

BUILDING AUTOMATION SYSTEMS LIMITED

TERMS & CONDITIONS

1. General

- 1.1 Any party entering into a contract with BAS for the supply of goods or services, or receiving goods and/or services from BAS (which party is hereinafter referred to as "the Customer") agrees that these terms and conditions (hereinafter referred to as the "Terms and Conditions") shall
 - 1.1.1 apply to the supply of any goods and/or services by BAS (hereafter referred to as the "Goods" and the "Services" respectively) and
 - 1.1.2 override any other terms and/or conditions whether incorporated into or referred to by the Customer in the Customer's order or elsewhere; and
 - 1.1.3 be incorporated into and form part of all dealings between the Customer and BAS.
- 1.2 Unless otherwise agreed in writing, these are the only terms and conditions of sale to which Building Automation Systems ("BAS") will be bound.
- 1.3 Any alteration or modification of these Terms and Conditions shall only have effect if in writing and signed by BAS.
- 1.4 The Terms and Conditions shall supercede and exclude all prior discussions, representations (contractual or otherwise) and arrangements relating to the supply of Goods and/or Services including but not limited to, those relating to the performance of the Goods and/or Services.

2. Quotations And Prices

- 2.1 Prices quoted are based on information available to BAS at the time of quotation and may be adjusted in accordance with further information becoming available.
- 2.2 Indent prices are based on the exchange rate and freight rates ruling at date of quotation.
- 2.3 BAS reserves the right to revise quotes, prices or charges in the event of any error, increase in cost to BAS for labour, materials, specification changes, transport, tax, rates of exchange or otherwise after the date of the quotation. Prices are subject to change without notice.
- 2.4 GST and other taxes are payable by the Customer in addition to the quoted prices.
- 2.5 Engineering and commissioning is not included in the prices of Goods and not offered unless specifically quoted.

3. Payment

- 3.1 Payment shall be made within 30 days following provision of the Goods and/or Services from BAS unless otherwise agreed in writing by BAS.
- 3.2 It shall be condition precedent to future delivery of Goods and/or Services that all payments due shall have been made and if such payments shall not have been made and future deliveries are withheld accordingly, BAS shall not be liable to the Customer for non – delivery in any way howsoever.
- 3.3 Any expenses, costs or disbursements incurred by BAS in recovering any outstanding monies including debt collection agency fees and solicitor costs shall be paid by the Customer.
- 3.4 BAS shall be entitled without notice to terminate any credit arrangement with the Customer in the event of the Customer defaulting in any of the Terms and Conditions.
- 3.5 BAS shall be entitled at any time to request such security or additional security as BAS shall in its sole discretion think fit and be entitled to withhold supply of Goods and/or Services until such security or additional security shall have been provided.
- 3.6 BAS shall be at liberty at its discretion to charge interest on all overdue accounts at the rate of 24 centum per annum.

4. Delivery

- 4.1 While BAS will make every effort to effect delivery of Goods and/or Services in accordance with dates arranged with the Customer, BAS gives no guarantee as to delivery dates and

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BAS has no liability for any loss or damage arising from delay in delivery or non delivery whatsoever or howsoever caused and whether in respect of the whole or part of the Goods and/or Services.

- 4.2 A delay in delivery shall in no event entitle the Customer to cancel the contract. The Customer shall supply such full details as may be necessary, or required by BAS, to enable BAS to complete the delivery.
- 4.3 If the Customer is unable to accept delivery of Goods when ready, BAS may store the Goods and take reasonable steps to prevent their deterioration until delivery to the Customer. In such a case the Customer shall be liable to BAS for the reasonable cost (including insurance) of storage. This provision shall be in addition to and not in substitution of, any other payment of damages for which the Customer may become liable.

5. Title to Goods

- 5.1 The customer hereby acknowledges that the legal and beneficial ownership of all Goods supplied by BAS shall not pass to the Customer until all payments and all other obligations due to BAS by the Customer have been fully made by the Customer to BAS.
- 5.2 In the event that the Customer:
 - 5.2.1 defaults in any of the Terms and Conditions including the payment of monies due,
 - 5.2.2 is likely to make an arrangement with its creditors,
 - 5.2.3 becomes insolvent or commits an act of bankruptcy,
 - 5.2.4 has a receiver appointed over all or any part of the assets of the Customer,
 - 5.2.5 has a liquidator (provisional or otherwise) appointed or is placed under statutory or official management or voluntary administration,then:
 - 5.2.6 BAS may cancel any outstanding order with the Customer; and
 - 5.2.7 any moneys payable by the Customer to the BAS whether due for payment or not shall become immediately due and payable; and
 - 5.2.8 BAS shall have the right (with out giving notice) to retake possession of any of the Goods supplied to the Customer by BAS. The Customer hereby authorises and allows BAS or its representative, servant, agent, contractor or employee to enter the premises upon which the Goods are housed or stored for the purpose of retaking possession of the same. The Customer agrees that BAS shall not be liable for any costs, losses, damages, expenses or any other monies or losses suffered by the Customer as a result of BAS retaking possession of the Goods. The Customer hereby indemnifies BAS against prosecution and claims for damages resulting from the seizure of the Goods.

6. Insurance

- 6.1 The Customer shall keep the Goods insured to their full value against all risks until legal and beneficial ownership in the Goods has passed to the Customer.
- 6.2 During such period the Customer will maintain the Goods in good condition.

7. Limitation of Liability

- 7.1 The Customer agrees that BAS, its directors, officers, employees, agents, volunteers and contractors will have no liability whatsoever and howsoever arising for any loss, claim, costs, expenses or damages whatsoever and howsoever arising suffered by the Customer or any third party.
- 7.2 The limitation referred to at clause 7.1 above will include loss, claim, costs, expenses or damages arising directly or indirectly out of any Goods, Services, advice, instructions or information provided by BAS but which is incorrect or at fault in any respect.
- 7.3 If BAS, its directors, officers, employees, agents, volunteers and contractors are found to be liable to the Customer in any way whatsoever and howsoever arising, the total liability of BAS to the Customer shall be limited to 5 per cent of the amount paid by the Customer to BAS in the previous 12 month period.

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- 7.4 Any complaints of damage, short delivery or otherwise howsoever in respect of Goods and/or Services must be made to BAS within three days of receipt by the Customer.
- 7.5 The provisions of this clause 7 shall remain in full force and effect following termination of this agreement.

8. Indemnity

- 8.1 The Customer shall indemnify and save harmless BAS against all proceedings, claims, demands, costs and expenses whatsoever and howsoever made against or incurred by BAS, its directors, officers, employees, agents, volunteers and contractors in respect of the Goods and/or Services.

9. Warranties

- 9.1 All conditions, warranties, guarantees and representations in respect of the Goods and Services which would otherwise be implied whether under the Consumer Guarantees Act 1993, the Fair Trading Act 1986, the Sale of Goods Act 1908 or other statutory law or the common law, are excluded to the maximum extent permitted by law.

10. Guarantee

- 10.1 Subject to these Terms and Conditions BAS will replace or repair at it's own cost all Goods supplied by BAS which are faulty by reason only of the use of defective materials or by reason of defective workmanship in the creation of the Goods within a period of 12 calendar months from date of delivery provided that the Customer has notified BAS in writing of the fault within that period.
- 10.2 The Customer shall, as soon as practicable after discovering any such defect or fault, return the defective Goods or parts thereof to BAS unless it has been agreed between the parties that the necessary replacement or repair shall be carried out by BAS on the Customer's premises where the goods are being installed.
- 10.3 BAS shall be under no liability to the Customer in respect of defects in the Goods except as specified in this clause nor shall it be responsible for any personal injury or damage or loss of any kind attributable to defects in such goods but the Customer will keep BAS indemnified against any such claim.
- 10.4 In the event of the Customer attempting to repair the goods without the written consent of BAS the provisions of the clause become null and void.
- 10.5 This warranty shall not apply to Services.

11. Returns / Repair

- 11.1 Goods returned for credit will be accepted at the sole discretion of BAS. Equipment which is in original condition may be accepted for a maximum credit of 85% of the original net price to the Customer.
- 11.2 Reconditioned equipment may be lent to the Customer while Goods are repaired, when available for a charge. No repair or replacement shall extend any guarantee period.

12. Security Interest

- 12.1 Until full payment for all Goods and Services has been made by the Customer, the Customer grants BAS:
 - 12.1.1 a security interest over all Goods supplied by BAS at any time as security for, all amounts owed now or in the future by the Customer to BAS and, performance of the Customer's obligations under this agreement; and
 - 12.1.2 a purchase money security interest ("PMSI") as that term is defined in the the Personal Properties Securities Act 1999 (hereafter referred to as the "PPSA") over any Goods and their proceeds.
- 12.2 The Customer further consents to BAS registering finance statements under the PPSA and will provide BAS on request with all information necessary for the registration of BAS' security interests.

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- 12.3 The Customer agrees to the debiting of its accounts with BAS with the cost of registration of the financing statements and all other costs associated with perfection and enforcement of the same including BAS' full Solicitor/own client costs.
- 12.4 The Customer agrees to BAS exercising its rights under s109 and s120 concurrently and to BAS retaining any repossessed Goods immediately so that BAS' rights under s123 of the PPSA shall become effective immediately upon repossession. The Customer agrees that repossession and retention of the Goods under s120-123 will only satisfy so much of the Customer's debt to BAS as is equivalent to BAS' estimation of the market value of the Goods as they are to be used by BAS at the date of repossession and the repossession and retention will immediately extinguish any rights and/or interest the Customer has in the Goods.
- 12.5 The Customer will indemnify BAS for any claims brought by a third party against BAS as a result of BAS repossession and retention of the Goods. The Customer acknowledges that BAS may allocate any monies it receives from the Customer towards debts, charges and expenses in any priority it determines to maintain its security interest in any Goods.
- 12.6 Where Goods are incorporated with or fixed to any property owned by the Customer or a third party such incorporation shall be deemed owned in common by the Customer and BAS. Accordingly this contract shall create an equitable interest entitling BAS to protect such interest in any way and if the property to which the goods have been affixed includes land, then BAS shall be considered to have a covetable interest in that land.
- 12.7 The Customer shall not create a security interest in the Goods in any way nor give any interest in the Goods while BAS has a security interest in the same.
- 12.8 The Customer acknowledges receipt of these conditions and waives any right it may have to receive from BAS a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to this agreement.
- 12.9 The Customer agrees that sections 114(1)(a), 117(1)(c), 133 and 134 of the Personal Property Securities Act 1999 ("PPSA") shall not apply on the enforcement by BAS of any security interest created or provided for by these conditions. The Customer also agrees to waive any rights it may have under sections 116, 120(2), 121, 125, 129, 131 and 148 of the PPSA.
- 13. General**
- 13.1 In addition to any other right, power or remedy of BAS expressed or implied in this agreement, at any time after the Customer has defaulted in its obligations, BAS may appoint in writing any person or persons to be a receiver of all or any of the Goods and the receiver shall have the powers set out in the Receiverships Act 1993.
- 14. Force Majeure**
- 14.1 BAS shall have no liability whatsoever for any failure of, or delay in performance by any circumstance which is not within BAS' immediate control including but without limiting the generally of the foregoing, strikes, lockouts, labour disputes of any kind, fires, accidents, breakdown of plant, delay or transport, unavailability of materials, war, hostilities or any local national emergency, compliance with any order or request or a Government or other public authority or Force Majeure of any kind.
- 15. Privacy Act**
- 15.1 The Customer authorizes BAS to obtain information about the Customer and any Guarantor of the Customer from the Customer, or any third party and whether in respect of the creditworthiness of the Customer, in seeking to recover a debt or for any other reason directly or indirectly related to these terms and conditions or any other document executed by the Customer or the course of trade between BAS and the Customer.
- 16. Governing Law**
- 16.1 This agreement and all contracts entered into between the Customer and BAS shall be governed by the law of New Zealand whose Courts shall have exclusive jurisdiction to hear and determine any dispute.