

Birthsparks Ltd

Terms and Conditions of Sale

The customer's attention is drawn in particular to the provisions of clause 9

1 Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

“Business Day” means a day other than a Saturday, Sunday or public holiday in Scotland when banks in Glasgow are open for business;

“Conditions” means the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6;

“Contract” means the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions;

“Customer” means the person or firm who purchases the Goods from the Supplier;

“Force Majeure Event” has the meaning given in clause 10;

“Goods” means the goods (or any part of them) as set out in the Order Confirmation;

“Order” means the order by the Customer for the Goods, as set out in an order form or as otherwise communicated to the Supplier by the Customer;

“Order Confirmation” means the document (which may be the Supplier's invoice) sent from the Supplier to the Customer confirming acceptance of the Order and setting out the price payable for the Goods;

“Supplier” means Birthsparks Ltd, a company registered in Scotland with company number SC437142) whose registered office is at 6 Bryden Place, Coylton, Ayr KA6 6QE.

“Supplier's Website” means the Supplier's website at <http://www.cub-support.com>.

1.2 Construction. In these Conditions, the following rules apply:

1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted

1.2.4 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms

1.2.5 1.2.5 A reference to writing or written includes e-mail but not fax.

2 Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues the Order Confirmation or fulfils the Order, whichever is earlier, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties for the sale of the Goods. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the brochures of the Supplier and/or on the Supplier's Website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3 Goods

- 3.1 The Goods are described in the Supplier's brochures and/or the Supplier's Website.
- 3.2 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4 Delivery

- 4.1 The Supplier shall ensure that:
 - 4.1.1 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant reference numbers of the Customer and the Supplier, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 4.1.2 if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the expense of the Supplier.

- 4.2 The Supplier shall deliver the Goods to the location set out in the Order Confirmation or such other location as the parties may agree (“Delivery Location”) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Supplier making the Goods available for collection at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the failure of the Customer to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Supplier fails to deliver the Goods its liability shall be limited to the cost of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the failure of the Customer to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept delivery of the Goods within 2 Business Days of the Supplier or its nominated third party attempting to deliver the Goods, then:
- 4.6.1 delivery of the Goods shall be deemed to have been completed at 9:00 am on the second Business Day following the day on which the Supplier or its nominated third party attempted to deliver the Goods; and
- 4.6.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If five (5) Business Days after the day on which the Supplier or its nominated third party attempted to deliver the Goods the Customer has not taken possession of them, the Supplier may: (a) return the Goods to the Supplier’s (or its nominated third party’s) premises or warehouse and charge the Customer for all related costs and expenses (including transport and insurance); and/or (b) resell or otherwise dispose of part or all of the Goods and pay over to the Customer the price paid less any sums due to the Supplier hereunder, which may include storage, transport and/or selling costs.
- 4.8 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5 Quality

- 5.1 The Supplier warrants that:
- 5.1.1 on delivery, and for a period of six (6) months from the date of delivery; or

5.1.2 until the Goods are first removed from their packaging; or

5.1.3 until the Goods are first used;

whichever is earlier (the “Warranty Period”), the Goods shall:

5.1.4 conform in all material respects with their description;

5.1.5 be free from material defects in design, material and workmanship;

5.1.6 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
and

5.1.7 be fit for any purpose held out by the Supplier.

5.2 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing to the Supplier: (a) within five (5) Business Days of delivery where a defect is ascertainable on inspection; or (b) within five (5) Business Days of the date on which it should reasonably have become aware of a defect during the Warranty Period;

5.2.2 the Customer provides photographic evidence of any alleged physical damage to any Goods;

5.2.3 the Supplier is given a reasonable opportunity of examining such Goods; and

5.2.4 the Customer (if asked to do so by the Supplier) returns such Goods to the place of business of the Supplier (or its nominated third party) at the cost of the Supplier;

5.2.5 the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for failure of the Goods to comply with the warranty set out in clause 5.1 in any of the following events:

5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2; or

5.3.2 the defect arises because the Customer failed to follow the oral or written instructions of the Supplier as to the storage, commissioning, installation, use and maintenance of the Goods (including but not limited to as set out in the Supplier’s user guide) or (if there are none) good trade practice regarding the same; or

5.3.3 the Customer alters or repairs the Goods without the written consent of the Supplier; or

5.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

5.3.5 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the failure of the Goods to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6 Title and risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
 - 6.2.1 the Supplier receiving payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; or
 - 6.2.2 the Customer reselling the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
 - 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the property of the Supplier;
 - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
 - 6.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
 - 6.4.1 it does so as principal and not as the agent of the Supplier; and
 - 6.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2 then, without limiting any other right or remedy the Supplier may have:
 - 6.5.1 the right to resell the Goods by the Customer or use them in the ordinary course of its business ceases immediately; and

- 6.5.2 the Supplier may at any time:
- 6.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold; and
 - 6.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7 Price and payment

- 7.1 The price of the Goods shall be the price set out in the Order Confirmation, or, if no price is quoted, the price set out in the published price list of the Supplier in force as at the date of delivery.
- 7.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 7.2.1 any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or
 - 7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
 - 7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax (“VAT”) or other applicable sales tax. The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 The Supplier may invoice the Customer on issuing the Order Confirmation. All payments to the Supplier due under the Contract shall be made to the bank account nominated in writing by the Supplier in full and cleared funds. Time of payment is of the essence.
- 7.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any

amount payable by the Supplier to the Customer.

8 Termination and suspension

- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- 8.2.1 the Customer commits a material breach of the Contract which is irremediable or fails to remedy a breach which is capable of remedy within five (5) Business Days of receiving a notice specifying the breach;
 - 8.2.2 the Customer is unable to pay its debts as they fall due or is otherwise bankrupt or insolvent; or has a receiver (or its overseas equivalent) appointed to manage its business or assets; or is the subject of any steps to wind it up for any reason or has a substantial proportion of its assets seized or expropriated;
 - 8.2.3 (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - 8.2.4 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.3 (inclusive);
 - 8.2.5 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - 8.2.6 the financial position of the Customer deteriorates to such an extent that in the opinion of the Supplier the capability of the Customer to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - 8.2.7 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.2.1 to clause 8.2.7, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the outstanding unpaid invoices and interest of the Supplier.
- 8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9 Limitation of liability

9.1 Nothing in these Conditions shall limit or exclude the liability of the Supplier for:

- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees,
- 9.1.2 agents or subcontractors (as applicable); or
- 9.1.3 fraud or fraudulent misrepresentation; or
- 9.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 9.1.5 defective products under the Consumer Protection Act 1987; or
- 9.1.6 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to clause 9.1:

- 9.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 9.2.2 the total liability of the Supplier to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 110% of the price of the Goods.

10 Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or, in the case of the Supplier only, default of suppliers or subcontractors.

11 General

11.1 Assignment and other dealings.

- 11.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare

a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Notices.

11.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing, and shall be delivered personally, sent by pre-paid first-class recorded post, commercial courier, e-mail or (as appropriate) international courier.

11.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2.1; if sent by pre-paid registered first-class post, at 9.00 am on the second Business Day after posting; if delivered by commercial courier or international courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission provided that the sender does not receive a notification that delivery of the email has been unsuccessful.

11.2.3 Notices sent by email shall also have a hard copy sent on the same day or next Business Day.

11.2.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance.

11.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.3.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.4 Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.5 Third party rights. A person who is not a party to the Contract shall not have any rights to enforce its terms.

- 11.6 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.
- 11.7 Governing law. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Scottish law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Scotland.