

Terms and Conditions of Sale

Definition of expressions used within these terms & conditions.

The "Seller" shall mean BERU f1systems Ltd, BF1 Connect or any other trading title used by BERU f1systems Ltd

The "Purchaser" shall mean the person, business or company that places an order for goods or services that is accepted by the Seller.

"Contract" shall mean any contract between the Seller and Purchaser for the sale of goods or supply of services.

"Goods" shall mean any goods which the Seller supplies to the Purchaser under a contract.

"Services" shall mean any service, which the Seller provides to the Purchaser under any contract.

The following conditions shall apply:

1 Quotations and Acceptance

- (a) Quotations are valid for 30 days and represent no obligation until the Seller acknowledges the Purchaser's Order.
- (b) The Seller's conditions shall apply to the entire exclusion of those of the Purchaser, and no variation thereof shall be binding upon the Seller unless and until accepted in writing by a duly authorised person on behalf of the Seller.
- (c) All orders must be received in writing, telephone orders will not be accepted.
- (d) By submitting an order to the Seller, the Purchaser agrees to be subject to these conditions in their entirety. All orders must be bona fide commitments showing quantities and specification required.

2 Price and Delivery

- (a) Prices quoted do not include V.A.T. where applicable.
- (b) All quoted prices will be in GBP Sterling. Any translation to other currencies will be at a rate specified by the seller with reference to accredited sources. The seller reserves the right to amend the rate used if material deviations, >5%, to the exchange rate occur between quotation and order date.
- (c) Delivery will be ex-works and goods will be packed to the Seller's normal specification in non-returnable packing. Carriage will be arranged at the Purchaser's request and expense. Any applicable C.O.D. charges will be added to the price of the goods.
- (d) Any delivery period quoted is an estimate only and commences from the Seller's acknowledgement of the Purchaser's order. Provided the Seller takes all reasonable steps to deliver the goods at the time stated, the Seller shall be under no liability for any delay or failure in delivery.
- (e) The Seller reserves the right to deliver in more than one consignment and to invoice each consignment separately.
- (f) Purchasers outside the U.K. are responsible at their own expense for obtaining any import licence required in the country of destination; the Seller is responsible for seeking any necessary licence to export from the U.K. unless the Purchaser's office issuing the order is located in the UK.
- (g) All contracts for export from the U.K. shall be in accordance with INCOTERMS 2000 Edition or any amendment or re-publication thereof for the time being in force at the date of the contract.
- (h) The Seller may invoice the Purchaser for the goods or services at any time after despatch, or for the services on or any time after performance commences. In the case of pro-forma orders the Seller will provide documentation prior to despatch to enable payment to be actioned.

3. Blanket ordering, stock holding.

- (a) Blanket orders requiring periodic call off will be accepted, with the following conditions.
 - a. The Purchaser holds a suitable credit facility with the Seller.
 - b. The order is received in writing, specifying required quantities to be delivered within an acceptable period.
 - c. The Seller reserves the right to deliver and charge in full for all items held for the Purchaser not called for by the end of the order period covered by the blanket order.
- (b) The Seller will hold stock on behalf of the buyer to enable call off situations only after formal acceptance of order.
- (c) All items held on behalf of the Purchaser will be taken within the time period specified.

4 Cancellation, rescheduling and termination of orders

- (a) Orders for products accepted by the Seller may be cancelled or rescheduled by the Purchaser only with the written consent of the Seller (which consent the Seller may withhold for any reason) and the Purchaser shall indemnify the Seller against the cost of all labour and materials used in connection with the order cancelled or varied and against all loss, damage cost, charges and expenses suffered or incurred by the Seller as a result of the cancellation or variation.
- (b) Either party may terminate a contract for supply immediately at any time by written notice to the other party if the other party commits a material breach of the contract for services which is incapable of remedy or which it fails to remedy within thirty (30) days of receiving written notice requiring it to be remedied.
- (c) The Seller reserves the right to charge for any administration costs or aborted delivery charges incurred due to cancellations or variations to confirmed orders.

5 Title and Risk

- (a) Legal title to the goods shall remain with the Seller until such time as the Seller has received full payment of the price of the goods and the price of any other goods or services previously or subsequently supplied by the Seller to the Purchaser whereupon such title shall pass to the Purchaser. Insofar as the goods may be delivered to the Purchaser prior to the time when title thereto passes to the Purchaser as aforesaid the Purchaser shall until such time hold the goods as the fiduciary agent and bailee of the Seller and shall accordingly remain liable to account to the Seller for the goods or, if the same shall be sold by the Purchaser (which the Purchaser shall be entitled to do as the fiduciary agent of the Seller but as between the Purchaser and the Purchaser's customer, only as principal and without creating any relationship, disclosed or undisclosed, between the Seller and such customer), for all of the proceeds, tangible and intangible (and including without limitation insurance proceeds and proceeds of proceeds) thereof. The Purchaser shall, as trustee for the Seller, pay such proceeds into a back account separate from all other bank accounts and other monies and assets of the Purchaser and of third parties. The Purchaser shall store the goods separate from any other goods of the Purchaser and of third parties and shall identify the goods as the property of the Seller. The Purchaser shall not remove any identifying marks placed on the goods by the Seller.
- (b) Notwithstanding the retention by the Seller of legal title to the goods, (i) risk in the goods shall pass to the Purchaser on delivery to the Purchaser's delivery address and the Purchaser shall arrange for the Seller's interest in the same to be noted on all relevant insurance policies and (ii) the Seller shall be entitled to maintain any action against the Purchaser for the price of the goods or any part thereof.
- (c) The Purchaser may exercise its right to sell the goods as the fiduciary agent to the Seller in the usual course of the Purchaser's business but such right: (i) may be revoked at any time by the Seller. Giving notice to that effect if the Purchaser is in default for longer than seven days in the payment of any sum whatsoever due to the Seller (whether in respect of the goods or of any other goods or services supplied at any time by the Seller to the Purchaser or for any reason whatsoever), or if the Seller has bona fide doubts as to the solvency of the Purchaser and (ii) shall automatically cease if a receiver, manager or administrator is appointed over the assets, undertaking or property of the Purchaser, or a winding-up or administration order against the Purchaser is made or petitioned, or any petition order in bankruptcy against the Purchaser is presented or made, or the Purchaser goes into voluntary liquidation (otherwise than for the purposes of reconstruction or amalgamation while solvent) or calls a meeting or makes arrangements or compositions with creditors.
- (d) Upon determination of the Purchaser's rights of sale under Condition (c)(i) or (c) (ii) above, the Purchaser shall place the goods at the disposal of the Seller (who shall be entitled to enter any premises of the Purchaser for the purpose of removing the goods and to remove the goods from the said premises) and/or, as the case may be, pay to the Seller the proceeds then held by the Purchaser as trustee for the Seller in accordance with Condition 3(a)

6 Terms of Payment and Set Off

- (a) Payment deliveries shall be due 30 days from date of invoice except where the Seller has agreed with the Purchaser other contractual arrangements. The Seller reserves the right to charge interest at 2% per month on any sum outstanding after the due date. Pro-forma orders will only proceed upon receipt of cleared funds for the full due amount of the order placed.
- (b) Any discounts specified by the Seller shall apply only where payment is received as detailed by written contract.
- (c) Payment shall not be withheld on account of any claim by the Purchaser against the Seller.
- (d) The Seller reserves the right to suspend deliveries where payment for any order, related or otherwise, has not been made by the due date and remains outstanding.
- (e) If at any time any sum of money becomes payable by the Seller to the Purchaser under or in connection with the contract or any breach thereof by the Seller, the Seller shall be entitled, in addition to any other rights of set-off conferred by law, to set-off against such sum any amount then due, or which may at any time thereafter become due, to the Seller from the Purchaser (or any other company in the BERU Group of Companies) under the contract or any other contract, order or transaction between the Seller (or any such other company) and the Purchaser.

7 Description and Data

- (a) Where the Seller is the manufacturer, goods will be supplied substantially as described but the right is reserved to make design changes which do not lower their performance, affect their mechanical interchange ability, increase their price or effect their conformance to applicable safety, statutory or regulatory requirements. Where the Seller is not the manufacturer, goods will be supplied to the manufacturer's current specification and finish.
- (b) The Seller shall make every effort to ensure the accuracy of technical data or literature relating to the goods, but the Seller (so far as permitted by law) accepts no liability in contract, tort or otherwise for any damage or injury arising directly or indirectly from any error or omission in such technical data or literature.

8 Guarantee

- (a) Subject to 6(a) the Seller guarantees at its discretion to refund the price of or to repair or replace free of charge, any of the goods found to its satisfaction to be defective within 12 months of the date of delivery owing to faulty design, materials or workmanship, provided that the goods have not been modified or repaired other than by the Seller and have been operated, stored and maintained within the Seller's recommendation for use. In the case of goods repaired or replaced by the Seller the guarantee shall terminate at the end of the original guarantee period.
- (b) Goods returned under this guarantee must be delivered to the Seller's premises at the Purchaser's expense accompanied by the Seller's original packing note and a statement of the reason for the return.
- (c) The Seller's liability under Conditions 6(a) and 7(a) is the sole liability of the Seller as regards the quality, fitness, description or correspondence with sample of the goods. All other representations, warranties, conditions, terms and statements in such regard, express or implied, statutory or otherwise, are excluded save where not capable or exclusion at law.
- (d) Goods shall not be considered defective for the purposes of these Conditions unless (i) they are not in accordance with any specification of the Purchaser accepted in writing by the Seller or (ii) if there is no such specification or to the extent that such specification is silent as to any aspect of the design, function, performance, tolerances, quality or characteristics of the goods, the goods do not conform to the Seller's published information (if any) or otherwise to the

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standard which the Seller considers normal or usual for products of the kind sold at a similar price the Seller is not in a position to ensure that the Purchaser's specification is correct and/or sufficient for the purposes intended by the Purchaser and the Purchase is solely responsible therefore.

9 Goods not manufactured by the Seller

- (a) Goods not manufactured by the Seller are supplied on condition that the Seller's liability in contract, tort or otherwise shall in no circumstances extend beyond the liability to the Seller or the manufacturer or supplier of such goods. In particular, but without limitation, the benefits of the supplier/manufacturer's guarantee or warranty attaching to the goods or software shall be made available to the Purchaser and Condition 6(a) shall not apply.
- (b) By ordering goods the Purchaser agrees to (i) comply with the terms of any licence granted to the Seller in respect thereof and (ii) indemnify the Seller and keep it indemnified against any claim made by the relevant licensor against the Seller as a result of any act or omission on the part of the Purchaser.
- (c) Details of the aforementioned guarantee, warranty and licence (if applicable) are available on request from the Seller.

10 Force Majeure.

The Seller shall have no liability in respect of failure or delay in delivery or in performance of any obligations under the contract due to any cause outside the Seller's control, including but not limited to act of God, fire floods, war, civil disturbances, tempest, terrorism, riot, act of Government, currency restriction, industrial disputes, unavailability of materials or failure of supplier, carrier or sub-contractor to deliver on time.

11 Intellectual Property Rights.

- (a) The sale of the goods and the publication of any information or technical data relating thereto does not imply, and the Seller gives no warranty as to, freedom from the patent, registered design or other industrial property rights of this parties (whether arising or created before or after the date of delivery of the goods) ("IPR") in respect of the goods or any particular application thereof or any method in which the goods are used to disposed of or any combination of the goods with or into any other product (whether or not supplied by the Seller), whether or not that application, method or combination is the only application, method or combination in which the goods can be disposed of or used.
- (b) The Purchaser warrants that any design and specifications supplied or specified by it to the Seller will not involve the infringement of any IPR in the manufacture and sale of the goods by the Seller.
- (c) The Purchaser undertakes to indemnify and keep indemnified the Seller against all royalties, claims, actions, demands, proceedings, losses and costs in connection with any infringement or alleged infringement of any IPR arising out of or in connection with the matters described in paragraphs (a) and/or (b) above.
- (d) The Purchaser will keep confidential any and all confidential information that it may acquire. The Purchaser will not use the confidential information for any purpose other than to perform the obligations under the contract. The Purchaser will ensure its officers and employees comply with the provisions of this condition 10(d). The obligations on the Purchaser set out in this condition will not apply to any information which is publicly available or becomes publicly available through no act or omission of the Purchaser or if the Purchaser is required to disclose by order of a court of competent jurisdiction.

12 U.S. Export Control Regulations

- (a) The Seller shall in no circumstances be liable for any damage, loss or claim howsoever occasioned by an act or omission on the part of the Purchaser in contravention of any regulations issued by the United States Government concerning the export of goods, services or technology.
- (b) Any goods supplied by the Seller whose export from the United Kingdom is restricted by any aforementioned regulations shall not be exported by the Purchaser without the prior approval of the relevant authorities concerned with the administration of such regulations.

13 Purchaser's Items

Items supplied by the Purchaser for the contract shall be of suitable quality and shall be provided free of charge in the quantities and at the times required by the Seller. Any defect in such items shall not entitle the Purchaser to rescind the contract, reject the goods, make deductions from the contract price or claim damages in respect of such defect and the Purchaser shall indemnify and keep indemnified the Seller from and against all actions, demands, claims, proceedings, losses or costs arising from the supply of defective items by the Purchaser.

14 Limitation of Liability

- (a) Save in the case of personal injury or death caused by the negligence of the Seller and other than as provided in Conditions 6 & 7, the Seller shall not be liable in contract, tort, breach of statutory duty or otherwise for any loss, injury, destruction or damage suffered by the Purchaser whatsoever or howsoever arising out of or in connection with the supply of goods or services by the Seller.
- (b) If for any reasons the provisions of Conditions 6, 11 & 14 are of no effect in respect of a claim against the Seller, the Seller's liability in respect of that claim shall in no event exceed the price paid for the relevant goods or services by the Purchaser.
- (c) The Seller accepts no liability whether in contract, tort, breach of statutory duty or otherwise for any loss of use, profits or contracts or for any other form of consequential or indirect loss or damage.

15 Termination

The Seller may by written notice terminate the contract immediately if the Purchaser:

- (a) Is in material breach of any of the terms of contract. Failure to pay the sums due in accordance with condition 5 is a material breach of the terms of contract, which is not capable of remedy.
- (b) Becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed, ceases to trade or appears in the reasonable opinion of the Seller likely or is threatening to cease trade.
- (c) Has any distraint, execution or other process levied or enforced on any of its property; or
- (d) The equivalent of any of the above occurs to the Purchaser under the jurisdiction to which the Purchaser is subject.

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- (e) The termination of the contract howsoever arising is without prejudice to the rights, duties and liability of either the Purchaser or the Seller accrued prior to termination. The conditions, which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination, which shall include but shall not be limited to the Purchasers obligations in relation to any guarantee.

16 Law

Any question relating to any quotation or any contract subject to these conditions or agreed amendment of these conditions shall be determined in all respects by the Laws of England.