

# JONATHAN B. SMITH TRADING AS BOA SYSTEMS

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## STANDARD TRADING CONDITIONS

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### 1. Application

1.1 All goods and/or services are supplied by Boa Systems to intending customers on the terms set out below, which cannot be varied except in writing signed by or on behalf of both Boa Systems and the intending customers.

1.2 These conditions are to have precedence over any condition appearing on an order form or any other document emanating from an intending customer, and such intending customers conditions shall have no effect.

1.3 Acceptance of goods and/or services from Boa Systems is to be conclusive evidence before any court or arbitrator that these terms apply.

### 2. Intending Customer's Solvency

2.1 The intending customer acknowledges that before entering into an agreement for the purchase of any goods and/or services from Boa Systems he has expressly represented and warranted that he is not insolvent and has not committed any act of bankruptcy or being a company with limited or unlimited liability knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver to petition for the winding up of the company or exercise any other rights over or against the company's assets.

### 3. Charges

3.1 If a fixed quotation is agreed, this is limited to the supply of the goods and/or services that the quotation specifies. The customer must pay an additional amount for extras.

3.2 If a fixed quotation is not given, then Boa Systems supplies goods and services at a charge calculated on the basis of the cost of goods, plus an hourly rate for labour, plus expenses. The charges applicable for such goods, the hourly rate of labour and relevant expenses will be notified to the customer separately.

3.3 All prices and charges are subject to the addition of Value Added Tax (where applicable) at the appropriate rate ruling at the tax point for the sale.

### 4. Payment

4.1 Boa Systems may invoice the goods when they are dispatched or when the services are rendered. In the case of services, Boa Systems has the right to payment by instalments as the work progresses.

4.2 Invoices are to become due for payment 30 days after the date of invoice without reduction or deferment on account of disputes or cross claims.

4.3 If the customer does not pay Boa Systems on the due date, Boa Systems can:

4.3.1 Suspend work until the payments are resumed.

4.3.2 Withdraw from its obligations under the contract ("cancellation") by giving the customer 28 days notice in writing, and after cancellation the customer remains liable to Boa Systems for its loss of profit.

4.3.3 Charge the customer interest on outstanding money (both before and after cancellation, and both before and after any court judgment) at a rate of 2 per cent per month compounded monthly on so much of the invoice as is unpaid until the date of actual payment.

4.3.4 Charge the customer its reasonable and proper debt collection costs. These are at a rate of £25 per letter, which we or our collectors send you, and £10 per telephone call, which we or our collectors make to you.

## **5. Deposit**

5.1 Boa Systems may require the customer to pay a deposit up to 25% of value as a condition of accepting any order.

## **6. Installation**

6.1 Unless otherwise agreed in writing, Boa Systems is not under an obligation to install any goods supplied and charges quoted do not include the cost of installation.

6.2 If Boa Systems accepts an obligation to install goods, the customer is to prepare and make available the installation site for the intended delivery date.

## **7. Quality and Purpose**

7.1 Subject to the exclusions mentioned in clause 7.2 below:

7.1.1 Boa Systems warrants that goods and/or services accord with the specification agreed with the intending customer in writing or, if there is no such specification, are within normal limits of industrial quality and,

7.1.2 The customer is under an obligation to inspect and test goods at the earliest opportunity. This obligation extends to allowing Boa Systems to carry out beta testing with the co-operation of the customer, if Boa Systems states to the customer that is appropriate. Boa Systems agrees to remedy any defects in goods supplied ON CONDITION THAT the customer notifies Boa Systems of the defect within 90 days of actual delivery.

7.2 The exclusions mentioned in 7.1 above are:

7.2.1 No claim will be entertained by Boa Systems outside the 90 day time limit unless in the circumstances it is fair and reasonable to do so.

7.2.2 So far as the law permits, the liability of Boa Systems shall be limited to repairing or replacing the goods or renewing or completing the services, and shall not extend to any consequential loss.

7.2.3 So far as the law permits, any statutory or other warranty as to quality, fitness for purpose, or compliance with samples is excluded.

7.2.4 The warranties in clause 7.1 do not apply to defects caused by fair wear and tear, exhaustion of disposable parts and damage caused through misuse and/or insurable risk.

7.2.5 Actual product specifications may in certain circumstances vary from those shown in any order, technical specification or quotations. Boa Systems does not accept any liability for changes in product specification where beyond Boa Systems control.

7.2.6 In the event that Boa Systems is unable to supply goods as ordered by the customer, Boa Systems reserves the right to substitute goods of equal or superior quality at the same price.

7.2.7 "Special Goods" (as defined in clause 13) are supplied subject to the further exclusions specified in clause 13.

## **8. Delivery/Completion**

8.1 The date for the delivery of goods or rendering of services shall be the subject of agreement between Boa Systems and the intending customer, but if a delivery date or date of completion is agreed in writing or otherwise given by Boa Systems, the same shall be taken as an estimate made by Boa Systems in good faith and shall not be a condition of any contract. Boa Systems shall not be liable to the customer for any loss or damage sustained directly or indirectly in consequence of failure to deliver or to complete by the stated delivery date.

## **9. Force Majeure**

9.1 Boa Systems shall be under no liability for any failure to perform any obligation to the customer if that failure is due to any cause beyond Boa Systems reasonable control. If such circumstances occur, Boa Systems has the right to cancel or delay delivery, or cancel the supply of the service.

## **10. Risk**

10.1 Goods are at the risk of the customer as soon as they are delivered by Boa Systems to the customer's vehicle or premises or otherwise to his order.

## **11. Property**

11.1 Goods shall remain the sole and absolute property of Boa Systems as legal and equitable owner until such time as the customer shall have paid to Boa Systems the agreed charges, together with the full charges for the supply of any other goods and/or services the subject of any other contract with Boa Systems.

11.2 The customer acknowledges that he is in possession of goods solely as bailee for Boa Systems until such time as the full charges for them are paid to Boa Systems, together with the full price of any other goods and/or services the subject of any other contract with Boa Systems.

11.3 Until such time as the customer becomes the owner of the goods, he will store them on his premises separately from his own goods or those of any other person and in a manner which makes them readily identifiable as the goods of Boa Systems.

11.4 The customer's right to possession of the goods shall cease, and payment for them shall become immediately due, if he, not being a company, becomes insolvent, or he, being a company, does anything or fails to do anything which would entitle a receiver to take possession of any assets or which would entitle any person to present a petition for winding up, or if any petition be presented for the appointment of an administrator or interim administrator. In such circumstances, Boa Systems may enter the customer's premises to recover the goods.

11.5 Until Boa Systems is paid the full price for the goods, together with the full price of any other goods and/or services the subject of any other contract with Boa Systems, the relationship of the customer to Boa Systems shall be fiduciary in respect of the goods and if the same are sold by the customer Boa Systems shall have the right to trace the proceeds of them according to the principles in *Re Hallett's Estate*.

11.6 Even though the goods continue to belong to Boa Systems until they are paid for in full:

11.6.1 Boa Systems still has the right to recover payment for them.

11.6.2 Risk in the goods passes to the customer as soon as they are delivered into the customer's possession or control.

## **12. Intellectual Property**

12.1 All intellectual property rights including rights of copyright and design relating to goods supplied by Boa Systems remain Boa Systems property. Boa Systems is free to prepare and produce similar goods and to sell them to other customers without any restriction.

12.2 Intellectual property rights including copyright relating to software are reserved to Boa Systems. The customer is licensed to use the software on his premises only. The software may be copied for the purpose of keeping backups to ensure against loss due to system failure or similar events. Copying and distribution to any third party is prohibited.

### **13. Special Goods**

13.1 In this condition 13 "Special Goods" means tailor-made or customised goods which are designed/manufactured/obtained to meet the customers specific requirements.

13.2 Special Goods will be supplied in accordance with the written specification prepared by Boa Systems and approved by the customer. After approval, the customer cannot vary his requirements.

13.3 Upon approval of the specification for Special Goods, the customer shall if requested by Boa Systems pay a non-refundable deposit of 25%.

13.4 Boa Systems is to test Special Goods using samples and data (supplied by the customer as representative, so far as possible, of the conditions to be encountered in operational use), and if that test is successful and the Special Goods conform to the specification they are to be deemed accepted by the customer.

13.5 If the samples and data supplied by the customer for testing the Special Goods do not fully represent the operational environment for which the Special Goods are intended, Boa Systems does not accept any liability (so far as the law permits) for failure of Special Goods caused by conditions in the operational environment which were not present in the test environment.

13.6 The customer is to indemnify Boa Systems against all and any liability arising from breach of third party intellectual property rights resulting in the design/production/supply of Special Goods.

13.7 The customer acknowledges that the terms in this condition 13 are reasonable in relation to the supply of Special Goods.

### **14. Assignment & Third Parties**

14.1 The benefit and obligations of any contract with Boa Systems cannot be assigned by the customer.

14.2 Unless the contract states otherwise in writing, the benefit of this contract is personal to the named customer and only the named customer can enforce the contractual terms.

### **15. Waiver**

15.1 Any concession granted by Boa Systems to the customer shall not operate as a waiver of Boa Systems contractual rights set out in these standard trading conditions.

### **16. Severability**

16.1 If any court or arbitrator decides that any term (or part of the term) of these standard trading conditions is void, voidable or unenforceable, the rest of these trading conditions shall continue to be valid and enforceable. The court or arbitrator will, if possible, modify the offending term to the minimum extent necessary to make it valid.

### **17. Governing Law**

17.1 These standard trading terms shall be interpreted in accordance with and governed by the laws of England and Wales. Boa Systems and the customer submit to the jurisdiction of the English Courts.