

BIC Terms and conditions of Sale (“Terms of Sale”) – 01 July 2019

BIC ‘TERMS OF SALE’

0. Definitions used in these Terms of Sale.

- a) “Agreement” means the contractual agreement between BIC and Distributor, or between BIC and End Customer;
- b) “Distributor” means the contractual partner of BIC in an Agreement of distribution to which these terms and conditions of sale apply;
- c) “End Customer” means contractual partner of BIC in an Agreement of sale, explicitly not being a customer of Distributor as defined in the Agreement of distribution;
- d) “Market” means the defined market segment in the Territory appointed to Distributor for the distribution of BIC Products as defined in the Agreement of distribution;
- e) “Order” means a purchase order for BIC Products as further defined in the Agreement including these Terms of Sale;
- d) “Territory” means the territory appointed to Distributor for the distribution of BIC Products as defined in the Agreement of distribution;
- e) “BIC Products” means: the BIC Hardware and/or the Software provided to Distributor (and/or its customers) or End Customer as specified in and under the terms of the Agreement.

1. Order Procedure.

- (a) BIC Order Acceptance. Distributor or End Customer, shall submit binding purchase orders for BIC Products (“Orders”) no later than sixty (60) days prior to the desired ship date. All Orders for the BIC Products by Distributor or End Customer shall be subject to acceptance in writing or in an e-mail message by BIC at its principal place of business and shall not be binding until the earlier of such acceptance or shipment, and, in the case of acceptance by shipment, only as to the portion of the Order actually shipped.
- (b) Controlling Terms. The terms and conditions of the Agreement, including without limitation these terms and conditions of sale, the Incoterms 2000 insofar as mentioned in these terms and conditions of sale, and the terms and conditions of the applicable BIC invoice or confirmation shall apply to each Order accepted or

shipped by BIC hereunder. The provisions of Distributor’s or End Customer’s form of purchase order or other business forms shall not apply to any Order notwithstanding BIC’ acknowledgment or acceptance of such order, except for the following terms which BIC shall accept with respect to each order pursuant and subject to the provisions of these terms and conditions of sale: (i) quantity and type(s) of BIC Products ordered; (ii) requested delivery dates and (iii) shipment destinations.

(c) Cancellation. BIC reserves the right to cancel any Orders placed by Distributor or by End Customer and accepted by BIC as set forth above, or to refuse or delay shipment thereof, if Distributor or if End Customer (i) fails to make any payment as provided in this Agreement or under the terms of payment set forth in any invoice or otherwise agreed to by BIC and Distributor or by BIC and End Customer, (ii) fails to meet reasonable credit or financial requirements established by BIC, including any limitations on allowable credit, or (iii) otherwise fails to comply with the terms and conditions of the Agreement. BIC also reserves the right to discontinue the manufacture, sale, distribution or provision of any or all BIC Products at any time, also with respect to the relevant Market and/or Territory, and to cancel any Orders for such discontinued BIC Products without liability of any kind to Distributor, to End Customer or to any other person. BIC shall exercise commercially reasonable efforts to provide Distributor or End Customer with advance notice of any such discontinuation. No such cancellation, refusal or delay shall be deemed a termination or breach of this Agreement by BIC.

2. Conformity to Specifications & Traceability.

BIC Products delivered to Distributor or to End Customer shall not substantially fail to meet the product specifications as have been agreed in writing between Distributor and BIC or between End Customer and BIC. BIC shall do its utmost to meet all requirements agreed upon including maintaining the necessary documentation and managing traceability of BIC Products provided to Distributor or provided to End Customer.

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3. Prices, Quantities and Payment.

(a) Prices to Distributor, Prices to End Customer. During the term of the Agreement, prices to Distributor or to End Customer for the BIC Products shall be as stated in the Agreement. BIC may change its prices to Distributor or to End Customer from time to time upon at least thirty (30) days’ prior written notice. Prices as stated in the Agreement or amendments thereto are not necessarily all-inclusive and do not specifically include, without limitation, those costs, fees and charges otherwise allocated to Distributor or to End Customer under this Agreement and in accordance with the delivery terms and conditions, unless otherwise expressly stated in a separate writing.

(b) Price Increase and Decrease. In the event BIC increases the price to Distributor or to End Customer for any BIC Products, the increase shall apply to any Order received by BIC after the effective date of the increase. In the event BIC decreases the price to Distributor or to End Customer for any BIC Products, the decrease shall apply to all units of such product ordered after the effective date of the decrease.

(c) Payment Terms. All payments shall be made in the invoice currency, free of any currency control or other restrictions. Distributor or End Customer shall at the time of submission of any Order for the BIC Products hereunder, pay by wire transfer to a bank account designated by BIC the amount of the aggregate prices of the BIC Products ordered (plus any applicable taxes and other charges).

(d) Credit Terms. Upon credit approval by BIC, shipments may be made on BIC’ credit terms in effect at the time an Order is accepted. BIC reserves the right, upon written notice to Distributor or to End Customer, to declare all sums immediately due and payable in the event of a breach by Distributor or End Customer of any of its payment obligations to BIC. Furthermore, BIC reserves the right at all times either generally or with respect to any specific Order by Distributor or End Customer to vary, change or limit the amount or duration of credit to be allowed to Distributor or to End Customer. Distributor or End Customer agrees to pay for the BIC Products as invoiced. BIC will invoice Distributor or End Customer 60% at the moment of Order acceptance and 40% at the moment of delivery of the Order. Subject to the

provisions of this subsection, as of the Effective date of the Agreement, BIC’ credit terms with respect to Distributor or End Customer shall be net thirty (30) days from the invoice date.

(e) Taxes and Tariffs. BIC’ prices do not include any national, state or local sales, use, value added or other taxes, customs duties, or similar tariffs and fees which BIC may be required to pay or collect upon the delivery of BIC Products or upon collection of the prices or otherwise. Should any tax or levy be made, Distributor / End Customer agrees to pay such tax or levy and indemnifies BIC for any claim for such tax or levy demanded. Distributor represents and warrants to BIC that all BIC Products acquired hereunder are for redistribution in the ordinary course of Distributor’s business, and Distributor agrees to provide BIC with appropriate resale certificate numbers and other documentation satisfactory to the applicable taxing authorities to substantiate any claim of exemption from any such taxes or fees. Distributor shall pay any withholding taxes required by applicable law. Distributor shall supply BIC with evidence of such payment of withholding tax, in a form acceptable to BIC to meet the requirements for claiming foreign tax credits on BIC’ national income tax return. End Customer agrees and warrants not to resell or redistribute BIC Products without BIC’ prior written consent, and agrees and warrants to use BIC Products only in the single course of End Customers’ business.

(f) Return Policy. Distributor or End Customer agrees that all units of the BIC Products are non-returnable. In the event Distributor or End Customer receives defective units of BIC Products, Distributor or End Customer shall provide evidence of such defects to BIC for approval, identifying the type of defect and number of defective units. If BIC agrees that such units are defective, BIC will provide further written instruction to Distributor or End Customer regarding the disposition of such defective units, provided that such defect is established within 12 months after the date of shipment as defined in section 4.

(g) Interest. Interest shall accrue on any delinquent amounts owed by Distributor or End Customer for BIC Products at the rate of fifteen percent (15%) per annum or the maximum rate permitted by applicable law.

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(h) No Setoff. Distributor or End Customer shall not setoff or offset against BIC’ invoices any amounts that Distributor or End Customer claims are due to it. Distributor or End Customer shall bring any claims or causes of action it may have in a separate action and waives any right it may have to offset, setoff or withhold payment for the BIC Products delivered by BIC.

(i) Ownership of any physical goods does not transfer unless the sales price has been paid in full. Furthermore, Distributor accepts that any goods sold to it by BIC have a lien put upon them against any payments outstanding to BIC.

4. Shipment, Risk of Loss, Delivery, and Inspection.

(a) Shipment. All BIC Products shall be delivered to either Distributor or End Customer or Distributor’s or End Customer’s carrier at BIC facilities or the facilities of a third party manufacturer that manufactures the BIC Products on BIC’ behalf (the “**BIC Manufacturer**”). Distributor or End Customer shall arrange and pay for all shipping of BIC Products, EXW (Incoterms 2000). Distributor or End Customer shall select the mode of shipment and the carrier. Notwithstanding the parties’ use of the EXW term in this Agreement, Distributor or End Customer shall be responsible for payment of all packing, shipping, freight insurance charges, export duties, and any other expenses incurred by BIC in delivering the BIC Products to the delivery site (“**Shipping Charges**”). At BIC’ sole option and discretion, Distributor or End Customer shall either reimburse BIC or the BIC Manufacturer for all Shipping Charges or pay all Shipping Charges in advance.

(b) Distributor / End Customer will comply with all reasonable directions of BIC in relation to storage, delivery and other matters to ensure the quality of the BIC Products.

(c) Title and Risk of Loss. Title and all risk of loss of or damage to the BIC Products ordered by Distributor or End Customer shall pass to Distributor or End Customer upon delivery of the BIC Products by BIC or the BIC Manufacturer at the disposal of either Distributor or End Customer or Distributor’s or End Customer’s carrier at the delivery site.

(d) Delivery. BIC shall use reasonable efforts to meet Distributor’s or End Customer’s requested delivery schedules for the BIC Products, but any dates quoted for delivery of the BIC Products are approximate only and time for delivery shall not be of the essence. BIC reserves the right to refuse, cancel or delay shipment to Distributor or End Customer when Distributor’s or End Customer’s credit is impaired, when Distributor or End Customer is delinquent in payments or fails to meet other credit or financial requirements established by BIC, or when Distributor or End Customer has failed to perform its obligations under the Agreement. In any event, BIC shall not be liable for any damages, direct, consequential, special or otherwise, to Distributor, to End Customer or to any other person for failure to deliver or for any delay or error in delivery of the BIC Products for any reason whatsoever.

5. Acceptance.

Within seven (7) days after any Order of BIC Products clears customs in Distributor’s Territory, or within seven (7) days after any Order of BIC Products have been delivered to End Customer, Distributor respectively End Customer shall (a) inspect such BIC Products to determine their conformity to the requirements of the Agreement, and (b) if any such BIC Products fail to so conform, deliver notice to BIC providing an explanation of the nature and details of the alleged nonconformity. In the absence of such timely and proper notice, Distributor / End Customer shall be deemed to have accepted such BIC Products.