

# RADWAY CONTROL SYSTEMS LIMITED – STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

## 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

- 1.1. Definitions:
  - “**Action Plan**” the scope of the Services as agreed between the parties during the Telephone Consultation; “**Business Day**” a weekday other than a Saturday, Sunday, bank holiday or public holiday in England; “**Charges**” the charges payable by the Customer for the supply of the Services calculated in accordance with clause 6; “**Conditions**” these terms and conditions as amended from time to time in accordance with clause 11.5; “**Contract**” the contract between Radway and the Customer for the supply of Services in accordance with these Conditions; “**Customer**” the person, firm or company who purchases Services from Radway; “**Customer Default**” has the meaning set out in clause 5.2; “**Quotation**” the quotation provided by Radway to a framework Customer in relation to a particular job, detailing the scope of the Services; “**Radway**” Radway Control Systems Limited, registered in England and Wales with company number 02953969; “**Services**” the services supplied by Radway to the Customer in accordance with the Action Plan or a Quotation (as applicable); “**Telephone Consultation**” the initial telephone consultation between Radway and a non-framework Customer where the Customer requests the provision of the Services on an ad-hoc basis.
- 1.2. Interpretation:
  - 1.2.1. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
  - 1.2.2. Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
  - 1.2.3. A reference to writing or written includes email.

## 2. BASIS OF CONTRACT

- 2.1. The initiation of the Telephone Consultation or the approval of the Quotation respectively by the Customer constitutes an offer by the Customer to purchase the Services in accordance with these Conditions (“**Offer**”).
- 2.2. The Offer shall only be deemed to be accepted by Radway when:
  - 2.2.1. the Customer issues verbal or written acceptance of these Conditions;
  - 2.2.2. if requested by Radway, the Customer provides a deposit over the telephone (“**Deposit**”), by way of:
    - 2.2.2.1. a card payment of £500.00, or such other sum as specified by Radway; or
    - 2.2.2.2. a purchase order which Radway confirms it accepts, and
  - 2.2.3. Radway confirms proposed date(s) and time(s) for the performance of the Services.
- 2.3. Radway will not provide the Services until the Customer has paid any Deposit that has been requested by Radway in full.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are, or otherwise may be, implied by law, trade custom, practice or course of dealing.

## 3. SUPPLY OF SERVICES

- 3.1. Radway will respond to the Customer's enquiry as soon as possible, and aims to respond to all Customer enquiries within four hours of receiving them.
- 3.2. Radway shall supply the Services to the Customer in accordance with the Action Plan or Quotation (as applicable), in all material respects.
- 3.3. Radway shall use reasonable endeavours to meet any performance dates and times set out in the Action Plan or Quotation (as applicable), or otherwise communicated to the Customer, but any such dates and times shall be estimates only, and Radway does not guarantee that it will be able to comply with these dates and times.
- 3.4. Radway warrants to the Customer that it will provide the Services using reasonable care and skill.
- 3.5. Radway does not warrant that any repairs will provide a permanent resolution to the issue(s) identified during the provision of the Services.
- 3.6. Where the Customer does not have an existing contract with Radway, Radway's insurance cover prohibits it from providing Services to ad hoc customers in the following work places: towers; steeples; chimney shafts; blast furnaces; dams; canals; viaducts; bridges; tunnels; aircraft; airports; ships; docks; harbours; piers; wharves; breakwaters; sea walls; collieries; mines; gas works; oils refineries; power stations; storage tanks; chambers for bulk oil or petrol or gas or chemicals; or railways. The Customer must notify Radway immediately if it believes that it may be affected by this prohibition.

## 4. SUPPLY OF COMPONENTS

- 4.1. Subject to clause 4.2, if the provision of the Services requires Radway to source third-party replacement or additional components (“**Components**”), the Customer agrees that:
  - 4.1.1. the Components may be equivalent components, rather than exact replacements, of the components being replaced;
  - 4.1.2. the Components may not be brand new components; and
  - 4.1.3. Radway does not provide any warranties in relation to the Components.
- 4.2. If Radway benefits from a manufacturer's warranty in relation to the Components, it shall pass on the benefit of this warranty to the Customer.

## 5. CUSTOMER'S OBLIGATIONS

- 5.1. The Customer shall:
  - 5.1.1. co-operate with Radway in all matters relating to the Services;
  - 5.1.2. provide Radway, its employees and any other personnel acting on behalf of Radway, with safe access to the Customer's premises and other facilities as reasonably required by Radway to provide the Services;
  - 5.1.3. provide Radway with such information and materials as Radway may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 5.1.4. prepare the Customer's premises, including ensuring that they are safe, for the supply of the Services;
  - 5.1.5. provide any specialist personal protective equipment necessary for the supply of the Services;
  - 5.1.6. 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 start; and
  - 5.1.7. comply with all applicable laws, including health and safety laws.

- 5.2. If Radway's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (“**Customer Default**”):
  - 5.2.1. without limiting or affecting any other right or remedy available to it, Radway shall have the right to immediately terminate the Contract and refuse to perform the Services;
  - 5.2.2. Radway shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Radway's failure or delay to perform any of its obligations as set out in clause 5.1; and
  - 5.2.3. the Customer shall immediately pay Radway the Charges incurred in accordance with clause 6.

## 6. CHARGES AND PAYMENT

- 6.1. Subject to clause 6.2, the Charges for the Services shall be calculated on the basis of Radway's price list, a copy of which will be provided to the Customer on request.
- 6.2. Regardless of the scope of the Services, the minimum charge for the provision of the Services will be £200.00.
- 6.3. Radway will invoice the Customer within three Business Days of completion of the Services.
- 6.4. Where the Customer has paid a Deposit:
  - 6.4.1. if the Charges exceed the amount of the Deposit, Radway will use the Deposit towards the Charges and invoice the Customer for the amount of the Charges exceeding the Deposit; or
  - 6.4.2. if the Charges are less than the amount of the Deposit, Radway will refund the Customer the remaining sum of the Deposit, once the Charges have been deducted, when it issues the invoice.
- 6.5. The Customer shall pay each invoice submitted by Radway:
  - 6.5.1. within 30 days of the date of the invoice, unless otherwise agreed by Radway in writing; and
  - 6.5.2. in full and in cleared funds to a bank account nominated in writing by Radway.
- 6.6. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Radway to the Customer, the Customer shall, on receipt of a valid VAT invoice from Radway, pay to Radway such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.7. If the Customer fails to make a payment due to Radway under the Contract by the due date, then, without limiting Radway's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 6.8. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 7. DATA PROTECTION

- 7.1. Both Radway and the Customer shall comply with the Data Protection Act 2018 and any subordinate legislation made under it, together with any guidance and codes issued by the Information Commissioner, all as updated from time to time (“**Data Protection Law**”).
- 7.2. In this clause 7, the term “**Shared Personal Data**” shall refer to any personal data (as defined by Data Protection Law) made available by one party to the other under this Agreement.
- 7.3. The parties acknowledge that the relationship between them shall dictate their classification as data controller or data processor, but agree that it is the intention of both parties to act as joint data controllers with respect to the Shared Personal Data.
- 7.4. Radway shall only process Shared Personal Data as is reasonably necessary in connection with the performance by Radway of the Services being provided under the Contract, and all related purposes.
- 7.5. Each party shall, in respect of Shared Personal Data, ensure that it provides clear and sufficient information to the data subjects of the purposes for which it will process their personal data, the legal basis for such purposes and such other information as is required by Data Protection Law.
- 7.6. Each party shall be responsible for compliance with any requests made to it by a data subject to exercise their rights, as set out in Data Protection Law.

## 8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 8.1. The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
  - 8.2.1. death or personal injury caused by negligence;
  - 8.2.2. fraud or fraudulent misrepresentation; and
  - 8.2.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.3. Subject to clause 8.2, Radway's total liability to the Customer shall not exceed the Charges paid for the Services.
- 8.4. Subject to clause 8.2, the following types of loss are wholly excluded: loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, data or information; loss of or damage to goodwill; and indirect or consequential loss.
- 8.5. Radway has given commitments as to compliance of the Services with the agreed Action Plan or Quotation (as applicable) in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 and all other warranties are, to the fullest extent permitted by law, excluded from the Contract.
- 8.6. This clause 8 shall survive termination of the Contract.

## 9. TERMINATION

- 9.1. Once Radway has accepted an Offer in accordance with clause 2.2, if the Customer no longer wishes to receive the Services, the Customer shall be liable for the Charges incurred in accordance with clause 6.
- 9.2. Where the Customer is not signed up to a framework with Radway, without affecting any other right or remedy available to it, Radway may terminate the Contract:
  - 9.2.1. in accordance with clause 5.2 (Customer Default); and
  - 9.2.2. at any time on written or verbal notice to the Customer.
- 9.3. Where the Customer is signed up to a framework with Radway, without affecting any other right or remedy available to it, Radway may terminate the Contract:

- 9.3.1. on three months' written notice to the Customer;
  - 9.3.2. in accordance with clause 5.2 (Customer Default); and
  - 9.3.3. immediately if the Customer:
    - 9.3.3.1. the Customer commits a material breach of any term of the Contract;
    - 9.3.3.2. the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its 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 its assets or ceasing to carry on business; or
    - 9.3.3.3. suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 9.4. Unless terminated earlier in accordance with clauses 9.1, 9.2 or 9.3, the Contract will terminate immediately on completion of the Services, or on expiry of the framework (if applicable).

## 10. CONSEQUENCES OF TERMINATION

- 10.1. On termination of the Contract the Customer shall immediately pay to Radway any outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Radway shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 10.2. Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract that existed at or before the date of termination.
- 10.3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## 11. GENERAL

- 11.1. **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.2. **Assignment and other dealings.**
  - 11.2.1. Radway may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
  - 11.2.2. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 11.3. **Confidentiality.**
  - 11.3.1. Each party undertakes that it shall not, at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3.2.
  - 11.3.2. Each party may disclose the other party's confidential information:
    - 11.3.2.1. 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 its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3.2;
    - 11.3.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
  - 11.3.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 11.4. **Entire agreement.**
  - 11.4.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  - 11.4.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
  - 11.4.3. Nothing in this clause shall limit or exclude any liability for fraud.
- 11.5. **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.6. **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.7. **Notices.**
  - 11.7.1. Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by first-class post, recorded delivery or by commercial courier, at its registered office or its principal place of business, or sent by e-mail to an e-mail address provided for communications in respect of this Contract.
  - 11.7.2. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by first-class post or recorded delivery, at 9.00 am on the second day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by e-mail, on the next day after transmission.
  - 11.7.3. This clause 11.7 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 11.8. **Third party rights.**
  - 11.8.1. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
  - 11.8.2. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.9. **Governing law and Jurisdiction.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales, and the courts of England and Wales shall have exclusive jurisdiction.