

BMD & CO. LTD.

TERMS AND CONDITIONS OF TRADE

1.0 ACCEPTANCE

- 1.1 These Terms and Conditions shall apply to all contracts for the purchase of goods (the “Goods”) by and the supply of services (the “Services”) to BMD & Co. Ltd. (the “Buyer”) from the supplying party (the “Seller”) to the exclusion of all other terms and conditions including any terms or conditions which the Seller may purport to apply under any sales offer, Sellers terms and conditions or similar instrument of the Seller.
- 1.2 Acceptance of a Buyer purchase order (“Purchase Order”), dispatch or delivery of the Goods and/or Services by the Seller to the Buyer shall be deemed to be conclusive evidence of the Sellers acceptance of these Terms and Conditions.
- 1.3 Any variation of these Terms and Conditions (including any special terms and conditions agreed between the Buyer and the Seller) shall be inapplicable unless agreed in writing by a duly authorised representative of the Buyer.
- 1.4 In the event of any conflict between the terms stated on the front of a relevant Purchase Order and the terms and conditions herein, the terms stated on the Purchase Order will take precedence.

2.0 PRICE

- 2.1 The contract price shall be as agreed between Buyer and Seller and as stated on the Purchase Order.
- 2.2 The contract price shall be taken to be in Euro unless specifically designated otherwise and shall include all taxes and other impositions, costs, charges, and expenses (including for the avoidance of doubt transport charges) chargeable in respect of the Goods and/or Services by the Seller or any other person before delivery.
- 2.3 The Seller has 10 days from date of receipt of changes in the specification or shipping instructions to inform the Buyer of any adjustment in price. The contract price shall not be increased by the Seller (whether following an increase in the cost of labour or materials or otherwise) unless the Buyer expressly agrees in writing to such increase. Cash discounts and credit periods if any shall be commuted as commencing with receipt of the invoice or the Goods or Services whichever is the later. In the event that the Buyer makes any claim in connection with the Goods and/or Services provided by the Seller, the Buyer shall be entitled to withhold or deduct such amount as the Buyer deems appropriate from any amount then or subsequently to become due by the Buyer to the Seller and such amount withheld shall not become due until the resolution of such claim and then only in so far as it may exceed the amount of such claim.
- 2.4 On completion of the works as specified in the Purchase Order, a representative of the Buyer shall certify that the Goods and/or Services have been delivered as specified in the Purchase Order. Upon receipt of such certification Seller may submit an invoice in accordance with Clause 2.5 below notwithstanding that such certification shall not extinguish Seller’s liability for Goods and/or Services which have been supplied negligently or which are subsequently found to be defective or causes damage.
- 2.5 The Seller shall invoice the Buyer on delivery of the Goods and/or Services as specified in the Purchase Order as described in Clause 2.4 above.
- 2.6 Buyer shall pay correctly submitted invoices at the end of the month following the month of invoice.

3.0 RISK & TITLE

- 3.1 Risk of loss and/or damage to the Goods shall rest with the Seller until the Goods are physically delivered to the Buyer’s workshop or site or other destination nominated by the Buyer. Title to the Goods and Services delivered shall pass to the Buyer on delivery of the Goods and/or Services. Rejected Goods shall be at the Sellers risk as soon as rejection is notified to the Seller, notwithstanding that same are in the Buyers possession.

4.0 SHIPMENT / DELIVERY

- 4.1 The delivery date and shipping instructions shall be of the essence.
- 4.2 If the Seller fails to deliver all of the Goods and/or the Services in accordance with the Purchase Order on the delivery date, then without prejudice to the Buyers rights for the breach of contract the Buyer may terminate the order. In this event without prejudice to the Buyers other remedies the Seller shall promptly collect any Goods which have been delivered.
- 4.3 Where delivery of a quantity of the Goods which correspond to the order has been tendered but is less than the agreed quantity and the Buyer has not exercised its right of termination under clause 4.2 the Buyer may accept the Goods which correspond to the order and recover for the Sellers breach in respect of the failure to deliver the remainder of the Goods.
- 4.4 Receipt of deliveries or payment for Goods or services delivered hereunder shall not constitute acceptance. The signature of the Buyers receiving clerk is for count of original packages only and not for correct weight or count, quantity or condition of contents. Buyer retains the right to inspect the Goods or Services performed which are in Buyers judgement defective. Goods rejected by Buyer and Goods supplied in excess of quantities ordered may be returned at Sellers expense. In addition to any other remedies available to the Buyer may charge the Seller all expenses of unpacking, examining, repacking and re-shipping such Goods. In the event of receipt of Goods whose defect or nonconformity is not apparent on examination resulting in deterioration of the Buyers finished product the Buyer reserves the right to require the replacement as well as payment of any resulting damages.
- 4.5 The Buyer may postpone delivery by notice given to the Seller at any time before delivery.
- 4.6 The Buyer in accordance with clause 11.3 may terminate this contract at any time before all of the Goods and/or Services are delivered by giving written notice to the Seller. On giving such written notice the Seller:
- (i) Shall cease to be bound to deliver and the Buyer shall cease to be bound to receive delivery of any further Goods or Services;
 - (ii) The Buyer shall cease to be bound to pay that part of the price which relates to Goods or Services which have not been delivered;
 - (iii) The Buyer shall not be liable for any loss or damage whatever arising from such cancellation.

5.0 INTELLECTUAL PROPERTY & CONFIDENTIALITY

- 5.1 The Seller agrees to return all physical or secret or confidential intellectual property furnished to Seller by Buyer or Buyers agents in connection with the execution and filling of this contract and the Seller further agrees not to disclose to or use such property for the benefit of any third party.
- 5.2 The Seller warrants that the Goods sold hereunder and every element thereof, the method of manufacture thereof, and the use of the Goods in the customary manner or in the manner suggested or recommended by the Seller or any manner intended by the Buyer which is known to the Seller do not infringe any Irish, European Community or other trademark, patent or copyright and agrees to indemnify and hold harmless the Buyer and the Buyers employees against any damages, liability, cost or expense resulting from any claim or proceedings alleging such infringement Provided the Buyer gives Seller notice thereof, where upon the Seller shall be obliged to enter and defend, settle or otherwise terminate such claim or proceeding at its expense.
- 5.3 Seller agrees to keep all confidential information of Buyer in confidence during and following termination of the contract and to protect such information from unauthorised dissemination and use.

6.0 INSPECTION & TESTING

- 6.1 If the Seller is the manufacturer, the Seller hereby grants the Buyer the right to qualify and audit the Seller. If the Seller is a distributor/agent, the Seller hereby agrees to use commercially reasonable efforts to have the manufacturer grant the Buyer the right to qualify and audit the manufacturer. The Buyer may at all reasonable times during manufacture, inspect on the Sellers premises the manufacture and workmanship of all Goods to be supplied by the Seller, and if any item is being manufactured on other premises, the Seller shall obtain permission for the Buyer to inspect, shall give to Buyer reasonable notice of the dates on and the place at which the Goods will be ready for testing and shall at Sellers expense give Buyer all assistance as may be reasonably necessary to carry

out the test effectively. Such inspection or testing shall not relieve the Supplier from its obligations under the contract for the supply of Goods and Services whether statutory or otherwise.

6.2 If the Buyer is not reasonably satisfied that the Goods or their manufacture or processing comply in all material respects with the contract the Seller without extra cost to the Buyer shall take all steps necessary to ensure due compliance.

7.0 PACKAGING, IMPORT & EXPORT

7.1 The Seller shall comply with the specifications and all applicable standards and legal and regulatory requirements concerning the design, manufacture, processing storage, testing and packaging of the Goods.

7.2 The Goods shall be marked in accordance with the Buyers instructions or the Buyers specifications and all lawful requirements and shall be properly packed and secured for delivery to the Buyer in an undamaged condition.

7.3 If the Seller is to export the Goods into the Republic of Ireland the Seller shall ensure that the Goods are not packaged in hay, straw, peat moss or litter. The Seller shall in addition promptly obtain all necessary export and import licences, clearances and other consents necessary for the export and supply of the Goods.

7.4 Seller shall ensure that any materials required by this order that are deemed hazardous will be packaged, marked and shipped by Seller in a manner which complies with all regulations governing the transport, packaging and supply of such hazardous materials.

8.0 WARRANTY

8.1 All representations, statements or warranties made or given by the Seller, its servants and agents (whether orally, in writing or in any of the Sellers brochures, catalogues or advertisements) regarding the quality and fitness for purpose of the Goods and/or Services shall be deemed to be an express condition of the contract.

8.2 In addition to any warranty implied by fact or law the Seller expressly warrants all Goods and Services supplied to Buyer to be free from defects in design workmanship and materials, to conform strictly with applicable specifications, drawings, approved samples and other descriptions if any, and to be fit and sufficient for the purposes intended and to be of merchantable quality and of good material and workmanship. Such warranties together with all other service warranties of Seller shall be for the benefit of the Buyer, its successors, assigns and customers. All warranties shall survive inspection, test, acceptance and payment by Buyer. The Buyer shall have the option to return for credit or require prompt correction or replacement of the defective or non conforming Goods or to cover and receive payment therefore as of the time the Buyer establishes the Seller will not satisfactorily cure the non conforming tender.

8.3 The Seller warrants that it has the right to sell the Goods, that the Goods are free from any charge or encumbrance in favour of any third party, that Buyer shall enjoy quite possession of the Goods and without effecting the generality of the foregoing, that Buyer shall have the right to use the Goods for any purpose, of which the Seller is or should reasonably be aware without interference from any third party.

9.0 INDEMNIFICATION

9.1 The Seller shall indemnify the Buyer against all claims by the customers of the Buyers and their sub buyers arising out of any breach whatever by the Seller of the contract due to want of merchantability quality or lack of fitness for purpose of the Goods or any of the Goods and without prejudice to the other rights of the Buyer for breach by the Seller. Where any of the Goods supplied to the Buyer are not in accordance with the contract, the Seller shall at the option of the Buyer forthwith upon notice being given either repair or replace such Goods. If it is necessary to open up or dismantle any other works or assemblies to permit such repair or replacement, then the Seller shall bear the cost (direct and indirect) of such opening up or dismantling and of reassembly and making good after repairs, replacements and testing of such Goods being completed to the Buyers reasonable satisfaction.

9.2 The Seller agrees that it will indemnify the Buyer and save the Buyer harmless from all losses (including consequential losses) liability, damage, expense, claims and/or costs in respect of personal injury, damage to property, loss of profits or otherwise which may be sustained by or claimed against the Buyer, arising out of or contributed to by, or connected with the performance by the Seller whether by its servants or agents, representatives or employees or howsoever of its obligations under the contract.

10.0 INSURANCE

- 10.1 The Seller is obliged to hold in force all necessary employers liability, public liability, motor contractors, all risks or engineering insurances to fully satisfy its requirements to defend, indemnify and hold the Buyer harmless as set forth herein and to provide details of such insurances to Buyer upon request.
- 10.2 The Buyer at its absolute discretion may refuse to accept any deliveries from the Seller if the Seller fails to comply and/or provide evidence of such request to have adequate insurance, satisfactory to the Buyer.
- 10.3 All insurance cover referred to herein will name the Buyer and any other party which Buyer may reasonably nominate as an additional insured and provide for a thirty day notice period for cancellation or reduction in coverage or limits.

11.0 TERMINATION

- 11.1 The Buyer shall have the right in its absolute discretion and without having to give any reasons or adopt any procedure at any time by giving notice in writing to the Seller to terminate any contracts forthwith in any of the following events:
- (i) if the Seller shall commit any material breach or persistent breaches of any covenant or agreement made between the parties and, where the breach is capable of remedy in the sole discretion of the Buyer, shall fail to remedy such breach within thirty (30) days after receipt of written notice thereof by the Seller; or
 - (ii) if the Seller enters into liquidation whether compulsorily or voluntarily (otherwise than for the purpose of amalgamation or reconstruction) or compounds with its creditors or has a receiver or an examiner appointed over all or any part of its assets or takes or suffers any similar action in consequence of debt.
- 11.2 The Buyer shall have the option of terminating any contract with immediate effect by written notice to the Seller in the event of ownership of or control over the Seller being transferred to others or in event of the Buyer being taken over by consolidating with any individual form of corporation or selling or otherwise disposing of all or substantial part of its assets.
- 11.3 The Buyer may in its absolute discretion without having to give reasons or adopt any procedure terminate any contract at any time by providing the Seller with not less than one (1) months prior written notice.

12.0 CONSEQUENCES OF TERMINATION

- 12.1 On expiration of any contract or in case of cancellation for any reason, the Seller shall:
- (a) immediately cease and refrain from exercising all rights granted to the Seller under any contract; and
 - (b) immediately return to the Buyer or otherwise dispose of as Buyer directs any goods, documentation or information which is the property of the Buyer.

13.0 MISCELLANEOUS

- 13.1 This Order, the work required to be done hereunder and any payments to be made hereunder may not be assigned, transferred or sub-contracted by the Seller without Buyers prior written approval. Breach of this condition shall entitle the Buyer to cancel the contract or at its election any part of it.
- 13.2 This Agreement will be governed by and construed and accordance with the laws of Ireland (excluding Northern Ireland) and the parties hereto agree to submit to the non-exclusive jurisdiction of the Courts of Ireland (excluding Northern Ireland) for the Buyers benefit only.
- 13.3 If a Court of competent jurisdiction finds any provision of this Agreement unlawful or enforceable that provision will be enforced to the maximum extent permissible so as to effect the intent of the parties and the remainder of this Agreement will continue in full force and effect.
- 13.4 No single or reported waiver of any default for any period of time shall be construed as a continuing waiver and the right of termination under the contract shall remain enforceable at any time any default may exist, no matter for how long or how many times that default may have existed.