



## TERMS AND CONDITIONS OF SALE

The following terms and conditions are the terms on which RESTRANAUT LIMITED (company number 02110245) trading as Thinking Software (the "**Company**") agrees to sell the "**Goods**" (Software, Hardware or Services) to another business (the "**Buyer**").

In this Agreement, the Company and the Buyer are each referred to as a "**Party**", or together as "**the Parties**".

This is a legal agreement between the Buyer and the Company. By installing and/or using any version or release of the Goods (including, but not limited to, products called Rota Horizon, Rota Summit, Rota Professional, Rota Planner and Rota Pay-Link), the Buyer is agreeing to be bound by the terms of this Agreement.

### 1. Orders, Purchase Price and Payment

- 1.1. This Agreement shall commence on the date that the Company confirms the Order for the Goods in writing.
- 1.2. The "**Purchase Price**" (exclusive of VAT) for the Goods shall be the price quoted by the Company. The payment of the Purchase Price shall be made by the Buyer in two instalments:
  - An initial 50% deposit
  - A final 50% balance due upon completion of configuration, or in 90 days, whichever is sooner. This sets the date on which your annual support contract will commence.
- 1.3. Any cancellation of any order by the Buyer must be in writing and agreed as cancelled, also in writing, by the Company.
- 1.4. The Buyer acknowledges that its receipt of the Initial Invoice acts as Confirmation of Order.

### 2. Goods

The description and quantity of the Goods to be sold shall be as set out in the Quotation provided by the Company to the Buyer.



### 3. Delivery

The Company shall arrange delivery of the Goods to the Buyer's delivery address and, where appropriate and such Service forms part of the Order, will also arrange for the installation of the Goods.

### 4. Responsibility for Installation

The Installation of the Goods may be undertaken either by the Buyer's employees or agents, or the Company's employees or agents.

### 5. Technical Support

5.1. Any technical support purchased by you in relation to the Goods ("**Technical Support**") shall be provided in accordance with the terms, details and the provisions of this Clause 5. Technical Support shall be provided as long as an active Annual Support Contract is in place. The Annual Support Contract is charged as a percentage per annum of the System Price, inclusive of any upgrades or additions. The Company will provide the Technical Support via the telephone and/or the Internet ("**Remote Access**") and the Buyer must provide the Company with connectivity through both these channels. In circumstances where Remote Access is not available, the Company reserves the right to make a charge for Time, Mileage and Expenses incurred in providing on-site installation or support visits, should these be required. Technical Support is available between 08.30 and 17.30 GMT/BST, in English, Monday through Friday, with emergency cover on UK Public Holidays. Technical Support requests outside these hours must be logged on the Company's Web Portal, details of which have been provided to the Buyer. The Company's goal is to respond to Web Portal enquiries within 1 business day.

5.2. Work which involves moving an existing installation of the Goods to different or replacement servers, or time spent upgrading server software infrastructure, is not included within the scope of the Technical Support, and is chargeable separately on a time-and-materials basis in accordance with our standard terms and prices.

### 6. Responsibilities

6.1. The Company will provide the Goods as described.

6.2. The Buyer is responsible for the provision of relevant services, e.g. power, network stability and hardware platforms.



- 6.3. The Buyer acknowledges the need for, and undertakes to maintain, such suitable fault-tolerant and/or fail-safe systems as is necessary to fully protect people, property and the environment from the impact of a reasonable failure or malfunction of the Goods. The Buyer further undertakes to provide users of the Goods with notice of the undertaking given in this Clause 6.3 and will indemnify the Company against any loss, cost, damage or third-party action or claim arising from its use of the Goods on any other basis, or against any breach by the Buyer of this Clause 6.

## 7. Licence Agreement

- 7.1. Where the Goods include Software, then in consideration of the Buyer's payment of the Licence Fee, which is included in the Purchase Price paid by the Buyer for the Software, the Company grants to the Buyer a non-exclusive right, without right of sub-licence, to use this copy of the Software for the full period of the copyright in the Software. If the Buyer has purchased 'Fixed' Licences to use the Software, these Licences give the Buyer the right to use the Software on the designated computers. If the Buyer has purchased 'Concurrent' Licences to use the Software, these Licences give the Buyer the right to use the Software on a single network of computers. Any other use of the Software is prohibited.
- 7.2. Where the Goods include Software, the Buyer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part, and the Company reserves all rights not expressly granted, and retains title and ownership of the Software, including all subsequent copies in any media. Both the Software and any accompanying written materials are copyrighted. Where permitted, the Buyer may copy the Software for Backup purposes only. Any other duplication of the Software or the accompanying written materials is expressly forbidden. The Buyer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying. The Buyer also agrees not to provide, transmit, or otherwise make available, either the Software or the accompanying written materials to any person the Buyer does not employ.

## 8. Limited Warranty

- 8.1. Where the Goods include Software, the Buyer acknowledges that it has been offered the one or more demonstrations of the Software and has had reasonable opportunities satisfy itself that the Software has the functionality to suit the Buyer's requirements. The Buyer accepts full responsibility that the Software meets its intended requirements and acknowledges that the Software has not been developed with the Buyer's specific circumstances and needs in mind.



- 8.2. Where the Goods include Software, the Company warrants for a period of 90 days from the date this Agreement commences ("**Warranty Period**") that the Software will meet a reasonable standard of merchantability and quality bearing in mind the nature of software provided. If, within the Warranty Period, the Buyer notifies the Company in writing of any defect or fault in the Software in consequence of which it fails to conform to such warranted standard, and such defect or fault does not result from the Buyer, or anyone acting with the authority of the Buyer, having amended the Software or used it outside the terms of this licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Company, or it has not been loaded onto Company-specified or suitably configured equipment, the Company shall, at the Company's option, do one of the following:
- 8.2.1. repair the Software;
  - 8.2.2. replace the Software; or
  - 8.2.3. terminate the licence for the Software immediately by notice in writing to the Buyer and refund any of the Licence Fee paid by the Buyer as at the date of termination (less a reasonable sum in respect of the Buyer's use of the Software to the date of termination) on return of the Software and all copies thereof, provided the Buyer provides all the information that may be necessary to assist the Company in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Company to re-create the defect or fault.
- 8.3. Other than as set out in this Clause 8, the Goods are provided "as is" and the Company does not warrant that the functions contained in the Software will be uninterrupted or error free, or that any Goods provided under the terms of this Agreement are designed or intended to provide or guarantee fault-tolerance or failsafe performance.
- 8.4. The Buyer acknowledges that the proper operation of the Goods relies on third party software and hardware components including, but not limited to computers, handheld devices (including PDAs and Smartphones) and/or their operating systems, network quality and connectivity (whether wired or wireless), and access control systems ("**Third Party Components**"). Without prejudice to the Buyer's rights under Clause 8.6, the Company gives no warranty or representation whatsoever as to the suitability, functionality, performance, reliability or any other characteristic of the Third Party Components.



- 8.5. All other conditions, warranties or other terms which might have effect between the Parties or be implied or incorporated into this Agreement for the Goods or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 8.6. All Hardware supplied has a twelve-month manufacturer's warranty and will be replaced free of charge, usually on a next-working-day basis, if found to be faulty within that period.

## 9. Data Protection and GDPR

- 9.1. Each of the Parties shall comply with Applicable Data Protection Laws (**Applicable Data Protection Laws**: means (i) until 24 May 2018, the Data Protection Act 1998, or (ii) from 25 May 2018 onwards, Regulation (EU) 2016/679 of the European Parliament on the protection of natural persons with regard to the processing of personal data (also known as the General Data Protection Regulation or GDPR) and any act of UK parliament which brings this into force, and any other applicable data protection laws and regulations regarding the privacy and the protection of "personal data" or "personally identifiable information" (as defined by such laws), in connection with the exercise of its rights and the performance of its obligations under these Terms. The Company acknowledges that the Buyer is acting as a Data Controller and the Company will be the Data Processor in respect of any personal data of the Buyer (including its employees, contractors, consultants, agents and any other persons ("**Buyer Personal Data**") which the Company may access and/or process pursuant to Clause 4 ("Installation") and Clause 5 ("Technical Support") or other relevant clauses of this Agreement.
- 9.2. The types of Buyer Personal Data which may be processed by the Company and the purpose and duration of such processing are:
- 9.2.1. Types of Buyer Data Collected
- The Company will process any Buyer Personal Data which is transmitted through the Buyer's use of the Software, which may include for example an employee's name, home and work phone number, business and home email address, home address, access pass number, payroll identification number, pay rate/level and any other personal information which may be contained in databases accessed by the Company pursuant to provision of the Goods.



## 9.2.2. Purpose

The Company processes such Buyer Personal Data solely for the purposes of providing the Goods to the Buyer, and in accordance with the Agreement.

## 9.2.3. Duration

The Company will collect and process such Buyer Personal Data for the duration of the Agreement (Clause 5 "Technical Support") and for a period of up to 30 days after termination of the Agreement to allow for the deletion and/or return of Buyer Personal Data to the Buyer and will only retain anonymised data after the expiry or earlier termination of the Agreement for the purposes of improving its services.

## 9.3. To the extent that the Company processes any such Buyer Personal Data, the Company shall:

- 9.3.1. only process such Buyer Personal Data in accordance with this Clause 9, and while fulfilling the Company's responsibilities, particularly those pursuant to Clause 4 ("Installation") and Clause 5 ("Technical Support") or other relevant clauses, or in accordance with any other written instructions from the Buyer and not for its own purposes, and subject to the Protected Data Policy in place from time to time, a current copy of which can be found by [Clicking Here](#);
- 9.3.2. ensure that people processing the Buyer Personal Data are subject to the same duties of confidence as set out in the Agreement and agreed by the Parties;
- 9.3.3. upon termination of all of the Company's responsibilities pursuant to Clause 4 ("Installation") and Clause 5 ("Technical Support") or other relevant clauses, or at the Buyer's option, either securely destroy or return such Buyer Personal Data to the Buyer and delete existing copies, except where the Company is required by law to keep a copy and subject to any rights in the Agreement to use anonymised Buyer Personal Data post termination;
- 9.3.4. not transfer any such Buyer Personal Data outside of the European Economic Area unless it has complied with its applicable obligations under Applicable Data Protection Laws in ensuring adequate safeguards in relation to such transfer;
- 9.3.5. in the event that the Company receives a request, notification or complaint from a data subject or a regulatory authority which is addressed to, or intended for, the Buyer, promptly pass on such request, notification, complaint or communication to the Buyer;



- 9.3.6. assist the Buyer by implementing appropriate technical and organisational measures within its systems and processes to assist with the Buyer's obligation to respond to requests from data subjects seeking to exercise their rights under Applicable Data Protection Laws, to conduct a data protection impact assessment under Applicable Data Protection Laws and to consult with regulatory authorities under Applicable Data Protection Laws;
- 9.3.7. implement and maintain appropriate technical and organisational measures to protect Buyer Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction, damage or theft of Buyer Personal Data and having regard to the nature of the Buyer Personal Data which is to be protected. As a minimum, these should include any requirements under Applicable Data Protection Laws and the requirements set out in this Agreement; and
- 9.3.8. notify the Buyer without undue delay if it becomes aware of any accidental, unauthorised or unlawful destruction, loss, alteration, or disclosure of, or access to Buyer Personal Data (a "**Security Incident**") and provide sufficient detail of the Security Incident for the Buyer to take action to remedy the Security Incident.
- 9.4. The Buyer consents to the Company appointing sub-processors of such Buyer Personal Data under the Agreement, provided that the Company has entered or (as the case may be) will enter with such sub-processors into a written agreement incorporating terms which are the same as or substantially similar to those set out in this clause. The Company will make available to the Buyer a list of its then current sub-processors upon request by the Buyer. As between the Buyer and the Company, the Company shall remain fully liable for all acts or omissions of any sub-processors appointed by the Company pursuant to the Agreement and this clause.
- 9.5. The Company shall maintain complete and accurate records to demonstrate its compliance with this clause 9 and shall allow the Buyer and its respective auditors or authorised agents, at the Buyer's own cost and expense and upon reasonable prior written notice, to conduct audits or inspections while clause 5 is in place ("Technical Support") and for 12 months thereafter, which will include providing access to the premises, resources, personnel processor or its sub-processors (if applicable) use in connection with the provision of the Services, and provide all reasonable assistance in order to assist the Buyer in exercising its audit rights under this clause. Any such audit shall be conducted in a manner that ensures minimum disruption to the Company's day to day business operations. The purposes of an audit pursuant to



this clause shall be to verify that the Company and its Sub-processors (if applicable) are processing Buyer Personal Data in accordance with the obligations under this Agreement and Applicable Data Protection Law.

- 9.6. The Buyer represents and warrants to the Company that it has and will maintain in place all necessary and appropriate consents to enable the lawful transfer to and processing by the Company of any Buyer Personal Data for the purposes of this Agreement in compliance with the Applicable Data Protection Laws.
- 9.7. Nothing in the Agreement shall relieve the Company of its own direct responsibilities and liabilities under Applicable Data Protection Laws.
- 9.8. For the purposes of this clause 9 the terms "**data controller**", "**personal data**", "**process**" and "**processing**" shall have the meaning set out in the Applicable Data Protection Laws and "**sub-processors**" shall mean the third party sub-processors appointed by the Company for the processing of Buyer Personal Data under this Agreement.

## 10. Limitation of Liability

10.1. Except as expressly stated in Clause 10.2:

10.1.1. the Company shall not in any circumstances have any liability for any losses or damages which may be suffered by the Buyer (or any person claiming under or through the Buyer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which constitute special damage (even if the Company was aware of the circumstances in which such special damage could arise), loss of profits, loss of anticipated savings, loss of business opportunity, loss of goodwill or loss or corruption of data, provided that this Clause 10.1.1 shall not prevent claims for loss of or damage to the Buyer's tangible property that fall within the terms of Clause 10.1.2 or any other claims for direct financial loss that are not excluded by any of categories in the preceding provisions of this Clause 10.1.1;

10.1.2. the total liability of the Company, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to the Purchase Price paid by the Buyer and attributable to the relevant element of the Goods (whether Software, Hardware or Services) which gave rise to the liability; and



10.1.3. the Buyer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) the Company shall have no liability in any circumstances otherwise than in accordance with the express terms of this Agreement.

10.2. The exclusions in Clause 8.5 and Clause 10.1 shall apply to the fullest extent permissible at law, but the Company does not exclude liability for:

10.2.1. death or personal injury caused by the negligence of the Company, its officers, employees, contractors or agents;

10.2.2. fraud or fraudulent misrepresentation;

10.2.3. breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

10.2.4. any other liability which may not be excluded by law.

10.3. All dates supplied by the Company for the delivery of any of the Goods shall be treated as approximate only. The Company shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

10.4. The Company shall not be liable for any default due to any circumstances beyond the reasonable control of the Company including, but not limited to, Acts of God, war, civil unrest, riot, strike, lock out, acts of civil or military authorities, fire, flood, earthquake or shortage of supply.

10.5. All references to "the Company" in this Clause 10 shall, for the purposes of this Clause and Clause 13.4 only, be treated as including all employees, subcontractors, group members and suppliers of the Company, all of whom shall have the benefit of the exclusions and limitations of liability set out in this Clause 10.

## 11. Intellectual Property Rights

11.1. The Buyer acknowledges that all intellectual property rights in the Goods belong and shall belong to the Company or the relevant third-party owners (as the case may be), and the Buyer shall have no rights in or to the Goods other than the right to use them in accordance with the terms of this Agreement. All goodwill arising from your



use of the Goods shall inure for our benefit.

- 11.2. The Buyer shall not use any of the Company's intellectual property rights in any way without the Company's prior written consent.
- 11.3. The Buyer authorises the Company, and grants it a perpetual licence, to use its corporate logo and name for promotional purposes only. To opt out please email us at [sales@thinking-software.com](mailto:sales@thinking-software.com).
- 11.4. This Agreement shall not prevent the Company from entering into similar agreements with third parties, or from independently developing, using, selling or licensing products and/or services which are similar to the Goods provided under this Agreement.

## 12. Duration and Termination

- 12.1. This Agreement shall continue until the date on which the Buyer ceases to use any of the Goods.
- 12.2. Without affecting any other right or remedy available to it:
  - 12.2.1. the Company may terminate this Agreement with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - 12.2.2. either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if the other Party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or
  - 12.2.3. either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- 12.3. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.



#### 12.4. On termination for any reason:

12.4.1. all rights granted to the Buyer under this Agreement shall cease;

12.4.2. the Buyer shall cease all activities authorised by this Agreement;

12.4.3. the Buyer shall immediately pay to the Company any sums due to the Company under this Agreement; and

12.4.4. if requested in writing by the Company, the Buyer shall immediately destroy or return to the Company (at the Company's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Company that it has done so.

#### 13. General

13.1. If any provision or part-provision of this Agreement 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 or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

13.2. If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.3. The Company may without the consent of the Buyer sub-licence its rights or obligations or any part of this Agreement. The Buyer shall not, without the prior written consent of the Company: (a) sub-license, assign or novate the benefit or burden of this Agreement in whole or in part; (b) allow the Software to become the subject of any charge, lien or encumbrance; and (c) deal in any other manner with any or all of its rights and obligations under this Agreement.

13.4. Other than the entities referred to in Clause 10.5, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.



- 13.5. The headings in this Agreement are for ease of reference only and shall not affect the interpretation of any of the terms.
- 13.6. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.
- 13.7. The Parties acknowledge and agree that they are independent contractors under this Agreement, and nothing herein shall be construed to create a partnership, joint venture, agency, or employment relationship between them. Neither of The Parties has authority to enter into agreements of any kind on behalf of the other, and neither Party shall be considered the agent of the other.

#### 14. Non-Solicitation

The Buyer agrees during the term of, and for a period of twelve months immediately following the termination of this Agreement, the Buyer shall not approach and/or solicit any other employee of the Company for the purpose of any type of employment, any business undertaking or any other offer with respect to payment for services rendered by the Company's employee to the Buyer, in which the Company's employee is interested or concerned, whether in the capacity as an employee, secondee, consultant, servant, or otherwise.

#### 15. Entire Agreement

- 15.1. Each of the Parties confirms that this Agreement, together with the Order for any of the Goods and any amendments or additional Goods provided after the date of this Agreement, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.



15.2. Each Party confirms that:

- 15.2.1. in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Agreement; and
- 15.2.2. in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement are pursuant to this Agreement, and for the avoidance of doubt and without limitation, neither Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement).

16. Governing Law and Jurisdiction

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and submitted to the exclusive jurisdiction of the Courts of England.