

BLUECUBE LEGAL NOTICES

BCS (NA) Ltd. Standard Terms of Sale, Rental and Services

Version date: 9 September 2021



1. The client (herein "**Client**") agrees that:
 - (a) BCS (NA) Ltd. (herein "**BCS**") supplies any goods and renders services on its prevailing standard terms as presently set out in this document (herein "**Standard Terms**"), constituting a binding agreement between the Client and BCS, as may be amended from time to time and for which BCS reserves the right to revise these Standard Terms from time to time, with the effective date of such revision being stated at the top of this document.
 - (b) These Standard Terms will govern all sales, rental and services transactions between the parties, save that goods supplied or services rendered after the effective date of any revised Standard Terms shall be governed by such revised terms.
 - (c) These Standard Terms are 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 BCS's quotation will become part hereof and be incorporated herein and in the event of conflict these Standard Terms shall prevail.
2. The Client hereby acknowledges that it or its duly authorised representative has read and understood each provision of these Standard Terms and accepts them as binding.
3. The Client warrants that its representative has been duly authorised to contract on its behalf.
4. Save as expressly provided in a further separate written agreement between BCS and the Client, BCS makes no representation and gives no warranty in connection with any goods sold or services rendered being supplied to the Client, including (without limitation) that it will be fit for the specific intended purpose of the Client. The Client acknowledges that no representations may be made or warranties given by any director, officer, employee or other representative of BCS or any of the foregoing for any of BCS's affiliated group companies unless such representation or warranty is reduced to writing and signed by a duly authorised director on behalf of BCS.
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 intellectual property (herein abbreviated "**IP**") and related rights in goods and services supplied to the Client are reserved to and shall vest in BCS and/or its licensors. (b) IP includes 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 open for acceptance by the Client for the period as indicated in such quotation (or otherwise if not stated therein, a period of 60 (sixty) days from date of issue of the quotation concerned).
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 employees 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 Terms.
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 of the Client unless specified otherwise, by way of Incoterms, in BCS's written quotation.
11. In case of special orders undertaken by BCS, delivery times given are merely estimates and are not binding on BCS.
12. 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 cost, which shall be prepaid or reimbursed against invoice on terms deemed fit by BCS.
13. The Client agrees to keep BCS indemnified against any claims or cost that may arise from contracting with a third party for the benefit of the Client.



14. Without limiting the provisions of clause 4. in the event of a valid claim by the Client for goods or services that are defective and for so long as such goods or services are still under warranty as proven by the Client to the satisfaction of BCS, the total aggregate liability of BCS shall be limited to the factory guarantee of the goods supplied, as evidenced by the Client to the satisfaction of BCS, 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 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 or otherwise the terms of warranty breached. Under no circumstances will BCS be liable for damage arising from misuse or abuse of the goods.
15. Any liability of BCS in terms of clause 14. is furthermore 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.
16. Ownership of the replacement component passes to the Client once the replaced component is received at BCS's principal place of business as directed by BCS to the Client in writing from time to time.
17. (a) The warranty period, unless otherwise agreed to in a written service level agreement signed by both the Client and BCS, 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 under a further separate written agreement as aforesaid (if any). (b) The warranty period for BlueCube MQi specific components will be extended for so long as a service level agreement (herein "SLA") pertaining to product support services remains in place and shall expire upon termination of such SLA for whatever reason. The extended warranty covers only BlueCube MQi specific components as well as labour for repair/replacement of such components due to normal wear and tear and/or faulty workmanship on the part of BCS, subject to any further restrictions or provisions contained in the SLA (which shall take precedence in the event and to the extent of a conflict with this clause). (c) BCS shall not be liable for any losses, injury, damages or death howsoever arising as result of the opening of any components.
18. Any item delivered to BCS will form the object of a pledge as a real right of security in favour of BCS for all outstanding amounts owing by the Client to BCS.
19. Under no circumstances will BCS be liable for special or consequential damages.
20. 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, which notice is to be given by way of email and/or hand delivered courier to an authorised person on behalf of BCS.
21. 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, or (b) if the Client has been allocated in writing by BCS to be an approved client (herein "**Approved Client**"), within 30 (thirty) days after date of invoice or such payment terms that are agreed to by the parties.
22. Pricing excludes all taxes, levies and duties, which will be the responsibilities of the Client.
23. The Client has no right to withhold payment for any reason whatsoever.
24. 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.
25. 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 21. 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.
26. 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.
27. Any overdue payments by the Client to BCS shall attract interest at the Prime Rate plus 4% (four per cent), calculated daily and capitalised monthly. For purposes of the aforementioned, "Prime Rate" shall mean the publicly-quoted prime overdraft rate charged by BCS's bankers from time to time, calculated daily and compounded monthly, and in the event of a dispute arising between the parties as to the aforesaid rate of interest, a certificate issued by any branch manager of the said bank confirming the rate shall be evidence of such rate until proven otherwise (i.e. *prima facie* proof).
28. 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.
29. The Client indemnifies BCS completely against any damage whatsoever relating to the removal of repossessed goods.
30. 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.
31. 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.
32. The Client agrees that BCS will not be required to furnish security in order to institute any legal action against the Client.
33. 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.



34. BCS shall have the right to institute any legal proceedings in any Court in Canada at its sole discretion and the Client consents to the jurisdiction of the courts in Canada.
 35. 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.
 36. Any document will be deemed duly presented to the Client (i) 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 (ii) on being delivered by hand to the Client or any director, member or owner of the Client.
 37. The Client chooses as its *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).
 38. Any additional or out-of-scope goods or services to be provided by BCS not covered in BCS's original scope of work provided in its quotation or other agreement with the Client in writing may be charged and invoiced separately. The Client agrees that the standard rates of BCS for such additional or out-of-scope goods or services rendered shall apply, which rates may be obtained on request.
 39. The invalidity of any part of these Standard Terms will not affect the validity of any other part, each provision being severable.
 40. 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): any international, national or local pandemic or epidemic, government-imposed lockdowns or other restrictions, failures at a national or regional level in infrastructure, government services or otherwise, inability to secure products, labour, power, electricity, load shedding, 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.
 41. This contract is governed by the laws of Canada. 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 Standard Terms, in which event these Standard Terms will prevail.
 42. Any disputes regarding this contract, 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 ADR Institute of Canada, and the seat of said arbitration shall be in Vancouver, Canada.
 43. This contract becomes final and binding on the placing of an order for the goods and/or services by the Client.
 44. These Standard Terms constitute the whole agreement between BCS and the Client relating to the subject matter hereof and supersedes any other discussions, understandings or agreements regarding the subject matter hereof. No party shall be bound by any undertakings, representations, warranties or the like not recorded herein.
 45. These terms may only be amended if reduced to writing and signed in writing by an authorised director on behalf of BCS or should BCS publish revised prevailing terms at any time as herein provided for.
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