the Buyer shall hold the Goods as bailee for the Seller and shall ensure they can at all times be identified as the property of the Seller.

9.4 The Buyer must arrange its own all risks insurance over the Goods from the moment of delivery ex works RSP GmbH in Germany. Until title passes to the Buyer upon payment in full of the Seller's invoice(s) for the Goods the Buyer agrees and confirms that it will hold on trust for the Seller all and any insurance proceeds arising from loss or damage to the Goods occurring before title passes to the Buyer.

9.5 Where the Buyer has provided the chassis cab or carrier vehicle title to any Basic Construction or Accessory Equipment will not pass to the Buyer notwithstanding that any part of the Basic Construction or Accessory Equipment has been fitted to the chassis cab or carrier vehicle provided by the Buyer and in all cases clause 9.2 will apply and title to the Basic Construction or Accessory Equipment will not pass to the Buyer.

9.6 Until such time as title passes to the Buyer the Seller may:

9.6.1 repossess the Goods and by doing so terminate the Buyer's right to use; and

9.6.2 for that purpose enter any premises of the Buyer or any third party where the Goods are stored.

**10. Carriage of Goods**

10.1 Carriage will be chargeable if not included in the Order Confirmation. This will be at the rate of £3,500.00 (ex. VAT).

**11. Force Majeure**

11.1 For the purposes of these Conditions, Force Majeure Event means an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake, epidemic or similar events, or default of suppliers or subcontractors.

11.2 The Seller shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

11.3 If a Force Majeure Event prevents the Seller from providing the Goods for more than 8 weeks the Seller shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.

**12. Limitation of Liability:**

21.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:

12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

12.1.2 fraud or fraudulent misrepresentation;

12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

12.1.4 defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1:

12.2.1 the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including



negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

12.2.2 the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 1.5 times the price quoted in the Order Confirmation.

12.3 After the Warranty Period, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

### 13. Insolvency of the Buyer

13.1 An Insolvency Event occurs when:

13.1.1 The Buyer makes a voluntary arrangement with creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes in to liquidation (other than for the purposes of amalgamation or reconstruction); or

13.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the Buyer's property or assets.

13.2 If an Insolvency Event occurs then, without limiting any other right or remedy available to the Seller, the Seller may cancel the contract without any liability to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement to the contrary and clause 9.2 (Buyer is bailee) shall apply and the Buyer or the Buyer's liquidator or administrator shall hold the Goods as bailee for the Seller.

13.3 If an Insolvency Event occurs where the Buyer has provided to the Seller a chassis cab or carrier vehicle clauses 9.2 and 9.3 will apply notwithstanding the Insolvency Event.

### 14. General

14.1 Notices.

14.1.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

14.1.2 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.2 Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.3 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

14.4 Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.5 The Contract contains the entire agreement and understanding of the parties relating to the subject matter of the Contract and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral.

14.6 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Seller.

14.7 Governing law. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

14.8 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

**RSP UK Suction Excavators Ltd**  
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