

Terms and Conditions of Sale 2016

These replace and supersede all previous versions

1. INTERPRETATION

1.1 IN THESE CONDITIONS:

Buyer means the person who accepts a quotation of the Seller for the sale of Services or whose order for Services is accepted by the Seller;

Services means the services (whether these are supplied in full or in part over time) which the Seller is to supply in accordance with these Conditions;

Seller means BEMA Ltd. (Company Registration No. 00438632) whose registered office is at: 5A Stover Road, Yate, Bristol, BS37 5JN;

Conditions means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;

Contract means the contract for the purchase and sale of the Services;

Writing includes facsimile transmission or any other comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 BASIS OF THE SALE

The Seller shall sell and the Buyer shall purchase the Services in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions: which subject as provided below shall govern the Contract to the entire exclusion of any other terms and conditions.

1.5 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

1.6 The Seller's employees or agents are not authorised to make any representations or inducements of any sort concerning the Services unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations or inducements which are not so confirmed.

1.7 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the application or use of the Services which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed

1.8 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

1.9 Each Contract shall be on the basis that it is a special order of services.

2. ORDERS AND SPECIFICATIONS

2.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by either the Buyer or their authorised representative, and the Seller or their authorised representative. No work will commence until the written confirmation is received.

2.2 The Buyer alone shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

2.3 The quality and description of and any specification for the Services shall be those set out in the Seller's quotation, or reasonably approximate thereto in the circumstances (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

2.4 If the Services are to be designed, produced and supplied by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

2.5 The Seller reserves the right to make any changes in the specification of the Services which are required to conform with any statutory requirements or, where the Services are to be supplied to the Seller's specification, which do not affect their usage or performance.

2.6 Subject to clause 3.7 no order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all layout, time and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

2.7 The Buyer may cancel the order hereby made without liability by notice in Writing delivered to the Supplier at its address shown on the order form on or after the cancellation date but before work commences on the Services so ordered. Once work has commenced cancellation will not be accepted.

3. PRICE OF THE SERVICES

3.1 The price of the Services shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

3.2 The Seller reserves the right, by giving notice to the Buyer at any time before installation, to increase the price of the Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of time, or other costs of production), any change in delivery dates,

quantities or specifications for the Services which is requested by the Buyer, or any delay caused by an instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

3.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller for an online application, and for additional Services to be provided at the Buyer's premises, and where the Seller agrees to install either personally or by an employee or agent rather than online, or provide the additional Services other than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, time and insurance.

3.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

3.5 No work will commence until the Deposit set out in the Seller's quotation and order form has been received.

4. TERMS OF PAYMENT

4.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the buyer for the price of the Services on or at any time after completion of the Services, or the Services are installed, whichever is the sooner, unless the Services are to be completed at a later date, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has provided the Services.

4.2 The Buyer shall pay the invoice for the Services (less any discount to which the Buyer is entitled, but without any other deduction) within the terms as stated on the invoice, notwithstanding that the Service may not have taken place and the benefits of the Services has not passed to the Buyer. The time of payment of the invoice shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

4.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

4.3.1 cancel the contract or suspend any further Services to the Buyer;

4.3.2 appropriate any payment made by the Buyer to such of the Services (or any additional Services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

4.3.3 charge the Buyer interest whether before or after any judgment either: (i) at the annual rate of 5% above the base lending rate from time to time of HSBC Bank plc; or (ii) at the rate and on the basis permitted under the Late Payment of Commercial Debts (Interest) Act 1998 until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

4.4 All of the conditions in Clauses 5.3 and Sub Clauses 5.3.1, 5.3.2, and 5.3.3 apply equally to ongoing Services which attract a monthly subscription, which is required to be paid in advance of the Service taking place.

5. DELIVERY

5.1 Any dates quoted for delivery of the Services are approximate only and the Seller shall not be liable for any delay in delivery of the Services or consequential loss howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Services may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

5.2 Where the Services are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the

Contract as a whole as repudiated. If the Seller fails to deliver the Services for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Services to replace those not delivered over the price of the Services.

6. CANCELLATION OF CONTRACT

6.1 All ongoing service Contracts are for a minimum of one year, with payment required monthly in advance, and subject to the Conditions set out in Section 5 Terms of Payment above.

6.2 Renewal of contract will happen automatically on the yearly anniversary of the commencement of the Contract. The Seller is under no obligation to inform the Buyer of the Contract renewal, in order to ensure a seamless Service.

6.3 Cancellation of Contract and Services can only take place on an annual basis. Request for cancellation of Services must be received in Writing, by the Seller, from the Buyer, in advance of the annual cancellation date. If no such Cancellation is received, the Seller will deem that the renewal is required and renew automatically.

7. RISK AND PROPERTY

7.1 Risk of damage to or loss of the Services shall pass to the Buyer:

7.1.1 in the case of Services to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Services are available; or

7.1.2 in the case of Services to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Services, the time when the Seller has agreed to deliver the Services.

8.2 Notwithstanding delivery and the passing of risk in the Services, or any other provision of these Conditions the property in the Services shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Services and any additional Services by the Seller to the Buyer for which payment is then due.

8.3 Until such time as the property in the Services passes to the Buyer, the Buyer shall hold the Services as the seller's fiduciary agent and bailee, and shall keep the Services separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Services in the ordinary course of its business, but not to change the nature of the Services or amalgamate them with other goods. The Buyer shall account to the Seller for the proceeds of sale or otherwise of the Services, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, property stored, protected and insured. Until such account is made, the Seller shall have a paramount lieu over such proceeds.

8.4 Until such time as the property in the Services passes to the Buyer (whether or not the Services are still in separate existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Services to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Services are stored and repossess the Services.

8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Services which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. LIABILITY

8.1 the Seller shall be under no liability whatsoever, including liability for negligence, in respect of any defect in the Services arising from any drawing, design or specification supplied by the Buyer;

8.2 the Seller shall be under no liability in respect of any defect arising from wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration of the Services without the Seller's approval;

8.3 the Seller shall be under no liability if the total price for the Services has not been paid by the due date for payment;

8.4 Where the Services are sold under a consumer transaction (as defined by the Sale of Services Act 1979) the statutory rights of the Buyer are not affected by these Conditions.

8.5 Any claim by the Buyer which is based on any defect in the quality of condition of the Services or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure and in any event within 3 months of delivery. If delivery is accepted, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Services and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Services had been delivered in accordance with the Contract.

8.6 The Seller shall not be liable for any non or short provision of Services unless full particulars thereof are given to the Seller in writing within 7 days of the date of the relevant invoice.

8.7 Where any valid claim in respect of any of the Services which is based on any defect in the quality or condition of the Services or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Services (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Services (or a proportionate part of the price), but the Seller shall have no further liability whatsoever to the Buyer.

8.8 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation that amounts to a misrepresentation or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Services or their use or resale by the Buyer, except as expressly provide in these Conditions.

8.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.9.1 Act of God, explosion, flood, tempest, fire or accident;

8.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.9.3 acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority

8.9.4 import or export regulations or embargoes;

8.9.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.9.6 power failure or breakdown in machinery.

9. INDEMNITY

9.1 If any claim is made against the Buyer that the Services infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the

Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:

9.1.1 the Seller is given full control of any proceedings or negotiations in connection with any such claim;

9.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

9.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

9.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

9.1.5 the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and

9.1.6 without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

10. INTELLECTUAL PROPERTY

10.1 All drawings, specifications, patents, designs, trade marks, or other intellectual property rights (**the Intellectual Property**) supplied by the Seller to the Buyer shall remain the property of the Seller and shall be returned to the Seller on request. Should the Buyer fail so to return any of such items, then the Buyer shall be liable for any loss or expense thereby suffered or incurred by the Seller.

10.2 No copyright material comprised in the Intellectual Property may be altered or amended by the Buyer without the prior written consent of the Seller. No artwork other than that comprised in the Intellectual Property shall be used in relation to any of the Services without the prior written consent of the Seller. No copyright material comprised in the Intellectual Property may be used in connection with the manufacture, distribution or marketing of any goods other than the Services for which the use of such material is specified.

10.3 The Buyer recognises the Seller's title to the Intellectual Property and shall not claim any rights, title or interest in the Intellectual Property or any part of it save as is granted by the Seller;

10.4 The Buyer shall not register or use any of the Intellectual Property in its own name as proprietor.

10.5 The Buyer shall hold all goodwill generated by its operations under the Contract as bare trustee for the benefit of the Seller.

10.6 Any designs or other works derived by the Buyer from the Intellectual Property or any part of it shall be held by it as bare trustee for the Seller and at the Seller's request shall be assigned to it without compensation.

10.7 The Buyer shall not use any part of the Intellectual Property in a manner which might amount to infringement of passing off and the Buyer shall call to the attention of the Seller the use of any part of the Intellectual Property by any third party or any activity of any third party which might in the opinion of the Buyer amount to infringement or passing off.

11. INSOLVENCY OF BUYER

11.1 This clause applies if:

11.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

11.1.2 an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Buyer: or

11.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

11.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

11.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller (including, for the avoidance of doubt, those rights and remedies referred to in clauses 7.2, 7.3 and 7.4) the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Services have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. GENERAL

12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12.2 No variation of this contract or waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of subsequent contracts or a waiver of any subsequent breach of the same or any other provision.

12.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

12.4 The Contract shall be governed by the laws of England.