

Terms and Conditions for Purchasing Goods and/or Services

1. Interpretation

1.1 Definitions

BBI means BBI Solutions OEM Limited (registered in England and Wales (company number 08368483) whose registered office is at c/o Berry Smith LLP, Haywood House, Dumfries Place, Cardiff, CF10 3GA.

BBI Materials: as defined in *clause 5.3.8*.

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Business Hours: the period from 9.00am to 5.00pm on any Business Day.

Commencement Date: has the meaning given in *clause 2.4*.

Conditions means the terms and conditions set out in this document as amended from time to time in accordance with *clause 17.4*.

Contract means the contract between BBI and the Supplier for the sale and purchase of the Goods and/or Services in accordance with these Conditions.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services, in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports.

Delivery Date means the date specified in the Order.

Delivery Location means the address for delivery of Goods as set out in the Order.

Goods means the goods (or any part of them) set out in the Order.

Mandatory Policies: means BBI's business policies made available to the Customer upon request.

Order means BBI's order for the Goods and/or Services, as set out in BBI's purchase order or in BBI's written acceptance of the Supplier's quotation.

Specification means the applicable specification for the Goods and/or Services, including any related plans and drawings, that is agreed in writing by BBI and the Supplier.

Services: means the services to be provided by the Supplier under the Contract as set out in the Specification.

Supplier means the person or firm from whom BBI purchases the Goods and/or Services.

1.2 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.3 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.4 a reference to **writing** or **written** includes faxes and emails.

2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by BBI to purchase the Goods and/or Services from the Supplier in accordance with these Conditions.

2.3 The Supplier must provide BBI with an acknowledgment of receipt of the Order within twenty four (24) hours.

2.4 The Order shall be deemed to be accepted on the earlier of:

2.4.1 the Supplier issuing a written acceptance of the Order without change to the terms of the Order; and

2.4.2 the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence

(Commencement Date).

2.5 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

2.6 The Conditions shall apply to the supply of both Goods and Services, except where the application to one or the other is specified.

3. Supply of Goods

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 correspond with their description and any applicable Specification;

3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by BBI expressly or by implication, and in this respect BBI relies on the Supplier's skill and judgement;

3.1.3 where they are manufactured products, be free from defects in design, material and workmanship and remain so for the shelf life and/or warranty period as identified by the Supplier ; and

3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.3 BBI may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.4 If following such inspection or testing BBI considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at *clause 3.1*, BBI shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 BBI may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. Delivery of Goods

4.1 The Supplier shall ensure that:

4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.3 if the Supplier requires BBI to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

4.2.1 on the Delivery Date;

4.2.2 at the Delivery Location; and

4.2.3 during Business Hours, or as instructed by BBI.

4.3 Delivery of the Goods shall be completed upon confirming receipt of the Goods in writing by BBI's representative after unloading the Goods at the Delivery Location.

4.4 The Supplier shall not deliver the Goods in instalments without BBI's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment shall entitle BBI to the remedies set out in *clause 6*.

4.5 If the Supplier:

4.5.1 delivers less than 95% of the quantity of Goods ordered, BBI may reject the Goods; or

4.5.2 delivers more than 105% of the quantity of Goods ordered, BBI may at its sole discretion reject to Goods or the excess Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and BBI accepts the delivery, the Supplier shall make a pro-rata adjustment to the invoice for the Goods.

5. The Services

5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to BBI in accordance with the terms of the Contract.

5.2 The Supplier shall meet any performance dates for the Services that BBI notifies to the Supplier.

5.3 In providing the Services, the Supplier shall:

5.3.1 co-operate with BBI in all matters relating to the Services, and comply with all instructions of BBI;

5.3.2 perform the Services with reasonable care and skill in accordance with best practice in the Supplier's industry or trade;

5.3.3 use personnel who are suitably skilled and experienced to perform the Services;

5.3.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification;

5.3.5 provide all equipment, tools, vehicles and such other items as required to provide the Services;

5.3.6 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

5.3.7 observe all health and safety rules and regulations and any other security requirements that apply at any of BBI's premises;

5.3.8 hold all materials, equipment and tools, drawings, specifications and data supplied by BBI to the Supplier (BBI Materials) in safe custody at its own risk, maintain BBI Materials in good condition until returned to BBI, and not dispose of or use BBI Materials other than in accordance with BBI's written instructions or authorisation; and

5.3.9 not do or omit to do anything which may cause BBI to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that BBI may rely or act on the Services.

6. BBI Remedies

6.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, or both, then, without limiting any of its other rights or remedies, BBI may exercise any one or more of the following remedies:

6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

6.1.2 to refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Supplier attempts to make;

6.1.3 to recover from the Supplier any costs incurred by BBI in obtaining substitute goods and/or services from a third party;

6.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and

6.1.5 to claim damages for any other costs, loss or expenses incurred by BBI which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in *clause 3.1*, then, without limiting or affecting other rights or remedies available to it, BBI shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:

6.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

6.2.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

6.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;

6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

6.2.5 to recover from the Supplier any expenditure incurred by BBI in obtaining substitute goods from a third party; and

6.2.6 to claim damages for any additional costs, loss or expenses incurred by BBI arising from the Supplier's failure to supply Goods in accordance with *clause 3.1*.

6.3 If the Supplier has supplied Services that do not comply with the requirements of *clause 5.3*, then, without limiting or affecting other rights or remedies available to it, BBI shall have one or more of the following rights and remedies:

6.3.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

6.3.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;

6.3.3 to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services;

6.3.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

6.3.5 to recover from the Supplier any expenditure incurred by BBI in obtaining substitute services or deliverables from a third party; and

6.3.6 to claim damages for any additional costs, loss or expenses incurred by BBI arising from the Supplier's failure to comply with *clause 5.3*.

6.4 These Conditions shall apply to any repaired or replacement Goods, or substituted or remedial Services supplied by the Supplier.

6.5 BBI's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

7. Title and risk

Title and risk in the Goods shall pass to BBI on completion of delivery.

8. Price and payment

- 8.1 The price of the Goods shall be the price set out in the Order.
- 8.2 The price of the Goods:
 - 8.2.1 excludes amounts in respect of value added tax (**VAT**), which BBI shall additionally be liable to pay, if applicable, to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - 8.2.2 includes the costs of packaging, insurance and carriage of the Goods.
- 8.3 No extra charges shall be effective unless agreed in writing with BBI.
- 8.4 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by BBI, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.5 In respect of the Goods, the Supplier may invoice BBI for price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery. In respect of the Services, the Supplier shall invoice BBI on completion of the Services. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, BBI's order number, the Supplier's VAT registration number and any supporting documents that BBI may reasonably require.
- 8.6 BBI shall pay correctly rendered invoices for Goods and/or Services 45 days after the end of month of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 8.7 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 1% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.
- 8.8 BBI may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to BBI against any liability of BBI to the Supplier.

9. BBI materials

The Supplier acknowledges that all **BBI Materials** supplied by BBI to the Supplier and all rights in BBI Materials are and shall remain the exclusive property of BBI. The Supplier shall keep BBI Materials in safe custody at its own risk, maintain them in good condition until returned to BBI and not dispose or use the same other than in accordance with BBI's written instructions or authorisation.

10. Intellectual Property Rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any BBI Materials) shall be owned by the Supplier.
- 10.2 The Supplier grants BBI, or shall procure the direct grant to BBI of a fully paid-up, worldwide, non-exclusive, royalty free, perpetual and irrevocable license to use, copy and modify the Deliverables (excluding any BBI Materials) for the purposes of receiving and using the Services and the Deliverables.

11. Indemnity

- 11.1 The Supplier shall keep BBI indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by BBI as a result of or in connection with:
 - 11.1.1 any claim made against BBI for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - 11.1.2 any claim made against BBI by a third party for death, personal injury or damage to property arising out of or in connection with defects in the Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - 11.1.3 any claim made against BBI by a third party arising out of or in connection with the supply of the Goods and/or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
 - 11.1.4 any claim against BBI that the Goods supplied by the Supplier have not been manufactured and/or supplied in accordance with (EC) Regulation N° 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation and Authorization of Chemicals (REACH),
- 11.2 This *clause 11* shall survive termination of the Contract.

12. Insurance

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, public liability insurance and transport insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on BBI's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

13. Confidentiality

- 13.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 13.2 This *clause 13* shall survive termination of the Contract.

14. Compliance with relevant laws and policies

- 14.1 In performing its obligations under the Contract, the Supplier shall:
 - 14.1.1 comply with all applicable laws, statutes, regulations and codes from time to time in force; and
 - 14.1.2 comply with the Mandatory Policies.

- 14.2 In addition to clause 14.1, the Supplier accepts and understands that, where relevant, the Supplier will be responsible for ensuring that the Goods provided comply with the requirements of REACH, the EU regulation on the control of chemicals (or equivalent local laws in the applicable territory) and will be manufactured in accordance with the specifications methods processes and procedures set out.
- 14.3 BBI may immediately terminate the Contract for any breach of *clause 14*.

15. Termination

- 15.1 BBI may terminate the Contract in whole or in part at any time before delivery of the Goods and/or performance of the Services with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. BBI shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods and/or Services at the time of termination according to subclause 15.1, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 15.2 Without limiting its other rights or remedies, BBI may terminate the Contract with immediate effect by giving written notice to the Supplier if:
 - 15.2.1 the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
 - 15.2.2 the Supplier 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;
 - 15.2.3 the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his 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;
 - 15.2.4 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 15.2.5 the Supplier's financial position deteriorates to such an extent that in BBI's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 15.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 15.4 Clauses that expressly or by implication survive termination of the Contract shall continue in full force and effect.

16. 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 it if such delay or failure results from an event, circumstance or cause beyond its reasonable control. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate the Contract by giving 5 days written notice to the affected party.

17. General

17.1 Assignment and other dealings

- 17.1.1 BBI may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

- 17.1.2 The Supplier may not assign, transfer, mortgage, charge, 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 BBI.

- 17.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of BBI. If BBI consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

- 17.3 **Entire agreement.** 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.

- 17.4 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by BBI.

- 17.5 **Waiver.** Except as set out in *clause 2.52-52.4*, 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.

- 17.6 **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.

17.7 Notices.

- 17.7.1 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 (if it is a company) or its principal place of business (in any other case) 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 personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

- 17.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in *clause 17.7.1*; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

- 17.7.3 This clause does not apply to the service of any proceedings or other documents in any legal action, or other method of dispute resolution.

- 17.8 **Third party rights.** No one other than a party to the Contract shall have any right to enforce any of its terms.

- 17.9 **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.

- 17.10 **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.