



## Standard Terms and Conditions of Licence of RCT's Embedded Software

The following terms and conditions ("**Standard Terms**") apply when RCT grants a licence to you ("**Customer**") for the use of RCT's proprietary software that is embedded ("**Embedded Software**") in a product, hardware, equipment or goods supplied by RCT.

### 1. Grant of licence

1.1 RCT grants to the Customer a perpetual (subject to clause 10), non-exclusive, royalty free and non-transferrable licence to use the Licensed Software and the Documentation during the Term, for the sole purpose of the Customer's use of the Goods, subject to and in accordance with the terms and conditions set out in this Agreement.

1.2 The use of the Licensed Software is limited to the Customer's employees and workers under a contract for services.

### 2. Licence Fees

2.1 Unless RCT specifies otherwise, there are no ongoing licence fees for the grant of the Licence. Any upfront fees associated with the grant of the Licence are incorporated in the price of the Goods.

### 3. Restrictions

3.1 The Customer must not:

- (a) use the Licensed Software for any purpose or in any manner other than as set out in clause 1;
- (b) permit any third party to use the Licensed Software without RCT's prior written consent;
- (c) reproduce, make error corrections to or otherwise modify or adapt the Licensed Software or the Documentation or create any derivative works based upon the Software or the Documentation;
- (d) de-compile, disassemble or otherwise reverse engineer the Licensed Software or permit any third party to do so; or
- (e) modify or remove any copyright or proprietary notices on the Licensed Software or the Documentation.

### 4. Delivery

4.1 RCT will deliver the Licensed Software together with the Goods to the Customer, in accordance with the terms of the Supply Contract.

4.2 The Licence will commence from the time the Goods are delivered to the Customer.

### 5. Intellectual Property Rights

5.1 Nothing in this Agreement constitutes a transfer of any Intellectual Property Rights in the Licensed Software.

5.2 The Customer:

(a) acknowledges that RCT owns all Intellectual Property Rights in the Licensed Software;

(b) will not directly or indirectly do anything that would or might invalidate or put in dispute RCT's title in the Licensed Software.

5.3 If any person makes any claim alleging that any of the Licensed Software (or use of the Licensed Software) infringes any Intellectual Property Rights or Moral Rights of any person, the Customer must:

(a) promptly notify RCT in writing;

(b) not make any admissions or take any action in relation to the claim without RCT's written consent;

(c) permit RCT control over any and all investigations, negotiations, settlement and dispute resolution proceedings relating to the claim; and

(d) cooperate with, assist and act at all times in accordance with the reasonable instructions of RCT, in relation to the claim and any consequent investigations, negotiations, settlement and dispute resolution proceedings.

### 6. Title warranty

6.1 RCT warrants to the Customer that it has rights to the Licensed Software and has the authority to grant the Licence.

6.2 RCT warrants that the use of the Licensed Software will not infringe on any third party's Intellectual Property Rights.

### 7. Limited warranty

7.1 Except as expressly provided in this Agreement, due to the inherent nature of software, RCT provides the Licensed Software "as is". RCT expressly disclaims all warranties, conditions or other terms, whether express, implied or statutory, including without limitation, warranties, conditions or other terms regarding merchantability, fitness for a particular purpose or performance. RCT does not warrant that the Licensed Software will operate uninterrupted or error-free or that all errors will be corrected. In addition, RCT does not warrant that the Licensed Software or the Goods will be free of vulnerability to intrusion, attack or harmful code.

7.2 Subject to clause 7.3, RCT warrants that the Licensed Software will substantially conform to

RCT's specifications and the Documentation during the Warranty Period. If there is any Demonstrable Error during the Warranty Period, RCT will use its best efforts to rectify the Demonstrable Error.

7.3 The warranty in clause 7.2 does not apply in any of the following circumstances:

- (a) The Demonstrable Error is caused or contributed by the Customer's alteration, interference or modification of the Licensed Software without RCT's prior written consent;
- (b) The Customer did not use the Licensed Software in accordance with the Documentation or RCT's instructions;
- (c) The Demonstrable Error is caused or contributed by the Customer's use of the Licensed Software with other software, equipment, services or hardware that is not intended for the Licensed Software or authorised by RCT;
- (d) The Demonstrable Error is the result of the Customer's use of the Licensed Software other than in the environment or with the hardware recommended by RCT.

## 8. Liability

- 8.1 To the full extent permitted by law, RCT excludes all liability in respect of loss of data, interruption of business or any consequential or incidental damages.
- 8.2 To the full extent permitted by law, RCT excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement.
- 8.3 Either Party's liability for any claim relating to this Agreement will be reduced to the extent to which the other Party contributed to the damage arising from the claim.
- 8.4 This Agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, RCT limits its liability in respect of any claim to, at RCT's option:
  - (a) the replacement of the Licensed Software with a similar software (as determined by RCT);
  - (b) the rectification of the Licensed Software.

## 9. Confidentiality

- 9.1 A Party must not, without the prior written consent of the other, use or disclose the other party's Confidential Information unless expressly permitted by this Agreement or required to do so by law or any regulatory authority.
- 9.2 A Party may:
  - (a) use the Confidential Information of the other Party solely for the purposes of

complying with its obligations and exercising its rights under this Agreement; and

- (b) disclose the Confidential Information to its personnel or advisers to the extent necessary for them to know the information for purposes related to this Agreement, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.
- (c) Each Party must implement and maintain effective security measures to prevent unauthorised use and disclosure of the other Party's Confidential Information whilst it is in the receiving Party's possession or control.
- (d) Each Party must return, or at the other Party's option destroy, all Confidential Information of the disclosing Party in the receiving Party's possession or control, on the earlier of RCT's request or on termination of this Agreement for any reason.

## 10. Termination

10.1 RCT may terminate or suspend the Licence in any of the following circumstances:

- (a) RCT has reasonable grounds to believe that you are in breach of any term of the Agreement and you fail to rectify the breach within the time specified by RCT;
- (b) The Customer experiences an Insolvency Event or an Insolvency Event affecting the Customer is in RCT's sole opinion reasonably expected to occur;
- (c) The Customer ceases or threatens to cease conduct of your business in the normal course.

10.2 If RCT terminates the Licence in accordance with clause 10.1, you must cease to use the Licensed Software immediately.

## 11. Notices

Any notice shall be given by sending the notice by registered mail, courier, fax or by email to the last known address of the other Party.

## 12. Order of precedence

If there is any inconsistency between a term in this document and the Supply Contract, RCT will at its sole discretion determine which term will prevail.

## 13. General

13.1 This Agreement constitutes the entire agreement and understanding of the Parties, and supersedes all prior negotiations, understandings and representations, whether written or oral, of the Parties with respect to the subject matter of this Contract.

13.2 The Customer must not assign, sub-license or otherwise deal in any other way with any of its

rights under this Agreement without the prior written consent of RCT.

- 13.3 Nothing contained in this Agreement creates any relationship of partnership or agency between the parties.
- 13.4 If a provision of this Agreement is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- 13.5 Each Party must at its own expense do everything reasonably necessary to give full effect to this Agreement and the events contemplated by it.
- 13.6 This Agreement (and any documents executed in connection with it) is the entire Agreement of the Parties about its subject matter and supersedes all other representations, arrangements or agreements. Other than as expressly set out in this Agreement, no Party has relied on any representation made by or on behalf of the other.
- 13.7 This Agreement may be amended only by a document signed by all parties.
- 13.8 A provision of or a right under this Agreement may not be waived or varied except in writing signed by the person to be bound.
- 13.9 This Agreement may be executed in counterparts which will be taken together to constitute one document.
- 13.10 A Party will not be responsible for a failure to comply with its obligations under this Agreement to the extent that failure is caused by a Force Majeure Event, provided that the Party keeps the other closely informed in such circumstances and uses reasonable endeavours to rectify the situation.
- 13.11 All duties and other government charges in relation to this Agreement must be paid by the Customer.
- 13.12 This Agreement is governed by the laws of Western Australia and each Party submits to the jurisdiction of the courts of Western Australia.
- 13.13 Any terms and conditions that you include in your purchase order (or in any other written communications to RCT) will be of no legal effect and do not form part of this Agreement, unless RCT's authorised representative expressly agrees in writing that your terms and conditions will override these Standard Terms.

#### 14. Definitions

In this Agreement, unless the context indicates the contrary:

**Agreement** means this licence agreement for RCT's grant of the Licence to the Customer, subject to the terms and conditions in this document.

**Automation Software** includes but is not limited to the following software developed by RCT:

- (a) G-Dash
- (b) Guard Viewer;
- (c) Select;
- (d) Control;
- (e) AutoNav;
- (f) AutoLoad.

**Confidential Information** means all information provided by a Party to the other in connection with this Agreement where such information is identified as confidential at the time of its disclosure or ought reasonably be considered confidential based on its content, nature or the manner of its disclosure, but excluding:

- (a) information that enters the public domain or is disclosed to a Party by a third party, other than through a breach of this Agreement, and
- (b) information developed independently by a Party.

**Demonstrable Error** means a material error in the Licensed Software which causes:

- (a) the Licensed Software not to operate in accordance with RCT's specifications; or
  - (b) the Goods to operate in an unsafe manner, and
- which the Customer can evidence.

**Documentation** means any and all proprietary documentation made available to the Customer by RCT (at its sole discretion) for use with the Licensed Software.

**Force Majeure Event** means any event beyond the control of the relevant Party.

**Goods** means any good, equipment, product or hardware that RCT supplies to the Customer under the Supply Contract.

**Insolvency Event** means any of the following events:

- (a) voluntary administration;
- (b) any winding up or dissolution proceedings;
- (c) failure to pay debts when they fall due; or
- (d) receivership.

**Intellectual Property** includes but is not limited to all trademarks, patents, copyright, designs, marks, processes, know-how, methodology, concepts, proof of concept, models, specifications, source code, inventions, formulae, trade secrets, drawings and data or other like property or rights owned or held by the relevant Party.

**Intellectual Property Rights** means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, domain names, know how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application.

**Licence** means the licence to use the Licensed Software and Documentation granted by RCT to the Customer under this Agreement.

**Licensed Software** is any proprietary software of RCT:

- (a) that is generally embedded in the Goods;

- (b) is not Automation Software; and
- (c) to which RCT determines that this Agreement will apply to the Licence.

**Moral Rights** has the meaning given under the Copyright Act 1968 (Cth) and includes any similar rights existing in other countries.

**Supply Contract** means the supply contract between RCT and the Customer for the supply of the Goods to the Customer.

**Warranty Period** follows the warranty period for the Goods.

## 15. Interpretation

Unless the context requires otherwise:

- (a) a reference to a person includes a corporation or any other legal entity;
- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience and do not form part of this Agreement or otherwise affect the interpretation of this Agreement;
- (d) An obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (e) A reference to a Party includes that Party's executors, administrators, successors and permitted assigns,

including persons taking by way of novation;

- (f) A reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) the term "includes" (or any similar term) means "includes without limitation";
- (h) A reference to "\$" or "dollar" is to the Australian dollars (unless RCT specifies otherwise);
- (i) If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) a reference to any statute includes references to any subsequently amended, consolidated or re-enacted version of that statute and all delegated legislation or other statutory instruments made under it; and
- (k) In the interpretation of this Agreement, no rule of contract interpretation applies to the disadvantage of a Party on the basis that it put forward this Agreement or any part of it.