



**In these Conditions:**

**Authorised Officer:** a person whose position with BSR is that of Director, of BSR

**Backorder:** an Order accepted by BSR for which the Goods are not available at time of Order placement and which are still to be received by BSR from its main supplier

**Buyer:** is the person (including a natural person, corporate or unincorporated body, whether or not having a separate legal personality) who places an Order with BSR for the purchase of the Goods or the provision of the Services and whose order is accepted by BSR in accordance with these Conditions

**Charges:** the amounts payable for the Goods or the Services, as set out in the relevant Order accepted by BSR

**Conditions:** the terms and conditions set out in this document (as amended from time to time), and any special terms and conditions on the face of BSR's tender or BSR's written acceptance of the Order, the conditions and terms of use governing the use by the Buyer of BSR's website and the terms and conditions of any supplier of BSR, copies of which shall be made available on request (as the case may be)

**Contract:** is each individual Order between BSR and the Buyer for the purchase and sale of the Goods and/or Services accepted by BSR in accordance with these Conditions

**Data Controller:** has the meaning set out in the Data Protection Legislation

**Data Protection Legislation:** means (i) the General Data Protection Regulation ((EU) 2016/679) ("GDPR") as amended or updated from time to time and the Data Protection Act 2018 and any successor legislation to the GDPR or the Data Protection Act 2018

**Data Subject:** an individual who is the subject of Personal Data

**Delivery:** the delivery of the Goods either (i) by BSR's carrier, completion of which being BSR's carrier's notification to the Buyer that the Goods are ready to be off-loaded at the address supplied by the Buyer or (ii) by Buyer's carrier, completion of which being BSR's notification to Buyer that the Goods are ready for collection or (iii) electronic delivery by email.

**Electronic Means:** any electronic means including without limit on the Web, by EDI or XML, or other platform utilised for the placing of Orders

**End User:** any third party to whom the Buyer resells the Goods or Services (for the avoidance of doubt, such third party can be another reseller)

**Goods:** are any hardware or software, whether packaged, licensed or as a service, and instalments of the Goods or any parts of them sold by BSR to the Buyer in accordance with the Conditions;

**Insolvency Event:** any one or more of the events listed at clauses 2.2.2 – 2.2.8 (inclusive)

**Order:** is the Buyer's order for the Goods or Services placed with BSR (including Backorders)

**Personal Data:** has the meaning given to it in the applicable Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which the Buyer is the Data Controller and in relation to which BSR is providing services under the Contract.

**Processing and process:** have the meanings set out in the applicable Data Protection Legislation

**Services:** any customisation, implementation, installation, fulfilment services or configuration services (or part of them) relating to the Goods to be provided by BSR to the Buyer from time to time under these Conditions;

**Third Party Provider:** any third party who provides similar product and/or services to BSR for resale from time to time

**BSR:** is BSR Software LTD of 30b Victoria Avenue, Hillingdon, Uxbridge, England, UB10 9AH.

The headings in these Conditions are included for convenience only and shall not affect the interpretation or construction of these Conditions.

THE BUYER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSES 8 AND 9.

## 1. BASIS OF SALE

- 1.1 All Contracts shall be governed by these Conditions (and where applicable any other terms agreed in writing by an Authorised Officer of BSR) to the exclusion of any other terms and conditions, including without limit any terms on or referred to in any Buyer purchase order or other Buyer documentation. In the case of Orders placed by Electronic Means which refer to any terms and conditions of the Buyer, BSR's automatic taking on to its system of such order shall amount to a rejection of the Buyer's terms and conditions and an offer to supply the Goods ordered on the basis of these Conditions.
- 1.2 No variation to these Conditions shall be binding unless agreed in writing by an Authorised Officer of BSR.
- 1.3 Subject to clause 1.2, BSR's employees or agents have no authority to make any representations concerning the Goods or Services. In entering into the Contract, the Buyer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind the Contract for any such representations (unless made fraudulently).
- 1.4 If any advice or recommendation for the Goods given by BSR or its employees or agents to the Buyer or its employees or agents is followed or acted upon, it is done so entirely at the Buyer's own risk and BSR shall not be liable for any such advice or recommendation.
- 1.5 All references in these Conditions to BSR agreeing, approving, waiving or specifying a matter apply only if such is confirmed in writing by an Authorised Officer.
- 1.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by BSR shall be subject to correction without any liability on the part of BSR.
- 1.7 It shall be a condition of any quotation and subsequent Contract (if applicable) that the information provided by the Buyer is correct, accurate, not misleading and a complete response to BSR's request(s) when provided and remains so for at least until the later of the date when the quotation lapses or the relevant Goods and/or Services are delivered.
- 1.8 Any quotation for the Goods/Services given by BSR shall (i) not constitute an offer and (ii) only be valid until their expiration date.

- 1.9 Any Order constitutes an offer by the Buyer to purchase the Goods incorporating these Conditions. Orders accepted by BSR are accepted solely subject to these Conditions and the Contract shall come into existence when BSR accepts the Order or by processing the Order for delivery (whichever is earlier).
- 1.10 Orders shall not be accepted unless sent to BSR in an official purchase order. Orders in an alternative form will not be accepted.

## **2. CANCELLATION OF ORDERS**

- 2.1 No Contract may be cancelled by the Buyer unless agreed in writing by BSR if so agreed at BSR's discretion, the Buyer shall indemnify BSR in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by BSR as a result of cancellation.
- 2.2 BSR shall have the right immediately to cancel or to suspend any Contract or services or any delivery to be made under the Contract without any liability to the Buyer if:
- 2.2.1 the Buyer fails to make any payment when due or breaches any provision of the Contract and the Buyer has failed to remedy such breach within 7 days after receipt of notice in writing from BSR requiring the Buyer to do so;
  - 2.2.2 the Buyer suspends or threatens to suspend payment of its debts, or is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; or
  - 2.2.3 the Buyer (a) negotiates with its creditors for rescheduling of its debts, (b) makes a proposal to or compounds with its creditors in respect of its debts other than solely by way of solvent amalgamation or reconstruction or (c) makes an application to court for protection from its creditors generally; or
  - 2.2.4 the Buyer passes a resolution for winding-up or for the appointment of an administrator, or a liquidator or a winding-up order is made other than solely in relation to a solvent amalgamation or reconstruction (or in the case of an individual is made bankrupt); or
  - 2.2.5 an administrator, receiver or administrative receiver is or is likely to be appointed in relation to the Buyer or any of its assets; or
  - 2.2.6 any creditor of the Buyer attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of the Buyer's assets, and such attachment or process is not discharged within ten Business Days
  - 2.2.7 the Buyer ceases, or threatens to cease, to carry on business; or
  - 2.2.8 BSR reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
  - 2.2.9 the Buyer commits or is a party to dishonest or fraudulent conduct in relation to the Contract.
  - 2.2.10 the Buyer requires Goods or services for the purpose of Nuclear Weapons or Weapons Production, or any other warfare based business
- 2.3 If clause 2.2 applies then, without prejudice to any other right or remedy available to BSR, BSR shall be entitled to do any one or more of the following:
- 2.3.1 cancel each and every Contract yet to be performed (in whole or in part);
  - 2.3.2 suspend any further deliveries under each and every Contract without liability to the Buyer;

- 2.3.3 immediately revoke any and all credit extended to the Buyer on such terms as BSR shall in its sole and absolute discretion determine;
- 2.3.4 reduce or cancel all quantity and other discounts offered to the Buyer; and
- 2.3.5 if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

### **3. DELIVERY**

- 3.1 Unless otherwise agreed in writing with an Authorised Officer the costs of packing and Delivery shall be for the Buyer's account. If BSR pays for or incurs all or part of such costs, it shall invoice its costs so incurred to the Buyer at the date of dispatch.
- 3.2 The Buyer warrants the details of any address for Delivery stipulated by the Buyer (including those of End Users). BSR reserves the right to invoice the Buyer for any losses incurred by BSR for failed or re-routed deliveries as a result of inaccurate information provided by the Buyer (including where recipient is not available/unwilling to accept the Goods).
- 3.3 Any Delivery dates given are estimated dates only and time is not of the essence for Delivery. Changed specifications or instructions may result in revised estimated Delivery times.
- 3.4 The Goods may be delivered in instalments. Each delivery shall constitute a separate Contract and failure by BSR to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 3.5 If the Buyer (i) arranges collection of the Goods from BSR and the Buyer's carrier fails to take receipt of the Goods after BSR has notified the Goods are ready for collection or (ii) fails to give BSR adequate Delivery instructions or (iii) has requested a delay in Delivery or (iv) is unable to give access to its premises for the purposes of Delivery or installation then BSR may at the risk and expense of the Buyer:
  - 3.5.1 store the Goods until actual Delivery and invoice the Buyer for all such costs of storage and re-Delivery; or
  - 3.5.2 sell the Goods at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Buyer (if available) or charge the Buyer for any shortfall (as applicable).
- 3.6 Where Goods are to be exported out of the United Kingdom by either (i) BSR to the Buyer or (ii) by the Buyer itself (subject to any special terms agreed in writing between the Buyer and BSR and notwithstanding any other provision of these Conditions):
  - 3.6.1 The terms of purchase of the Goods will be subject only to warranty provided by the original equipment manufacturer ("OEM") and the Buyer shall be solely responsible for ensuring that it fully understands and is aware of such warranty terms;
  - 3.6.2 The Buyer shall ensure that it complies with any export controls as notified by BSR, the OEM or a third party or as contained within any supporting documentation provided with the Goods;
  - 3.6.3 The relevant tax legislation will be applied in accordance with and under the United Kingdom legislation at the time of the contract;

- 3.6.4 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any import taxes or duties thereon;
  - 3.6.5 Unless otherwise agreed in writing between the Buyer and BSR, delivery terms of the Goods shall be 'Delivered at Place' (as per Incoterms 2010) and BSR shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979;
  - 3.6.6 the Buyer shall be responsible for arranging for testing and inspection of the Goods at BSR's premises before shipment. BSR shall have no liability for any claim in respect of any defect in the Goods, which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit;
  - 3.6.7 The Buyer shall not be entitled to withhold payment of the price for the Goods due to the Buyer's failure to comply with the provisions of this clause; and
  - 3.6.8 The Goods will be packaged in accordance with BSR's standard practice, and the packaging shall meet any reasonable requirements stipulated in advance by any independent contractors or shippers.
- 3.7 The Buyer's failure to make due payment in respect of any deliveries or instalments under any Contract shall entitle BSR to delay, suspend or cancel further deliveries and services in whole or in part at its option.
  - 3.8 Where the Buyer fails to take Delivery of the whole quantity of the Contract at the due time, any discount or other allowance in respect of the Goods, which the Buyer is or would be entitled to shall be forfeited.
  - 3.9 Where BSR has agreed to ship Goods or perform Services direct to End User on behalf of Buyer any such shipment or performance shall be deemed to be Delivery to Buyer and any refusal by the End User to accept Delivery or performance shall be deemed to be a refusal by Buyer. It shall be Buyer's obligation to report any delivery discrepancies in accordance with this clause 3 when Goods are shipped direct to End User or when Goods are sent onto End User by Buyer.

#### **4. ACCEPTANCE AND RETURNS PROCEDURE**

- 4.1 BSR shall not be liable in respect of any damage to the Goods, discrepancy in the Contract, shortage in the Goods Delivered, loss of the Goods in transit or any claim that the Goods delivered or collected do not otherwise comply with the Contract other than in accordance with this Condition and warranty clause 4 as stated below.
- 4.2 Damage, discrepancies, shortages and invoice queries:
  - 4.2.1 The Buyer shall be responsible for inspecting the boxed / parcel contents containing the Goods on Delivery to check the Goods for damages, discrepancies and shortages. On Delivery, the Buyer must write on the Despatch Note prior to signing of any damages, discrepancies and shortages.
  - 4.2.2 The invoiced Charges shall, in the absence of a manifest error, be deemed accepted by the Buyer unless the Buyer notifies BSR customer services in writing within 14 days of the date of the invoice.
  - 4.2.3 The Buyer shall notify BSR customer services in writing within 48 hours of Delivery of any short Deliveries, damaged Goods Delivered or any non-shipment of Goods detailed on the proof of Delivery. Save for bona fide notifications received by BSR under 4.2(i), (ii) and 4.2(iii) above, BSR shall have no liability whatsoever to Buyer in respect of the matters noted above.

- 4.3 Goods that fail on installation ("DOAs"): BSR operates a returns procedure for DOAs. The DOA returns procedure may vary depending on the OEM of the Goods and will be notified to the Buyer upon the Buyer notifying BSR (within 14 days of Delivery) that the Goods have apparently failed on installation.
- 4.3.1 BSR are bound by the returns policy of the OEM vendors and the Buyer agrees to be bound by the same policy.
- 4.4 Goods that fail after installation ("Faulty Goods"): In no circumstances may the alleged Faulty Goods be returned to BSR without BSR's prior written consent. Where Goods are returned a handling charge may be levied at BSR's discretion and shall be either deducted from any credit allowed by BSR (should the Goods be accepted at BSR's discretion as Faulty Goods) or be payable to BSR by the Buyer upon demand. The Buyer must notify BSR immediately of the fault becoming apparent and follow BSR's instructions in relation to the fault.
- 4.5 General provisions relating to DOAs and Faulty Goods:
- 4.5.1 The Buyer shall pay all BSR's reasonable costs and expenses if the Goods suspected to be DOA or Faulty Goods by the Buyer prove not to be DOA or Faulty Goods (at BSR's sole discretion).
- 4.5.2 Any returns shall be subject to and the Buyer shall comply with BSR's returns authorisation procedures.
- 4.5.3 DOA and Faulty Goods shall be dealt with in accordance with the applicable OEM's DOA or Faulty Goods procedures and the Buyer shall comply with the same.
- 4.5.4 The Buyer shall be responsible for all transportation and insurance costs relating to returned Goods.
- 4.5.5 The Buyer shall have no right to return any Goods delivered in accordance with the Contract.
- 4.5.6 Goods must be received by BSR within 14 days of BSR issuing a returns authorisation to Buyer.
- 4.6 Where a return under this clause 4 is approved in writing by BSR, the Goods (or part thereof) to be returned must be delivered to BSR's premises in its original packaging together with supporting documentation confirming the alleged fault and quoting the relevant returns number. In the event the Buyer fails to comply with this clause 4.6, BSR will be entitled to levy a handling fee as applicable in the circumstances.
- 4.7 BSR shall be under no obligation to accept return of any Goods other than as provided in the warranty clause below.

## **5. PRICE**

- 5.1 All BSR prices for Goods and/or Services ("Price(s)") are quoted subject to (i) acceptance within any period specified and (i) any increase which may occur as a result of factors falling outside the control of BSR, which without limitation, shall include any of the following circumstances:
- 5.1.1 where the Buyer has requested (whether before or after a Contract has been made) any variation whatsoever to the quantity, capacity, form, content, style or description of the Order or Goods and/or Services, or has requested an earlier or a later Delivery date to that originally requested; or
- 5.1.2 where steps are taken by BSR to comply with any statutory provisions from time to time in force, and any increases in the price charged to BSR of any equipment or goods bought in from BSR's suppliers in order for BSR to fulfil the Contract; or

- 5.1.3 where the supply of the Goods or the provision of Services is suspended, varied or otherwise delayed by any acts or omissions of the Buyer.
- 5.1.4 where BSR has incurred any additional or unforeseen import duties after the Contract has been made.
- 5.2 Unless otherwise stated, the Price does not include the costs of Delivery and VAT and any other applicable customs or excise duties or taxes (where applicable) and these will be added to all invoices at the rate ruling at the date of despatch.

## **6. PAYMENT**

- 6.1 Payment of the Charges or any part thereof and any other charges due under the Contract must be made by the Buyer within 30 days month end following date of BSR's invoice with reference to the invoice number (unless otherwise specified in writing by an Authorised Officer) or in line with the relevant credit agreement between the Buyer and BSR.
- 6.2 Should the Buyer fail to make payment by the due date, BSR shall be entitled to suspend services and charge interest on the overdue amount at the rate of 4% above Barclays Banks' base rate from time to time. Such interest shall accrue on a daily basis from the due date until the actual date of payment (whether before or after judgment).
- 6.3 The Buyer shall make all payments in pounds sterling immediately when due without set off, deferment, deduction or withholding whatsoever (whether on account of any claim or counterclaim or otherwise). Where payments in an alternative currency are authorised in writing by the Authorised Officer prior to the Contract being concluded, such payments shall be made by telegraphic transfer to the account to be designated by the Authorised Officer from time to time.
- 6.4 The time of payment shall be of the essence of the Contract.
- 6.5 The Buyer shall indemnify BSR against the total costs incurred (without limitation) by BSR arising out of the Buyer's breach(es) of these Conditions.
- 6.6 On the happening of a "Relevant Event" BSR shall be entitled in its sole and absolute discretion to alter its terms of payment or to alter any credit terms which may have been granted. For the purposes of this clause 6.6, a "Relevant Event" shall be defined as being:
  - 6.6.1 where BSR is notified or otherwise reasonably believes that the Buyer's credit record has worsened to a level unacceptable to BSR; or
  - 6.6.2 where BSR in its sole discretion deems the Buyer's financial position to be unacceptable; or
  - 6.6.3 where BSR's trade indemnity insurers require such alteration.
- 6.7 Notwithstanding clause 6.6, BSR reserves the right to withdraw any credit facilities afforded to the Buyer at any time, without notice.
- 6.8 In the event that the trading relationship between the Buyer and BSR is terminated for whatsoever reason then all sums due by the Buyer shall immediately become due and payable.

## **7. RETENTION OF TITLE AND RISK**

- 7.1 Risk in the Goods will pass to the Buyer on completion of Delivery.
- 7.2 Title to the Goods (including full legal and beneficial ownership but excluding software, title of which shall never pass to the Buyer) shall not pass to the Buyer until:
  - 7.2.1 BSR receives payment in full for the Goods as supplied to the Buyer; and

- 7.2.2 BSR receives payment in full for all and any other debts owed by the Buyer to BSR at any given time; or
  - 7.2.3 The Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at such time as specified in clause 7.5.
- 7.3 Until title to the Goods has passed to the Buyer, the Buyer will:
- 7.3.1 hold the Goods as bailee for BSR;
  - 7.3.2 store the Goods separately from all other material in the Buyer's possession;
  - 7.3.3 take all reasonable care of the Goods and keep them in reasonable condition;
  - 7.3.4 insure the Goods: (i) with a reputable insurer (ii) from the date of delivery (iii) against all risks (iv) for an amount at least equal to the Price (v) noting BSR's interest on the policy;
  - 7.3.5 ensure that the Goods are clearly identifiable as belonging to BSR;
  - 7.3.6 not remove or alter any mark on or packaging of the Goods;
  - 7.3.7 inform BSR as soon as possible if it becomes subject to an Insolvency Event; and
  - 7.3.8 provide BSR such information concerning the Goods as BSR may request from time to time.
- 7.4 Notwithstanding clause 9.3, and subject to clause 9.5, the Buyer may use or resell the Goods in the ordinary course of its business (but not otherwise) before BSR receives payment for the Goods. However, if the Buyer resells the Goods before that time:
- 7.4.1 It does so as principal and not as BSR's agent; and
  - 7.4.2 Title to the Goods shall pass from BSR to the Buyer immediately before the time at which resale by the Buyer occurs.
- 7.5 If, at any time before title to the Goods has passed to the Buyer, the Buyer informs BSR, or BSR reasonably believes, that the Buyer has or is likely to become subject to an Insolvency Event and the Goods remain in the possession or control of the Buyer, then, without limiting any of BSR's other rights and remedies:
- 7.5.1 The Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
  - 7.5.2 BSR may at any time:
    - 7.5.2.1 at its sole discretion elect to transfer title to Buyer; or
    - 7.5.2.2 require the Buyer at the Buyer's expense to redeliver the Goods to BSR and if the Buyer fails to do so promptly, enter any premises or instruct an agent of BSR's to enter any premises where the Goods are stored and repossess them.
- 7.6 Where the Buyer uses banking facilities or factoring or an invoice discounting company which involves the selling of debtors or using debtors as security, the Buyer shall notify the third party concerned of BSR's interest in the Goods and specifically that title in the Goods has not passed until BSR's invoice has been paid in full and otherwise as set out in these Conditions.



## **8. LIMITED WARRANTY**

- 8.1 Buyer acknowledges that BSR does not manufacture the Goods (or where Goods comprise computer software does not publish or license the software) and subject to the conditions set out below in this clause 8 BSR only sells Goods with the benefit of the OEM's warranty. Warranties are offered from the OEM on a passthrough basis to End User or directly by OEM to End User.
- 8.2 BSR warrants that at the time of Delivery, Goods will conform to the specifications stated by the OEM in its published data sheet for the Goods. To the extent legally and contractually permitted, BSR shall pass through to Buyer any transferable Goods warranties, indemnities, and remedies provided to BSR by the OEM, including those for intellectual property infringement.
- 8.3 The warranty in clause 8.2 above is in lieu of all warranties whatsoever (whether expressed or implied and whether arising at common law or by statute) all of which are hereby excluded to the full extent permitted by law. BSR does not attempt to exclude the warranty as to title.
- 8.4 BSR's warranty in clause 8.2 shall only operate where BSR is able to claim under the OEM's warranty. The Buyer shall be responsible for making itself aware of the terms of the OEM's warranty prior to the Contract being formed and complying in all respects with the same at all times

## **9. LIMITATION OF BSR'S LIABILITY**

- 9.1 BSR'S LIABILITY UNDER ANY CONTRACT IS LIMITED TO MAKING GOOD DAMAGE OR FAILURES TO THE EXTENT DESCRIBED IN CLAUSE 4 AND SUBJECT TO CLAUSE 8.
- 9.2 BSR'S LIABILITY TO BUYER IS LIMITED TO BUYER'S DIRECT DAMAGES UP TO AN AMOUNT NOT EXCEEDING THE PRICE OF THE GOODS AT ISSUE. THIS LIMITATION OF LIABILITY DOES NOT APPLY IN CASE OF DEATH OR PERSONAL INJURY CAUSED BY BSR'S NEGLIGENCE. BSR IS NOT LIABLE FOR AND BUYER IS NOT ENTITLED TO ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (FOR EXAMPLE, LOSS OF PROFITS OR REVENUE, LOSS OF DATA, LOSS OF USE, REWORK, REPAIR, MANUFACTURING EXPENSE, COSTS OF PRODUCT RECALL, INJURY TO REPUTATION OR LOSS OF CUSTOMERS). TO THE EXTENT BSR CANNOT LAWFULLY DISCLAIM ANY IMPLIED OR STATUTORY WARRANTIES, BUYER'S STATUTORY RIGHTS ARE NOT AFFECTED BY THIS LIMITATION OF LIABILITY.
- 9.3 TO THE EXTENT THE LAW DOES NOT PERMIT SUCH LIABILITY TO BE EXCLUDED, BSR DOES NOT ATTEMPT TO LIMIT ITS LIABILITY FOR DAMAGE TO THE TANGIBLE PROPERTY OF THE BUYER RESULTING FROM THE NEGLIGENCE OF BSR OR ITS EMPLOYEES OR AGENTS TO THE EXTENT THAT BSR IS INSURED AGAINST SUCH LOSS.
- 9.4 THE BUYER UNDERTAKES WITH BSR THAT IT WILL ENSURE COMPLIANCE SO FAR AS IS REASONABLY PRACTICABLE BY ITSELF, ITS EMPLOYEES, AGENTS AND LICENSEES WITH ANY INSTRUCTIONS GIVEN BY BSR OR THE OEM FOR THE PURPOSE OF ENSURING THE GOODS WILL BE SAFE AND WITHOUT RISK TO HEALTH WHEN PROPERLY USED AND WILL TAKE ANY STEPS AND PRECAUTIONS, HAVING REGARD TO THE NATURE OF THE GOODS AS ARE NECESSARY TO PRESERVE THE HEALTH AND SAFETY OF PERSONS HANDLING, USING OR DISPOSING OF THEM.
- 9.5 BSR GIVES NO UNDERTAKING THAT THE GOODS ARE FIT FOR ANY PARTICULAR PURPOSE (INCLUDING ANY PURPOSE FOR WHICH SUCH GOODS ARE COMMONLY SUPPLIED) OR IS OF ANY PARTICULAR QUALITY IN RESPECT OF ITS APPEARANCE, FINISH, SAFETY, DURABILITY OR FREEDOM FROM DEFECTS OR OTHERWISE. THE BUYER HAVING GREATER KNOWLEDGE OF HIS OWN REQUIREMENTS RELIES ENTIRELY ON HIS OWN SKILL AND JUDGEMENT IN EVALUATING WHETHER THE EQUIPMENT IS IN EVERY RESPECT OF SATISFACTORY QUALITY.

- 9.6 THE BUYER UNDERTAKES TO ENSURE THAT THE END USER OF ANY GOODS THAT THE BUYER HAS RESOLD WILL COMPLY WITH THE OEM MANUFACTURER/DEVELOPERS END USER LICENCE AGREEMENT

## **10. TELECOMMUNICATIONS GOODS**

- 10.1 Where Goods supplied are to be used in conjunction with British Telecom ("BT") lines or apparatus then the following additional Conditions shall apply:
- 10.2 BT shall have the right to require modifications to be carried out to Goods already installed and in use and the modifications will be carried out at the Buyer's expense
- 10.3 the Buyer shall indemnify BSR against all and any liability, cost or expense arising out of or in connection with damage, loss or injury to BT goods or personnel in connection with or arising out of the Buyer's acts or omissions.

## **11. FORCE MAJEURE**

- 11.1 BSR shall not be liable for any loss or damage and be entitled to cancel or rescind any Contract if the performance of its obligations under the Contract is in any way adversely affected by any cause whatsoever beyond BSR's control including (but not limited to) the delays or default of supplies or the defaults of any subcontractor, act of God, explosion, fire or accident, war, threat of war, sabotage, insurrection, civil disturbance, requisition, Acts, restrictions, regulations, by-laws, prohibitions or measures of any Government or Parliamentary or Local Authority, strike, lock-out, trade disputes, flood, accident to plant or machinery, shortage of materials or labour, import or export regulations or embargoes. If due to any such event BSR has insufficient stocks to satisfy an Order BSR may apportion available stocks between its customers at its sole discretion.

## **12. CONFIGURATION**

- 12.1 The Buyer shall be solely responsible for the accuracy of a configuration services Order and BSR shall provide such services entirely under Buyer's instruction without warranting that the configured Goods are satisfactory for the purpose for which it is required.
- 12.2 Configuration services have a warranty of 14 days from date of shipment to Buyer. BSR's sole liability in respect of any defective configuration services for which BSR is responsible shall be the repair (or at BSR's sole option, replacement) of the Goods on which the services have been performed. Claims under this clause 12.2 must be made within 21 days of the date of shipment.

## **13. DATA PROTECTION**

- 13.1 The parties acknowledge and agree that some or all of the Services to be provided by BSR pursuant to an Order entered into pursuant to these Conditions may involve BSR processing Personal Data of which Buyer is the Data Controller. The parties acknowledge and agree that, in respect of such processing, for the purposes of the Data Protection Legislation, Buyer is the Data Controller and BSR is the Data Processor.
- 13.2 Buyer warrants that:
- 13.2.1 it has all necessary and appropriate consents and notices in place to enable the lawful transfer of any Personal Data to BSR for the duration and purposes of any Contract;
- 13.2.2 all instructions given by it to BSR in respect of Personal Data shall at all times be in accordance with Data Protection Laws; and
- 13.2.3 it has undertaken due diligence in relation to BSR's processing operations, and it is satisfied that BSR's processing operations are suitable for the purposes for which the Buyer proposes to use the services and engage BSR to process the Protected Data.

- 13.3 BSR shall process the Personal Data only in accordance with Buyer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by Buyer.
- 13.4 BSR shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 13.5 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 13.6 BSR warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
  - 13.6.1 take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
    - 13.6.2 the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
    - 13.6.3 the nature of the data to be protected; and
    - 13.6.4 take reasonable steps to ensure compliance with those measures.
- 13.7 On the basis BSR warrants to adhere to the remainder of this condition 13.7, Buyer consents to BSR engaging sub-processors for carrying out any processing activities in respect of the Protected Data. Prior to appointing any such sub-processor, BSR warrants that:
  - 13.7.1 prior to the relevant sub-processor carrying out any processing activities in respect of the Protected Data, BSR appoints each sub-processor under a written contract containing materially the same obligations as under this condition 13;
  - 13.7.2 BSR ensures each such sub-processor complies with all such obligations; and
  - 13.7.3 BSR to remain fully liable for all the acts and omissions of each sub-processor as if they were its own.
- 13.8 The Buyer agrees to indemnify and keep indemnified and defend at its own expense BSR against all costs, claims, penalties, fines, damages or expenses incurred by the Buyer or for which t BSR may become liable due to any failure by the Buyer or its employees or agents to comply with any of its obligations under this condition 13.
- 13.9 Buyer acknowledges that BSR is reliant on Buyer for direction as to the extent to which BSR is entitled to use and process the Personal Data. Consequently, BSR will not be liable for any claim brought by a Data Subject arising from any action or omission by BSR, to the extent that such action or omission resulted directly from Buyer's instructions.
- 13.10 The Buyer agrees that BSR may transfer Protected Data that is processed pursuant to BSR providing the goods and/or services in accordance with an Order to countries outside the European Economic Area (EEA) or to any International Organisation(s) (an International Recipient), provided all transfers by BSR of Protected Data to an International Recipient (and any onward transfer) shall (to the extent required under Data Protection Laws) be effected by way of appropriate safeguards and in accordance with Data Protection Laws.
- 13.11 BSR shall promptly (i) refer all data subject requests it receives to the Buyer and (ii) notify the Buyer of the Personal Data Breach and provide any necessary details of the same.

## 14. GENERAL

- 14.1 Where applicable, Buyer is responsible for all obligations and liabilities under the European Union's (i) Waste Electrical and Electronic Equipment Directive (2012/19/EU), (ii) Packaging Waste Directive (94/62/EC) and (iii) Batteries Directive (2006/66/EC), all as amended and all related national implementing measures in force from time to time. BSR shall have no liability or obligations under the preceding directives.
- 14.2 Buyer agrees to comply with the UK Bribery Act 2010 and corresponding legislation applicable in the jurisdictions Buyer conducts business in. Buyer shall not make any direct or indirect payment, offer to pay, or authorise to pay, any gift, money, promise to give or authorise the giving of anything of value to any government official or politician or the immediate family of the same for the purpose of influencing acts or decisions of such individual in order to assist directly or indirectly Buyer or BSR in obtaining or retaining business or securing an improper advantage. Buyer's commitment to comply with the Bribery Act 2010 and other such legislation shall also extend to its dealings with BSR, its suppliers, the End Users and any other commercial parties.
- 14.3 BSR may assign any of its rights and/or obligations under a Contract. The Buyer may not without the prior written consent of BSR assign any of its rights and/or obligations under any Contract.
- 14.4 No delay or failure by BSR in enforcing any provision shall constitute a waiver of that provision or any other provision. No waiver by BSR of any breach of a Contract shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 14.6 BSR's rights are cumulative and in addition to any rights available to it at common law.
- 14.7 These Conditions are BSR's current Conditions. BSR maintains the right to add to or amend these Conditions at any time and in its sole discretion. The Buyer will be responsible for satisfying themselves as to the Conditions on an ongoing basis and those applicable to the transaction(s) in hand, by either viewing the BSR website or requesting a hard copy direct from BSR.
- 14.8 Nothing in these Conditions shall confer on any third party (that is, any party other than BSR or the Buyer) any benefit or the right to enforce any term of these Conditions and the application of the Contracts (Rights of Third Parties) Act 1999 to these Conditions is hereby excluded.
- 14.9 The Buyer and BSR agree that each Contract (incorporating these Conditions) shall be governed by and construed in accordance with English law and each of the Buyer and BSR irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including but not limited to non-contractual disputes and claims).
- 14.10 BSR may monitor, record, store and use any telephone, email or other communication with the Buyer in order to:
- 14.10.1 check any instructions given to BSR,
  - 14.10.2 for training purposes,
  - 14.10.3 for crime prevention and
  - 14.10.4 to improve the quality of BSR's customer service.
- 14.11 Except as specifically permitted in writing by (a) BSR or (b) the relevant manufacturer(s) of relevant Goods or (c) the provider of relevant Services, the Buyer hereby agrees that it will not (and will inform third parties they are not permitted to): (i) copy or manufacture any Goods; or

(ii) translate, modify, adapt, enhance, extend, decompile, disassemble or reverse engineer any of the Goods