



**RediRack**

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**General Terms And Conditions Of Offer And Sale**

**Definitions**

Buyer	shall mean the purchaser.
Company	shall mean Redirack.
Conditions	shall mean the Company's general terms and conditions of offer and sale set out below.
Contract	shall mean the agreement between the Buyer and the Company for the execution of the Works howsoever made, including therein the Conditions and all other documents to which reference may properly be made in order to ascertain the rights and obligations of the parties under the said agreement.
Contract Price	shall mean the sum in the Company's quotation increased or reduced by such sums (if any) as under the Conditions are to be taken into account in ascertaining the Contract Price.
Company's Equipment	shall mean all plant, vehicles, machinery, stores, tools and other things brought on to the site by the Company and required for the construction and completion of the Works but not for incorporation therein.
Materials	shall mean the goods to be supplied under the Contract.
Site	shall mean the address specified by the Buyer to which delivery of the materials shall be made by the Company.
Works	shall mean all the Materials to be supplied and the work and labour to be done by the Company under the Contract.

**1.0 Offer and Acceptance**

- 1.1 The Company's quotation shall constitute an offer to supply Materials or services or to carry out any Works referred to therein on and subject to the Conditions.
- 1.2 An order placed by the Buyer in response to a quotation shall only be binding on the Company if it is accepted by the Company in writing. Notwithstanding that the order form or other document whereby the Buyer places his order with the Company may contain or refer to printed terms or conditions inconsistent with or differing from the Conditions. Such order form or other document shall unless the same be accompanied by a separate letter expressly requesting that the Conditions be waived or supplemented in such specific respect or respects as may be particularised in such letter, be deemed to constitute an unqualified acceptance of the Conditions, which shall apply to the exclusion of any other such printed terms or conditions as aforesaid.
- 1.3 No variation, waiver or supplement to the Conditions shall be binding on the Company unless expressly accepted by the Company in writing.
- 1.4 An order must be placed by the Buyer in response to a quotation within 28 days of the date of the quotation, failing which the quotation shall be deemed to have been withdrawn.

**2.0 Point of Delivery**

- 2.1 Unless otherwise agreed in writing, the Buyer shall be responsible for the provision of labour and equipment to offload the Materials upon their arrival at the Site.
- 2.2 Unless otherwise specified, the prices of Materials are quoted "Carriage Paid to Site"

**3.0 Buyer's Risks**

- 3.1 From the time of their arrival at the Site, the Buyer shall be responsible for loss or damage to the Materials and to the Company's Equipment howsoever caused or arising (except to the extent that it is caused by or arisen from the acts or omissions of the Company's servants or sub-contractors) and shall indemnify and keep the Company indemnified to the full value thereof until the Contract is completed or the Materials and Company's Equipment have been removed from the Site by the Company.
- 3.2 Should any Materials required for the installation be lost or damaged by acts or omissions of the Buyer or of others (not the Company's servants or sub-contractors) such Materials shall be replaced by the Company at the Buyer's expense. The Buyer shall accept any delay to the Works due to the need to replace lost or damaged items.
- 3.3 The Buyer is required to acknowledge receipt of all Materials delivered at the Site by signing the appropriate Delivery Note.

#### **4.0 Price Variations**

- 4.1 Unless otherwise stated in the quotation, the Contract Price is deemed to exclude VAT. To the extent that the tax is properly chargeable on the supply to the Buyer of any Materials or services provided by the Company under the Contract, the Buyer shall pay such tax as an addition to payments otherwise due to the Company under the Contract.
- 4.2 The Contract Price is based on the cost of materials, labour and other rates and prices ruling at the date of the Company's quotation. If, by reason of any rise or fall in the rates of wages, salaries or other payments (including allowances) payable to labour or in the cost of material or transport or of conforming to such laws, orders, regulations and by-laws (including the imposition of any new such matter) as are applicable to the Works above or below such rates and costs ruling at the date of the Company's quotation, the cost to the Company of performing its obligations under the Contract shall be increased or reduced, the amount of such increase or reduction shall be added to or deducted from the Contract Price as the case may be. For the purposes of this Condition, the cost of material shall be construed as including any duty or tax by whomsoever payable which is payable under or by virtue of any Act of Parliament on the import, purchase, sale appropriation, processing or use of such material.
- 4.3 Where the Works include the erection of Materials the Contract Price is based upon the Site being available to the Company between the hours of 8 a.m. and 6 p.m. Monday to Friday inclusive unless otherwise agreed and on the assumption that full and free access to the Site will be open to the Company during these hours and that the facilities specified in paragraph 5 hereof will be provided by the Buyer. The additional costs of overtime or week-end working and lost time due to lack of access to the Site or non availability of the facilities to be provided by the Buyer shall be added to the Contract Price and shall be paid by the Buyer.

#### **5.0 Obligations**

Unless the Buyer shall be otherwise advised in writing he shall at his own expense and at such time or times as may be specified by the Company:

- 5.1 Provide covered and secured waterproof accommodation within the immediate vicinity of the Site in which erection of the Works is to take place to ensure the safe custody of and minimise deterioration to Materials and Company's Equipment whilst on Site.
- 5.2 Provide adequate lifting facilities and personnel to handle Materials and Company's Equipment into store as provided in paragraph 5.1 above prior to commencement of the Works.
- 5.3 Provide a satisfactory and continuous means of access to the Site free from all obstructions together with offloading facilities and parking facilities for vehicles of the Company, its servants and agents.
- 5.4 Effect and complete all works of preparation and construction necessary to receive the Materials including clearance of all obstructions from the area of the Site in which erection of the Work is to take place.
- 5.5 Ensure that there is a sufficient and continuous supply of electric light, power and water available at all points where necessary for the performance of the Works by the Company prior to the commencement of such works.
- 5.6 Provide a level and even floor capable of supporting the Works and the loads imposed upon the Works. The Company reserves the right to suspend the Works until such time as the floor meets its requirements or at its discretion the Company may proceed with the Works and any additional costs incurred shall be added to the Contract Price and shall be paid by the Buyer. The Company will advise the Buyer when the Work is stopped because of these reasons.
- 5.7 Provide any health and welfare facilities which may be required by law under the regulations current from time to time for employees of the Company while they are engaged at the Buyer's premises in the performance of the Contract.
- 5.8 Supply all such plans, data and information together with Site plans and levels (in every case to an identified scale) as the Company may reasonably require from time to time in connection with the Works.

#### **6.0 Limitation of Liability of Company**

- 6.1 The Company's quotation is based upon an analysis of advice, information, drawings and specifications (as the case may be) supplied by the Buyer regarding the Buyer's requirements for storage and materials handling. The Company shall not be responsible for any discrepancies, errors or omissions in its analysis nor in any drawings, data, specifications or information prepared by it utilising or incorporating all or any plans, data and information supplied by the Buyer pursuant to paragraphs 5.6 and 5.8 above. The Buyer shall pay the extra cost reasonably incurred by the Company due to alterations to the Works necessitated by (a) reason of inaccurate drawings or information in whatever form so supplied to the Company and (b) any delay in commencing or interruption in the programme for the Works drawn up by the Company due to the non-performance by the Buyer of all or any of the obligations to be performed by him pursuant to paragraph 5 hereof; such extra costs shall either be added to the Contract Price or may be the subject of a separate payment at the discretion of the Company.
- 6.2 The Company shall not be liable for any loss or damage whatsoever (including consequential loss or damage) in any way suffered by the Buyer or any other person, firm or company whatsoever (whether on the grounds of negligence or otherwise) by reason of the fact that the Company may have inspected, advised on or approved the Site and/or any plans, data and information supplied by or on behalf of the Buyer whether prior to the date of the Company's quotation or pursuant to paragraphs 5.6 and 5.8 above and the Buyer shall at all times indemnify and keep the Company indemnified against all losses, claims, damages, charges and expenses for injury (including death) suffered by any person or loss of or damage to property belonging to any person, firm or company for which the Company, its sub-contractors or their respective employees may be liable or be deemed to be liable under the Contract except where such losses, claims, damages, charges and expenses arise out of or are caused by the negligence, wilful misconduct or breach of warranty of the Company, its sub-contractors or their respective employees.
- 6.3 If the Company is held to be legally liable for any breach of the Contract or shall become legally liable to the Buyer in any way howsoever, the liability of the Company in respect of any or all causes of action shall in no circumstances exceed in the aggregate 100 per cent of the Contract Price.
- 6.4 If the Company has delivered the Materials which form part or all of the Contract to which the Conditions apply the Company's liability in clause 6.3 above shall not exceed in aggregate 20% of the Contract Price.

## **7.0 Builders Work and Alterations to Premises**

Unless otherwise specifically agreed, the Company will not carry out under the Contract any builders work or alterations to premises.

## **8.0 Payment and Buyer's Default**

Unless otherwise agreed, payment terms are strictly net not later than 30 days after the date of invoice(s), time being of the essence of the Contract. Amounts and times of payments are set out in the quotation.

8.1 If under the Contract deliveries are required over an extended period, each consignment shall be invoiced separately.

8.2 If the Buyer fails to make payment of a sum when the same becomes due whether under the Contract or any other contract which the Company may have with the Buyer, the Company shall be entitled to charge the Buyer interest on the sum due under the Contract and unpaid calculated at a rate of two per cent per annum over the Bank of England minimum lending rate (minimum 5 per cent) from time to time ruling and further to suspend the Works. If such payment or any part thereof, shall remain in arrears for (7) days after written demand shall have been made therefor, the Company shall have the further right to cancel the Contract and/or any such other contract and, in either case, without prejudice to any other right or remedy which the Company may have.

8.3 If the Buyer makes any composition or arrangement with or assignment for the benefit of his creditors or has any process of execution levied upon his goods or being a corporation goes into liquidation or has a Receiver appointed or being a person becomes bankrupt or commits any act of bankruptcy, the Company may without prejudice to any other remedy determine the Contract and resell the Materials and any loss on such resale shall be paid by the Buyer.

8.4 Where the Company tenders the Materials but delivery is not accepted, the Company may store the Materials in its own or any other warehouse for the account of the Buyer and the Buyer shall be liable for the cost of storage, additional handling, transport and any associated costs. The Company may also deliver its invoice for the Materials stored and payment thereof shall be due at the same time and in the same manner as if the Materials had been delivered to the Buyer at the time they were placed in store.

8.5 Any concession, latitude or waiver the Company may allow or has allowed the Buyer at any time shall not prevent the Company subsequently exercising its full right under the Contract.

## **9.0 Right of Set Off**

No right of set off shall exist in respect of any claims by the Buyer against the Company unless and until such time as such claims are accepted by the Company in writing and the Buyer shall not withhold all or any part of any sum which has become due for payment under the Contract.

## **10.0 Suspension and Cancellation**

10.1 In the event of suspension or cancellation of the Contract by the Buyer for any reason whatsoever (otherwise than in consequence of some default on the part of the Company) the Company reserves the right to make a charge which shall be paid within 30 days of the notification of the charge by the Company to the Buyer.

The charge may include:

(a) A sum representing the difference between the Contract Price and the cost of the Materials to the Company.

(b) Where the Materials have been specially prepared or manufactured for the Buyer and are not readily re-saleable, the cost of the Materials to the Company and in cases where manufacture has not yet commenced, a charge in respect of any preliminary and terminal costs including preparation of drawings, site plans and specifications.

(c) In the case of contracts which include erection a sum calculated on the value of the labour content of any works already carried out.

(d) All other costs, charges and expenses which the Company has or will become liable to pay to any person, firm or company in consequence of or arising out of the suspension or cancellation of the Contract.

10.2 Upon the resumption of the Contract after suspension, the Company shall be allowed such extensions of time for the performance of its obligations as is fair and reasonable having regard to the period of suspension and the Contract Price shall be adjusted in accordance with the provisions of 4.2 above.

## **11.0 Title**

The property in the Materials shall remain with the Company until it has received in cash the whole of the Contract Price. On completion of the Contract all surplus Materials supplied by the Company shall unless otherwise agreed remain the property of and be removed from the Site by the Company together with the Company's Equipment (if any). Until such removal the Buyer shall continue to take reasonable precautions for the safe custody of such surplus Materials and Equipment.

## **12.0 Patents and Copyright**

- 12.1 Where the Materials agreed to be sold or any part thereof shall consist of any article to be manufactured altered or worked upon by the Company in accordance with the design specification or instructions of the Buyer, the Buyer warrants to the Company that any such article or the design of the construction thereof shall not in any way infringe any letters patent copyright or any other protection subsisting in favour of third parties and agrees to indemnify the Company against all actions claims and demands which may be made against it by such third parties including any costs and expenses incurred by the Company in respect thereof.
- 12.2 In all other cases, in the event of any claim being made against the Buyer in respect of infringement or alleged infringement of letters patent copyright or other protection in respect of Materials designed and supplied by the Company, the Buyer shall inform the Company immediately. Thereupon the Company shall be at liberty at its absolute discretion to conduct all negotiations for the settlement of any such claim or any litigation or proceedings which may arise therefrom. The liability of the Company to the Buyer in any such cases whether or not the Buyer shall be permanently prohibited from using the Materials by reason of such claim shall be limited to accepting a return of the said Materials and refunding the Buyer, the purchase price thereof paid by him less a fair proportion thereof for the benefit which may have been derived from the use of the Materials whilst it remained in the Buyer's possession.
- 12.3 Any specification and/or drawing prepared by or on behalf of the Company submitted with or expressly referred to in a quotation shall form part of that quotation. The copyright of all such specifications and drawings remains the copyright of the Company or the Company's suppliers (as the case may be) and may not be divulged or used without the Company's permission in writing.

## **13.0 Warranties**

- 13.1 All Redirack racking sold by the Company is manufactured from steel made to the Company's specification. The Company warrants that in the manufacture of Redirack racking the highest standards of workmanship and raw material have been used.
- 13.2 If within a period of six months:
- a) after the despatch of the Materials in the case of a single consignment, or
  - b) after the despatch of the final consignment of the Materials in the case of delivery by instalments, or
  - c) after the Materials have been taken over by the Buyer in the case of a contract with erection

any fault is found in the Materials, in the opinion of the Company, is not attributable wholly or in part to inexpert installation or repair by persons other than the Company or a subcontractor of the Company and is a fault within its control, then in each such case the Company shall at its own expense and sole discretion either repair or replace the faulty Materials provided that notice of the fault is given in writing to the Company by registered post not more than 7 days after the expiry of the said period of six months.

- 13.3 Save as aforesaid, all express or implied warranties, terms and conditions, statutory or otherwise, as to the quality or fitness for any purpose or the soundness of performance of the Materials or any component thereof whether manufactured by the Company or a third party are hereby expressly excluded from the Contract notwithstanding that samples of materials or merchandise to be handled or products to be produced by the use of the Materials shall have been supplied to or by the Company.
- 13.4 The warranties and undertakings contained in paragraphs 13.1 and 13.2 above do not extend to any Materials not manufactured by the Company but wherever possible the Company will extend to the Buyer the benefit of any warranty or guarantee given to it by any other manufacturer of Materials.

## **14.0 Substitution of Materials**

The Company reserves the right to substitute without prior notice or consultation other materials for any which may be specified on the Contract provided that the operating capabilities and technical properties are not in the opinion of the Company, adversely affected.

## **15.0 Alterations to Design or Specification**

Any alteration to design and/or specification requested by the Buyer shall be notified to the Company in writing. Any costs incurred in complying with such alterations shall be added to the Contract Price and shall be paid by the Buyer.

## **16.0 Sub-Contracting**

The Company reserves the right to sub-contract any part of the Contract, but in so doing the Company will not be relieved of any liabilities under the Contract.

## **17.0 Force Majeure**

Whilst the Company undertakes to make every endeavour to execute orders as near to the date specified for delivery as possible, all orders are accepted subject to delays caused by fires, industrial disputes, non-availability of raw materials or power supply, acts of Providence or through any other cause whatsoever beyond the control of the Company and the Company shall not incur any liability or be responsible for any inconvenience, costs, losses or damages suffered by the Buyer arising from such delays (unless otherwise specifically agreed by the Company in writing, no penalty shall apply).

## **18.0 Statutory and Bye-Law Approvals**

It shall be the responsibility of the Buyer to obtain all necessary permissions and licences and to conform to the provisions of Acts of Parliament and to any bye-laws orders and regulations for the time being in force affecting any works of construction under the Contract and the Buyer shall pay and indemnify the Company against all fees payable, costs, claims and actions in connection therewith.

**19.0 Materials Lost or Damaged in Transit**

19.1 If goods have not been received within two days of despatch, the Buyer shall advise the Company in writing immediately.

19.2 Upon the receipt of such notice within the period specified, the Company will use its best endeavour to assist the Buyer to obtain proof of delivery or admission of damage or short delivery from the carrier.

19.3 Failure to comply with the requirements of paragraph 19.1 may invalidate any claim by the Buyer in respect of damaged or lost Materials. In any event, the Company's liability shall be limited at its option to the replacement, rectification or repair of such items or the reasonable costs of repairs carried out by others on the Company's behalf.

**20.0 Completion / Cleaning**

The Company will make every reasonable effort to clear the Site of all surplus materials and waste, the latter being placed on a central dump to be provided by the Buyer for subsequent disposal by the Buyer and the Company will make every reasonable effort to leave the installation clean and ready for use but it accepts no liability whatsoever for any deposits of dirt or other materials, or damage to the installation, subsequent to the completion of the Works, occasioned by the Buyer or any Third Party.

**21.0 Completion / Take-Over**

Upon the practical completion of the Works the Buyer shall issue to the Company a take-over certificate in the form nominated by the Company signed by the Buyer's authorised representative in which shall be certified the date on which the Works were completed and the Buyer shall be deemed to have taken over the Works on the date so certified. Where the Works are to be undertaken in defined phases, the take-over of each phase shall be executed in the same manner as if it constituted the whole of the Works.

**22.0 Applicable Law**

The Contract shall, unless otherwise agreed in writing, be construed in accordance with English Law and any legal action resulting therefrom shall be brought in an English Court.