

Blue Cube Systems (Pty) Ltd Standard Conditions of Sale, Rental and Services

effective September 2011

1. The Client agrees that (a) this contract represents a binding agreement between the Client and Blue Cube Systems (Pty) Ltd (hereinafter called the "Seller") and that no alteration or additions to this contract may be effected unless agreed to by both parties, reduced to writing and signed by the Client and a duly authorised representative of the Seller; (b) that this agreement will govern all future sale, rental and services transactions between the parties; and (c) is applicable to all existing debts between the parties.
2. The Client hereby acknowledges that he/she/its duly authorised representative has read and understood each term of this agreement and accepts them as binding.
3. The Client warrants that his/its representative has been duly authorised to contract on its behalf.
4. The Client acknowledges that no representations were made by the Seller in regard to the goods or services of any of its qualities leading up to this contract.
5. The Client agrees that neither the Seller nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Client.
6. All quotes will remain valid for a period of 30 days from date of the quote.
7. The Client hereby confirms that the goods and services on the invoice issued duly represent the goods and services ordered by the Client at the prices agreed to by the Client and where performance/delivery has already taken place that the services and goods were inspected and conform to the quality and quantity ordered. It is the sole responsibility of the Client to determine that the goods or services ordered by him are suitable for the purpose he intends using them.
8. Any invoice (copy or original), waybill or delivery note signed by the Client or its employee or representative and held by the Seller shall be conclusive proof that delivery was made to the Client. All orders, whether oral or in writing, will be binding and subject to these standard conditions of agreement.
9. The risk responsibilities and costs pertaining to goods passes to the Client when the goods are handed to the first carrier or other party/entity/governmental institution/customs officials or the Client unless specified otherwise in the the Seller's written quotation.
10. Blue Cube personnel will travel by car only in vehicles which are equipped with dual airbags.
11. In case of special orders undertaken by the Seller, delivery times given are merely estimates and are not binding on the Seller.
12. If the Seller agrees to engage a third party to transport the goods, the Seller is hereby authorised to engage a third party on the Client's behalf and at the Client's risk and on the terms deemed fit by the Seller.
13. The Client agrees to indemnify the Seller against any claims that may arise from such agreement against the Seller.
14. In the event of goods or services that are defective, the rights of the Client are limited to the factory guarantee of the goods supplied or the price quoted by the Seller for the services (exclusive of any taxes or interest) whichever constitutes the lesser amount and subject to the provisions in Clause 15. To be valid, guarantee claims must be supported by the original tax invoice and the undamaged packaging of the goods. All guarantees are immediately null and void should any medium be tampered with. Under no circumstances will the Seller be liable for damage arising from misuse or abuse of the goods.
15. Liability under Clause 14 is restricted to the cost of repair or replacement of faulty goods or services or granting of a credit at the sole discretion of the Seller. It is the duty of the Client to return any defective goods to the premises of the Seller at his/her/its own cost.
16. The warranty period is twelve (12) months calculated from the date of commissioning and must be read with the terms and conditions of any specific written warranty provided to the Client by the Seller (if any). It will be extended indefinitely as long as a Product Support Service contract is in place. The extended warranty covers replacements of all parts as well as labour content of repair / replacement of the Blue Cube MQi components due to normal wear and tear and/or faulty workmanship on our part. However third party material handling components and components that contain moving parts like samplers, pumps, pneumatics, pipes, valves and mechanical switches are not included in the warranty or extended warranty but will carry the warranty of the third party supplier.
17. Any item delivered to the Seller will form the object of a pledge in favour of the Seller for present and past debts.
18. Under no circumstances will the Seller be liable for consequential damages.
19. No claim under this contract will arise unless the Client has given the Seller 30 days written notice by prepaid registered post to rectify any defect of breach of contract.
20. The Client agrees to pay the amount on the invoice at the offices of the Seller (a) cash on order, or (b) if the Client is an Approved Client, within 7 days after date of Invoice.
21. The Client has no right to withhold payment for any reason whatsoever.
22. The Client is not entitled to set off any amount due to the Client by the Seller against any debt due to the Seller by the Client.
23. The Client agrees that if an account is not settled in full (a) against order or (b) within the period agreed to according to clause 20 above in the case of Approved Clients, the Seller is (i) entitled to immediately institute action against the Client at the sole expense of the Client, or (ii) to cancel the agreement and take possession of any goods delivered to the Client and claim damages.
24. The Client agrees that the amount due and payable to the Seller shall be determined and proven by a certificate issued by the Seller and signed on its behalf by any duly authorised person, which authority need not be proven. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Client.
25. The Client agrees that interest shall be payable on any monies due to the Seller at the maximum legal interest rate legally permitted from the date they fall due. In the case of late payment interest shall be calculated from the date of shipment.
26. In the event of cancellation by the Seller, the Client shall be liable to pay (a) the difference between the selling price and the value of the goods at the time of repossession or the quoted price of the Seller for the services (if applicable) and (b) all other costs incurred in the repossession of the goods. The value of repossessed goods will be deemed to be the value placed on them by any sworn valuator after such repossession and such valuation will be conclusive proof of the value.
27. The Client indemnifies the Seller completely against any damage whatsoever relating to the removal of repossessed goods.
28. All goods supplied by the Seller remain the property of the Seller until such goods have been fully paid for. The Client is not entitled to sell or dispose of any goods unpaid for without the prior written consent of the Seller.
29. The Client shall be liable to the Seller for all legal expenses (including collection fees) on the attorney-and-client scale (including counsel's fees) incurred by the Seller in the event of (a) any default by the Client or (b) any litigation in regard to the validity and enforceability of this agreement. The Client will also be liable for any collection or valuation fees incurred.
30. The Client agrees that the Seller will not be required to furnish security in terms of the Rules of Court.
31. The Client agrees that no indulgence whatsoever by the Seller will affect the terms of this agreement or any of the rights of the Seller and such indulgence shall not constitute a waiver by the Seller in respect of any of its rights herein. Under no circumstances will the Seller be stopped from exercising any of its rights in terms of this contract.
32. The Seller shall have the right to institute any action in either the Magistrate's Court or the High Court at its sole discretion.
33. The Client agrees to keep all oral, electronic and written communications and information received from the Seller (including but not limited to negotiations and agreements) strictly confidential and shall not disclose same to any third party without express written consent from the Seller.
34. Any document will be deemed duly presented to the Client within (i) 3 days of prepaid registered mail to any of the Client's business or postal addresses or to the personal address of any director, member or owner of the Client, or (ii) within 24 hours of being faxed to any of the Client's fax numbers or any director, member's or owner's fax numbers, or (iii) on being delivered by hand to the Client or any director, member or owner of the Client.
35. The Client chooses domicilium citandi et executandi the business address, or the physical addresses of any director (in the case of a company), member (in the case of close corporations) or of the owner(s) or partner(s).
36. The Client agrees to the standard rates of the Seller for any goods or services rendered; which rates may be obtained on request.
37. The invalidity of any part of this contract will not affect the validity of any other part.
38. Any order is subject to cancellation by the Seller due to force majeure from any cause beyond the control of the Seller, including (without restricting this clause of these instances): inability to secure products, labour, power, materials or supplies, or by reason of an act of God, war, civil disturbances, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.
39. This contract is subject to South African law. However, International sales shall be governed by the the United Nations Convention on Contracts for the International Sale of Goods (1980) which will apply save in the event of a conflict with these terms and conditions, in which event these terms and conditions will prevail.
40. Any disputes regarding this contract, including but not limited to the formation, validity or the contents thereof will be resolved by a South African Court in the Western Cape Province.
41. This contract becomes final and binding on the placing of an order for the goods by the Client.