

CONDITIONS OF SALE

1. Interpretation

1.1 Definitions

Business Day	means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
Commencement Date	means the date the Contract commences, as set out in the Order Form;
Conditions of Sale	means these terms and conditions set out in clause 1 to clause 15 (inclusive);
Contract	has the meaning given to it in paragraph 1 of the Order Form;
Delivery Date	means the date specified in the Order Form for delivery of Equipment;
Delivery Location	means the address for delivery of the Equipment, as set out in the Order Form and, where the term “customer to collect” or similar term is used in the Order Form, the Delivery Location shall be the location designated by the Supplier for collection;
Equipment	means the equipment (or any part of them), as set out in the Order Form;
Force Majeure Event	means events, circumstances or causes beyond a party's reasonable control;
Intellectual Property Rights	means any patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
OEM	means each original equipment manufacturer for the Equipment;
Price	means the price for the Equipment, as set out in the Order Form;
Schedules	means the schedules to the Order Form;
Software	means any programmes in object code form installed on the Equipment;
Specification	means the specification for the Equipment as set out in the Order Form;
VAT	means value added tax or any equivalent tax, chargeable in the UK; and
Warranty Period	has the meaning given to it in clause 6.1 of these Conditions of Sale.

1.2 Interpretation

- (a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (b) Any phrase introduced by 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.
- (c) A reference to **writing** or **written** includes fax and emails.

2. Commencement and term

The Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, upon expiry of the Warranty Period, when it shall terminate automatically without notice.

3. Orders

- 3.1 The parties agree to use the relevant Contract number stated on the Order Form in respect of all correspondence relating to the Contract.
- 3.2 The Customer is responsible for ensuring that the Contract (including any applicable Specification) are complete and accurate. The Customer undertakes to give BCW all necessary information relating to the Equipment, that BCW reasonably requires to fulfil the Contract.
- 3.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by BCW shall be subject to correction without any liability on the part of BCW.

4. The Equipment

- 4.1 Any samples, drawings or advertising produced by BCW, and any descriptions or illustrations contained in BCW's correspondence, materials or website are produced for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Contract or have any contractual force.
- 4.2 BCW reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements, or to improve the performance or safety of the Equipment.

5. Delivery

- 5.1 BCW shall ensure that, if BCW requires the Customer to return any packaging materials to BCW, that fact is clearly stated in written correspondence to the Customer. The Customer shall make any such packaging materials available for collection at such times as BCW shall reasonably request. Returns of packaging materials shall be at BCW's expense.
- 5.2 BCW shall endeavour to deliver Equipment to the Delivery Location on or before the relevant Delivery Date.
- 5.3 Deliveries shall be made on Business Days during normal working hours. BCW may levy additional charges for any deliveries made outside such hours at the Customer's request.
- 5.4 The Customer shall be responsible (at the Customer's cost) for preparing the Delivery Location for delivery of Equipment and for the provision of all necessary access and facilities reasonably required to deliver the Equipment. If BCW is prevented from carrying out delivery on the scheduled date because no such preparation has been carried out, BCW may levy additional charges to recover its loss arising from this event.
- 5.5 Delivery is completed upon completion of unloading of the Equipment at the Delivery Location and risk in the Equipment shall pass to the Customer at that time. The Customer shall be deemed to have accepted the Equipment when the Customer has had ten (10) Business Days to inspect it after delivery and has not exercised in writing its right of rejection.
- 5.6 Delivery Dates are approximate only, and the time of delivery is not of the essence. BCW shall not be liable for any delay in delivery of any Equipment that is caused by:
 - (a) a Force Majeure Event; or
 - (b) the Customer's failure to provide BCW with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.
- 5.7 If BCW fails to deliver Equipment within sixty (60) days of the Delivery Date, its liability shall be limited to the costs incurred by the Customer in obtaining replacement goods of the same description and quality in the cheapest market available, less the Price of the Equipment. BCW shall have no liability for any failure to deliver Equipment to the extent that such failure is caused by:
 - (a) a Force Majeure Event; or
 - (b) the Customer's failure to provide BCW with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.
- 5.8 BCW may deliver Contracts by instalments, which shall be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.

6. Warranty

6.1 BCW warrants that the Equipment shall be subject to the warranties of the relevant OEM and/or its authorised distributor, including the duration of such warranties (the **Warranty Period**). Details of such warranties are available upon request.

6.2 Subject to clause , if:

- (a) the Customer gives notice in writing to BCW during the Warranty Period, that some or all of the Equipment do not comply with the warranties contained in clause ;
- (b) BCW is given a reasonable opportunity of examining such Equipment; and
- (c) the Customer (if asked to do so by BCW) returns such Equipment to BCW, the OEM or an authorised distributor, then such return shall be at the cost of the OEM and/or the distributor and, to the extent the costs are not met by the OEM and distributor, such costs shall be met by the Customer.

BCW shall, at its option and as the sole and exclusive remedy of the Customer, repair or replace any Equipment that are found to be defective or refund the price of such defective Equipment in full.

6.3 BCW shall not be liable for Equipment' failure to comply with the warranties set out in clause 6.1 if:

- (a) the defect arises because the Customer failed to follow BCW's or the OEM's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;
- (b) the defect arises as a result of BCW following any instruction, design or specification supplied by the Customer;
- (c) the Customer alters or repairs such Equipment without the written consent of BCW;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (e) the Equipment differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 BCW's only liability to the Customer if the Equipment fail to comply with the warranties set out in clause is as set out in this clause 6.

6.5 The terms implied by sections 13 to 15 of the Sale of Equipment Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.6 The terms of the Contract shall apply to any repaired or replacement Equipment supplied by BCW, with the exception of the Warranty Period, which shall continue to run from the initial delivery date for the relevant Equipment.

7. Title and risk

7.1 Risk in Equipment shall pass to the Customer on completion of unloading the Equipment at the Delivery Location from the arriving means of transport.

7.2 Title to Equipment shall only pass to the Customer once BCW receives payment in full (in cash or cleared funds) for them.

7.3 Until title to the Equipment has passed to the Customer, the Customer shall:

- (a) hold the Equipment on a fiduciary basis as BCW's bailee;
- (b) store the Equipment (at no cost to BCW) separately from all other goods and equipment held by the Customer so that they remain readily identifiable as BCW's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- (d) maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (e) notify BCW immediately if it becomes subject to any of the events listed in clause ; and
- (f) give BCW such information as BCW may reasonably require from time to time relating to:
 - (i) the Equipment; and

(ii) the ongoing financial position of the Customer.

7.4 BCW may at any time recover Equipment in which title has not passed to the Customer. The Customer irrevocably licenses BCW, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in clause , and to recover any Equipment in which property has not passed to the Customer.

7.5 BCW may at any time after delivery elect to transfer title in the Equipment to the Customer, in which case the Customer shall immediately pay the Price to the Seller.

8. Software licence

8.1 If BCW refers to a software licence in the Order Form, the price of the Equipment includes the licence fee for the Customer's right to use the Software.

8.2 If the Customer is provided with any operating system software licence in respect of the Software, the Customer shall sign and return it to BCW within seven days of installation of the software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.

8.3 If no software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:

- (a) the Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement or for normal operation of the Equipment), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without BCW's prior written consent;
- (b) the Customer shall not use the Software on any Equipment other than the Equipment, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
- (c) such licence shall be terminable by either party on 28 days' written notice, provided that BCW terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or BCW is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and
- (d) on or before the expiry of this licence, the Customer shall return to BCW all copies of the Software in its possession.

9. Product recall

9.1 If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Equipment from the market (**Recall Notice**) it shall immediately notify BCW in writing enclosing a copy of the Recall Notice.

9.2 Unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of BCW and only then in strict compliance with BCW's instructions as to the process of implementing the withdrawal.

10. Price and payment

10.1 The Customer shall pay for Equipment in accordance with this clause .

10.2 The Price excludes amounts in respect of VAT, which the Customer shall additionally be liable to pay to BCW at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice.

10.3 Unless otherwise agreed in the Order Form, BCW may invoice the Customer for the price of Equipment plus VAT at the prevailing rate (if applicable) on or at any time after the Commencement Date. BCW shall ensure that the invoice includes the Contract number and the invoice number, BCW's VAT registration number, and any supporting documentation that the Customer may reasonably require.

10.4 The Customer shall pay invoices in full in cleared funds within fourteen (14) calendar days of the invoice date. Payment shall be made to the bank account nominated in writing by BCW.

- 10.5 If the Customer fails to make any payment due to BCW under the Contract by the due date for payment, then, without limiting BCW's remedies under clause :
- (a) 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 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%; and
 - (b) BCW may suspend all further deliveries of Equipment until payment has been made in full.
- 10.6 All amounts due under the Contract from the Customer to BCW 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). BCW may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by BCW to the Customer.
- 11. Limitation of liability**
- 11.1 Nothing in the Contract shall limit or exclude BCW's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Equipment Act 1979; or
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any matter in respect of which it would be unlawful for BCW to exclude or restrict liability.
- 11.2 Subject to clause :
- (a) BCW shall not be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, for any loss of profit, any indirect or consequential loss, loss or corruption of data or information or loss of business arising under or in connection with the Contract; and
 - (b) BCW's total liability to the Customer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, shall not exceed one hundred percent of the total sums paid and/or payable by the Customer for Equipment under the Contract.
- 12. Intellectual Property Rights**
- 12.1 If BCW modifies or configures the Equipment, or applies any process to it, in accordance with a specification submitted or prepared by the Customer or any other information provided by the Customer, the Customer shall indemnify and keep indemnified BCW against all losses, damages, costs, claims, demands, liabilities and expenses (including consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by BCW in connection with, or paid or agreed to be paid by BCW in settlement of, any claim for infringement of any third party Intellectual Property Rights which results from BCW's use of the Customer's specification or such other information. The indemnity shall apply whether or not the Customer has been negligent or at fault and does not limit any further compensation rights of BCW.
- 12.2 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Equipment are and shall remain the sole property of BCW or (as the case may be) third party rights, owner.
- 12.3 BCW shall retain the property and copyright in all documents supplied to the Customer in connection with the Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of BCW.
- 12.4 BCW's Intellectual Property Rights in and relating to the Equipment shall remain the exclusive property of BCW, and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.
- 12.5 In relation to the Software:

- (a) the Customer acknowledges that it is buying only the media on which the software is recorded and the accompanying user manuals;
- (b) nothing contained in these Conditions of Sale shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and
- (c) the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence terms of use and registration requirements relating to them.

13. Compliance with relevant laws and policies

In performing its obligations under the Contract, BCW shall comply with all applicable laws, statutes and regulations from time to time in force provided that BCW shall not be liable under the Contract if, as a result of such compliance, it is in breach of any of its obligations under the Contract.

14. Termination

14.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within twenty (20) Business Days of that party being notified in writing to do so;
- (b) the other party 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), obtaining a moratorium, 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, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

14.2 Without limiting its other rights or remedies, BCW may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment.

14.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of Contract which existed at or before the date of termination.

14.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

15. General

15.1 **Force majeure.** Neither party shall be in breach of 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 a Force Majeure Event. If the period of delay or non-performance continues for three (3) months, the party not affected may terminate the Contract by giving thirty (30) days' written notice to the affected party.

15.2 Assignment and other dealings.

- (a) The Customer shall not assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of BCW.
- (b) BCW may at any time assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under the Contract.

15.3 Confidentiality.

- (a) Each party undertakes that it shall not, at any time during the term of the Contract, and for a period of two (2) years after termination or expiry, disclose to any person any confidential information concerning the business, affairs, customers, clients or BCWs of the other party, except as permitted by clause .
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors, sub-contractors or advisers to whom it discloses the other party's confidential information comply with this clause ; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

15.4 Entire agreement.

- (a) 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.
- (b) Each party agrees that it 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.

15.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.6 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract 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.

15.7 Severance. If any provision or part-provision of the Contract 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 the Contract.

15.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office 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 by hand, or sent by pre-paid first class post or other next Business Day delivery service or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered by hand, when left at the address referred in clause ; if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.9 Third party rights. No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.

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