

BSG Communications Limited standard terms and conditions of sale / hire - 1/2009

1. Definitions

- 1.1. In these conditions:-
- 1.2. "BSG" shall mean BSG Communications Limited, whose registered address is, Old Orchard, Wantage Road, Leckhampstead, Newbury, Berkshire, RG20 8QU.
- 1.3. "Customer" shall mean the person, firm, or company by whom BSG accept to supply their Order for the supply of any Product.
- 1.4. "Conditions" shall mean the terms and conditions of sale set out in this document.
- 1.5. "Product" shall mean all goods and service work carried out by BSG.
- 1.6. "Order" shall mean a Customer's Order which has been placed on BSG in accordance with these term and conditions and which BSG has agreed to accept.
- 1.7. "Specification" shall mean the technical description (if any) of the goods or services contained or referred to in the accepted order.
- 1.8. Headings in these conditions are for convenience only and shall not effect their interpretation.

2. Basis of the sale

- 2.1. Orders placed for the Products shall be subject to these conditions, whether or not specifically referred to, and no other terms shall be effective unless specifically agreed to in writing by BSG's authorised representative. Orders will only be binding upon BSG when received and accepted in writing by BSG. The geographic scope of performance of this contract is limited to the United Kingdom unless otherwise agreed. Unless previously withdrawn, quotations are open for acceptance within the period stated. Where no period is stated the quotation shall be open for acceptance within 30 days from the date it is given. Every quotation is subject to
 - 2.1.1. revision by BSG for errors and omissions;
 - 2.1.2. increase / decrease in price in accordance with condition 3.1 below;
 - 2.1.3. the provision of Products of a similar or equivalent nature as may be agreed with the Customer.

3. Prices and payment

- 3.1. Prices are based on current costs and charges for the Products at the date of quotation or publishing of any literature. Prices may be increased by BSG to take into account any changes in costs or charges for the Products at the point that the Customers Order is acknowledged.
- 3.2. All prices give by BSG will normally exclude any Value Added Tax, duty, levy, packaging, transit insurance or delivery costs.
- 3.3. BSG has a minimum Order value policy of £ 75.
- 3.4. Prices are normally on cash prior to delivery. All payments in excess of 15,000 Euros must be paid by cheque or transfer as per Money Laundering Regulations 2003.
- 3.5. BSG at its sole discretion may offer the Customer thirty days to make payment from the date of Invoice. In the event that the Customer should fail to make payment due under the contract on the due date then without prejudice to BSG's other rights and remedies BSG may suspend performance under this contract and BSG shall be entitled to interest on the amount due at 4 per cent per annum above the London bank base rate for the time being from the date upon which the amount is due until payment in full and reimbursement of BSG's expenses including legal fees and the cost of collection.

4. Title and Risk

- 4.1. Product risk shall pass to the Customer at the time and place of delivery.
- 4.2. Until full cleared payment of all the sums due to BSG in respect of the Products the legal and beneficial ownership of the Products shall remain with BSG.
- 4.3. Until property in the Products passes to the Customer in accordance with clause 4.2, the Customer shall hold the Products and each of them on a fiduciary basis as bailee for BSG. The Customer shall store the Products (at no cost to BSG) separately from all other Products in the Customers possession and marked in such a way that they are clearly identified as BSG's property.

5. Delivery

- 5.1. Any delivery date given by BSG for delivery is given as an estimate only unless BSG expressly agrees in writing to be bound by a delivery date. BSG shall in no event be liable for direct, indirect, or consequential loss arising from delays in delivery.
- 5.2. The Customer undertakes to take delivery of all Products within fourteen days after the date that BSG notify the Customer that the Products will

be / are ready for despatch. If for any reason the Customer is unable to accept delivery or give suitable delivery instructions for the Product(s) BSG shall if its storage facilities permit store the Products until actual delivery and the Customer shall be liable to BSG for reasonable costs (including insurance) of so doing. This provision shall be in addition to and not in substitution for any other payment or damages for which the Customer may be liable in respect of his failure to take delivery at the appropriate date.

- 5.3. In the absence of any agreement to the contrary BSG will be entitled to use any method or means of transportation it may select, and despatch the Products in such quantities or partial or complete shipments as it may think fit. No claim in respect of any loss or damage to Products in transit will be accepted by BSG.

6. Cancellation of orders

- 6.1. In the event of any cancellation by the Customer of all or part of an Order before the estimated delivery date, the Customer shall, if so required by BSG, pay to BSG a cancellation charge of such a figure that BSG deems reasonable to cover all costs & time incurred.

7. Intellectual property rights

- 7.1. The Customer hereby warrants that:-
- 7.2. The Customer acknowledges that any and all the trade marks, copyright, patents and other intellectual property rights used or subsisting in connection with the Products including software, hardware and other parts thereof in which BSG or the respective manufacture, developer or third party has an interest are and shall remain the sole property of BSG or such manufacturer, developer or third party.
- 7.3. The Customer shall indemnify BSG fully against all liabilities, costs and expenses which BSG may incur as a result of work done in accordance with the Customer's specifications involving infringement of any copyright, patent or other proprietary right.

8. Warranty

- 8.1. BSG warrants to the Customer that hardware Products will be free from material defects of workmanship and materials and will conform to their published specifications. Hardware Products warranty is one year from date of delivery.
- 8.2. Software Products warranties vary according to each Product's own software license conditions. Some software will require the Customer to take out a support contract to effect any warranty. Software must be loaded onto suitably configured equipment and set up to process data in accordance with the technical specifications of the software. BSG does not warrant that the operation of the software will be uninterrupted, bug, virus or error free.
- 8.3. During the warranty period as set out in clauses 8.1, and 8.2 above, if the Customer discovers a defect in the Products, the Customer's exclusive remedy under the BSG warranty is to return the Product to BSG. BSG shall at its sole option either repair or replace the same. This remedy is available only during the warranty period, for Products notified to BSG within the period of this warranty and returned within ten days of such notification.
- 8.4. The Customer must prepay all transportation, packaging and transit insurance costs of returning the Products to BSG.
- 8.5. BSG shall have no liability under the warranty if the non performance of the Products is attributable to:-
 - 8.5.1. the Customer's incorporation, attachment or otherwise use or incorporation of any attachment, feature, program, or device to the Products, or any part thereof;
 - 8.5.2. accident, transportation, neglect or misuse, alteration, modification, or enhancement of the Products by the Customer;
 - 8.5.3. failure to provide a suitable installation or storage environment;
 - 8.5.4. use of supplies or materials not meeting BSG or manufacturers specifications;
 - 8.5.5. use of the Products for other than the specific purpose for which the Products are designed;
 - 8.5.6. use of the Products on any systems other than any hardware platform specified by BSG for the Products;
 - 8.5.7. errors attributable to third party software.
- 8.6. BSG's warranty for the Products is solely for the benefit of the Customer who has no authority to extend this warranty to any other person or entity.

- 8.7. If BSG has obtained the Products from a third party, then the warranties given hereunder shall be co-extensive with but no greater than the warranty given by that third party to BSG in respect of the Products. BSG shall provide the Customer with copies of such third party warranties on request.

- 8.8. Except as stated in this clause BSG gives no warranty and makes no representations to the Customer in relation to the Products, and all other terms, conditions and representations in respect of the Products are hereby excluded whether express, implied, arising under statute or otherwise.

9. Hire

- 9.1. Products hired may only be used for their intended published purposes by the customer.
- 9.2. BSG will offer the customer training for such products if requested by the customer. Such training may be at additional cost. If such training is not taken then the customer accepts that they fully understand how to use the products including any legal or health and safety issues that relate to moving, installing or using it.
- 9.3. The customer agrees to pay the agreed period hire fee which is based on a daily, weekly or other period for the entire duration of the hire. The duration is taken to be the time between the customer receiving the entire product(s) and BSG receiving the entire product(s) back. The hire fee will be calculated by dividing the duration by the period and rounded up to the nearest whole period.
- 9.4. Should the hire duration run across a calendar month boundary then BSG shall be entitled to raise an invoice for the appropriate proportion of the fee that occurred in that month. The customer agrees to pay such invoices promptly within the payment terms agreed.
- 9.5. The products will be supplied in working order and in good physical repair, together with any accessories. Should any accessories not be returned or should the product be returned in poor or damaged condition than the customer agrees to pay BSG its costs and time to repair or replace such items.
- 9.6. BSG will endeavour to supply the products on the dates agreed with the customer. Should for any reason products not be available than BSG may offer a suitable alternative product, or may inform the customer that the hire is cancelled. The customer may also at its discretion cancel the hire at any time prior to BSG despatching the products. If the hire is so cancelled than neither party shall be entitle to any claim, compensation, recall or any other liability claim from the other party.

10. Liability

- 10.1. If it is proven that BSG is liable for personal injury or death caused by defects in any of its Products or by negligence of BSG employees or agents in connection with the performance of their duties hereunder, BSG will indemnify the Customer in respect of such liability.
- 10.2. BSG will indemnify the Customer for direct damage to tangible property caused by defects in any of the BSG supplied Products or by the negligence of BSG employees or agents in connection with the performance of their duties up to a total limit of £ 50,000 (Fifty thousand pounds sterling) for any one event or series of connected events.
- 10.3. Without prejudice to clause 10.2 above, in no event will BSG be liable for any damages resulting from the loss of data or for the loss of profits or loss of anticipated savings or for any indirect or consequential loss whatsoever even if such loss was reasonably foreseeable or BSG had been advised of the possibility of the Customer incurring the same.
- 10.4. The limitation will apply regardless of the form of action whether under statute, in contract or tort including negligence or any other form of action.
- 10.5. Any action against BSG must be brought within twelve months after the cause arises.
- 10.6. For the purpose of this condition BSG includes its employees, sub-contractors and suppliers.
- 10.7. The Customer accepts that it is solely responsible for ensuring that the functions and facilities of the Products meet the Customer's requirements. The Customer shall ensure that it installs and maintains adequate backup and recovery measures to minimise any inconvenience that may occur in the event the Products fail to operate in accordance with BSG's technical specification.

- 10.8. Without prejudice to the provisions of clause 10 above and save as provided in clause 10.1, in no event shall the liability of BSG to the Customer howsoever arising (including, but without limitation, the liability referred to in clauses 10.2, 10.3, 10.4, 10.5, 10.6 and 10.7) in respect of the subject matter of this agreement exceed the sum of £ 1,000,000 (one million pounds sterling).

11. Termination

- 11.1. If the Customer shall make default in or commit a breach of these conditions, or if any distress or execution shall be levied upon the Customer's property or assets, or if the Customer shall make or offer to make any arrangement or composition with creditors, or commit any act of bankruptcy, or if any petition or receiving Order in bankruptcy shall be presented or made against it, or if the Customer is a limited company and any resolution or petition to wind-up such company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if Receiver of such company's undertaking, property or assets or any part thereof shall be appointed, or if any circumstances or event shall occur which in BSG's opinion indicate that it is likely that any of the foregoing may occur, or that the Customer may not perform its obligations under these conditions with BSG, then BSG shall have the right without prejudice to any other claim, right or remedy, forthwith to terminate in whole or part the contract then subsisting.
- 11.2. BSG shall not be liable to the Customer for damages of any kind, including incidental or consequential damages, on account of the termination of this agreement.

12. Force Majeure

- 12.1. BSG shall be under no liability for any delay in or failure to perform all or part of its obligations hereunder if such delay or failure shall be due to Acts of God, strikes, lock-outs, labour disturbances, civil disturbances, statute, Order or regulation of any government, public, local, or other authority, delays or defaults of suppliers and sub-contractors and without prejudice to the generality of the foregoing, any other causes beyond the reasonable control of BSG.

13. Assignment

- 13.1. BSG shall be entitled to sub-contract performance of this Agreement in whole or part.
- 13.2. This Agreement is between BSG and the Customer as principals and shall not be assigned by the Customer without the express consent in writing of BSG.

14. General

- 14.1. Notices authorised or required to be given by either party under this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or sent by first class pre-paid post or by facsimile transmission addressed to the other party at the address as the recipient may designate on the Order form.
- 14.2. This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, negotiations and discussions between the parties hereto relating thereto.
- 14.3. No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise.
- 14.4. The failure of a party hereto to exercise or enforce any right under this Agreement shall not be deemed to be a waiver thereof nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
- 14.5. Save as expressly provided herein, no amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of the parties hereto.
- 14.6. If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected thereby.
- 14.7. This Agreement shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the non-exclusive jurisdiction of the English Courts.