

# Broadberry Terms & Conditions

## Broadberry Data Systems Limited ("The Company")

### Terms and Conditions of Sale

#### 1. General

- a) Unless otherwise expressly agreed in writing by a Director (or authorised executive) of the Company all goods are sold upon the following Terms and Conditions and no agent or representative of the Company has any authority to vary or amend these Terms and Conditions or any part of them. Any Terms and Conditions printed on the buyer's order forms or in correspondence or elsewhere or implied by trade, custom, practice or course of dealing are binding only insofar as they are not at variance with these Terms and Conditions and they have been specifically agreed to in writing by a Director (or authorised executive) of the company and any purported provisions to the contrary are hereby excluded or extinguished.

#### 2. Quotations and Acceptance

- a) Quotations issued by the Company whether verbally or in writing do not constitute offers and the Company reserves the right to withdraw or revise the same at any time prior to the Company's acceptance of the buyer's order.
- b) The Company reserves the right at any time to refuse to accept orders and cancel any incomplete orders or to suspend delivery, due to circumstances beyond his control. A discretionary charge of up to 30% of the invoice price may be made should the customer cancel the order without the written agreement of the Company. (Such charges to cover the loss of profit incurred by the Company).

#### 3. Prices

- a) The prices shown in our catalogues and price lists are correct at the time of printing but are subject to alteration without notice.
- b) The prices payable for the goods shall be those that pertain at the time of despatch. The Company shall have the right at any time to withdraw any discount from its normal prices as listed or quoted and/or to revise prices to take into account increases in costs prior to delivery including (without limitation) costs of any goods, materials, carriage, labour or overheads, the increase or imposition of any tax, duty or other levy and any variation in exchange rates.
- c) Unless otherwise specified, prices are exclusive of packing, carriage, VAT and any other duty or tax payable by the buyer which shall be added to the price.

#### 4. Delivery

- a) The Company will use all reasonable endeavours to deliver at the time stated but delivery dates shall be regarded as estimates only and not of any contractual effect, The Company shall not be liable for any delay occasioned by any cause whatsoever beyond the Company's control.
- b) Delivery shall be at the premises of the Company or, as the case may be, the premises of the Company's suppliers unless otherwise stipulated or agreed by the Company. Delivery, other than at the Company's premises or those of its suppliers as aforesaid shall be at the cost of the buyer.
- c) In the case of delivery of goods by instalments, the buyer will not be entitled to treat the delivery of faulty goods in any one instalment or the late delivery or non-delivery of any one instalment as a repudiation of the whole contract.
- d) If the buyer fails to give delivery instructions within 14 days of it being notified the goods are ready for delivery, the Company shall (without prejudice to any other rights of remedies available) be entitled (but not bound) to store the goods at any available place at the buyer's expense.
- e) Unless otherwise stated, the goods will be consigned by goods train or road transport to the address in The United Kingdom specified by the buyer in writing.  
The costs of carriage and packaging (including cases and materials) will be charged to the buyer on the invoice for the goods at the time of despatch. Packing cases and materials are non-returnable unless otherwise stated.

## 5. Risk and Title to Goods

- a) The risk in the goods passes to the buyer upon delivery but property in the goods remains vested in the Company and shall only pass from the Company to the buyer upon full payment being made by the buyer of all sums due on whatsoever account or grounds to the Company from the buyer. In the event of the goods being sold by the buyer in such manner as to pass to a third party a valid title to the goods, whilst any such sums are due as aforesaid, the buyer shall be the trustee for the Company of the proceeds of such sale or to the claim for such proceeds and the buyer shall place such proceeds in a separate bank account. The Company's rights under this sub-clause (a) shall attach to the proceeds of such sale. Nothing herein shall constitute the buyer the agent of the Company for the purposes of any such sub-sale.
- b) The buyer agrees that prior to full payment being made as aforesaid, the Company may at any time repossess the goods and enter upon the buyer's premises and remove the goods therefrom (and dispose of the same in any manner it may decide) and that prior to such payment the buyer shall keep such goods as fiduciary agent and Bailee and separate and identifiable for this purpose.
- c) In the event of the goods becoming constituents of or being converted into other products whilst sums are due as provided in sub-clause (a) hereof, the Company shall have the ownership of and title to such other products (but not by way of a charge) as if they were the goods and accordingly this Clause 5 shall so far as is appropriate apply to such other products subject to the buyer's right to the surplus of any moneys realised by the said products in excess of those due to the Company as provided herein.
- d) Any implied authority that the buyer shall be entitled to sell the goods and pass property in the same to third parties in the normal course of its business or manufacture products out of the same or sell such products will continue until otherwise notified to the buyer by the Company or until the happening of any of the following events (whichever is earlier):-
  - (i) Any notice to the buyer that an Administrative Receiver or other Receiver or Manager is to be or has been appointed in respect of its undertaking or a material part thereof or other property or assets;
  - (ii) any notice to the buyer that a petition to wind up the buyer is to be or has been presented to the buyer under Section 124 of the Insolvency Act 1986 or otherwise or any notice to the buyer of a proposal to pass a Resolution to wind up the buyer (including any proposal by the buyer so to do);
  - (iii) A decision by the buyer to make a voluntary arrangement or composition with its creditors or any notice to the buyer and/or any of its creditors that a proposal for the same is to be or has been made;
  - (iv) The buyer becoming unable to pay its debts as such expression is defined by the Insolvency Act 1986; or
  - (v) Any notice to the buyer that it is to be the subject of a petition for an Administration Order presented to the Courts or the making of any Administration Order in respect of the buyer;
  - (vi) And upon the happening of any such events the buyer shall immediately notify a Director (or other authorised executive) of the Company.
- e) On receipt of written notice from the Company or on the happening of any of the events set out in sub-clause (d) above, the buyer's implied authority to sell the Company's goods shall immediately be withdrawn and all such goods and products made therefrom shall immediately be delivered to the Company.

The buyer shall insure and keep insured the goods to their full value against all normal commercial risks until the date that the property in the goods passes from the Company and shall whenever requested by the Company produce a copy of the policy of insurance.

Without prejudice to any other rights of the Company, if the buyer fails to comply fully with the terms of this sub-clause, all sums whatever owing by the buyer to the Company shall immediately become due and payable.

## 6. Notification of Loss or Damage and Partial Rejection

- a) Company must be informed in writing within three days (excluding Saturdays, Sundays or Public Holidays) of delivery of the goods in the event of any shortage or damage and within seven days (excluding Saturdays, Sundays and Public Holidays) of receipt of invoice if the goods have not been delivered, otherwise the goods shall be deemed to have been accepted by the buyer as being in good order and in conformity with the contract.
- b) The buyer waives any right of partial rejection of the goods it may have pursuant to the provisions of Section 35A of the Sale of Goods Act 1979.

## 7. Payment

- a) Payment of invoices shall unless otherwise agreed in writing be made in full without any deduction or set-off by the due date stated on the invoice.

- b) Failure to make due payment in respect of any deliveries or instalments under this or any other contract between the buyer and the Company shall entitle the Company to delay, suspend or cancel deliveries in whole or in part at its option,
- c) Any extension of credit allowed to the buyer may be changed or withdrawn at any time. Any credit accounts are payable 30 days from invoice date.
- d) If payment is not made in full by the due date stated on the invoice
  - I) the Company reserves the right to charge interest to the buyer at a rate of 2% per month on the unpaid balance (such interest to accrue on a day-to-day basis from the due date for payment until receipt by the Company of the full amount whether before or after any judgement); and
  - II) the buyer shall indemnify the Company against all costs and expenses (including any legal costs and expenses on a full indemnity basis) incurred or sustained by the Company in recovering sums due or in exercising its rights pursuant to Clause 5, in each case without prejudice to any other rights or remedies available to the Company.
- e) Payment shall be due whether or not property in the goods has passed by virtue of Clause 5 above and the Company shall (without prejudice to any other right or remedy) accordingly be entitled to sue for the price once the same is due even if property in the goods has not passed.

#### **8. Bank Funding, Invoice Discounting, Factoring**

- a) Where the customer uses banking facilities or factoring or an invoice discounting company which involves the selling of debtors or using debtors as security, the customer must notify the factoring or invoice discounting company of the Company's interest in the goods and specifically that title in the goods has not passed until the invoice has been paid in full, as set out in 5 above.

#### **9. Variations**

- a) The Company shall be deemed to have fulfilled its contractual obligations in respect of any delivery though the quantity of the goods delivered may be up to 10% more or less than the quantity of goods specified in the contract and in such event the buyer shall pay for the actual quantity of such goods delivered.

#### **10. Liability**

- a) The buyer shall inspect the goods upon delivery. The Company will make good at its option by repair or replacement any defects in the goods due solely to defective workmanship or materials which are notified in writing to the Company and, in the case of any defect discoverable upon reasonable examination, such notification must be made within three days from the date of delivery and, in the case of any defect not discoverable upon reasonable examination, such notification must be made within fourteen days of the date such defect is actually discovered provided that :
  - i) the aforesaid obligations on the Company shall not extend to defects caused by wilful damage, negligence (other than by employees or agents of the Company), incorrect storage or application, movement, installation or defects caused by fair wear and tear;
  - ii) if required by the Company and at the buyer's cost the goods are returned within fourteen days of notification of the defect packaged and transported in accordance with the Company's requirements, and
  - iii) the aforesaid obligations on the Company shall in any event only apply for a period of twelve months from the date of delivery
- b) Save as herein set out and for liability for death or personal injury resulting from negligence on the part of the Company and save for breach of the seller's statutory implied undertakings as to title, all express or implied conditions, representations or warranties as to description, quality or fitness of the goods or otherwise are expressly excluded.
- c) Save for liability for death or personal injury resulting from negligence of the Company, the Company's aggregate liability under any one claim or under the total of all claims arising from any one act or default of the Company howsoever such a claim or claims arise (be it by negligence, breach of contract, misrepresentation or otherwise) shall in no circumstances exceed £25,000.00 or such greater figure as is from time to time the limit of liability laid down by the Company's insurers in respect of such claims PROVIDED THAT the Company shall not be liable for any consequential or indirect loss or loss of profits or contract whatsoever (whether arising by the Company's negligence or otherwise).

### 11. Force Majeure

- a) The Company shall not be liable to the buyer for any loss or damage which may be suffered by the buyer as a direct or indirect result of the supply of goods by the Company being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond the Company's control including but not limited to Act of God, war, hot, strike, lock-out, trade dispute or labour disturbance, accident, break-down of plant or machinery, fire, flood, storm, difficulty of increased expense in obtaining workmen, materials or transport or other circumstances affecting the supply of goods or raw materials therefore by the Company's normal source of supply or the manufacture of the goods by the Company's normal means or the delivery of the goods by the Company's normal route or means of delivery.
- b) If, due to any of the circumstances or events set out in sub clause a) above, the Company has insufficient stocks to meet all its commitments the Company may apportion available stocks between the buyer and its other customers at its sole discretion.

### 12. Safety Instructions

- a) The buyer undertakes with the Company that it will ensure compliance so far as is reasonably practicable by its employees, agents, licensees and customers with any instructions given by the Company or the manufacturer for the purpose of insuring that the goods will be safe and without risk to health when properly used and will take any other steps or precautions, having regard to the nature of the goods, as are necessary to preserve the health and safety of persons handling, using or disposing of them.

### 13. Legal Interpretation

- a) Any agreement to which these Terms and Conditions apply shall be governed and construed in accordance with English Law and any dispute arising out of or in connection with such agreement shall be determined by the English Courts.

### 14. Severance and Waiver

- a) In the event of any part of these Conditions being ineffective for any reason, the remainder thereof shall constitute the Conditions binding upon the parties.
- b) Failure or neglect by the Company to enforce at any time any of the provisions hereof shall not be construed as nor be deemed to be a waiver of the Company's rights hereunder nor shall such failure or neglect in any way affect the validity of the whole or any part of these Terms and Conditions and the Company's right to take subsequent action shall not be prejudiced thereby,

We have read, understood and agree to abide by your Terms and Conditions of Sale. I am authorised by the Company to accept all of the above on behalf of the Company.

Please Sign	
Signed:	
Print Name:	
Position:	
Company:	
Date:	