

## Bay Dynamics Limited – Terms and Conditions for the Supply of Products

1. **Definitions:** In these terms of trade (*Terms*):
  - (a) **Accessories** means any third party off-the-shelf products or accessories acquired to be used with, affixed to or otherwise incorporated into a Product (including as an example, cameras and camera housings), but excluding batteries.
  - (b) **Business Day** means a day that is not a Saturday, Sunday or a public holiday in Tauranga, New Zealand.
  - (c) **Products** means all of the products purchased from us by you, including batteries but excluding Accessories.
  - (d) **Services** means all of the services provided to you by us, including training or maintenance services relating to the Products.
  - (e) **we, us, our** means Bay Dynamics Limited (company number 6287508).
  - (f) **you, your** means the customer and, where this is more than one person/party, each such person/party jointly and severally.
2. **Application of Terms:** You accept these Terms by placing an order with us. These Terms prevail over any other terms and conditions except specific terms agreed in a quote (including terms on any purchase order submitted by you).
3. **Pricing:** The prices and hourly rates for our Products and Services are as set out in our quote or, if no valid quote applies, our current price list at the time (which may be amended by us at any time without notice), on a “plus GST (if any)” basis. We will obtain prices for any Accessories on request and we reserve the right to charge a margin of up to 10% on all purchases of Accessories.
4. **Quotes & Orders:** All quotes given by us:
  - (a) are not an offer by us. A contract on these Terms is only concluded pursuant to a quote if you submit an order for Products or Services before the quote expires and we accept that order by confirmation in writing (which may be by e-mail). We reserve the right to refuse any order;
  - (b) are valid for 20 Business Days after the date of the quote (or longer period if specified in the quote) and become null and void if a written order has not been placed by you by 5pm on the date the quote expires;
  - (c) may include any agreed specific terms, and if an order is received before the quote expires and is accepted by us then those specific terms shall form part of your contract with us and prevail over these Terms to the extent of any inconsistency or conflict;
  - (d) are based on the cost of labour, materials, freight and other inputs as at the date of the quote, and may be updated at any time. If the cost of materials or Products ordered materially increases after an order has been accepted, we reserve the right to charge you (and you will pay) the difference in the cost of materials or Products by giving you 30 days written notice, and we will not apply any further margin in respect of those increased costs; and
  - (e) may be based on assumptions and/or estimates and notwithstanding the total estimated costs on the quote, if any of those assumptions and/or estimates are incorrect and as a direct result our costs are increased, we will notify you of the consequential increase in the price payable for the Products and Services ordered by you (calculated in a manner consistent with our original quote or estimate) and you agree to pay those increased prices for the Products and Services provided to you.
5. **Cancellations and variations:** Once an order has been accepted by us that order may not be cancelled or varied by you without our prior written approval. We may impose additional terms as a condition of approving any cancellation or variation requested by you.
6. **Warranties for Products and Accessories:** For each Product (excluding Accessories), we warrant for the relevant warranty period (as set out in the quote and if no quote applies, for 12 months) that the Product:
  - (a) complies with our specifications for that Product (if any) as provided or made available to you, including in a quote;
  - (b) is fit for the specific purpose stated by us (if any); and
  - (c) is of acceptable quality and is free from defects, subject always to fair wear and tear.
 For each Accessory, the supplier’s or manufacturer’s warranty applies and we make no warranties in respect of that Accessory. If the benefit of the relevant supplier’s or manufacturer’s warranty is not able to be enforced by you directly, we will use reasonable endeavours to enforce it on your behalf and pass through the benefit of the warranty to you. We are not liable to you in any way for any loss arising from or in connection with the failure of an Accessory.
7. **Warranties for Services:** We warrant that our Services will be performed with reasonable care, skill and diligence and in performing Services we will comply with all applicable laws.
8. **Qualifications to all warranties:** All warranties are void and of no effect and we will not be liable to you in any way if:
  - (a) you require the Product to be delivered or made available for collection before the relevant Product has passed our internal factory acceptance testing and quality control procedures;
  - (b) the Product is used by personnel who have not been trained by us in the use of the Product;

- (c) the Products are not (or we have cause to consider that they have not been), used, stored or maintained in accordance with our recommended use, storage and maintenance guidelines or policies, including being used below their stated depth rating (in all cases as determined by us);
  - (d) the Products are modified or repaired in any way by you or any other person not approved by us to carry out the particular modifications or repairs (and if we do authorise you or your agent to modify the Products, the modifications or repairs are not completed in accordance with our instructions). For the avoidance of doubt, making "modifications" to a Product includes fixing or appending to that Product any new, different or alternative Accessories not supplied by us for that Product;
  - (e) in respect of batteries in particular, they are not used, charged or otherwise maintained in accordance with the relevant supplier's or manufacturer's instructions;
  - (f) the relevant damage or defect is caused by a failure of a battery or an Accessory, or as a result of a battery or Accessory not being used or maintained in accordance with the supplier's or manufacturer's instructions;
  - (g) the Products are subject to excessive wear and tear;
  - (h) the Products have been repaired by someone other than us or our approved contractors;
  - (i) the Products have been damaged while in your possession; or
  - (j) and to the extent that, you have not used reasonable efforts to mitigate the effects of the relevant defect or damage.
- 9. No other warranties:** To the maximum extent permitted by law, all warranties implied by customary practice, statute or at law are excluded and you agree that in accepting these Terms, you have relied entirely on your own enquiries, knowledge, skill and judgement.
- 10. Consumer Guarantees Act:** If you are a consumer as defined in the Consumer Guarantees Act 1993 (**CGA**), nothing in these Terms shall limit or exclude any rights or remedies you have under the CGA. Where the Products or Services are provided for your business purposes, you agree the CGA shall not apply.
- 11. Customer obligations and acknowledgements:** You agree that:
- (a) you have chosen the Products and Services using your own judgement;
  - (b) we are not legally responsible for any loss or damage you might suffer in relation to your purchasing or use of our Products or Services;
  - (c) we will rely on information provided by you in relation to your order for the Products or Services and any costs incurred by us in reliance on incorrect or inadequate information may result in additional costs charged to you; and
  - (d) in using the Product you will comply with all of your obligations at law and you will not permit it to be used in a reckless manner or in a manner that may endanger another person's safety or property.
- 12. Deposit & Payment:** Unless otherwise agreed in writing (including in an applicable quote):
- (a) a non-refundable deposit (**Deposit**) shall become due and payable immediately upon an order being accepted by us. The amount of the Deposit shall be as set out in the quote or as otherwise agreed in writing. We are under no obligation to action your order until we receive your Deposit;
  - (b) the remaining amount payable to us (being the total purchase price including GST less the Deposit) shall be payable by you on delivery of the Products. If we provide any other Services to you, then unless set out in the quote or agreed otherwise full payment is required within 10 working days of the date of the invoice for those Services. All payments by you shall be made to our nominated account without any deduction, withholding or set off;
  - (c) you authorise us as your agent to purchase any Accessories on your behalf as your agent. We will on-charge to you the cost of the Accessory as a disbursement (plus any margin) and reserve the right to require full payment of that disbursement prior to ordering the Accessory and otherwise on demand;
  - (d) we may require full payment upon accepting an order;
  - (e) we may revoke any agreed payment terms if we have any concerns about your ability to pay and if required by us, you shall procure that guarantees are provided to our satisfaction in respect of the performance of your obligations;
  - (f) if you are late in payment, we may charge default interest on the overdue amount until it is paid at the rate of 12% per annum; and
  - (g) you are liable for any costs we incur (including actual solicitor costs) in enforcing our rights under these Terms (eg debt recovery).
- 13. Timing & Delivery:** The timeframes we give you for delivery and/or installing the Products or providing Services are estimates only and are not guaranteed, and unless the CGA applies we will not be liable for any claims arising as a result of any delays. We will use reasonable endeavours to meet those timeframes and if there are any delays (eg shipping or importation delays) we will keep you updated.
- 14. Title and risk:** Risk in the Products shall pass to you upon delivery of the Products. For the purposes of these Terms, "delivery" shall be deemed to occur when the Products are either delivered and unloaded by us or our agent to your nominated place of delivery or, where we have agreed that you will collect the Products, when the Products are collected by you or your agent (loading to be at your risk). Title to the Products shall pass to you on the later of the date of delivery, or the date that all amounts owing to us by you for or relating to the supply of the relevant Products are paid in full. Prior to title to the Products passing to you, you grant us a security interest over the Products under the Personal Property Securities Act 1999 (**PPSA**). You agree to do all things reasonably required to enable us to perfect our security interest. To the maximum extent permitted

by law, you agree the following sections of the PPSA do not apply and/or you agree to waive your rights under these sections: 114(1)(a), 116, 120(2), 121, 133, 134 and 148.

- 15. Force majeure:** We shall not be liable for any act, omission or failure to fulfil our obligations that arises from any cause beyond our reasonable control. For as long as such circumstances continue, we may, at our sole discretion, delay or suspend performance of or terminate your order until such time as the circumstances have ceased. You will be liable for all Products and Services provided up to the date performance ceases.
- 16. Default:** We may immediately terminate your order by notice to you in writing where you commit, or become subject to, any of the following events:
- (a) you breach any provision of these Terms and fail to remedy that breach within 7 Business Days of notice from us;
  - (b) where you are a natural person, you become bankrupt; or
  - (c) where you are a corporation, you are wound up or deregistered, or where a receiver, manager, trustee, liquidator official assignee or other person is appointed in respect of you and/or of your assets.
- Where an order is terminated pursuant to this clause 16, we shall be entitled to retain all moneys received from you and are under no obligation to provide further Products or Services to you. You will be liable for all Products and Services provided up to the date of termination.
- 17. Liability:** Our liability for any defective Products or Services or for any cost, loss, damage, injury or claim arising directly or indirectly in relation to the Products or Services supplied by us, whether arising from contract, tort (including negligence) or otherwise, shall be limited to (at our option), repairing the Products, replacing the Products, re-performing the Services, or providing you with a refund of the price paid for the affected Products or Services. Without limiting anything else in these Terms we are not responsible for any costs, losses, liability or claims that results wholly or partly from the use or storage of the Products, the acts or omissions of any other person, or any other cause beyond our reasonable control. We are not responsible in any circumstances for any indirect, consequential or special loss, loss of profits or economic loss. Our liability at all times shall be limited to the amount of the purchase price paid by you for the relevant Products or Services. This clause is subject always to clause 10 (CGA).
- 18. Intellectual property:** You agree and acknowledge that we are the exclusive owner or licensee of any intellectual property in our Products or Services and any new intellectual property that we create in performing these Terms vests in us automatically when they are created. For the avoidance of doubt, no intellectual property rights relating to the Products or Services shall vest in you at any time.
- 19. Privacy:** We may collect, hold, use and disclose any personal information about you and any guarantor for the purposes of:
- (a) assessing your/any guarantor's creditworthiness;
  - (b) creating, administering, and maintaining an account with us;
  - (c) performing our contract with you;
  - (d) collecting payments, including debt collection;
  - (e) marketing our products to you;
  - (f) enforcing our rights under these terms;
  - (g) communicating with you/any guarantor for any such purpose.
- The Privacy Act 2020 entitles an individual to have access to, and to seek the correction of, their personal information that is held by an agency. You can request this by contacting us at our business address.
- 20. Assignment:** You are not permitted to assign your obligations under these Terms to any person without our prior written consent. We may engage subcontractors to perform Services under these Terms and we remain liable to the acts and omissions of our subcontractors.
- 21. Entire agreement:** These Terms (plus any special terms in an applicable quote) constitute the entire agreement between the parties about the provision of Products and Services, and supersedes all prior agreements, undertakings, representations and negotiations.
- 22. No waiver:** A waiver of a right or remedy under these Terms is ineffective unless it is in writing.
- 23. Severability:** If any clause of these Terms is found by any court of law to be invalid or otherwise not binding on the parties, or if the parties between themselves agree that one or more clauses are no longer to have effect, the rest of the clauses of these Terms shall continue in full force and effect.
- 24. Governing law:** This agreement is governed by New Zealand law. The parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand Courts.