

## TERMS AND CONDITIONS OF SALE OF PRODUCTS AND SUPPLY OF SERVICES

1. **DEFINITIONS**

In these Terms:

"**ACL**" means the Australian Consumer Law Schedule of the *Competition and Consumer Act*;

"**Agreement**" means any agreement for the provision of Products and Services by the Supplier to the Customer pursuant to a Quote;

"**consumer**" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement;

"**Customer**" means any person, jointly and severally if more than one, using the Website, and/or obtaining a Quote from the Supplier and/or acquiring Products or Services from the Supplier;

"**Intellectual Property Rights**" means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, business and domain names, inventions, and other results of intellectual activity in the industrial, commercial, scientific or artistic fields;

"**GST**" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;

"**PPSA**" means the *Personal Property Securities Act 2009* as amended;

"**Product**" or "**Products**" means BarrelEye and other related products supplied by the Supplier to the Customer;

"**Quote**" means any quote or proposal provided by the Supplier to the Customer, whether verbal or written, which includes the scope of works in relation to the provision of the Products and/or supply of the Services by the Supplier to the Customer;

"**Services**" means the any Services provided by the Supplier to the Customer;

"**Supplier**" means UAM TEC Pty Ltd (ABN 42 633 254 725);

"**Terms**" means these Terms and Conditions of Sale of Products and Supply of Services; and

"**Website**" means [www.uamtec.com.au](http://www.uamtec.com.au).
2. **BASIS OF AGREEMENT**
  - 2.1 Unless otherwise agreed by the Supplier in writing, the Terms apply exclusively to every Quote provided by the Supplier.
  - 2.2 Please read these Terms carefully before accepting a Quote. By accepting a Quote, the Customer agrees to such Quote and the Customer agrees to be bound by these Terms. If the Customer does not agree to all of the Terms, then such Customer may not purchase any Products or Services from the Supplier. If these Terms are considered an offer, acceptance is expressly limited to these Terms.
  - 2.3 An agreement is accepted by the Supplier when the Customer accepts the Quote electronically.
  - 2.4 Any alterations of Quote or changes to the Products to be supplied or Services provided by the Supplier must be requested by the Customer in writing and agreed to by the Supplier in writing.
  - 2.5 The Customer agrees that any changes to the Products or the Services requested once the Quote has been accepted by the Customer may incur extra costs and the Supplier has full discretion not to agree to any changes.
  - 2.6 The Supplier has an absolute discretion to refuse to accept any offer or amendment from the Customer or to supply any Products or Services.
  - 2.7 The Customer must provide the Supplier with its specific requirements in relation to the Products or the Services prior to the Quote being issued.
  - 2.8 The Supplier may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to Quotes and provision of Products and Services after the notice date.
3. **PRIOR TO ACCEPTING QUOTATION**
  - 3.1 Before accepting the Quote, the Customer must ensure that the Customer has provided to the Supplier the correct details in relation to the Product or Products to be supplied and Services to be provided to allow for the scope to be correctly drawn up.
  - 3.2 If the above-mentioned is not in place, the Supplier can, in its absolute discretion:
    - (a) Refuse supply of any Products or Services; or
    - (b) Charge the Customer for any changes that are required to be made to the Products or Services as a result of the Customer's non-compliance with clause 3.1 above.
4. **SUPPLY OF GOODS AND SERVICES**
  - 4.1 All Products are supplied and Services provided as per specifications in the Quote.
  - 4.2 Any amendments to the Quote agreed to by the parties will be documented as an addendum to the original Quote with the outline of change of scope of works required by the Customer.
5. **LIMITATION OF LIABILITY**
  - 5.1 The Supplier will in no way be liable to any party for any injury, loss or damage arising out of or related to the use of the Products.
  - 5.2 Under no circumstances will the Supplier be liable for any direct, indirect, incidental, special or consequential loss or damage, including loss of programs or data, loss of business, business interruption, or lost profits.
- 5.3 Where liability cannot be excluded, any liability incurred by the Supplier is limited to the re-supply of the Products or the Services to the Customer or the reasonable costs of having the Products or the Services re-supplied.
- 5.4 Except as these Terms specifically state, or as contained in any express warranty provided by the Supplier, the agreement for the supply of the Products or Services from the Supplier to the Customer does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Products or Services or any contractual remedy for their failure.
6. **PRICING**
  - 6.1 Prices quoted for the supply of Products include GST and any other taxes or duties imposed on or in relation to the Products and Services as provided for in the Quote.
  - 6.2 If the Customer requests any variation to the Quote, the Supplier may increase the price to account for the variation.
  - 6.3 Where there is any change in the costs incurred by the Supplier in relation to the Products or the Services, the Supplier may vary its price to take account of any such change, by notifying the Customer.
  - 6.4 Any delay in the commencement of the provision of the Services or the supply of the Products caused by the Customer, including but not limited to any delay, default, act or omission on the part of Customer, may change the Price at the absolute discretion of the Supplier to take into account either of any increase in cost to Supplier or changes as a result of any variation in the terms of the Quote.
7. **PAYMENT**
  - 7.1 When the Customer requests a Quote from the Supplier, the Supplier will provide the Quote for the total costs of Products and Services requested by the Customer and once the Quote has been accepted by the Customer, these Terms will apply.
  - 7.2 The Customer must make payment as follows, unless otherwise specified in the Quote:
    - (a) 50% of the total price contained in the Quote to be paid upon placement of the order by the Customer with the Supplier, which the Customer acknowledges is non-refundable due to the Product being custom made for the Customer; and
    - (b) The balance of 50% of the total price payable upon the Supplier advising the Customer that the Products are ready for shipment.
  - 7.3 Until the deposit (as per clause 7.2(a) above) is paid, no Products will commence to be manufactured.
  - 7.4 Until full payment for the Products (or Services) contained in the Quote is received by the Supplier, no Products or Services will be supplied or provided.
  - 7.5 Unless otherwise agreed in writing, all invoices must be paid within 14 days of the date of the invoice and payments must be made by EFT only.
  - 7.6 No shipment of Products will occur until the total payment for the Products will be received by the Supplier in clear funds.
  - 7.7 The Customer will be provided with details of all payment options available in the Quote.
  - 7.8 Payment terms may be revoked or amended at the Supplier's sole discretion immediately upon giving the Customer written notice.
  - 7.9 The time for payment is of the essence and all invoices should be paid on or before the due date.
8. **PAYMENT DEFAULT**
  - 8.1 If any Services or Products are to be paid on the invoice issued, and the Customer defaults in payment by the due date of any amount payable to the Supplier, then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any of its other accrued or contingent right:
    - (a) charge the Customer interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic) plus 4 per cent for the period from the due date until the date of payment in full;
    - (b) charge the Customer for, and the Customer must indemnify the Supplier from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any Products;
    - (c) cease or suspend supply of any further Products to the Customer; and
    - (d) by written notice to the Customer, terminate any uncompleted contract with the Customer.
  - 8.2 Clauses 8.1(c) and (d) may also be relied upon, at the Supplier's option, where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class

of his or her creditors generally or where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

## 9. PASSING OF PROPERTY

9.1 Until the Supplier receives full payment in cleared funds for all Products or Services supplied or to be supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer:

- (a) title and property in all Products remain vested in the Supplier and do not pass to the Customer;
- (b) title to all Products sold by the Supplier remain vested in the Supplier and do not pass to the Customer until full payment of the funds owed for the Products to the Supplier are paid in full. Until such time, the Customer hereby grants the Supplier a security interest in such Products and agrees that it shall not sell, charge or otherwise dispose of the Products and shall not allow any distress or other form of execution to be executed on the Products; and
- (c) in addition to the rights under the PPSA, until full payment is received by the Supplier for the Products, the Supplier may, without notice to the Customer, enter any premises where it suspects the Products are located, if applicable, and remove them, notwithstanding that they may have been attached to other goods not the property of the Supplier, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action.

## 10. PERSONAL PROPERTY SECURITIES ACT

10.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.

10.2 For the purposes of the PPSA:

- (a) terms used in clause 10 that are defined in the PPSA have the same meaning as in the PPSA;
- (b) these Terms are a security agreement and the Supplier has a Purchase Money Security Interest in all present and future Products supplied by the Supplier to the Customer and the proceeds of the Products;
- (c) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- (d) the Customer must do whatever is necessary in order to give a valid security interest over the Products which is able to be registered by the Supplier on the Personal Property Securities Register.

10.3 The security interest arising under this clause 11 attaches to the Products when the Products are collected or dispatched from the Supplier's premises and not at any later time.

10.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

10.5 To the extent permitted by the PPSA, the Customer agrees that:

- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on the Supplier will apply only to the extent that they are mandatory or the Supplier agrees to their application in writing; and
- (b) where the Supplier has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

10.6 The Customer must immediately upon the Supplier's request:

- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
- (b) procure from any person considered by the Supplier to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Supplier may at any time require.

10.7 The Supplier may allocate amounts received from the Customer in any manner the Supplier determines, including in any manner required to preserve any Purchase Money Security Interest it has in Products supplied by the Supplier.

## 11. RISK AND INSURANCE

11.1 The risk in the Products and all insurance responsibility for theft (of information), other damage or otherwise will pass to the Customer immediately on the Products being delivered (as a finalised product) to the Customer.

11.2 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the Products sold by the Supplier, unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL.

## 12. PERFORMANCE OF AGREEMENT AND DELIVERY

12.1 Any period or date for delivery of Products stated by the Supplier is an estimate only and not a contractual commitment.

12.2 The Supplier will use reasonable endeavours to meet any estimated dates for delivery of the Products but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

12.3 The Supplier's delivery records will be prima facie proof of delivery of the Products to the Customer.

12.4 Upon receiving full payment of the total amount payable in the Quote, the Supplier will arrange for the delivery of the Products to the Customer.

## 13. REFUNDS

13.1 The Supplier will not accept return of Products once these have been created to the Customer's specifications, unless the Products are of not merchantable quality.

13.2 No refunds will be given if:

- (a) the Customer provided wrong specifications for any of the Products purchased or Services provided; or
- (b) the Product has been damaged without any fault of the Supplier, for example by the Customer trying to pull it apart or by any sea creatures biting the Product etc.; and
- (c) the payment pursuant to clause 7.2(a) becomes non-refundable in all circumstances upon placement of the order by the Customer with the Supplier as the Products are custom made.

## 14. PRODUCT WARRANTY

14.1 The Customer acknowledges and agrees that the manufacturing warranty for all Products purchased from the Supplier will be for a period of twelve (12) months from the date of manufacturing, provided that no damage or malfunction of the Product is due to the act of the Customer or third party. For example, if the Product is found to have the seals broken or bite marks (sharks or other sea creatures), then the manufacturing warranty is nullified and cannot be relied on or claimed by the Customer.

14.2 For all warranty claims, the Products must be shipped by the Customer to the Supplier at the Customer's cost for assessment of the Product and whether it qualifies for a warranty claim. If a warranty claim is approved, the Supplier will either resupply the same type of product to the Customer or provide a refund, at the Supplier's sole discretion.

## 15. LIABILITY

15.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Products, the Terms do not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Products or any contractual remedy for their failure.

15.2 If the Customer is a consumer, nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against the Supplier for failure of a statutory guarantee under the ACL.

15.3 If the Customer on-supplies the Products to consumer (whether or not they are used up by the Customer in the course of manufacture):

- (a) if the Products are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Supplier's liability to the Customer;
- (b) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of the Supplier's liability to the Customer;

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Products by the Customer or any third party.

15.4 If clause 15.2 or 15.3 do not apply, then other than as stated in the Terms or any written warranty statement, the Supplier is not liable to the Customer in any way arising under or in connection with the sale, use of or any other dealings with the Products by the Customer or any third party.

15.5 The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

15.6 The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, in relation to any Products.

15.7 The Customer acknowledges that it has not relied on any advice, recommendation, information or assistance provided by the Supplier in relation to the Products or their use or application and it has not made known, either expressly or by implication, to the Supplier, if applicable, any purpose for which it requires the Products and it has the sole responsibility of satisfying itself that the Products are suitable for the use of the Customer.

15.8 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Products or supply of Services which cannot be excluded, restricted or modified.

## 16. CANCELLATION

- 16.1 If the Supplier is unable to deliver or provide the Products for any reason, then the Supplier may cancel the Customer's order pursuant to any Quote (even if it has been accepted) by notice to the Customer (written or verbal) and the Supplier will not be liable for any claim or loss by or of the Customer.
- 16.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on the Supplier once the Quote has been accepted.

## 17. EXCHANGES

- 17.1 Subject to clause 12.3, 17.2 and 17.4, the Supplier will not be liable for any damage or non-compliance with the specifications in the Quote unless the Customer notifies the Supplier with full details and description within 48 hours of receipt of the Products or discovering the damage or non-compliance of the Products, whichever may be applicable in the circumstances, otherwise the Customer is deemed to have accepted the Products.
- 17.2 When any shortages, claim for damaged Products or non-compliance with the Agreement specifications is accepted by the Supplier, the Supplier may, at its option, replace the Products, or refund the price of the Products.
- 17.3 Subject to clause 17.4, the Supplier will not under any circumstances accept Products for return that have been specifically produced to fulfil the Agreement, have been altered in any way, have been used or are not in their original condition and packaging.
- 17.4 If the Customer is a consumer, nothing in this clause 18 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.

## 18. CREDIT INFORMATION AND PRIVACY

- 18.1 The Customer acknowledges that certain items of information in provided to the Supplier may be disclosed to a credit reporting agency.
- 18.2 By creating the account with the Supplier, the Customer authorises the Supplier to obtain consumer and/or commercial information permitted by the Privacy Act from a credit reporting agency and to use such information for the purpose of collecting overdue payments relating to commercial credit owed by the Customer. This authority remains in force for the duration of the Customer's account with the Supplier and until all moneys owed have been repaid.
- 18.3 The Supplier may collect, use, store, record and transmit the Customer's personal information entered on this Website. For further details, please refer to the Supplier's Privacy Policy. All Customers' continued use of the Website and provision of Customer's personal information constitutes approval for the Supplier to deal with the Customer's personal information.

## 19. CUSTOMER OBLIGATIONS AND WARRANTY

- 19.1 The Customer must provide the Supplier and its employees and contractors with full and proper details of their specifications of the Products, prior to the Quote being produced.
- 19.2 The Supplier will not be liable or responsible for any associated damages, as the warranty is given on the Products only.
- 19.3 The Customer warrants all the information, including financial information, provided to the Supplier is complete and accurate. The Customer acknowledges that the Supplier will rely on the information when making a decision whether to provide the credit facility.
- 19.4 The Customer must provide all information requested by the Supplier within 14 days of request received from the Supplier, failing which the Customer will be liable for any costs incurred by the Supplier as a result of the Customer not complying this this clause 19.4 and delaying the provision of information further than the 14 days agreed to herein.

## 20. FORCE MAJEURE

- 20.1 The Supplier is not liable in any way howsoever arising under the Terms to the extent that it is prevented from acting by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war or pandemic. If an event of force majeure occurs, the Supplier may suspend any orders with the Customer and terminate the Terms by written notice to the Customer.

## 21. TITLE, INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHT

- 21.1 The Customer acknowledges and agrees that:
- the Supplier owns all the Intellectual Property, copyright, Website and all the contents of the Website;
  - the Customer will not acquire any interest in the Intellectual Property and any of its contents, Products or Services; and
  - acknowledges and agrees that all content, coding, graphics, design, Products and Services and Information available on the Website are protected by copyright, trade mark or other Intellectual Property rights and laws and remains the property of the Supplier or third party suppliers as the case may be.
- 21.2 The Customer further acknowledges that the use or duplication of the Intellectual Property in any other way other than as approved and agreed to by the Supplier would constitute a breach of the Supplier's Intellectual Property rights and would be a fundamental breach of these Terms. However, the Customer may download and print these Terms and the Privacy Policy for personal non-commercial use.

- 21.3 © UAM TEC Pty Ltd. All rights reserved.

- 21.4 All trade marks and trade names of the Supplier belong to the Supplier and/or its affiliates. Use of these trade marks without the owner's consent will infringe the owner's intellectual property rights. Nothing in this Website should be interpreted as granting any rights to use or distribute any names, logos or trade marks except with the express written consent of the respective owner.
- 21.5 If the Customer is a competitor of the Supplier and the Customer creates documents, Products or Services similar to those of the Supplier for the purpose of providing them to third parties, whether these third parties are business users or domestic users, the Supplier expressly excludes and does not permit the Customer to use or access the Website, to use or download any documents or any information from the Website or any other source. If the Customer breach the Supplier's Intellectual Property rights by using its documents, Products, service or the Information, the Customer will be liable for any loss that the Supplier may incur. The Supplier will hold the Customer accountable for all profits that the Customer might make from using the Supplier's Intellectual Property.
- 21.6 The Supplier reserves the right to deny access to the Products, the Services or the Website to any person or business, including the Customer if the Customer has not paid in full for the Products and the Services.

## 22. MISCELLANEOUS

- 22.1 The law of Victoria from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 22.2 The Supplier's failure to enforce any of these Terms shall not be construed as a waiver of any of the Supplier's rights.
- 22.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.
- 22.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.