

Bluecrow Projects Limited Terms of Sale

1. Interpretation

1.1 In these Terms:

“Buyer” means the person who accepts the Seller’s written quotation for the sale of the Goods and/or the Service and whose order for the Goods and/or the Service is accepted by the Seller;

“Contract” means the contract for the sale and purchase of the Goods and/or the Service;

“Goods” means the goods (including any instalment of the goods or any parts of them) referred to in the Specification and which the Seller is to supply in accordance with these Terms;

“Seller” means Bluecrow Projects Limited (registered in the UK under number 067768390);

“Service” means the service to be provided by the Seller to the Buyer in accordance with these Terms and referred to in the Specification;

“Specification” means the document referencing these Terms, including the specification for the Goods and/or the Service and setting out the specific terms of the Contract, or to which these Terms are attached;

“Terms” means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;

“Writing” and any similar expression, includes electronic mail, facsimile transmission and comparable means of communication.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

2. Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods and/or the Service in accordance with the Seller’s Written quotation (if accepted by the Buyer), or the Buyer’s Written order (if accepted by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the Buyer

2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the buyer and the Seller.

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods and/or the Service unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted on entirely at the buyer’s own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until a confirmation of order in Writing is issued to the Buyer by the Seller’s authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and/or Service within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity and description of the goods and/or the Service shall be as set out in the Seller’s quotation, or in the Seller’s written confirmation of order.

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim from a third party, including that for infringement of any patent,

copyright, design, trade mark or other industrial or intellectual property rights of any other person, which results in from the Seller's use of the Buyer's specification.

- 3.5 The Seller reserves the right to source and procure the supply of manufactured products from any third party for the purpose of enabling the Seller to perform the Contract in accordance with its terms. The Buyer's attention is specifically drawn to clause 3.8 below.
- 3.6 For the avoidance of doubt, all intellectual property rights in any designs, documents, process or products created by the Seller shall belong to the Seller unless otherwise agreed in writing.
- 3.7 The Seller reserves the right to make any changes in the specification of the Goods and/or the Service which are required to conform with any applicable statutory or E.U. requirements or, where the Goods and/or the Service is to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.8 No order which has been accepted by the Seller may be cancelled or otherwise amended by the Buyer except with the agreement in Writing of the Seller and on terms that the buyer shall indemnify the Seller in full against all loss (including loss of profit and other consequential loss), costs (including the cost of all labour, manufacture, materials used and third party services engaged, damages charges and expenses incurred by the Seller as a result of such cancellation or amendment).

4. Price

- 4.1 The price of the Goods and/or the Service shall be the Seller's quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the buyer, after which time they may be altered by the Seller giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving Written notice to the buyer at any time before delivery to increase the price of the Goods and/or the Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specification for the Goods and/or the Service or any additional work which is requested by the buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except, as otherwise stated in the Seller's Written quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on the basis of the Goods being made available to the buyer at the Seller's premises, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax, local, excise, sales or use taxes or taxes designated or levied by a foreign Government which the buyer shall be additionally liable to pay to the Seller.
- 4.5 All pallets and returnable containers must be returned (at the Buyers expense) to the Seller within 7 days of the date of delivery or collection and in the event that such items are not so returned the cost of such pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods.

5. Terms of Payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller may invoice the Buyer:
 - 5.1.1 for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event, the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods;
 - 5.1.2 for the price of the Service as soon as such Service has been provided.
- 5.2 All invoices are payable (without any set off or other deduction) in accordance with the payment terms set out in the Seller's written confirmation of order, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.
- 5.3 Unless otherwise agreed in Writing by the Seller all payments are to be made in pounds sterling.
- 5.4 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:
 - 5.4.1 cancel the Contract or suspend any further deliveries to the Buyer;

5.4.2 appropriate any payment made by the buyer to such of the Goods and/or the Service (or the goods and/or services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.4.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 3 percent per annum above Barclays Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

6. Delivery

6.1 Delivery of the Goods shall be made by the buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 If the Buyer is to collect the Goods at the Seller's premises then the Buyer shall ensure that an appropriate representative who is authorised to receive the Goods on behalf of the Buyer is in attendance. For the avoidance of doubt the Seller shall not be required to investigate the authority of such representative and shall incur no liability in releasing the Goods to any person who attends on behalf of the Buyer whereupon delivery will be deemed to have been made in accordance with the Contract.

6.3 Any dates quoted for delivery of the goods are proximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused.

6.4 Where applicable, upon delivery and unless otherwise agreed in Writing, the Buyer shall be solely responsible for ensuring that they have sufficient labour and equipment to safely and efficiently unload the Goods and such pallets and containers from the Seller's vehicles.

6.5 Where the goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with the Terms 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.

6.6 If the Buyer fails to collect or take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may at their sole discretion;

6.6.1 store the Goods until actual delivery or collection and charge the Buyer 1% of the invoice price per day for the costs of such storage; or

6.6.2 upon the expiry of 3 months from the intended date of delivery or the date when the Seller notified the buyer that the Goods were ready for collection (whichever is the later) sell, dispose of or otherwise destroy the Goods without liability to the Seller.

7. Buyer's Obligations

7.1 Unless otherwise agreed in writing, where the Service is to include the installation or other similar services being undertaken by the Seller at premises to be designated by the Buyer, then the Buyer shall:-

7.1.1 provide suitable accommodation to ensure the safe custody and to minimise deterioration of the Seller's equipment and materials whilst on site;

7.1.2 effect and complete all works or preparation and construction necessary to receive the Service including clearance of all obstructions from the area of the site on which installation of the goods is to take place;

7.1.3 ensure that there is sufficient and continuous supply of electric light and 240 volt power supply available at all points of the site (if 110 volt supply only is available the Seller must be informed in Writing at least 7 days before commencement of installation date);

7.1.4 provide an even and level floor capable of supporting the Goods and the loads imposed during the installation. The Seller reserves the right to suspend any works until such times as the floor meets its requirements or, at its discretion, the Seller may, after giving notice of its intention to do so, proceed with the installation and any additional costs incurred shall be added to the price under the Contract and shall be paid to the Seller in accordance with these Terms. The Seller will advise the buyer when the work is stopped for such reasons;

7.1.5 provide reasonable canteen, toilet and first aid facilities to the Seller's personnel. If any of these facilities are not available, the Seller must be informed in writing at least 7 days before the installation is due to commence;

7.1.6 ensure that the installation site is available for a minimum of 10 hours per day (and 7 days per week if required by the Seller);

7.1.7 provide the Seller in Writing with the name of the Buyer's contact person at the site who is authorised to:-

(i) sign day work sheets, goods received notes and other such documents;

(ii) give exact location of installation and

(iii) sign any orders for additional works required to the Contract;

7.1.8 ensure that the installation site remains at a reasonable working temperature and atmosphere;

7.1.9 ensure that no other works are in progress on or above the installation site; and

7.1.10 obtain all necessary permissions and licences and conform to the provisions of Acts of Parliament and to any bye-laws, orders and regulation affecting any construction works under the Contract and pay and indemnify the Seller against all fees payable, costs, claims and actions in connection therewith.

8. Risk and Ownership

8.1 Risk of damage to or loss of the Goods shall pass to the buyer:

8.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

8.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the ownership in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full for the price of the Goods and all other goods agreed to be sold or services supplied by the Seller to the Buyer for which payment is then due.

8.3 Until such time as the ownership in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the Goods in the ordinary course of its business.

8.4 Until such time as the ownership in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

9. Warranties and Liability

9.1 Subject to the following provisions, the Seller warrants that the Service will be provided using reasonable skill and care and, as far as is reasonably possible, in accordance with the Specification and that the Goods will correspond with their specification and will be free from defects in material and workmanship at the time of delivery.

9.2 the above warranty is given by the Seller subject to the following conditions:

9.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

9.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Seller's approval;

9.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date of payment;

9.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

9.3 Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.4 If delivery is not refused, and the Buyer does not immediately notify the Seller of any defect in the quality or condition of the Goods and/or the Service or their failure to correspond with the Specification, the Buyer shall not be entitled to reject the Goods and/or the Service and the Seller shall have no liability for such defect or failure,

and the buyer shall be bound to pay the price as if the Goods and/or the Service had been provided in accordance with the Contract.

9.5 Where a valid claim in respect of any of the Goods and/or the Service which is based on a defect in the quality or condition of the Goods and/or the Service or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may:

9.5.1 replace the Goods (or the part in question) or undertake such reasonable additional works to rectify such defects free of charge;

9.5.2 at the Seller's sole discretion, refund to the Buyer the price of the Goods and/or the Service (or a proportionate part of the price);

in which case the Seller shall have no further liability to the Buyer.

9.6 Except in respect of death or personal injury caused by the Seller's negligence, or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses, or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure so supply the Goods and/or Service in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods and/or the Service, except as expressly provided in these Terms.

9.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods or the Service, if the delay or failure was due to any cause beyond the Seller's reasonable control.

10. Termination

10.1 This clause 10 applies if:

10.1.1 the Buyer is in breach of any term of the Contract or any other contract with the Seller;

10.1.2 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.4 the Buyer ceases, or threatens to cease, to carry on business; or

10.1.5 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods and/or the Service has been delivered and/or provided but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. Export Terms

11.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Terms.

11.2 The Buyer shall be responsible for complying with any legislation or regulation governing the export of the Goods from the United Kingdom and/or the importation of the Goods into the country of destination and for the payment of any duties thereon.

11.3 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be placed on board the vessel by the Seller at the port of shipment to be agreed in Writing and thereafter the risk of loss or damage is transferred to the Buyer when the Goods pass the vessel's rail. The Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

11.4 the Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller 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.

12. General

12.1 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.3 If any provision of the contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provision of the Contract and the remainder of the provisions in question shall not be affected.

12.4 The Contract, shall be governed by the laws of England, and the buyer agrees to submit to the non-exclusive jurisdiction of the English courts.