

BDX Group Ltd Terms of Trade

All Goods & Services supplied by BDX Ltd

are done so under the following

TERMS OF TRADE. Purchase of goods or

services from BDX Group Ltd

by any customer is deemed acceptance of these

Terms of Trade

1. Definitions

"Customer" means the person who orders or purchases Goods or Services from BDX, and where the Customer comprises two or more persons, means those persons jointly & severally.

"Goods" means any goods provided and/or manufactured by BDX.

"PPSA" means the Personal Property Securities Act 1999

"Order" means an agreement between BDX and the Customer for BDX to supply Goods and/or Services to the Customer.

"Quote" means a written offer from BDX to the Customer to supply Goods and/or Services for a specified price, subject to the terms and conditions of such offer.

"Services" means any service performed by BDX

"BDX" means BDX Group Ltd

"Terms of Trade Credit" means the terms of trade credit entered into between BDX and the Customer

2. Orders, Pricing, Quotes and Estimates

- 2.1 BDX may decline, in whole or in part, any order in its sole discretion
- 2.2 The price of Goods and Services is as specified in Blackdog's pricelist (as amended from time) - or in an Order or accepted Quote, as applicable.
- 2.3 Unless otherwise stated, prices stated do not include GST and are ex BDX's yard or manufacturing plant.
- 2.4 These Terms of Trade apply to all Goods and Services supplied by BDX including those supplies pursuant to a Quote. A Customer's acceptance of a Quote constitutes an agreement to purchase Goods or Services on these terms.
- 2.5 A Quote may be withdrawn or varied by BDX before it has been accepted in writing by the Customer.

2.6 All Quotes are based on rated and charges in effect at the date of the relevant quote. Any increase in rates or charges (including without limitation sub-contracted labour, materials and fuel) shall result in an equivalent increase in the quoted price.

2.7 An estimate as to price or quantity is not binding on BDX.

2.8 Where a Quote includes an estimate of quantities and the actual quantity supplied is materially different from that estimate, BDX reserves the right to revise the quoted price.

3. Payments

3.1 Except where Goods & Services are charged to a Trade Credit Account, payment is due on the placing of the Order.

3.2 Upon acceptance of a quote BDX reserves the right to charge a deposit of up to 30% to cover materials & initial costs

3.3 All Goods and/or Services charged to a Trade Credit Account and any interest due on the Account shall be paid in full no later than the 20th of the month following relevant invoice.

3.4 BDX shall be entitled to charge interest at its current overdraft rate, plus 10% on all overdue amounts from the date payment was due, until the date of actual payment.

3.5 All payments must be made by way of cash, cheque or bank transfer, free of any deductions, set off, counterclaim or condition of any of any kind. Payment of any amount due occurs only when cleared funds are deposited into BDX's bank account

3.6 Payments received by BDX shall be applied firstly in payment of interest and any costs incurred in debt recovery and then in reduction of principal.

3.7 BDX may withhold any credit due to the Customer and apply that credit against any amount owing under the account.

3.8 If the Customer disputes any item charged to the account, it must notify BDX immediately, and pay the undisputed portion of the Account balance by the due date for payment.

3.9 Where the Customer receives a volume based discount on Goods and the Customer fails to purchase the total volume of such Goods, BDX reserves the right to withdraw such discount.

4.0 Security of Payment

4.1 The Customer grants to BDX a Security interest in the Goods and in any proceeds arising from the sale of the Goods to secure the obligations from the Customer to pay the purchase price for the Goods, and any other obligations by the Customer to BDX under these Terms or the Terms of Trade Credit (together the "Obligations") as and when the same become due.

4.2 The Customer grants to BDX a lien over any of the Customer's equipment upon which Services are performed in order to secure the obligations of the Customer to pay for such Services and any other Obligations as and when the same become due.

4.3 The Customer agrees that if the Customer is in breach of any of its Obligations;
(a) the Customer will, upon receiving a written request from BDX and at its own cost and expense, promptly deliver all or any of the Goods to BDX at such place as BDX directs;
(b) BDX may (and the Customer grants BDX licence to), at any time without giving notice either itself or through an authorised agent, enter into any place where the Goods are located and remove the Goods, if the Customer fails to deliver the Goods as required under this clause;

(c) BDX may sell all or any of the Goods without giving prior notice of the sale to the Customer (and to that end, nothing in s114(1)(a) of the PPSA shall apply to these Terms); and

(d) if BDX proposes, pursuant to s120 of the PPSA to take all or any of the Goods in satisfaction of the Obligations, the Customer waives its rights to require BDX to sell Goods and agrees that notwithstanding s120(1) of the PPSA, the Customer shall remain liable to BDX for the difference between the market value of the Goods at the time it is first able to be sold by BDX free from all rights and interests of the Customers and other persons pursuant to s123(1) of the PPSA and the amount of the Obligations which are in default.

4.4 The Customer:

- (a) agrees that nothing in s117(1)(c) of the PPSA will apply to these Terms, and (b) waives (to the extent applicable) the Customer's right under the PPSA:
 - (i) to receive a verification statement pursuant to s148 and a statement account under s116;
 - (ii) to recover a surplus under s119;
 - (iii) to receive notice of Blackdog's proposal to retain collateral under s120(2) and to object to that proposal under s121;
 - (vi) to receive notice of the removal of an accession under s126;
 - (vii) to apply to the Court for an order concerning the removal of an accession under a131;

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- (viii) to redeem collateral under s132;
- (ix) to reinstate a security agreement under ss133 and 134; and
- (c) shall immediately notify BDX of any change in the Customers name, address or contact person details, to enable BDX to register a financing change statement if required. In the absence of such notification, the address held by BDX is deemed to be the Customers current address for such purpose.
- 5. Consumer Guarantees Act 1993**
- 5.1 Where Goods or Services are being supplied for the purpose of a business, the Customer agrees that the Consumer Guarantees Act 1993 will not apply.
- 5.2 Where the Customer purchases Goods for resupply, the Terms of Trade must contain an equivalent provision to clause 5.1.
- 6. Warranties**
- 6.1 All statutory, express or implied warranties by BDX including, without limitation, the implied warranties of merchantability and fitness for any particular purpose are expressly excluded (to the extent permitted by law).
- 6.2 Quotes are prepared in accordance with information provided to BDX by the Customer and BDX will not be liable nor will it be bound by the quote where;
- (a) such information is inaccurate or any information omitted; and/or
- (b) the Customer makes any variations which result in the work being different from that quoted for.
- 6.3 BDX gives no warranty in respect of Goods manufactured by others.
- 7. Limitation of Liability**
- 7.1 The liability of BDX in respect of all claims for loss, damage or injury arising from breach of any of BDX obligations under this agreement or from any act or omission of BDX is limited in each case to the lesser of;
- (a) replacement or repair of the affected Goods, or re-supply of the services;
- (b) payment of the actual cost of replacing or repairing the affected Goods, or re-supplying the services; and
- (c) the price of the affected Goods or Services.
- 7.2 BDX shall not be liable for any direct or indirect loss or damage (including without limitation loss of profits or savings or for any indirect consequential loss or damage), however caused, arising out of or in connection with the supply of Goods or Services by BDX, except as set out in clause.
- 7.3 No action arising out of the supply of Goods or Services by BDX, regardless of form, may be brought more than six months after the Customer becomes aware, or reasonably ought to have become aware of the circumstances giving rise to the action.
- 8 Intellectual Property**
- All intellectual property rights in the Goods or arising out of the performance of the Services are and shall remain the property of BDX.
- Customer warrants that any design or drawing provided by it does not infringe any intellectual property right of any other person.
- Delivery**
- Delivery of Goods shall be deemed to occur at the point specified in an Order or Quote, or if nothing is so specified then when the Goods arrive at the address specified by the Customer (whether or not the Customer is present to acknowledge receipt), or when the Customer takes possession of the Goods, whichever occurs first.
- Risk in the Goods passes to the Customer on delivery under clause 9.1.
- BDX may deliver Goods by instalments if the Customer fails to pay for an instalment on the due date BDX may suspend deliveries of the other instalments.
- The Customer shall pay all freight and cartage charges including any additional costs or expenses incurred by BDX in delivering the Goods to the address requested by the Customer (including charges for waiting time, unloading equipment, labour or delivery outside of Normal hours). Where BDX is to deliver the Goods, the Customer must;
- (a) ensure BDX has all weather access to the site, to enable BDX to deliver the goods safely;
- (b) obtain all necessary resource and other consents from the relevant local authority and inform BDX of all matters relating to such consents;
- (c) locate, mark and advise BDX of all gas pipes, water pipes, sewerage lines, drainage lines, telephone cabling and other utilities that are on, or near, or adjacent to the delivery point, and of any actual or possible subsidence, slip, erosion, flooding or any other things that might constitute a hazard on the land where Goods are to be delivered; and
- (d) indemnify BDX against any cost, claims and damage incurred in the delivery of the Goods including any cleaning, repairing damage to the site or delivery equipment and returning the delivery vehicle to the road, provided Blackdog has acted with reasonable care & skill.
- 9.6 The Customer must make any claims for short delivery within 48 hours of delivery of Goods by BDX and must state the date of delivery of Goods and the delivery docket number.
- 10 Taxes**
- Unless otherwise stated, all prices are exclusive of Goods and Services Tax.
- 11 Hours**
- Unless otherwise agreed between the parties, BDX will supply the Goods and/or perform the Services during normal working hours. Any costs attributable to BDX being required by the Customer to work outside such hours shall be payable by the customer.
- 12 Indemnity**
- The Customer shall indemnify BDX against all claims, costs, expenses, damages and liability, including legal fees, arising out of or connected with or resulting from a breach by the Customer of these Terms.
- 13 Privacy Act**
- 13.1 The Customer has the right to access and correct any personal information held by Blackdog.
- 13.2 The Customer authorises BDX to make enquiries and/or provide information relating to the Customer to credit reference agencies, referees and other bodies as BDX considers necessary.
- 14 Force Majeure**
- No claim or liability will arise against BDX under these Terms or any Order or Quote, if and to the extent that BDX's failure or omission to carry out or observe any provisos of these Terms or any Order or Quote arises by reason of Forced Majeure. "Forced Majeure" means any event outside the reasonable control of BDX and includes, without limitation, fires or other casualties or accidents, power outages, acts of God, strikes and lockouts, severe weather conditions, delay in supply of materials or unavailability of materials war or other violence, or the introduction of any law, order, regulation, demand or requirement of any governmental agency.
- 15 Miscellaneous**
- 15.1 BDX's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of BDX's right to exercise or enforce such right or any other right in the future.
- 15.2 Any provision of these Terms that is held to be invalid or unenforceable for any reason shall be severed from, and shall not affect the remaining provisions of these Terms.
- 15.3 BDX may, in its sole discretion, amend these terms from time to time.