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## **Standard Terms and Conditions of Supply – Project, Goods or Services**

### **1. DEFINITIONS**

Unless otherwise specified or dictated by context, the following definitions apply;

"Agreement" means a contract for the supply by Blue River Controls Limited to the Client of the Goods and/or the Services incorporating these terms and conditions.

"Company" means the company registered as Blue River Controls Limited.

"Confidential Information" means any information designated as "confidential" disclosed by either party to the other.

"Client" means the legal entity accepting a Blue River Controls Limited written or oral quotation for the supply of Goods or Services or whose order for Goods or Services is accepted by Blue River Controls Limited or the party otherwise commissioning the Services in each case as named on the Invoice.

"Goods" means hardware, software or peripheral products ordered by the Client, accepted by Blue River Controls Limited and specified on the Invoice.

"Invoice" means the document sent by Blue River Controls Limited to the Client, demanding payment for the Products or the Services and containing, recording and evidencing contractual terms relating to the Agreement.

"Total Price" means the total charge for the Project, Goods or Services made to the Client, exclusive of Value Added Tax.

"Project" means hardware, software or peripheral products in respect of which Services are either bundled with those products or required under a Service Offering ordered by the Client, accepted by Blue River Controls Limited and specified on the Invoice, and such additions or changes thereto as may from time to time be agreed in writing between the parties.

"Services" means the services to be performed by Blue River Controls Limited pursuant to the Service Offering selected by the Client.

"Service Offering(s)" means the service options offered by Blue River Controls Limited for Projects or Goods.

"Third Party Products" means Goods not manufactured, assembled, authored or configured by Blue River Controls Limited and supplied to Blue River Controls Limited by third parties for re-supply by Blue River Controls Limited.

### **2. PROJECT, GOODS AND SERVICES**

2.1. Company shall supply and the Client shall purchase, the Project or Goods and/or the Services as principals only, to the intent and with the effect that no other party shall have any rights or obligations, or be entitled to sue or liable to be sued, under the Agreement.

2.2. The Project, Goods and Services are supplied subject to the terms and conditions of this Agreement to the exclusion of any other terms or conditions of the Client and variations or amendments must be confirmed by Company in writing.

### **3. DELIVERY, TITLE AND RISK**

3.1. The Project or Goods are delivered to Client's facility or other agreed delivery point.

3.2. Circumstances may cause the Project or Goods to be delivered by instalments.

3.3. Delivery dates are approximate.

3.4. The cost of packaging and delivery shall be agreed and met by the Client unless specified otherwise in a written quotation.

3.5. Risk passes from Company to Client on delivery.

3.6. Title to Project or Goods only passes to Client when full payment is made and Company shall be entitled at any time before title passes (without any liability) to:

- (i) terminate Client's right to use, sell or otherwise deal in Project or Goods, and
- (ii) enter the premises of Client and re-possess Project or Goods, and
- (iii) use or sell the Projects or Goods, and
- (iv) charge recovery costs.

#### 4. INTELLECTUAL PROPERTY RIGHTS

4.1. Company warrants that no patent, copyright, registered design, design right or trade mark ("Intellectual Property Rights") is infringed and shall indemnify Client, subject to the limitations set forth in Clause 12, in the event of any claim for infringement existing at the date of formation of the Agreement arising from the use of the Project or Goods, against all reasonable costs and damages awarded against Client in any action for such infringement, or for which Company may become liable in any such action, provided always that Company shall not be liable to so indemnify Client in the event that:

- (i) such infringement arises as a result of Company having followed a design or instruction furnished or given by Client, or
- (ii) the Project or Goods having been used in a manner or for a purpose not specified by or disclosed to Company prior to the date of the Agreement, or
- (iii) the Project or Goods have been modified without the Company's prior written authorisation, or
- (iv) Client has failed to give Company the earliest possible notice in writing of any claim made or to be made or of any action threatened or brought against Client and/or Client has failed to permit Company, at Company's expense, to conduct and control any litigation that may ensue and all negotiations for a settlement of the claim, or
- (v) Client has made without Company's prior written consent any admission that is or may be prejudicial to Company in respect of any such claim or action.

4.2. Client shall indemnify Company from costs, demands, expenses and liabilities claims incurred by or made against it as a direct or indirect result of Projects, Goods or Services supplied in accordance to Clients requirements or Third Party Products or products supplied by the Client for integration purposes (whether used separately or in combination) involving any alleged infringement of patent or copyright.

#### 5. ACCEPTANCE OF PROJECT OR GOODS

5.1. Client shall accept the Project or Goods on completion of pre-agreed acceptance tests by Company.

5.2. Client shall assist Company with commissioning and provide suitably qualified personnel to perform such work.

#### 6. THE SERVICE OFFERINGS

6.1. Services are provided in accordance with the provisions contained in the Service Offering selected by the Client, as shown on the Invoice.

6.2. Company shall use reasonable endeavours to meet relevant response times.

6.3. Client agrees that Company shall not be liable for any direct, indirect or consequential losses occurring as a result of Company' failure to meet relevant response times except as set out in Clause 11.

6.4. The Client may purchase extended service coverage in accordance with the current Company policy.

## 7. EXCEPTIONS

7.1. Company shall be under no obligation to supply the Services where, in the Company's reasonable opinion, these are needed because of improper or inadequate installation, use or maintenance; actions or modifications by unauthorised third parties or the Client; or accidental or wilful damage.

7.2. The Services do not include the correction or avoidance of software defects or errors or the loading or re-loading of Client's applications software or data or any reconfiguration of the Project, Goods or Services.

## 8. REPLACEMENT

Company reserves the right to replace the whole or any part of the Project, Goods or Services. Repairs may be carried out using products that, whilst not necessarily identical to the faulty Project, Goods or Services, are equivalent in functionality and appearance.

## 9. CLIENT'S OBLIGATIONS

9.1. Client shall properly use the Project, Goods or Services and shall provide Company with all reasonable facilities and information to enable Company to perform its duties.

9.2. Client shall be responsible for complying with all Client applicable regulatory requirements.

## 10. PRICE AND PAYMENT

10.1. Payment shall be made in full within 30 days of the date of Invoice.

10.2. The Total Price of the Project, Goods or Services shall be the Company quoted price as shown on the Invoice.

10.3. All prices quoted in writing are valid for 30 days except written quotations in respect of Third Party Products, which are valid for the period stated on the quotation document. Oral quotations are valid only to the end of the business day upon which they are given.

10.4. All prices for the sale of Project, Goods or Services exclude costs for transport and insurance unless specified in a written quotation.

10.5. All prices and any additional charges payable under the Agreement are exclusive of all sales taxes including Value Added Tax.

10.6. Company reserves the right to charge interest on any late payment sums of more than 7 days overdue on a day to day basis, as well after as before any judgment, from the date or last date for payment thereof to the date of actual payment (both days inclusive) at the rate of 2% above the base rate of Barclays Bank plc. Such interest shall be paid on demand.

## 11. WARRANTY

11.1. Company assembles systems in accordance with industry standard practices and Company warrants that the Project, Goods or Services (excluding Third Party Products and software) shall be free from defects in workmanship and design for a period of one year from the date of Invoice.

11.2. In respect of Third Party Products, the Client shall only be entitled to the benefit of any warranty or guarantee given by the Third Party manufacturer.

11.3. If, before the expiry of the warranty period or appropriate Service Offering, Company receives written notice from the Client of any breach of the warranty then Company shall, within a reasonable time, repair or, at its option, replace Project, Goods or Services that are defective or otherwise remedy such defects.

11.4. This warranty does not apply to defects resulting from improper or inadequate installation, use or maintenance; actions or modifications by unauthorised third parties or the Client or accidental or wilful damage.

11.5. Company does not give any warranty that the Project, Goods or Services are fit for any particular purpose and this warranty is given in place of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade, usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

## 12. LIABILITY

12.1. Company shall not be liable for any loss or damage sustained or incurred by the Client or any third party (including without limitation any loss of use of the Project, Goods or Services or loss of or spoiling of any of the Client's programs or data) resulting from any breakdown of or fault in the Project, Goods or Services, unless such breakdown or fault is caused by the negligence or wilful misconduct of Company, its employees, agents or sub-contractors, or to the extent that such loss or damage arises from any negligent delay by Company in providing the relevant Services and then only to the extent not excluded by the Agreement.

12.2. The Client shall indemnify Company and keep Company fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or wilful misconduct of the Client, its employees, agents or sub-contractors or by any breach of its contractual obligations.

12.3. Except in respect of injury to or death of any person, for which no limit applies, the respective liability of Company and the Client under sub-clauses 12.1 and 12.2 in respect of each event or series of connected events shall not exceed £1,000,000 or the Total Price, whichever is the greater.

12.4. Notwithstanding anything else contained in the Agreement, Company shall not be liable to the Client for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever.

## 13. FORCE MAJEURE

Neither party shall be liable for any delay in performance caused by circumstances beyond reasonable control and the party in delay shall be entitled to a reasonable extension of time for performance.

## 14. CONFIDENTIALITY

14.1. Each party agrees to maintain in confidence all Confidential Information disclosed by the other relating to the disclosing party's business and to use such information only in connection with this Agreement.

14.2. The parties agree that all confidentiality obligations shall survive for a period of one year from the date of disclosure.

## 15. TERMINATION

15.1. The Agreement may be terminated forthwith by written notice from either party if:

(i) the other commits any material breach of any of the terms of the Agreement and, if capable of remedy, shall have failed within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such notice to detail the breach and to contain a warning of such party's intention to terminate), or

(ii) the other becomes insolvent or bankrupt or is otherwise unable to pay its debts as they fall due.

15.2. The Agreement may be terminated forthwith by written notice from Company if the Client fails to pay any sum due and such sum remains unpaid for 14 days after written notice from Company that such sum has not been paid.

## 16. ENTIRE AGREEMENT

16.1. The Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof.

16.2. The Client warrants to Company that it has not been induced to enter into the Agreement by any prior oral representation (whether innocently or negligently made) except as specifically contained in the Agreement.

## 17. ASSIGNMENT

Company may engage competent third party subcontractors to perform some of the obligations under the Agreement, subject always to the terms of the Agreement. Except for this, neither party shall assign or otherwise transfer any of its rights or obligations under the Agreement without prior written consent from the other party.

## 18. NOTICES

18.1. All notices must be in writing and sent to the address of the recipient set out in the Agreement or the recipient's registered office or such other address as the recipient may designate.

18.2. Any such notice may be delivered personally or by first class prepaid letter or facsimile transmission or by electronic mail (followed by confirmation by post) and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission or electronic mail, when despatched.

18.3. Any notice concerning the validity or existence of the Agreement must be delivered personally or sent by Recorded Delivery first class letter post.

## 19. VALIDITY

If any condition or provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other conditions and provisions of the Agreement and the remainder of the conditions or provisions in question shall not be affected.

## 20. JURISDICTION AND INTERPRETATION OF LAW

20.1. The Agreement represents the complete agreement between Company and the Client with regards the Goods and Services and contains all agreements, warranties and conditions and other agreed terms, made or relied upon by either party.

20.2. No waiver, by Company, of any breach by the Client shall operate as a waiver of any subsequent breach.

20.3. Any indulgence or forbearance towards a Client shall not restrict or in any way prejudice the rights of Company in English Law.

20.4. The Agreement shall be governed by and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.