

## BDL's Terms of Business

### I. General.

1). Definitions. In these Terms of Business, the following definitions apply:

**BDL/us:** Bergmann Direct Limited, registered in England and Wales with company number 02239435, registered office: 10 Jesus Lane, Cambridge, Cambridgeshire CB5 8BA; address for correspondence: Jubilee Place, Lindum Business Park, Station Road, North Hykeham, Lincoln LN6 3QX.

**Commencement Date:** has the meaning set out in clause II. 1).

**Contract:** the contract between BDL and the Customer for the supply of Goods and/or Services in accordance with these Terms of Business.

**Customer/you:** the recipient of the Goods and/or Services pursuant to the Contract.

**Data Protection Legislation:** (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation (EU) 2016/679 and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

**Goods:** the equipment (or any parts of it) set out in the Order.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of BDL's quotation, or overleaf, as the case may be.

**Services:** the services supplied by BDL, or its subcontractor, to the Customer.

2). The Contract constitutes the entire agreement between the parties.

Accordingly, these Terms of Business shall apply to all future business relations, even if this is not expressly agreed on. These Terms of Business apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3). Any variation of these Terms of Business shall only be effective if agreed by BDL in writing.

4). Unless the context otherwise requires, a reference to one gender in these Terms of Business shall include a reference to all other genders.

### II. Order and Conclusion of Contract.

1). The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Terms of Business. The Order shall be deemed to be accepted when BDL starts to perform delivery or other services under the Contract, takes a deposit, or (if sooner) issues an order acknowledgement, at which point and on which date the Contract comes into existence (the Commencement Date). A quotation shall not constitute an offer.

2). Once the Contract is in existence it may not be cancelled except with the written agreement of BDL. As a gesture of goodwill, BDL will normally allow cancellation of a Contract within 14 days of the Commencement Date, but all deposits are non-refundable, and BDL will normally charge for management time spent on dealing with the Order and any other costs incurred.

3). Quotation documentation, such as illustrations, drawings, weights and measures shall be taken as approximate only, unless they are expressly indicated as binding. BDL retains title and any intellectual property rights to estimates, drawings and other documentation, which may not be made available to third parties.

4). BDL reserves the right to make alterations to function or form and also to the scope of the Services during the delivery period.

### III. Supply.

1). The dates and periods indicated by BDL are approximate only, unless there has been express written agreement to the contrary, and time is not of the essence.

2). Delays in delivery or performance due to force majeure or to occurrences constituting a major hindrance to BDL or rendering BDL unable to perform (including difficulties in obtaining materials, interruptions in production, strikes, lock-outs, shortage of staff, shortage of transport, official directives, etc., and also if BDL's suppliers or their sub-suppliers are affected) shall not be the responsibility of BDL. They shall entitle BDL to extend the period for delivery or performance by the duration of the hindrance plus a reasonable period for resumption, or to withdraw from the Contract wholly or partly in respect of that part of which is unfulfilled.

3). If the hindrance extends over more than 3 months, the Customer shall be entitled, after setting a reasonable extension, to withdraw from the Contract in respect of that part of it which is unfulfilled.

4). If despatch is delayed at the Customer's request, he shall be charged the costs incurred through storage, for storage at BDL's works not less than 0.5% of the invoice sum for each month, beginning one month after notification of readiness for despatch. However, after allowing a suitable extension which then elapses without result, BDL shall be entitled to dispose of the Goods as he thinks fit and to supply within a suitably extended period.

5). Adherence to delivery dates shall be subject to the Customer's fulfilment of his contractual obligations.

6). BDL shall be entitled at all times to effect supply and performance of service in part.

### IV. Passage of Risk.

1). The risk for loss, or damage of the Goods shall pass to the Customer at the time of delivery or surrender to the Customer's carrier, or in the event that the Customer collects, at the time the Goods are placed at his disposal. On request by the Customer, and at his expense, BDL will have the consignment insured against theft, breakage and damage caused by transport, fire or water, and against other insurable risks.

2). If delivery is delayed for reasons that are the responsibility of the Customer, the risk shall be transferred to the Customer as from the day on which the Goods are made ready for despatch, however, BDL shall be obliged to obtain insurance as required by the Customer, at the latter's request and expense.

### V. Claims, Objections with regard to Defects.

1). Claims in respect of incomplete or incorrect supply or objections on grounds of obvious defects shall be submitted in writing without delay and not later than 14 days after receipt.

2). Warranty claims shall be excluded if claims or objections with regard to defects are not submitted in due time or if full payment has not been received. If notified in due time, BDL shall only be obliged to act if the warranty is as stipulated in the provisions of clause IX.

### VI. Prices and Terms of Payment.

1). The prices specified in BDL's order acknowledgement (if one) shall apply, or, if no price is quoted, the price shall be as set out in BDL's published price list in force as at the date of delivery. Prices are exclusive of VAT and packaging and delivery, unless otherwise stated.

2). Reductions in the way of cash or other discounts or other concessions shall only be granted subject to specific written agreements. Cash payment shall be taken to mean payment in cash not later than at the time the consignment is received.

3). Payment orders, cheques and bills of exchange will only be accepted after special agreement and with a view to performance, all collection and discount expenses to be charged; passing on and prolongation shall not be taken as performance.

4). The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law), within 7 (seven) days of the date of the invoice (unless alternative payment terms are agreed in writing by BDL). Time of payment is of the essence. All deposits are non-refundable.

5). BDL may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by BDL to the Customer.

### VII. Default on payment.

1). Payment shall only be considered to have been effected when BDL has received the payment in full and cleared funds. Title to the Goods shall not pass to the Customer until BDL receives payment in full and cleared funds for the Goods.

2). If the Customer defaults on payment, BDL shall be entitled to charge interest from the time in question at the rate charged by the commercial banks for open overdrafts, but not less than a rate 5% above the discount rate of the Bank of England in effect at the time, plus the current rate of turnover tax.

3). If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause VIII 2), then, without limiting any other right or remedy BDL may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) BDL may at any time:
  - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
  - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

### VIII. Termination

1). If the Customer becomes subject to any of the events listed in clause VIII 2), BDL may terminate the Contract with immediate effect by giving written notice to the Customer.

2). For the purposes of clause VIII 1), the relevant events are:

- (a) the Customer 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (g) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause VIII 2). (a) to clause VIII 2). (f) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (k) the Customer's financial position deteriorates to such an extent that in BDL's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

3). Without limiting its other rights or remedies, BDL may suspend provision of the Goods under the Contract or any other contract between the Customer and BDL if the Customer becomes subject to any of the events listed in clause 2). (a) to clause 2). (l), or BDL reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment.

4). On termination of the Contract for any reason the Customer shall immediately pay to BDL all of BDL's outstanding unpaid invoices and interest, and, in the event that the Customer is unable to pay for any Goods already delivered, it shall either return those Goods or allow BDL to enter its premises and take possession of them. The Customer may not deal in any way with Goods which have not been paid for in full.

5). Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

6). Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

### IX. Warranty.

1). BDL warrants that on delivery, and for the warranty period of six months, or such other warranty period as is stated on BDL's order acknowledgement, (the "Warranty Period"), the Goods shall (a) conform in all material respects with their description and any applicable specification, (b) be free from material defects in design, material and workmanship, (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979), and (d) be fit for any purpose held out by BDL.

2). Subject to condition XI 3 below, if (a) the Customer gives BDL written notice during the Warranty Period and within 5 business days of discovery that the Goods do not comply with the warranty in condition IX 1 and BDL is given a reasonable opportunity of examining such Goods, and the Customer (if asked to do so by BDL) returns such Goods, BDL shall, at its option, repair or replace the defective Goods (the defective parts only), or refund the price of the defective Goods or components. For any component parts supplied by other manufacturers, BDL shall only provide replacement in accordance with the warranty terms of the manufacturer. Service, regulation and readjustment work shall fall outside the terms of the warranty.

3). BDL shall not be liable for Goods' failure to comply with the warranties set out in condition IX 1 above if (a) the defect arises because the Customer failed to follow BDL's instructions as to installation, use, maintenance, etc., or is due to any specification given by the Customer, or arises as a result of fair wear and tear, wilful damage, negligence, abnormal working conditions, or intervention by third parties, or (b) the Customer repairs or alters the Goods, or makes further use of them after giving notice under condition IX 2.

4). BDL shall be liable for replacements and repair work to the same extent as for the original supplies.

5). Claims for compensation arising from inability to perform, default, positive violation of claims, negligence in contracting or unlawful actions shall be excluded, unless they are based on premeditation or gross negligence on the part of BDL. In these cases the Customer shall be entitled to withdraw, to the exclusion of all other claims, including those arising from clauses 1) - 4).

### X. Limitation of Liability

1). Nothing in these Terms of Business shall limit or exclude BDL's liability for (a) death or personal injury caused by its (or its employees', agents' or subcontractors') negligence, (b) fraud, (c) any matter in respect of which it would be unlawful for BDL to exclude or restrict liability.

2). Subject to X 1, BDL shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss, or for loss of profit, and BDL's total liability to the Customer shall not exceed twice the Contract price.

3). BDL excludes all conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, to the fullest extent permitted by law.

### XI. Data Protection

1). Both parties will comply with the Data Protection Legislation. Where you give us personal data as the data controller and instruct us to process it, as a data processor, you will ensure that you have all necessary and appropriate consents and notices in place to enable lawful transfer of the personal data to us for the duration and purposes of the Contract, and for the processing of that personal data as envisaged by the Contract. **As a minimum, we shall:** process that personal data only on your written instructions (unless we are required by law to act without your prior instruction) or as is necessary to perform the Contract; ensure that we have in place appropriate technical and

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organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction; ensure that all personnel who have access to personal data are obliged to keep it confidential; not transfer any personal data outside of the EEA; not appoint a sub-processor without your written consent and always under a written contract; assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with your obligations under the Data Protection Legislation; notify you without undue delay on becoming aware of a personal data breach; at your written direction, delete or return personal data and copies thereof to you on termination of the Contract unless required by law to store the personal data; maintain complete and accurate records and information to demonstrate our compliance with this clause.

2). Where we, as a data controller, collect personal data from you, we do so under the terms of our Privacy Notice, a copy of which is available on our website.

## **XII. General**

1). Place of performance for all contractual commitments shall be the registered office of BDL.

2). The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

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

4). Should any provision of the Contract be invalid or illegal, it shall be deemed modified to the minimum extent necessary to make it valid and legal.

5). A person who is not party to the Contract may not enforce it.

6). Save as set out in the Contract, the Contract may not be amended save in writing signed by BDL.

7). BDL shall be entitled to correct at any time any arithmetical or typographical error or omission in any documentation relating to or arising out of the Contract.