



BEAKBANE LTD – CONDITIONS OF SALE

The “Seller” is Beakbane Ltd. The “Buyer” is the purchaser of goods from the Seller.

1.0 Validity.

1.1 All quotations are given, orders accepted and goods sold subject to the terms and conditions set out below (“the Contract Terms”) to the exclusion of any other terms and conditions (except those implied by statute the exclusion of which would be void) whether or not the same are endorsed upon delivered with or referred to in any purchase order or other document delivered by the Buyer to the Seller.

1.2 These terms and conditions may only be varied or waived by written agreement between the Seller and the Buyer.

1.3 All quotations are subject to the Seller’s written confirmation on receipt of the Buyer’s order and no contract will come into existence until the Seller dispatches to the Buyer an acknowledgment of order, or, if earlier, when the Seller allocates the goods for delivery to the Buyer.

2.0 Price.

2.1 The price of the goods shall be the price set out in the order. Unless otherwise stated, all prices quoted are ex Seller’s Works, unpacked and are exclusive of design and carriage costs and VAT and the cost of any tooling (which if relevant, shall be an additional cost to the Buyer, payable immediately against invoice). Unless otherwise directed by the Buyer the Seller will arrange non-returnable packing and delivery and charge the Buyer accordingly.

2.2 The Seller may, by giving notice to the Buyer at any time up to 2 business days before delivery, increase the price of the goods to reflect any increase in the cost of the goods that is due to any factor beyond the Seller’s control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs), any request by the Buyer to change the delivery date, quantities or types of goods delivered, or the specification, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

3.0 Payment.

The Seller may invoice the Buyer for the goods on or at any time after the completion of delivery. Unless otherwise agreed in writing the price will become payable when the Seller’s invoice is sent to the Buyer and unless otherwise stated full payment in cleared

funds will be made against Seller's invoices 30 days from the invoice date ('the due date'). Interest on any payment due but unpaid on the due date shall accrue at the rate of 8% over Barclays Bank Plc base rate from time to time in force from the date of delivery of the goods to the Buyer (or the date of the invoice for the goods, whichever is earlier) until the date of payment and shall be compounded monthly. Where the Buyer makes default under any contract with the Seller in payment on the due date of any amount due, the Seller may postpone delivery or may cancel any contract between the Seller and the Buyer but without prejudice to any other right or remedy which the Seller may have against the Buyer. The Buyer shall pay all amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4.0 Carriage and Delivery.

4.1 The time of delivery is not of the essence. Any time or date specified by the Seller as the time or date on which goods will be delivered or services rendered is given and intended as an estimate only and the Seller shall not be liable for any loss, damage or expense of any kind whatsoever whether consequential or otherwise howsoever arising from delay in delivery or completion of the contract nor will any such delay entitle the Buyer to refuse to accept delivery or cancel the contract.

4.2 Unless otherwise agreed in writing by the Seller the risk in the goods shall pass to the Buyer when the goods are delivered to the Buyer or to any person acting on the Buyer's behalf. In all cases delivery to a carrier shall constitute delivery to the Buyer even though the Seller may have arranged for the Carrier's services to be provided and even though the Seller may charge for carriage on the invoice for the goods.

4.3 Carriage and packing on all goods will be charged to the Buyer unless the Buyer makes his own arrangements to collect the goods from the Seller's works and notifies the Seller in writing accordingly.**4.4** The Seller will be entitled to make delivery by instalments and to invoice the Buyer for each instalment dispatched. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

4.4 If the Seller fails to deliver the goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the goods. The Seller shall have no liability for any failure to deliver the goods to the extent that such failure is caused by any event outside of the Seller's control or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the goods.

4.5 No claim in respect of damage to or shortages in the goods arising prior to delivery will be accepted by the Seller unless the Seller is advised in writing within 7 days of receipt of the goods and no claim for non-delivery will be considered or accepted unless the Seller is advised in writing within 21 days of invoice date.

5.0 Title and risk.

5.1 Property in the goods shall not pass from the Seller until:-

5.1.1 the Buyer shall have paid, and the Seller shall have received in cleared funds, the price plus VAT in full and

5.1.2 no other sums whatever shall be due from the Buyer to the Seller

5.2 Until the property in the goods passes to the Buyer, the Buyer shall hold the goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property. The Buyer shall not remove, deface or obscure any identifying mark or packaging on or relating to the goods, shall maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery and shall give the Seller such information as they may reasonably require from time to time relating to the goods and the ongoing financial position of the Buyer.

5.3 Until such time as property in the goods passes from the Seller the Buyer shall upon request deliver up such of the goods as have not ceased to be in existence or re-sold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the goods are situated and repossess the goods.

6.0 Defective Goods etc.

6.1 Subject to the provisos below the Seller will be under no liability under the contract for any loss or damage of any kind whatsoever whether consequential or otherwise and the Seller hereby excludes all conditions and warranties express or implied, statutory customary or otherwise which but for such exclusion would or might subsist in favour of the Buyer.

Provided always that:

6.1.1 Where the Seller is not the manufacturer of the goods supplied the Seller will use reasonable endeavours to make over to the Buyer the benefit of any warranty or guarantee given by the manufacturer so far as that is possible.

6.1.2 Where the Seller is the manufacturer of the goods the Seller will within a period of 6 months from the date of dispatch (or such other period as maybe agreed in writing) repair or at its option replace any goods which are returned to the Seller at the Buyer's cost and proved to the satisfaction of the Seller to be defective in material or workmanship provided always that this obligation will not apply where:

(a) The goods have been altered in any way whatsoever or have been subject to misuse unauthorized repair or alteration.

(b) The Buyer has failed to make known to the Seller before the contract is made the precise conditions and purposes under and for which the goods will be used or has failed to provide or make known to the Seller any information or dimensions (whether relating to the goods to be supplied or to the equipment to which the goods are to be fitted) necessary to enable the goods to perform their intended function and this sub clause will apply whether or not the Seller's servants or agents have inspected the equipment

or themselves taken measurements. Where Conditions 6.1.2 applies the cost of dismantling and reassembling the goods and of returning them to the Seller for inspection if they are suspected of being faulty will be borne by the Buyer and any goods replaced will belong to the Seller.

(c) The Buyer makes any further use of such goods after complaining of such defect.

(d) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the goods or (if there are none) good trace practice regarding the same.

(e) the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer. (f) The defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

(f) the goods differ from the description or the specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.2 Under no circumstances will the Seller or its servants or agents be liable for any loss or damage of any kind whatsoever (other than personal injury or death) whether consequential or otherwise caused directly or indirectly by any negligence on the part of the Seller or on the part of any of its servants or agents whether or not in the manufacture, fitting, repair or processing of the goods, or in connection with any services supplied under the contract.

6.3 Without prejudice to the generality of any of the Contract Terms this contract is made upon the express condition and understanding that the Seller gives no warranty or guarantee as to the suitability of the goods for any particular purpose even if that purpose is known to the Seller. The Buyer must satisfy himself that the goods conform to his requirements before use.

7.0 Design etc.

7.1 No variation by the Seller in specification or design of any of the goods (whether or not such specification or design is the Buyer's) shall constitute a breach of contract or impose upon the Seller any liability whatsoever.

7.2 The buyer will not at any time manufacture or procure to be manufactured any goods or materials to designs or specifications provided by the Seller nor disclose to any person, firm or company and drawings, manufacturing process of trade secrets or any information relating thereto belonging to the Seller. The copyright in all drawings and all other intellectual property rights subsisting in any item provided by the Seller will at all times remain with the Seller even after payment for the goods by the Buyer.

7.3 The Buyer shall indemnify the Seller 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 and expenses) suffered or incurred by the Seller in connection with any claim alleging infringement of trademarks, trade names, patents, copyrights, registered designs or any

other Intellectual Property Rights which arises out of or in connection with the Seller's use of the Buyer's designs and instructions.

8.0 Limitation of Liability

8.1 The restrictions on liability in this **Error! Bookmark not defined.** apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

8.2.1 death or personal injury caused by negligence;

8.2.2 fraud or fraudulent misrepresentation;

8.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

8.2.4 defective products under the Consumer Protection Act 1987

8.3 Subject to clause 8.2, the Seller's total liability to the Buyer shall not exceed the contract price.

8.4 Subject to clause 8.2, the following types of loss are wholly excluded:

8.4.1 loss of profits;

8.4.2 loss of sales or business;

8.4.3 loss of agreements or contracts;

8.4.4 loss of anticipated savings;

8.4.5 loss of use or corruption of software, data or information;

8.4.6 loss of or damage to goodwill; and

8.4.7 indirect or consequential loss.

9.0 Cancellation by the Seller.

9.1 Without limiting its other rights or remedies, the Seller may terminate this contract with immediate effect by giving notice to the Buyer if:

9.1.1 the Buyer commits a material breach of any term of the contract and (if such a breach is remediable) fails to remedy that breach within 5 days of that party being notified in writing to do so;

9.1.2 the Buyer fails to pay any amount due under the contract on the due date for payment

9.1.3 the Customer 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), obtaining a moratorium, 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;

9.1.4 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

9.1.5 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy

9.2 On termination of the contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of goods supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt.

9.3 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the contract which existed at or before the date of termination or expiry.

9.4 If the Seller is unable to carry out the contract or supply the goods by reason of any act of God, statute, orders regulation or bye-laws made under statutory authority, industrial disputes, strike, lock out, civil commotion, fire tempest, flood, failure of suppliers of raw materials or other goods to deliver, or by reason of any other cause of whatsoever kind and whenever occurring beyond the Seller's control, the Seller may cancel the contract by notice in writing to the Buyer, so far as it relates to goods not then supplied or work not then done and such cancellation shall not give rise to any claims by the Buyer provided always that the Buyer shall remain liable to pay for goods delivered and work done prior to the date of such cancellation.

10.0 Interpretation.

The contract will be construed and operate in accordance with English Law and the Buyer hereby submits to the non-exclusive jurisdiction of the English Courts.

11.0 Waiver

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

12.0 Severance

If any provision or part-provision of the contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.