

# BLACKOUT LTD

These terms and conditions regulate our trading relationship and set out duties and obligations. They need to be read in conjunction with the Order Confirmation which contains the specific content of our agreement but may also be subject to any special policies which Blackout applies under exceptional circumstances.

## CONDITIONS FOR SALE OF GOODS

### 1. Meanings

1.1 The following terms will have the following meanings in these conditions for Goods sale:

**"Blackout"** means Blackout Limited (registered in England and Wales with company number 02502293) whose registered office is at 2<sup>nd</sup> Floor 130 Shaftesbury Avenue London W1D 5AR and includes its subsidiaries associated companies and any successor business.

**"Business Day"**; means a day (which is not a Saturday Sunday or public holiday) when the clearing banks in London are open for business.

**"Conditions"**; means these terms and conditions for the sale of the Goods.

the **"Contract"** means the overall agreement between the parties for the sale of the Goods to the Customer and which consists of (i) any Special Policies and (ii) the Order Confirmation and (iii) these Conditions and (iv) any variations or additions which Blackout and the Customer agree in writing. Where conflict arises these parts of the Contract are to be interpreted as Condition 11 requires.

the **"Customer"** means the company or person which has agreed to purchase the Goods from Blackout.

**"Delivery"** means the transfer of possession of the Goods to the Customer by physical delivery or by collection as Condition 4 provides.

**"Delivery Date"** means the date agreed for the Delivery of the Goods.

**"Delivery Location"** means the agreed place for the Delivery of the Equipment whether by Blackout or by collection by the Customer.

**"Goods"** means the goods (or any part of them) agreed to be sold to the Customer.

**"Order"** has the meaning given in Condition 2.1.

**"Order Confirmation"** means Blackout's written acceptance of the Customer's Order.

an **"Overriding Circumstance"** means an act event or circumstance which is beyond Blackout's reasonable control.

**"Price"** means the price agreed to be paid for the Goods by the Customer as Condition 7 provides.

**"Special Policies"** are any special terms and policies required by exceptional circumstances which Blackout notifies to the Customer.

**"Specification"** is any specification for the Goods which Blackout and the Customer have agreed.

**"Storage Period"** means the period of five Business Days from the date agreed for Delivery

1.2 Reference to the **"Goods"** includes any part of them.

1.3 **"Published"** includes a statement made on Blackout's website.

1.4 A **"person"** includes a natural person or firm or corporate or unincorporated body or entity (whether it has a separate legal personality).

1.6 Reference to a **"company"** means any corporate body however it is incorporated or established.

1.7 A reference to a **"statute"** or **"statutory provision"** is a reference to that statute or statutory provision as it is currently in force with any subordinate legislation which is made under it or any statute or statutory provision which replaces it for an equivalent purpose.

1.8 A reference to the words **"in writing"** or **"written"** includes faxes and e-mails.

### 2. Basis of the Contract

2.1 The Order is an offer by the Customer to purchase the Goods on the terms of these Conditions. The Customer is responsible for ensuring that the terms of the Order and any specification supplied by the Customer are complete and accurate.

- 2.2 The Order will only be treated as accepted when Blackout sends an Order Confirmation to the Customer which the Customer accepts at which point the Contract will come into existence.
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement promise or representation made by Blackout or made on its behalf which is not set out in the Contract.
- 2.4 Any samples drawings descriptive material or advertising produced by Blackout and any illustrations contained in Blackout's Publications catalogues or brochures are produced for the sole purpose of providing an approximate idea of the Goods described in them. They will not form part of the Contract or have any contractual effect.
- 2.5 Any quotation given for the Goods by Blackout will not constitute an offer. A quotation will only be effective for a period of 10 Business Days from its date of issue.

### 3. Goods

- 3.1 The Goods are as described in the Specification or referred to by other means in the Order Confirmation.
- 3.2 Blackout reserves the right to amend the Specification if required by any statutory or regulatory requirement.

### 4. Delivery

- 4.1 Unless otherwise agreed the Goods will be Delivered by Blackout or collected by the Customer at the Delivery Location on the Delivery Date.
- 4.2 Blackout will ensure that the Delivery of the Goods is accompanied by a delivery note which shows:
  - (a) the date of the Order, and
  - (b) Blackout's reference numbers, and
  - (c) the type and quantity of the Goods (including the code numbers where these apply), and
  - (d) any special storage instructions, and
  - (e) whether the Order is being Delivered by instalments, and
  - (f) the place for Delivery.
- 4.3 If Blackout requires the Customer to return the packaging materials or pallets then this will be stated in the delivery note in which case the packaging materials and pallets will be promptly returned to Blackout or made available for Blackout's collection as Blackout reasonably requires.
- 4.4 The Delivery of the Goods will be completed on the arrival of the Goods at the Delivery Location or by their collection by the Customer.

- 4.5 Any dates quoted for Delivery are approximate only and the time of Delivery is not of the essence. Blackout will not be liable for any delay in the Delivery of the Goods caused by an Overriding Circumstance or by the Customer's failure to provide Blackout with adequate Delivery or unloading instructions.

- 4.6 If Blackout fails to Deliver the Goods, then its liability will be limited to the costs and expenses which the Customer has incurred in obtaining replacement goods of similar description, and quality in the least expensive market reasonably available less the price of the Goods. Blackout will have no liability for a failure to Deliver the Goods if the failure is caused by an Overriding Circumstance or by the Customer's failure to provide adequate Delivery instructions or other instructions relevant to the supply of the Goods.

- 4.7 If the Customer fails to accept the Delivery of the Goods on the day which Blackout notifies the Customer that the Goods are ready for Delivery then - except where the failure or delay is caused by an Overriding Circumstance or by Blackout's failure to observe the Contract Blackout will store the Goods for the Storage Period or (if earlier) until Delivery takes place and charge the Customer for the related costs and expenses (including storage and insurance) incurred in doing so.

- 4.8 If the Customer has not taken Delivery of the Goods by the end of the Storage Period and/or has not by that time paid the Price to Blackout then Blackout may (but will not be obliged to) terminate the Contract on immediate written notice to the Customer under Condition 8.1 and dispose of all or some of the Goods. In that case Blackout may charge the Customer for any shortfall received below the price of the Goods in addition to other damages.

### 5. Quality

- 5.1 Blackout warrants that on Delivery the Goods will:
  - (a) materially conforms with the Specification.
  - (b) be free from material defects in design, material and workmanship unless the Goods are sold as used stock.
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

- 5.2 Subject to Condition 5.3, if:
  - (a) the Customer gives Blackout written notice within a reasonable time of discovery that the Goods do not comply with the warranty given in Condition 5.1, and
  - (b) Blackout is given a reasonable opportunity of examining those Goods, and
  - (c) the Customer (if Blackout asks it to do so) returns those Goods to Blackout's place of business at the Customer's cost; then Blackout will at its discretion either repair

or replace the defective Goods or refund all or part the price of those Goods to the Customer.

5.3 Blackout will not be liable for the failure of the Goods to comply with the warranty set out in Condition 5.1 if:

- (a) the Customer makes any further use of those Goods after giving notice into Blackout under Condition 5.2, or
- (b) the defect occurred because the Customer failed to follow Blackout's verbal or written instructions for the storage commissioning installation use or maintenance of the goods or good trade practice regarding them, or
- (c) the defect arose because Blackout complied with any drawing design or Specification which was supplied by the Customer, or
- (d) the Customer has altered or repaired those Goods without Blackout's written consent, or
- (e) the defect occurred because of fair wear and tear wilful damage negligence or abnormal storage or working conditions, or
- (f) the Goods differ from the Specification as a result of changes made to ensure that they comply with applicable statutory or regulatory requirements.

5.4 Except where this Condition 5 provides Blackout will have no other liability for the failure of the Goods to comply with the warranty given in Condition 5.1.

5.5 Except where these Conditions provide all warranties conditions and other terms implied by statute or common law are to the fullest extent permitted by law excluded from the Contract.

## 6. Title and Risk

6.1 The risk in the Goods will pass to the Customer on Delivery.

6.2 Title to the Goods will not however transfer to the Customer until Blackout has received full payment in cleared funds for:

- (a) the Goods, and
- (b) any other goods or services which Blackout has supplied to the Customer which are due including delivery charges where these apply.

6.3 Until title to the Goods has passed to the Customer the Customer will following Delivery:

- (a) hold the Goods on a fiduciary basis as Blackout's bailee, and
- (b) store the Goods separately from other goods held by the Customer so that they remain readily identifiable as Blackout's property, and
- (e) not remove deface or obscure any identifying mark or packaging on or which

relate to the Goods; and keep the Goods in a satisfactory condition and insure them against all risks for their full price from the date of Delivery, and

- (g) notify Blackout immediately if the Customer becomes subject to any of the events listed in Condition 8.2, and
- (h) give Blackout any information relating to the Goods which Blackout requires.

6.4 If before the title to the Goods has passed to the Customer the Customer becomes subject to any of the events listed in Condition 8.2 (or if Blackout reasonably believes that of those events are about to occur and notifies the Customer) then Blackout can without limiting any other right or remedy which it may have require the Customer to promptly return the Goods and if the Customer fails to do so enter any premises where the Goods are stored in order to recover them.

## 7. Price and Payment

7.1 The price of the Goods is stated in the Order Confirmation or if no price is quoted the Price will be as listed in Blackout's current Published or otherwise notified price list at the date of Delivery.

7.2 Blackout may by notifying the Customer increase the price of the Goods due to:

- (a) any request which has been made by the Customer to change the Delivery date(s), quantities or types of the Goods ordered or the Specification; or
- (b) delay caused by any altered instructions of the Customer or the Customer's failure to give Blackout adequate or accurate delivery instructions or information.

7.3 The Price does not (unless otherwise stated in the Order Confirmation) include the costs and charges of packaging insurance and transporting the Goods and collecting materials from site which will be invoiced to the Customer.

7.4 The Price is exclusive of value added tax ("VAT") or any equivalent tax On receipt of a valid VAT or equivalent tax invoice the Customer will pay the VAT or other tax chargeable on the supply of the Goods by Blackout

7.5 Blackout may on at any time invoice the Customer for the Goods and VAT or other equivalent tax.

7.6 The Customer will pay the Price and VAT or other tax on or before the Delivery Date except where any credit terms have been agreed between the Customer and Blackout and then in compliance with those credit terms. Where no credit terms have been agreed payment must be received by Blackout in advance by electronic transfer in cleared funds through a recognised bank before the Goods are

Delivered. Invoices in amounts of less than £10,000 (inclusive of Vat) may be made by the Customer through a credit or debit card in the Customer's name to Blackout's nominated bank account. No sums may be paid or will be accepted in cash. Blackout may require an advance payment or deposit from the Customer when it needs to purchase a significant quantity of goods from a third-party supplier in order to satisfy the Customer's purchase order for the Goods.

7.7 If the Customer fails to make any payment due to Blackout under the Contract by the due date for payment, then the Customer will pay interest on the overdue amount at the rate of 4% per annum above the current base or equivalent rate of Handelsbanken. Interest will accrue daily from the due date for payment until the date of actual payment of the overdue amount for the period whether before or after judgment. The Customer will pay the interest due with payment of the overdue amount.

7.8 The Customer will pay the sums due under the Contract in full without any deduction or withholding except as required by law and the Customer will not be entitled to assert any credit set-off or counterclaim against Blackout in order to justify withholding payment of that amount in whole or part. Blackout may at any time without limiting any of its other rights or remedies set off any amount owing from the Customer against any amount payable by Blackout to the Customer.

## 8. Customer's Insolvency or Incapacity

8.1 If any of the events listed in Conditions 8.2 occur or if Blackout reasonably believes that any of them is about to happen or if Blackout is otherwise entitled to terminate the Contract and so notifies the Customer then without limiting Blackout's other rights or remedies Blackout may terminate the Contract and cancel or suspend all further Deliveries under the Contract or any other contract between the parties without incurring any liability to the Customer and all sums outstanding for Goods Delivered to the Customer will become immediately payable.

8.2 For the purposes of Conditions 6.4 and 8.1 the relevant events are:

(a) the Customer 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 (being a company) or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed to be either unable to pay its debts or as having no reasonable prospect of so doing in either case within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply, or

(b) the Customer 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, or

(c) (being a company) a petition is filed a notice is given a resolution is passed or an order is made for or in connection with the winding

up of the Customer (other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer), or

(d) (being an individual) the Customer is the subject of a bankruptcy petition or order, or

(e) a creditor or encumbrancer of the Customer 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, or

(f) (being a company) 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 Customer, or

(g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver, or

(h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets, or

(i) any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 8.2(a) to

(j) the Customer suspends threatens to suspend ceases or threatens to cease to carry on all or substantially the whole of its business, or is struck off the register of companies, or

(k) the Customer's financial position deteriorates to such an extent that in Blackout's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy, or

(l) (being an individual) the Customer dies or by reason of illness or incapacity (whether mental or physical) is incapable of Managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Termination of the Contract will not affect any of the rights and remedies which the parties have accrued before termination. Provisions which expressly or by implication survive termination of the Contract will continue in full effect

## 9. Limitation of Liability

9.1 Nothing in these Conditions will limit or exclude Blackout's liability for:

- (a) death or personal injury caused by its negligence or the negligence of its employee's agents or subcontractors (as applicable), 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) defective products under the Consumer Protection Act 1987, or
- (e) any matter in respect of which it would be unlawful for Blackout to exclude or restrict liability.

9.2 Subject to Condition 9.1:

- (a) Blackout will under no circumstances whatever be liable to the Customer either in contract or tort (including negligence) for breach of statutory duty or otherwise for any loss of profit or any indirect or consequential loss arising under or in connection with the Contract, and
- (b) Blackout's total liability to the Customer in respect of all other losses arising under or in connection with the Contract whether in contract tort (including negligence) breach of statutory duty or otherwise shall in no circumstances exceed the Price of the Goods.

## 10. Assignment and subcontracting

10.1 Blackout may at any time assign transfer charge subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

10.2 The Customer may not assign transfer charge subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without Blackout's advance written consent.

## 11. Conflict and interpretation

11.1 In the event of conflict then

- (i) the provisions of any Special Policies will prevail over the Order Confirmation and these Conditions and
- (ii) the provisions of the Order Confirmation will prevail over these Conditions and
- (iii) written variations or additions to the Contract will prevail over any other contrary provisions subject to Condition 16.2.

## 12. Notices

12.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing addressed to that party at its registered office (if it is a company) or at its place of business or any other address which that party has specified or in the case of an individual to that person's last known

residential address and notice will be in writing and will be delivered personally or sent by pre-paid first class post recorded delivery commercial courier or fax or by e-mail.

12.2 A notice or other communication will be deemed to have been received if delivered personally or when left at the address referred to in Condition 12.1 or if sent by pre-paid first class post or recorded delivery at 9.00 am on the second Business Day after posting if delivered by commercial courier on the date and at the time that the courier's delivery receipt is signed or if sent by fax mail one Business Day after transmission.

12.3 The provisions of this Condition will not apply to the service of any proceedings or other documents in any legal action once commenced in the Courts.

## 13. Severance

13.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid illegal or unenforceable that provision or part-provision will to the extent required be deemed to be deleted and the validity and enforceability of the other provisions of the Contract shall not be affected.

13.2 If any invalid unenforceable or illegal provision of the Contract would be valid enforceable and legal if some part of it were deleted the provision shall apply with the minimum modification necessary to make it legal valid and enforceable.

## 14. Waiver

14.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## 15. Third party rights.

A person who is not a party to the Contract shall not have any rights under or in connection with it.

## 16. Variation.

16.1 Except as set out in these Conditions any variation to the Contract including the introduction of any additional terms and

conditions will only be binding when agreed between the parties in writing.

16.2 An Order Confirmation or any variation or additions to the Contract will only be binding on Blackout if made or authorised by a person who is internally authorised for the purpose by a Blackout.

**17. Governing law and jurisdiction.**

The Contract and any dispute or claim which arises out of or in connection with it or its subject matter will be governed by and construed by English law. The parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter.