

BLUECUBE LEGAL NOTICES

BCS (AU) Pty Ltd Standard Conditions of Sale, Rental and Services

Effective May 2020



1. The Client agrees that:
 - (a) this agreement represents a binding agreement between the Client and BCS (AU) Pty Ltd (hereinafter referred to as "BCS") 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 BCS; and (b) this agreement will govern all future sale, rental and services transactions between the parties; and (c) this agreement is applicable to all existing debts between the parties; (d) the End-user license agreement "EULA" which can be found at <http://www.bluecubesystems.com>, has been read and that the Client understood each term and accepts them as binding; (e) the Client also agrees that the quotation will become part hereof and be incorporated herein and in the event of conflict between the quotation and these Terms and Conditions, the terms of the quotation shall prevail.
2. The Client hereby acknowledges that its duly authorised representative has read and understood each term of this agreement and accepts them as binding.
3. The Client warrants that its representative has been duly authorised to contract on its behalf.
4. The Client acknowledges that no representations were made by BCS in regard to the goods or services of any of its qualities leading up to this contract.
5. The Client agrees that neither BCS nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Client.
6. (a) All Immaterial and Intellectual Property (IP) rights are reserved by BCS. (b) Intellectual property means all proprietary and intellectual property rights of any kind, in any jurisdiction throughout the world, including: (i) copyrights, copyright registrations and applications therefore and all rights in any works of authorship not subject to copyright, and moral and economic rights, including, but not limited to, any of the foregoing rights in graphical user interfaces, software, programs or applications (including source code and object code), algorithms, databases and data collections, documentation, technical manuals, compilers, interpreters and tangible or intangible proprietary information or material; (ii) trademarks, service marks, designs, logos, indicia, distinguishing guises, trade dress, trade or brand names, business names, any other source or business identifiers including domain names, all goodwill associated with the foregoing, and registrations and applications for the foregoing; (iii) trade secrets, confidential information and know-how, including inventions (whether patentable or not), invention disclosures, improvements, processes, technology, formulas, reports and studies, data, technical data, research designs, research results, records and notes, prototypes, drawings, product designs and/or specifications, net lists, schematics, invention records and documentation in any form or media relating to any of the foregoing; (iv) patents, utility models and applications therefore, including provisionals, reissues, continuations, continuations-in-part, divisions, revisions, renewals, extensions, and re-examinations thereof, and all equivalent or similar rights anywhere in the world; and (v) designs, design registrations, and design registration applications.
7. All quotations will remain valid for a period of 60 (Sixty) days from date of the quotation.
8. 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 the Client is suitable for the purpose it is intended for.
9. Any invoice (copy or original), waybill or delivery note signed by the Client or its employee or representative and held by BCS 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.
10. 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, by way of Incoterms, in BCS' written quotation.
11. BCS personnel will travel by car only in vehicles which are equipped with dual airbags.
12. In case of special orders undertaken by BCS, delivery times given are merely estimates and are not binding on BCS.
13. If BCS agrees to engage a third party to transport the goods, BCS 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 BCS.
14. The Client agrees to indemnify BCS against any claims that may arise from such agreement against BCS.
15. 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 BCS for the services (exclusive of any taxes or interest) whichever constitutes the lesser amount and subject to the provisions in Clause 16. 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 BCS be liable for damage arising from misuse or abuse of the goods.
16. Liability under Clause 15 is restricted to the cost of repair or replacement of faulty goods or services or granting of a credit at the sole discretion of BCS. It is the duty of the Client to return any defective goods to the premises of BCS at his/her/its own cost.
17. Ownership of the replacement component passes to the Client once the replaced component is received at BCS' premises in Perth, Australia, which address is available on request.



18. The warranty period, unless otherwise agreed to in a Service Level Agreement, is 12 (Twelve) months calculated from the date of completion of commissioning and must be read with the terms and conditions of any specific written warranty provided to the Client by BCS (if any). It will be extended indefinitely if a Service Level Agreement ("SLA") pertaining to Product Support Services is in place. The extended warranty covers replacements of all parts as well as labour content of repair/replacement of the BCS components due to normal wear and tear and/or faulty workmanship on our part. BCS shall not be liable for any losses, injury, damages or death howsoever arising as result of the opening of any components.
19. Any item delivered to BCS will form the object of a pledge in favour of BCS for present and past debts.
20. Under no circumstances will BCS be liable for consequential damages.
21. No claim under this contract will arise unless the Client has given BCS 30 (Thirty) days written notice to rectify any defect of breach of contract.
22. The Client agrees to pay the amount on the invoice at the offices of BCS: (a) cash on order, EFT or documentary credit acceptable to BCS (b) if the Client is an Approved Client, within thirty (30) days after date of invoice or such payment terms that are agreed to by the Parties.
23. Pricing exclude all taxes, levies and duties, which will be the responsibilities of the Client.
24. The Client has no right to withhold payment for any reason whatsoever.
25. The Client is not entitled to set off any amount due to the Client by BCS against any debt due to BCS by the Client.
26. 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 2 above in the case of Approved Clients, BCS 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.
27. The Client agrees that the amount due and payable to BCS shall be determined and proven by a certificate issued by BCS 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.
28. The Client agrees that interest shall be payable on any monies due to BCS 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. For avoidance of any doubt, the maximum legal interest rate shall be the prescribed maximum interest rate of Australia.
29. In the event of cancellation by BCS, 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 BCS 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.
30. The Client indemnifies BCS completely against any damage whatsoever relating to the removal of repossessed goods.
31. All goods supplied by BCS remain the property of BCS 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 BCS.
32. The Client shall be liable to BCS for all legal expenses (including collection fees) on the attorney-and-client scale (including counsel's fees) incurred by BCS 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.
33. The Client agrees that BCS will not be required to furnish security in order to institute any legal action against the Client.
34. The Client agrees that no indulgence whatsoever by BCS will affect the terms of this agreement or any of the rights of BCS and such indulgence shall not constitute a waiver by BCS in respect of any of its rights herein. Under no circumstances will BCS be stopped from exercising any of its rights in terms of this contract.
35. BCS shall have the right to institute any legal proceedings in any Court in Australia at its sole discretion and the Client consents to the jurisdiction of the Australian courts.
36. The Client agrees to keep all oral, electronic and written communications and information received from BCS (including but not limited to negotiations and agreements) strictly confidential and shall not disclose same to any third party without express written consent from BCS.
37. Any document will be deemed duly presented to the Client (i) within 7 (Seven) 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 (Twenty-Four) hours on a business day and 48 (Forty-Eight) hours on any other day or on receipt of a confirmation of receipt, whichever constitutes the earlier time of being faxed to any of the Client's fax numbers or any director, member's or owner's fax numbers, or transmitted per e-mail or e-mail attachments, or (iii) on being delivered by hand to the Client or any director, member or owner of the Client.
38. The Client chooses domicilium citandi et executandi the business address, or the physical addresses of any director (in the case of a company) or of the owner(s) or partner(s).
39. The Client agrees to the standard rates of BCS for any goods or services rendered, which rates may be obtained on request.
40. The invalidity of any part of this contract will not affect the validity of any other part.
41. Any order is subject to cancellation by BCS due to force majeure from any cause beyond the control of BCS, 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.
42. This contract is governed by the laws of Australia. However, International sales shall be governed by the



United Nations Convention on Contracts for the International Sale of Goods (CISG) which will apply save in the event of a conflict with these terms and conditions, in which event these terms and conditions will prevail.

43. Any disputes regarding this contract, where a contract was concluded with a Client and the site where equipment is located falls within the border of Australia, including but not limited to the formation, validity or the contents thereof, will be resolved by way of arbitration, subject to the rules of the ICC and the seat of said arbitration to be in Perth, Australia.
 44. Any disputes regarding this contract, where a contract was concluded with a Client and the site where equipment is installed falls outside the borders of Australia, including but not limited to the formation, validity or the contents thereof, will be resolved by way of arbitration, subject to the rules of ICC and the seat of said arbitration to be in London, England.
 45. This contract becomes final and binding on the placing of an order for the goods and/or services by the Client.
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