

## BLUE MACHINERY (SPARES) LIMITED STANDARD TERMS & CONDITIONS FOR THE SALE OF GOODS AND SERVICES

These terms and conditions (T&Cs) are the only terms on which we, Blue Machinery (Spares) Limited (company registered in England and Wales under number 04597499), are prepared to sell goods (**Goods**) and supply services (**Services**). **We do not sell to consumers and consumer rights legislation shall not apply.** In these T&Cs, we refer to the legal entity purchasing, or seeking to purchase, Goods and/or Services from us as **you** or **your** and we refer to ourselves, Blue Machinery (Spares) Limited, as **the Seller, we, us or our**. The word **including** shall be deemed to be followed by the words **without limitation**. **Particular attention is drawn to clauses 3 and 5 below.**

### 1 ORDERS AND FORMATION

1.1 Offers made by us are non-binding. You may submit an order for Goods and/or Services to us verbally or in writing (an **Order**). Each Order shall be deemed to be an offer by you to purchase Goods and/or Services in accordance with these T&Cs. You shall be responsible for: (a) ensuring the accuracy of each Order; (b) ensuring the Goods or Services ordered are fit for your intended purpose; and (c) providing us with sufficient information to enable us to fulfil the Order in accordance with these T&Cs.

1.2 We reserve the right to reject any Order in our sole discretion. Each Order shall only be deemed to be accepted once we have issued written confirmation of acceptance of an Order to you (a **Sales Order**) or, if earlier, upon us supplying the Goods or Services. Upon acceptance of an Order, a contract shall be formed incorporating the Sales Order (if any), Valid Quotation (if any) and these T&Cs (together a **Contract**).

1.3 Subject only to the Sales Order and a Valid Quotation (which shall take precedence in the event of a conflict), these T&Cs supersede all other terms that may apply to the exclusion of all other terms you may seek to impose or incorporate or which may be implied by trade, custom, practice or course of dealing (including terms which you purport to apply under a purchase order or similar) and you hereby waive all rights you may have to rely on the same.

1.4 Any quotation given by us to you does not constitute an offer to supply. Unless withdrawn earlier or specified otherwise in writing, such quotation shall only be valid for seven days from the date thereof (a **Valid Quotation**).

1.5 You shall not be entitled to amend or cancel any Order once accepted by us. If we agree to any variation (at our sole discretion), you shall indemnify us in full on demand from and against all claims, liabilities, damages, fines, losses and/or penalties (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) of whatsoever nature or kind (**Losses**) suffered and/or incurred by us as a result of or in connection with such variation.

1.6 The Contract is not a contract for sale of goods by description or by sample. All samples, drawings, illustrations, descriptive matter, technical details, particulars of weights, dimensions, performance, functionality, colours, capacity, specifications, advertising materials and other information issued by us (whether on our website at [www.bluegroup.co.uk](http://www.bluegroup.co.uk) or any third party website, in catalogues or brochures (including those distributed by the manufacturer of the Goods)) are solely intended to provide an approximate idea of the Goods or Services described therein and such literature shall not form part of any Contract nor have any other contractual force. We do not accept any liability whatsoever for any errors or omissions. We reserve the right to make changes to, and to discontinue, any Goods and/or Services at any time without notice and to modify the specification and/or description of any Goods and/or Services under Order, provided this does not materially degrade performance or suitability of the same.

### 2 DELIVERY AND PERFORMANCE

2.1 Unless stated otherwise in the Sales Order (or in a Valid Quotation where no Sales Order has been issued), delivery of the Goods and performance of the Services shall take place at the Seller's place of business in the UK (the **Delivery Point**). We shall be entitled to make deliveries in instalments. Each delivery shall constitute a separate Contract and be invoiced and paid for separately.

2.2 Any dates specified or agreed for delivery of the Goods and/or performance of the Services are approximate and time shall not be of the essence. We reserve the right to deliver Goods and perform Services in advance of any agreed delivery dates. If no dates are specified or agreed, delivery and supply shall be completed within a reasonable time. We shall not be liable for any Losses suffered and/or incurred by you as a result of any delay (even if as a result of negligence). You must accept and pay for the Goods and Services in full, notwithstanding any delay.

2.3 Where the Delivery Point is not our place of business, we shall arrange for delivery of the Goods to the Delivery Point by such means as we see fit. You shall pay the costs of delivery, packaging and insurance and delivery shall take place at a time convenient to us at any time of the day.

2.4 If you fail to accept delivery or to provide any instructions, documents, licenses or authorisations required to enable the Goods to be delivered on time then, except where such failure or delay is caused by our material breach of these T&Cs: (a) delivery of the Goods shall be deemed to have been completed at 9am on the scheduled delivery date; (b) we shall store the Goods until delivery takes place and charge you for all related costs and expenses (including storage and insurance); and (c) if actual delivery has not been completed within 10 business days of the original date, we shall be entitled to resell or otherwise dispose of the Goods at our sole discretion.

### 3 TITLE AND RISK

3.1 Risk of damage to or loss of the Goods shall pass to you at the time of delivery or deemed delivery in accordance with clause 2. Notwithstanding delivery, title in the Goods (both legal and equitable) shall not pass to you until the earlier of: (a) receipt by us in full (in cash or cleared funds) of all sums due under the Contract and any sums which are or will afterwards become due or owing from you to us; (b) damage to the Goods after risk has passed (such that the Goods are no longer in their original condition); (c) integration or installation of the Goods such that they are no longer in their original condition; (d) sale of the Goods by you; or (e) the date notified to you by us in writing. If sub-clause (b), (c) or (d) applies, title shall pass at the time specified in clause 3.3.

3.2 Until title in the Goods has passed to you, you shall: (a) hold such Goods on a fiduciary basis as our bailee; (b) store such Goods (at no cost to us) separately from all other goods belonging to you or any third party and identify them as our property; (c) not encumber, charge or grant security over such Goods; (d) not destroy or deface any identifying marks on such Goods or their packaging; (e) notify us immediately if you suffer an Insolvency Event (as defined below); (f) provide such information relating to the Goods as we may require from time to time; (g) at our request, deliver up all Goods in your possession in respect of which title has not transferred; (h) permit us, and grant us an irrevocable licence, to enter any premises where the Goods are stored (at any time and without notice) to inspect and/or repossess such Goods; and (i) keep such Goods insured on our behalf for the full price of the Goods against "all risks" to our reasonable satisfaction and upon request produce the policy of insurance to us; and hold all proceeds of any claim under such insurance policy on trust for us and shall not mix such funds with any other money nor pay the proceeds into an overdraft bank account. You hereby represent and warrant to us that you have the authority to grant us the rights of access set out in this clause 3.2.

3.3 Subject to clause 3.4, you may use the Goods in the ordinary course of business before title passes; however, if the Goods are damaged, installed, integrated or sold: (a) you shall act as principal and not as our agent; and (b) title to the relevant Goods shall pass to you immediately before such damage or sale.

3.4 At any time before the title in the Goods has passed to you, we may by written notice end your right to use and sell the Goods (and this shall occur automatically without notice if you become subject to an Insolvency Event) and exercise our rights set out in clause 3.2 above.

3.5 We shall be entitled to a general lien on all of your goods in our possession for the unpaid price of any other Goods and/or Services supplied to you by us under this Contract or any other contract with us.

### 4 PRICE AND PAYMENT

4.1 Subject to clause 4.2 the price for the Goods and/or the Services shall be the price set out in the Sales Order or if no Sales Order has been issued, the price stated on a Valid Quotation or, failing which, our standard list price for such Goods or Services (the **Price**). The Price is exclusive of any VAT or any other applicable taxes, duties or levies which you shall pay in addition.

4.2 We reserve the right, at our discretion, to increase the Price at any time prior to delivery: (a) to reflect any increase in our costs of supply; (b) due to any event outside of our reasonable control; (c) due to any request by you to change any terms of the Order; (d) due to your failure to promptly provide adequate or accurate information, instructions or access; and/or (e) due to any increase to our price list where this determines the Price.

4.3 The Price shall be payable in full in advance of delivery of the Goods or provision of the Services, unless we have agreed to supply the Goods and/or Services in advance of payment, in which case payment shall be due within 30 days of the end of the month in which the Goods and/or Services were invoiced. Invoices shall be issued on or after delivery. We reserve the right to amend our payment terms at any time. Any queries in connection with an invoice must be raised with us in writing within three days of receipt.

4.4 Unless agreed otherwise in writing, payment shall be made in full and cleared funds, in pounds sterling, by electronic bank transfer to the bank account nominated in writing by us. Time for payment is of the essence.

4.5 Without limiting any other rights and remedies we may have, where you fail to pay any amount when due or where we have the right to terminate a Contract or are otherwise concerned about your financial stability, we may: (a) demand immediate payment of all outstanding amounts owed by you; (b) suspend further supply of Goods and Services until full payment has been received; (c) reduce or withdraw payment options and any bonuses, rebates, price reductions and discounts; (d) treat the Contract as repudiated; and/or (e) charge you interest on the overdue amount both before and after judgment at the rate of 8% per annum above the Bank of England's base rate from time to time, accruing on a daily basis from the due date until payment of the overdue amount.

4.6 You shall make all payments without any set-off, deduction, counterclaim or withholding (except as required by law). If any such withholding or deduction is required, you shall pay an additional amount to ensure we receive the same amount that would have been received if no such withholding or deduction had been required.

### 5 WARRANTIES, REMEDIES AND LIABILITY

5.1 Save as expressly set out in these T&Cs, we offer no warranty, representation, guarantee or condition whatsoever as to the quality of the Goods and/or Services, their fitness for a particular purpose, their correspondence with descriptions or samples (including with promotional materials or samples provided by us), their life or their wear or otherwise, whether express or implied and whether on the basis of common law, statute (including the Sale of Goods Act 1979), trade customs, conduct of the parties or otherwise and the same are hereby expressly waived and excluded to the fullest extent permitted by law.

5.2 Where we are legally entitled to do so, we shall transfer to you the benefit of any manufacturer's warranty obtained by us in respect of any Goods supplied to you, a copy of which shall be made available on request (**OEM Warranty**). If on delivery or during the applicable warranty period offered by the original manufacturer of the Goods (which shall be notified to you upon request), the Goods do not comply with the OEM Warranty, we shall liaise with the relevant manufacturer to obtain a repair or replacement of the Goods (in accordance with the terms of the OEM Warranty) on your behalf, provided you comply with clause 5.4 and ensure such notification and supporting evidence is received by us promptly and within the applicable warranty period specified by the manufacturer. Any delay may prevent a claim from being accepted under the OEM Warranty.

5.3 Where the Goods do not benefit from an OEM Warranty on delivery, we shall warrant that on delivery only the Goods shall conform with the description on the Sales Order (or, if there is no Sales Order, a Valid Quotation) in all material respects (subject to clause 1.6) and be of satisfactory quality (**Seller Warranty**).

5.4 Where the Goods are damaged in transit and/or do not comply with the Seller Warranty or OEM Warranty on delivery and/or the wrong quantity or type of Goods are delivered or no Goods are delivered, you must notify us in writing within **three days** of delivery of the Goods and refuse to sign the delivery note or other consignment document (where the defect should have been apparent on inspection). Latent defects must be notified to us within **three days** of discovery. In each case, you must provide sufficient evidence of the alleged defect or other non-conformance, together with any other information requested by us and/or the manufacturer.

5.5 Unless expressly agreed otherwise in writing by us, if you have a valid claim under the OEM Warranty and/or the Seller Warranty we shall (at our option or in accordance with the terms of the OEM Warranty) repair or replace the Goods or refund the (pro rata) amount you have paid for the defective Goods. Where the wrong quantity or type of Goods have been delivered in error, we reserve the right to deliver an additional instalment or to allow you to return the excess delivery or where the Goods cannot be returned or have been accepted by you, to adjust our invoice to reflect the actual quantity or type of Goods delivered. All deliveries and instalments are subject to a tolerance of  $\pm 5\%$  which shall be deemed accepted and a pro rata adjustment to our invoice made. Returns of any non-faulty Goods may be permitted at our sole discretion. Restocking fees shall apply.

5.6 Where you have ordered Services, we warrant that we shall supply the Services using reasonable care and skill (**Services Warranty**). If the Services do not comply with the Services Warranty, we shall re-perform the Services and make good any related damage to any Goods we have supplied which was directly caused by us, provided you notify us in writing within **three days** of the provision of the Services, provide sufficient evidence of the defect or damage and grant us access to your premises to re-perform the Services.

5.7 We shall not (and the original manufacturer shall not) be liable for any failure to comply with the OEM Warranty, the Seller Warranty and/or Services Warranty and/or any other warranty, guarantee, term or condition implied by law and you shall waive all rights to bring a claim if: (a) you make any further use of the Goods after noticing a defect; (b) a defect arises because you failed to follow our written or verbal instructions (or the manufacturer's instructions) as to the storage, installation, use and/or maintenance of the Goods or (if there are no such instructions) general trade practice; (c) a defect arises as a result of us following any specification, design or instructions supplied by you; (d) you alter or repair the Goods and/or tamper with their installation without our prior written consent; (e) the defect arises as a result of fair wear and tear, carelessness, improper treatment, inadequate lubrication, improper adjustment, wilful or accidental damage, negligence or neglect or abnormal storage or working conditions; (f) a defect arises because you or a third party has integrated or installed the Goods within another product and/or added or incorporated additional items onto or within the Goods; (g) the Goods or Services differ from their description as a result of changes made to ensure they comply with applicable law and/or the manufacturer's instructions; (h) you fail to notify us in writing of the alleged defect or non-conformance within three days of delivery or discovery of a latent defect and (for latent defects covered by an OEM warranty) at least three days prior to the end of the warranty period specified by the original manufacturer; (i) you fail to allow us or the manufacturer (or our representatives) to examine and inspect the Goods, alleged damage and/or storage conditions, and/or fail to provide such supporting evidence or information requested; (j) you fail to return the Goods to us or the manufacturer or allow us to collect them upon request; (k) you (or your agent, personnel or representative) signs a delivery note, receipt or other consignment document to accept delivery of the Goods or performance of the Services and does not make a written note of the issue or defect on such document (save for latent defects not apparent upon inspection).

5.8 The remedies in this clause are the sole and exclusive remedies for defective Goods and Services. We shall have no further liability whatsoever for any defects or failure to correspond to a specification or sample or for any injury, damage or loss resulting from such defects or for any other failure to comply with these T&Cs.

5.9 Nothing in these T&Cs shall limit or exclude liability which cannot be excluded by law. Subject to the foregoing: (a) under no circumstances whatsoever shall we be liable to you whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether negligent or innocent), restitution or otherwise, for any loss of profit, economic loss, loss of production, loss of reputation or goodwill, loss of business or opportunity and/or for any indirect or consequential loss, incidental, special or punitive damages arising under, out of or in connection with the Contract; and (b) our total liability to you in aggregate for all claims arising under, out of or in connection with the Contract, whether in contract, tort (including negligence and breach of statutory duty), misrepresentation, restitution or otherwise shall be limited to the total Price paid by you under the Contract.

5.10 We shall not be liable to you in any manner or be deemed to be in breach of the Contract because of any delay in performing or failure to perform any of our obligations due to any cause beyond our reasonable control, including interruption or failure of a utility service or transport network (including international shipping routes); act of God, earthquake or other natural disaster; epidemic or pandemic; war or armed conflict, terrorist attack, riot or civil unrest; foreign exchange fluctuations; increases in taxes and duties; malicious damage or sabotage; governmental action or intervention, including import/export restrictions; change in or compliance with applicable law; breakdown of or damage to plant, machinery, computers, property or transportation; collapse of buildings, fire, explosion or accident; restrictions on energy supply; labour or trade disputes, strikes, industrial action or lockout; extreme transport or weather conditions; and/or non-performance by third parties.

### 6 TERMINATION

6.1 Without prejudice to any other rights or remedies which we may have, we shall be entitled to immediately terminate any Contract and/or cancel any Order (or part thereof) on written notice, without liability, if: (a) you commit any breach of these T&Cs (including breach of a payment obligation) and (if remediable) you fail to remedy such breach within three days of being notified in writing to do so; (b) our right to sell the Goods to you is terminated or restricted; or (c) you become insolvent or bankrupt, enter into receivership, administration, liquidation or a composition, compromise or arrangement to reschedule or restructure your indebtedness, or you suspend or cease, or threaten to suspend or cease, carrying on your business (or any part of it) or payment of your debts or you are unable to pay your debts as they fall due, or a resolution is made in connection with your winding up or dissolution or you obtain a moratorium or you have an administrator, receiver, liquidator or manager appointed over the whole, or a substantial part, of your undertaking or assets or any steps are taken in preparation for the same (whether voluntarily or otherwise) or any event occurs in any jurisdiction that has an effect equivalent or similar to any of the above (an **Insolvency Event**).

6.2 On termination or cancellation for any reason, all sums owing to us shall become due immediately and any clauses which expressly or by implication survive shall continue in full force and effect.

### 7 GENERAL

7.1 All notices must be in writing and delivered by hand or sent by first class post to the other party's registered office or such other address as may be notified to it from time to time (or to your address set out in the Sales Order). Any notices sent by you must be marked for the attention of our Managing Director. Notices shall be deemed received on the next business day after posting.

7.2 You must keep all information concerning the Price and other commercial terms you have been offered by us strictly confidential, unless and only to the extent such information is publicly known (otherwise than due to your breach) or required to be disclosed by law, court order or any governmental or regulatory authority.

7.3 All intellectual property rights subsisting in and/or relating to the Goods, Services and/or our business generally shall be owned by us or our licensors, as applicable. Any use of our IP rights is subject to our prior written permission. Where the Goods or any part of them are manufactured to your design or specification, you shall indemnify and keep us indemnified on demand from and against all Losses suffered or incurred by us (and/or our sub-contractors or suppliers) as a result of any infringement of any third party intellectual property rights. If any claim is brought or threatened, we shall be entitled to suspend further supply of the Goods and/or Services.

7.4 If any provision or part-provision of a Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable and if this is not possible, the relevant provision or part-provision shall be deemed deleted. Any such modification shall not affect the validity and enforceability of the rest of the Contract.

7.5 A waiver by us of any breach of the Contract by you or a failure or delay by us in enforcing any of our rights will not be construed as a waiver or abandonment of our rights or remedies, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

7.6 Any variation to a Contract and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by a director of the Seller.

7.7 We may assign, license, transfer, sub-contract, mortgage, charge, delegate, declare a trust over or deal in any other manner with all or any part of our rights or obligations under the Contract without your consent. You may not do so without our prior written consent.

7.8 These T&Cs do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of these T&Cs, save that the original manufacturer of the Goods shall be entitled to rely on the limitations set out in clause 5 to defend any claims under the OEM Warranty.

7.9 The Contract and any dispute or claim (including disputes or claims relating to non-contractual obligations) arising out of or in connection with it, its subject matter or formation shall be governed by English law and the courts of England and Wales shall have exclusive jurisdiction over any such dispute or claim.