



TERMS AND CONDITIONS OF SUPPLY

1. DEFINITIONS

- 1.1 "Customer" - any person who seeks to place an order for the Products directly from BSL for its own use, or a Distributor.
- 1.2 "Conditions" - these terms and conditions in respect of the supply of the Products including any document expressly incorporated by reference.
- 1.3 "Designated Machine" - the Hardware configuration upon which the Software is stored and Used as specified in the Designated Machine Schedule
- 1.4 "Distributor" - a United Kingdom distributor of BSL.
- 1.5 "Hardware" - the hardware products supplied by BSL, including all ancillary equipment, supplies and documentation.
- 1.6 "Order" - an order for the supply of Products sent to BSL in writing by the Customer signed by an authorised representative of the Customer quoting the relevant BSL Quote Number, or Distributor Agreement Number, or the relevant BSL Customer Agreement reference.
- 1.7 "Order Acknowledgement" - BSL's acknowledgement of the Order.
- 1.8 "Order Acceptance" - the acceptance of the Order by an authorised representative of BSL.
- 1.9 "Price" - the price of the Products, including the Software licence fee and all other charges, set out in the Price List effective on the date BSL receives the Order, or if not so listed as determined by written agreement.
- 1.10 "Price List" - the BSL published Price List for the United Kingdom prevailing at the date of an Order Acknowledgement.
- 1.11 "Products" - Hardware and Software sold or licensed by BSL to the Customer.
- 1.12 "BSL" - Boxer Systems Limited whose United Kingdom headquarters is at 4 Allied Business Centre, Coldharbour Lane, Harpenden, Herts, AL5 4UT, and whose registered office is at 45 Mortimer Street, London, W1W 8HJ.
- 1.13 "Site" - the installation site(s) to which any Product is delivered.
- 1.14 "Software" - the BSL products or represented products, listed in the Product Schedule, in machine-readable object code form, including copies on magnetic media, documentation, and related information, together with the software operating system delivered in the Designated Machine. For the purposes of this agreement, Software includes any Software copies made by the Customer, updates or revisions made to the Software by or for BSL and any derivative works incorporating Software.
- 1.15 "Use" or "Used" - (a) storing the Software into a machine, and/or transmitting the Software into a machine for processing, and/or compiling, executing or interpreting any machine instructions, and/or displaying the Software in connection with the processing of machine instructions; and (b) utilising manual, related material and generated output of the Software.
- 1.16 "Warranty Period" - the period referred to in the Price List or quotation, commencing from the delivery of Products.

2. ORDER

- 2.1 Orders from the Customer for Products will normally be in writing stating quantities required, requested delivery dates and shipping instructions, referring to current Hardware and Software Identification Numbers and the Price.
- 2.2 The Conditions supersede any other terms and conditions referred to, offered, or relied on by the Customer subject to 2.7 below.
- 2.3 All Orders will constitute an offer by the Customer to BSL subject to the Conditions.
- 2.4 BSL will normally send the Customer an Order Acknowledgement within 10 days of receipt of the Order.
- 2.5 BSL will, after carrying out its own internal acceptance procedures with reference to the Order, normally send the Customer as soon as reasonably possible after the Order Acknowledgement an Order Acceptance showing a scheduled but non-binding delivery date for the Products.
- 2.6 A binding legal agreement for the supply of the Products subject to the Conditions will come into existence when the Order Acceptance is sent to the Customer, or otherwise on delivery of the Products to the Customer.
- 2.7 If the Customer is a Distributor, the terms and conditions of BSL's applicable United Kingdom Distributor Agreement form part of the Conditions. The terms and conditions of such agreements will prevail in the event of any conflict with the Conditions.

3. SHIPMENT AND RISK OF LOSS

- 3.1 Each delivery will be deemed to constitute a separate agreement to which the Conditions will apply, except that failure or defect in any delivery will not entitle the Customer to repudiate the agreement nor to cancel any subsequent deliveries.
- 3.2 BSL will schedule delivery for the date notified to the Customer in the Order Acceptance. In no event will BSL be liable for any damages for delay in delivery.
- 3.3 Delivery will be made to the delivery address in the United Kingdom specified by the Customer. The time of delivery will be the time when the Products arrive at the delivery address.
- 3.4 The Customer will furnish the necessary labour, if BSL so requires, under BSL's direction, for taking any Product into its designated operating point, unpacking it and placing it in the desired location, and the Customer will meet all expenses incurred (directly or indirectly) in connection with these activities.
- 3.5 Risk in the Equipment will pass to the Customer at the time the Equipment is dispatched from BSL's works or 5 working days after the date of notification to the Customer that the Equipment is ready for collection, whichever is earlier, and the Customer must insure the Equipment accordingly. Title to Hardware only will pass to the Customer when the Price has been paid in full and all outstanding debts have been cleared.
- 3.6 If the Customer refuses or fails to take delivery of Products, delivery will nevertheless be deemed to have taken place for the purposes of BSL's rights to payment, and BSL will be entitled to store the Products at the Customer's risk and expense, including all transportation charges.
- 3.7 Until title to and property in the Equipment passes to the Customer the following terms shall apply:
 - (a) the Customer shall only be entitled to possession of the Equipment in a fiduciary capacity as a bailee (but not as an agent);
 - (b) the Customer shall keep the Equipment in such a manner as to enable it to be easily identified as property of BSL;
 - (c) the Customer shall keep the Equipment properly insured against all risks at its full replacement value;
- 3.8 The Customer must notify BSL of any claim for shortages or damaged Products within 7 days of delivery. BSL will not accept any liability for any claim for shortages or damaged Products where notification is not received within 7 days of the date of delivery.

4. HARDWARE AND ACCEPTANCE

- 4.1 The Customer will be solely responsible for installation and training not included in the Price and not ordered by the Customer. In such circumstances BSL disclaims any liability arising from acts or omissions of the Customer in connection with installation and training.
- 4.2 Where the Hardware includes data communications equipment, and data transmission speeds are given, these are at all times subject to the operational capabilities of equipment belonging to the applicable telecommunications utility company to which the Hardware is linked.

- 4.3 All proprietary rights in all patents, designs, copyrights, engineering details, schematics, drawings and other similar data relating to the Hardware are and will at all times remain vested in BSL, or its suppliers. The sale of Hardware to the Customer does not convey any ownership or licence to exploit any of the proprietary rights of BSL, or its suppliers, in the Hardware. All operating instructions, manuals and other documentation referencing the Hardware and supplied by BSL are the copyright and design right of BSL, or its supplier, and will not be copied or disclosed to any third party without the prior express written consent of BSL.
- 4.4 Acceptance of Products takes place automatically on the expiry of 7 days from the date of delivery to the Customer, or (if specified by BSL in the Order, the Order Acceptance or elsewhere in writing) will take place at the Site or elsewhere when BSL demonstrates that the test procedures, diagnostic and/or verification programmes applicable to the Products work properly. If BSL's demonstration of the test procedure and/or programmes at the Site is delayed for more than 7 working days other than through any fault of BSL, the Products will be deemed to be accepted. In the event that any item of Hardware or Software fails acceptance procedures BSL will, at its option, repair or replace that item.

5. SOFTWARE AND LICENCE

- 5.1 Copyright subsists in all Software including its documentation whether it is BSL or its suppliers' proprietary software or Software supplied by BSL under licence.
- 5.2 Title to the Software remains with BSL, or with the third parties from whom BSL has acquired licence rights. The Customer is not granted any right, title, interest, copyright, or other intellectual property in the Software, or in any trademarks, service marks, words, symbols, or other trade marks used, adopted or owned by BSL or by any third party either alone or in association with other words or names.
- 5.3 BSL, and/or its supplier, grants the Customer subject to the Conditions a personal non-transferable, non-exclusive, limited licence to use the Software in machine-readable form solely for the Licensee's internal business purposes and solely on the Designated Machine.
- 5.4 In the event that, and only for so long as, the Customer's Designated machine is not operative, the Customer may temporarily use the Software on backup equipment provided that the Customer immediately informs BSL in writing of this.
- 5.5 The Customer may relocate the Designated Machine subject to BSL being notified in advance.
- 5.6 The Customer is permitted to develop Customer proprietary software (such as pre-processors, post-processors and software which utilises data files generated by the Software) with interfaces to the Software to be utilised by the Customer in conjunction with the Software. Such Customer proprietary software will remain the property of the Customer. The Customer will not make such proprietary software available for Use by any third party unless that party holds an appropriate licence to Use the Software in conjunction with the proprietary software.
- 5.7 The Customer will not disassemble or recompile the Software.
- 5.8 The Customer may reproduce the Software only as necessary for reasonable backup or archival purposes, provided, however, that all such Software copies (a) remain owned by BSL and its suppliers, as applicable, (b) are considered Software subject to this agreement and (c) include the same proprietary and copyright notices and legends originally supplied by BSL. Otherwise the Software may not be copied, reproduced or used in whole or in part without the prior written consent of BSL.
- 5.9 A Distributor will have the right to sub-licence the Software to third party customers provided that the sub-licence contains terms and conditions applicable to the Software that are identical to those set out in these Conditions and in the Distributor Agreement.

6. WARRANTIES

- 6.1 BSL warrants that it has good title to or right to supply the Products and that it or its designated service representative will repair or replace at its option all or part of any Hardware which, during the Warranty Period, is found by the Customer defective in workmanship or materials.
- 6.2 The repair or replacement will be carried out by BSL at its designated service centre with the condition that the Customer will ship, all charges pre-paid. BSL will return to the Customer the repaired or replaced item with freight charges pre-paid.
- 6.3 BSL warrants that the Software & Hardware substantially conforms to the applicable printed manuals in effect at the date of delivery for the Warranty Period. BSL's sole obligation under this warranty is limited to responding to Customer calls and to pursuing all reasonable endeavours to correct reported problems by supplying the Customer with a corrected version of the Software and/or Hardware. BSL does not warrant that: (a) operation of the Software will be uninterrupted or error free, or that any defects in the Software are correctable or will be corrected, or (b) functions contained in the Software will operate in the combinations which may be selected for use by the Customer to meet the Customer's requirements. BSL's warranty obligations will be void if the Software is modified without the prior written consent of BSL.
- 6.4 It is a fundamental condition of this warranty that no unauthorised modification to the Product takes place during the Warranty Period, and that the Product is not damaged by accident, misuse or misapplication.
- 6.5 Products must be confirmed as defective by BSL. If any Product proves not to be defective or is not under warranty protection because of misuse, lapse of time or for any other reason, the Customer will be charged for repair or replacement at BSL's standard rates prevailing from time to time.
- 6.6 EXCEPT FOR THE EXPRESS WARRANTIES STATED ABOVE, BSL DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED IN LAW OR OTHERWISE AND THE ABOVE WARRANTIES ARE IN LIEU OF ALL OBLIGATIONS AND LIABILITIES ON THE PART OF BSL FOR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS.

7. SUBSTITUTION AND MODIFICATION

BSL reserves the right to make improvements, substitutions, modifications or enhancements to any of the Products.

8. SERVICES

If the Contract includes Services to be performed by BSL whether of design, installation, commissioning, repair, rectification or improvement or otherwise then unless the Contract otherwise provides the following additional provision shall apply thereto:

- 8.1 BSL shall only be obliged to carry out such Services during normal working hours and if the Customer requests that overtime is worked and BSL agrees thereto such overtime shall be paid for by the Customer in addition to the Price at BSL's then current overtime rates and a BSL certificate stating the amount payable for such overtime shall be conclusive and binding on the Customer.
- 8.2 If the Services are to be performed otherwise than at BSL's works then the Customer undertakes to provide or to procure the provision free of charge:
 - (a) proper and safe storage and protection of all goods, tools, plant and equipment materials on site;
 - (b) free and safe access to the site and to the point at which the Services are to be performed.
 - (c) All facilities, materials, equipment and services necessary to enable such Services to be performed safely and expeditiously;
 - (d) All building work, cabling, cutting away and making good as may be necessary.

- 8.3 BSL will use all reasonable endeavours to complete the provision of the Services in all material respects by the Estimated Completion Date.
- 8.4 The Equipment and Services so provided shall at all times be held at the sole risk of the Customer who should insure accordingly and if any part thereof is lost, damaged or destroyed through any cause whatsoever, BSL shall be entitled to charge as a variation to the Contract for the restoration of Equipment or Services so lost, damaged or destroyed.
- 8.5 Unless otherwise agreed BSL will have no obligation to modify, adapt or alter any equipment or other item to accommodate and/or to be compatible with the Equipment.
- 8.6 Where BSL provides Consultation Services the Customer agrees to acknowledge receipt by way of acceptance of the Consultation Documents in their final form and BSL assumes no liability whatsoever under the Contract or otherwise for any matters contained or referred to in the Consultation Documents or the use thereof by the Customer.

9. RESCHEDULING OR CANCELLATION

- 9.1 If the Customer cancels all or any part of an Order, or requests changes to the date of shipment or the configuration ordered, the following cancellation provisions and charges apply:

Number of days between the cancellation notice received by BSL and scheduled shipment date	Cancellation provision date or charge as percentage of the price
0 - 7	25%
8 - 30	5%
30+	No charge

- 9.2 If Orders for Products which have been rescheduled are subsequently cancelled, the cancellation charges will be based on the amount of notice provided in the initial rescheduling of the Order or in the cancellation of the Order, whichever is less.
- 9.3 In the event of any configuration changes, BSL reserves the right to revise the scheduled shipment date.
- 9.4 Where delivery is postponed by BSL, the Customer will at its sole and exclusive remedy under this agreement be entitled to cancel all or part of the affected Order, without charge, if BSL is unable to give a revised delivery date, or within 7 days of notification by BSL of a revised delivery date if such a delivery date is more than 30 days after the scheduled date for delivery set out in the Order Acceptance.
- 9.5 Agreement must always be confirmed by BSL in advance of Products being returned, with or without cause. BSL is not obliged to accept the return of non-faulty Products. Acceptance of Products returned without cause is subject to them being returned in pristine condition, in their original packaging and complete with any PSUs or documentation with which they were supplied. A 15% restocking fee will apply in these circumstances. In the event that Products (including stock) are returned to BSL in improper order BSL will be entitled to charge 20% of the SRP to cover reconditioning of the products.
- 9.6 The parties agree that any charges set out in this clause 9 are reasonable and are intended as liquidated damages and not as a penalty.

10. PRICES

- 10.1 The Customer will pay BSL the Price in accordance with the Conditions.
- 10.2 In the event of a change in the Prices shown in the Price List, BSL will provide written notice to the Customer and:
- Price reductions shall not apply to orders accepted as of the effective date of the price reduction. However, the Customer may cancel accepted, unshipped orders and place new, identical orders at new prices in effect. Such new orders shall be accepted without charge subject to rescheduling.
 - Price increase may be necessary if there is large adverse fluctuation in the exchange rate with the pound sterling and the currency of the original manufacture.
- 10.3 The Price normally excludes delivery and installation charges unless BSL specifies that these are included.
- 10.4 The Price is exclusive of Value Added Tax, and any other SIMILAR taxes, which will be added in accordance with prevailing legislation.

11. PAYMENT

- 11.1 Upon delivery of the Products to the Site BSL will invoice the Customer the Price.
- 11.2 Payment terms are normally 25% with order; balance net 30 days where credit terms are agreed. Otherwise payment is required with the order. Credit terms are to be granted at BSL's sole discretion.
- 11.3 Unless otherwise agreed in writing, all payments will be made in sterling.
- 11.4 Payments which are not received when payable will be considered overdue and remain payable by the Customer together with interest for late payment from the date payable at a rate of 4% per annum above the base rate, for the time being, of Lloyds Bank Plc applicable as well after as before any judgement. Such interest will accrue on a daily basis and be payable on demand.
- 11.5 In the event of non-payment, and notwithstanding clause 11.4 above, BSL, at its option and without prejudice to any other remedy, may at any time after payment has become due temporarily suspend the Agreement.
- 11.6 If BSL becomes entitled to terminate this Agreement for any reason, any sums then due to BSL will immediately become payable in full.

12. INDEMNITIES AND LIMITS OF LIABILITY

- 12.1 The Customer declares that it has accepted these terms and conditions in the knowledge that BSL's liability is limited and that the Price has been calculated accordingly.
- 12.2 BSL will indemnify the Customer for:
- direct physical injury or death (in which case limit of liability of BSL is limited to £5,000,000); and
 - direct damage to property (in which event total liability of BSL is limited to £5,000,000 for any one event or series of connected events); caused solely by defects in any of the Products.
- 12.3 Subject to clause 11.2 BSL's liability for any breach of agreement is limited to a refund of the Price paid by the Customer for the Products. In no event will BSL be liable for any costs of procurement of substitute Products except as provided under clause 13.
- 12.4 Except as stated in clause 6, this clause 12 and clause 13, BSL disclaims all liability to the Customer in connection with this Agreement including the Customer's use of Products and in no event will BSL be liable to the Customer for special, indirect, exemplary, consequential or incidental loss or damages, or for loss of profits or economic or financial loss, loss of use or loss of data.
- 12.5 The Products are not specifically designed, manufactured or intended for application in connection with the use or handling of nuclear material or the construction, maintenance, operation or use in (a) any nuclear facility or (b) aircraft, aircraft communication or aircraft ground support equipment; and (c) boats or maritime use. The Customer warrants that it will not use or sell the Products for such purposes either separately or in combination with other Products unless prior written approval has been given by BSL. Such approval will be at BSL's discretion and will be subject to BSL's satisfaction with insurance arrangements that indemnify BSL against all risks.
- 12.6 The Customer will indemnify, defend and hold BSL and its employees harmless from and against any liability, loss, damage, cost, fines, expense or claim of any kind caused directly or indirectly by or arising out of or in association with:
- Development activities carried out by the Customer utilising the Products;

- Any negligent act or omission by the Customer;
- As a result of connection of any Product to the apparatus of any telecommunications utility company in breach of any statutory regulations through no fault of BSL.

13. PATENT AND COPYRIGHT INDEMNITY

- 13.1 BSL or its suppliers, at its expense, will defend, or at its option settle, any claim or action brought against the Customer for infringement of any United Kingdom or Republic of Ireland patent, copyright or design right by the Products. BSL, or its suppliers, will pay any final judgement entered against the Customer with respect to any such action, provided that the Customer promptly notifies BSL in writing of any such action on becoming aware of it, and that BSL, or its suppliers, is given sole conduct of the defence of such action and of all negotiations.
- 13.2 If an injunction is ordered affecting BSL's right to supply the Products or any part of them by reason of infringement of any United Kingdom or Republic of Ireland patent, copyright or design right or if in BSL's opinion, the Products are likely to become the subject of a claim for such infringement, BSL at its option and expense may:
- Obtain for the Customer the right to continue to use the Products; or
 - Replace or procure the modification of the Products so that they are no longer in infringement; or
 - If neither of the above options is possible, accept the return of Products and refund an amount equal to the sum paid by the Customer for the Products, subject to straight-line depreciation over a 3-year period. BSL is entitled to decline to make further shipments to the Customer in the event of such infringement.
- 13.3 BSL has no liability for:
- Any infringement arising from the combination of the Products or any part of them with any other Products not supplied by BSL; or
 - Modification of the Products unless the modification was made by BSL; or
 - Supplying to the Customer any information, data, service or applications assistance; or
 - Any infringement arising from Use of other than the then latest release of the Software by BSL, if such infringement could have been avoided by the Use of the latest release of Software and such latest release had been made available to the Customer but the Customer, with knowledge of the actual or possible infringement, chose to retain the prior version; or
 - A claim based on the UNIX Software apart from any additions or enhancements made to the UNIX Software by BSL's suppliers.
- 13.4 IN NO CIRCUMSTANCES WILL BSL BE LIABLE FOR ANY COSTS OR EXPENSES INCURRED BY THE CUSTOMER WITHOUT BSL'S WRITTEN AUTHORISATION AND THE FOREGOING STATES THE EXCLUSIVE REMEDY OF THE CUSTOMER IN RESPECT OF ANY PATENT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT BY THE PRODUCTS.

14. TERMINATION FOR CAUSE

- 14.1 This Agreement may be terminated forthwith by notice in writing without prejudice to any other available rights or remedies of either party:
- By BSL if the Customer fails to pay any sums due by the due date.
 - By either party if the other party fails to comply with any of its obligations under the Conditions, and such failure continues for 30 days after written notice of such failure. If a second similar default occurs within 6 months of the original default, the other party may terminate this agreement forthwith.
 - By either party if the other party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of a solvent amalgamation or reconstruction, or makes an arrangement with its creditors, or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act of 1986, or any statutory modification or re-enactment of the same.
- 14.2 Upon termination of this Agreement, the Customer will within 30 days deliver to BSL all documentation relating to all goods and will render unusable all Software contained in any storage apparatus. Thereupon Use of the Software by the Customer will be discontinued and the Customer will have no further rights in relation to the Software.
- 14.3 Such termination is without prejudice to any accrued rights and outstanding obligation of the parties to each other at the date of termination.

15. EXPORT AND RE-EXPORT LIMITATION

The Customer will not export or re-export directly or indirectly any Products without first obtaining all such written consents or authorisations as may be required by any applicable Government regulations in force from time to time including without limitation those of the United Kingdom Government and the United States Department of Commerce export regulations.

16. CONTRACT

- 16.1 This Agreement constitutes the entire agreement between the parties and supersedes all and any prior agreements, discussions, understandings, representations or promises. Each party warrants to the other that it has not relied upon any representation not recorded herein that has induced it to enter into this Agreement. No amendment of the Conditions will be valid unless confirmed in writing by authorised signatories of both parties on or after the date of this Agreement.
- 16.2 The headings in the Conditions are for ease of reference only and shall not affect the interpretation or construction of the Agreement.
- 16.3 No forbearance, delay, or indulgence by either party in enforcing its respective rights shall prejudice or restrict the rights of that party.
- 16.4 Neither party will assign or transfer all or any part of this Agreement without prior written consent of the other party except that assignments to associated companies of BSL are permitted.
- 16.5 In the event that any of the provisions of the Conditions is judged illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.
- 16.6 Neither party will be liable to the other for any delay in or failure to perform its obligations under this Agreement (other than a payment of money) where such delay or failure results from force majeure, act of God, fire, explosion, accident, industrial dispute or any other cause beyond its reasonable control.
- 16.7 Any notice given under this Agreement by either party to the other must be in writing and may be delivered personally or by recorded delivery or registered post and in the case of post will be deemed to have been received 3 working days after the date of posting. Notices must be delivered or sent to the addresses of the parties on the Order or Order Acceptance or to any other address notified in writing by either party.
- 16.8 This Agreement is governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.