



## PRODUCT DISCLAIMER

Bullshift Sales Limited makes no express or implied warranty, representation, or guarantee regarding the information contained herein or the suitability of its products and services for any particular purpose, nor does Bullshift Sales Limited assume any liability whatsoever arising out of the application or use of any products. The products sold hereunder and any other products sold by Bullshift Sales Limited have been subject to limited testing.

Buyer shall not rely on any data and performance specifications or parameters provided by Bullshift Sales Limited. The instructions of use of the products must be followed and adhered to at all times by the Buyer. It is the Buyer's responsibility to independently determine suitability of any products. The information provided by Bullshift Sales Limited hereunder is provided "as is, where is" and with all faults, and the entire risk associated with such information is entirely with the Buyer. Bullshift Sales Limited does not grant, explicitly or implicitly, to any party any rights, licenses, or any other IP rights, whether with regard to such information itself or anything described by such information.

Information provided in this document is proprietary to Bullshift Sales Limited, and Bullshift Sales Limited reserves the right to make any changes to the information in this document or to any products and services at any time without notice.

Terms and Conditions

## TERMS

### 2. INTERPRETATION

The following definitions and rules of interpretation in this clause apply in this agreement.

2.1. Definitions:

**Affected Party:** has the meaning given in clause 17.2.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commencement Date:** the date on which this agreement is entered into.

**Confidential Information:** has the meaning given in clause 13.1.

**Customer:** the party to whom the Supplier sells the goods to as detailed on the Order Form.

**Delivery:** completion of delivery of an Order in accordance with clause 5.2 or clause 5.5(a).

**Delivery Date:** the date specified for delivery of an Order in writing by the Supplier.

**Delivery Location:** the location specified for collection of an Order in accordance with clause 5.1.

**Force Majeure Event:** has the meaning given in clause 17.1.

**Group:** in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

**Intellectual Property Rights:** 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.

**month:** a calendar month.

**Order:** an order for Products submitted by the Customer in accordance with clause 3.

**Order Form:** the document on which the Customer confirms its Order in accordance with clause 3.1

**Product Prices:** means the price of an individual Product

**Products:** the products ordered by and supplied by the Supplier to the Customer.

**Representatives:** has the meaning given in clause 13.2.

**Specification:** the specification of the Products as confirmed by the Supplier to the Customer in writing.

**Supplier:** Bullshift Sales Limited a company incorporated and registered in England and Wales with company number 10083396 whose registered office is at Bank Chambers, 3 Churchyardside, Nantwich, Cheshire, England, CW5 5DE

**Term:** the term of the agreement, as determined in accordance with clause 14.

**Trial Period:** a period of time specified in writing by the Supplier as a trial period during which the Customer may trial the Products.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

**year:** twelve calendar months.

- 2.2. Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 2.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.4. The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the Schedules.
- 2.5. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.6. A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 2.7. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 2.8. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date

of this agreement under that statute or statutory provision.

- 2.9. A reference to **writing** or **written** includes email but not fax.
- 2.10. Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 2.11. A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

### 3. SUPPLY OF THE PRODUCTS

- 3.1. During the Term, the Supplier shall supply and the Customer shall purchase such quantities of Products as the Customer may order under clause 3 in accordance with the terms and conditions of this agreement.
- 3.2. The Products may only be used for the purposes for which they were designed and no other application.

### 4. ORDERS

- 4.1. The Customer shall give the Supplier its Order in writing specifying the type and quantity of Products and the Products' code numbers.
- 4.2. Each Order shall be deemed to be a separate offer by the Customer to purchase Products on the terms of this agreement, which the Supplier shall be free to accept or decline at its absolute discretion.
- 4.3. No Order shall be deemed to be accepted by the Supplier until it confirms the Order in writing or (if earlier) the Supplier notifies the Customer that the Order is ready for collection.
- 4.4. Once an Order has been accepted the Customer may not amend or cancel an Order without written consent from the Supplier.

### 5. QUALITY AND PACKING

- 5.1. The Products supplied to the Customer by the Supplier under this agreement shall:
  - (a) 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;
  - (b) be free from defects in design, material and workmanship and remain so for 10 months after Delivery; and
  - (c) comply with all applicable statutory and regulatory requirements.

- 5.2. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.3. The Supplier shall ensure that the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition.
- 5.4. The Supplier shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the supply packing, packaging, marking, storage, handling, and delivery of the Products.

## 6. DELIVERY

- 6.1. Unless agreed otherwise, the Customer shall collect each Order from the Supplier's premises as notified to the Customer from time to time (**Delivery Location**) within three Business Days of the Supplier notifying the Customer that the Order is ready for collection.
- 6.2. Delivery of an Order shall be completed when the Supplier places the Order at the Customer's disposal at the Delivery Location.
- 6.3. The Supplier may deliver Orders by instalments, which may be invoiced and paid for separately. Where Orders are to be delivered by instalments, they may be invoiced and paid for separately. References in this agreement to Orders shall, where applicable, be read as references to instalments.
- 6.4. Delays in the delivery of an Order shall **not** entitle the Customer to:
- (a) refuse to take delivery of the Order; or
  - (b) claim damages; or
  - (c) terminate this agreement, subject always to clause 15.2(c) and clause 15.2(m).

The Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under this agreement.

- 6.5. If the Customer fails to take delivery of an Order within three Business Days of the Supplier notifying the Customer that the Order is ready for collection, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under this agreement:
- (a) delivery of the Order shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Order was ready; and

- (b) the Supplier shall store the Order until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

## 7. ACCEPTANCE AND DEFECTIVE PRODUCTS

- 7.1. The Customer may reject any Products delivered to it that do not comply with clause 4.1, provided that:
- (a) notice of rejection is given to the Supplier:
    - (i) in the case of a defect that is apparent on normal visual inspection, within five Business Days of Delivery;
    - (ii) in the case of a latent defect, within a reasonable time of the latent defect having become apparent; and
  - (b) none of the events listed in clause 6.3 apply.
- 7.2. If the Customer fails to give notice of rejection in accordance with clause 6.1, it shall be deemed to have accepted such Products.
- 7.3. The Supplier shall not be liable for Products' failure to comply with the warranty set out in clause 4.1 in any of the following events:
- (a) the Customer makes any further use of such Products after giving notice in accordance with clause 6.1;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
  - (d) the Customer alters or repairs such Products without the written consent of the Supplier; or
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 7.4. If the Customer rejects Products under clause 6.1 then the Customer shall be entitled to:
- (a) require the Supplier to repair or replace the rejected Products; or
  - (b) require the Supplier to repay the price of the rejected Products in full.
- Once the Supplier has complied with the Customer's request, it shall have no further liability to the Customer in respect of the rejected Products' failure to comply with clause 4.1.
- 7.5. The terms of this agreement shall apply to any repaired or replacement Products supplied by the Supplier.

**8. TITLE AND RISK**

- 8.1. Risk in Products shall pass to the Customer on Delivery.
- 8.2. Title to Products shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for such Products.
- 8.3. Until title to Products has passed to the Customer, the Customer shall:
  - (a) store such Products separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to such Products; and
  - (c) maintain such Products in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier. The Customer shall obtain an endorsement of the Supplier's interest in the Products on its insurance policy, subject to the insurer being willing to make the endorsement. On request the Customer shall allow the Supplier to inspect such Products and the insurance policy.
- 8.4. If before title to Products passes to the Customer the Customer becomes subject to any of the events listed in clause 15.2(d) to clause 15.2(k) inclusive, then, without limiting any other right or remedy the Supplier may at any time:
  - (a) require the Customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and
  - (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Products are stored in order to recover them.
- 8.5. Performance of this agreement shall not entitle the Customer to any right, title or interest in the Supplier's Intellectual Property, including (without limitation) the Supplier's company or brand names.

**9. PRODUCT PRICES**

- 9.1. The Product Price will be as advised by the Supplier from time to time in writing. In the event that a Product Price has increased subsequent to a previous Order made by the Customer, the Supplier shall advise the Customer of such increase prior to accepting an Order.
- 9.2. The Product Prices in the UK are inclusive of VAT. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional

amounts in respect of VAT as are chargeable on a supply of Products, export orders exclude any duties tax and delivery costs.

**10. TERMS OF PAYMENT**

- 10.1. The Supplier shall be entitled to invoice the Customer for each Order at any time.
  - 10.2. The Customer shall pay invoices in full and in cleared funds prior shipment. Payment shall be made to the bank account nominated in writing by the Supplier.
  - 10.3. If a party fails to make any payment due to the other under this agreement by the due date for payment, then, without limiting the other party's remedies under clause 15.2, the defaulting party shall pay interest on the overdue amount at the rate of 5% per annum above Barclays'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. In relation to payments disputed in good faith, interest under this clause is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.
  - 10.4. All payments payable to the Supplier by the Customer under this agreement shall become immediately due and payable:
    - (a) on termination of this agreement for any reason; or
    - (b) if the Customer becomes subject to any of the events listed in clause 15.2(d) to clause 15.2(k) inclusive.
- This clause 9.4 is without prejudice to any right to claim for interest under the law or under this agreement.

**11. TRIAL PERIOD**

- 11.1. The Supplier may offer the Products to the Customer during a Trial Period. Throughout the Trial Period the Title of the Products shall remain with the Supplier.
- 11.2. Any applicable delivery charges, hire fees, packaging, installation and removal costs, insurance charges or other fees chargeable during a Trial Period will be notified to the Customer in writing prior to commencement of the Trial Period.
- 11.3. Risk in Products shall pass to the Customer on Delivery. On expiry of the trial period the Supplier shall collect the Products at its expense from the agreed location.
- 11.4. The Customer warrants that it shall not do, omit to do or permit any third party to do anything that would damage or diminish the value of the Products or

prohibit the Supplier from offering the Products for sale to a third party after expiry of the Trial Period.

- 11.5. The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs in respect of any breach of clause 10.4 above.

## 12. LIMITATION OF LIABILITY

- 12.1. This clause sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other in respect of:

- (a) any breach of this agreement however arising;
- (b) any use made or resale of the Products by the Customer, or of any product incorporating any of the Products; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

- 12.2. Nothing in this agreement shall limit or exclude the liability of either party for:

- (a) death or personal injury resulting from negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) breach of section 2 of the Consumer Protection Act 1987.

- 12.3. Without prejudice to clause 11.2, neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

- (a) loss of profit; or
- (b) loss of goodwill; or
- (c) loss of business; or
- (d) loss of business opportunity; or
- (e) loss of anticipated saving; or
- (f) loss or corruption of data or information; or
- (g) special, indirect or consequential damage suffered by the other party that arises under or in connection with this agreement.

- 12.4. Without prejudice to clause 11.2 or clause 11.3, the Supplier's total liability arising under or in connection with this agreement, whether arising in contract, tort (including negligence) or restitution, or for breach of

statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to £5,000.

## 13. ASSIGNMENT AND OTHER DEALINGS

- 13.1. Subject to clause 12.2, the Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).

- 13.2. The Customer may, after having given prior written notice to the other party, assign or subcontract any or all of its rights and obligations under this agreement to a member of its Group.

## 14. CONFIDENTIALITY

- 14.1. Each party undertakes that it shall not at any time during this agreement and for a period of four years after termination disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of its Group, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (**Confidential Information**), except as permitted by clause 13.2.

- 14.2. Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, agents, consultants or subcontractors (**Representatives**) who need to know such information for the purposes of carrying out the party's obligations under this agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 13.2 as though they were a party to this agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 14.3. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party or to be implied from this agreement. In particular, no licence is hereby granted directly or

indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.

**15. COMMENCEMENT AND TERM**

This agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 15, until the third anniversary of the Commencement Date, when it shall terminate automatically without notice (**Term**).

**16. TERMINATION AND SUSPENSION**

16.1. Without affecting any other right or remedy available to it, either party may terminate this agreement on giving not less than three months' written notice to the other party.

16.2. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any undisputed amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party 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 other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) 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 other party;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party 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;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2(d) to clause 15.2(j) inclusive;
- (l) the other party ceases, or threatens to cease, to carry on all or substantially the whole of its business; or
- (m) any Force Majeure Event prevents the other party from performing its obligations under this agreement for any continuous period of three months.

16.3. Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 15.2(d) to clause 15.2(k), or the Supplier 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 this Contract on the due date for payment.

**17. OBLIGATIONS ON TERMINATION**

On termination of this agreement each party shall promptly:

- (a) return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it or a member of its Group in

connection with the supply and purchase of the Products under this agreement;

- (b) return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
- (c) erase all the other party's Confidential Information from its computer systems (to the extent possible); and
- (d) on request, certify in writing to the other party that it has complied with the requirements of this clause.

**18. FORCE MAJEURE**

- 18.1. **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation acts of God, natural disaster, terrorist attack, war, government action; collapse of buildings, fire, explosion or accident, industrial action non-performance by suppliers or subcontractors and interruption or failure of utility service.
- 18.2. If a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 18.3. The Affected Party shall as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement.
- 18.4. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 12 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 2 weeks' written notice to the Affected Party.

**19. SEVERANCE**

If any provision or part-provision of this agreement 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 this agreement.

**20. DISPUTE RESOLUTION**

- 20.1. In the event of a dispute each party shall attempt to settle any dispute in good faith for a period of 30 days. If the parties are unable to reach a resolution, the parties agree to enter into mediation.
- 20.2. Neither party shall commence court proceedings in relation to a dispute unless mediation has been unsuccessful in resolving the dispute.

**21. FURTHER ASSURANCE**

At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

**22. VARIATION**

No variation of this agreement shall be effective unless it is in writing and signed by both parties (or their authorised representatives).

**23. WAIVER**

A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.

**24. NOTICES**

Any notice given to a party under or in connection with this agreement shall be in writing.

**25. ENTIRE AGREEMENT**

- 25.1. This agreement 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.
- 25.2. Each party acknowledges that in entering into this agreement it does not rely on[, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

25.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**26. THIRD PARTY RIGHTS**

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

**27. COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

**28. GOVERNING LAW**

This agreement 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.

**29. JURISDICTION**

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 this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.