

# TERMS AND CONDITIONS OF SALE

BlazeCut Pty Ltd is the Head Office of the BlazeCut Group.  
All contracts of sale are by BlazeCut Pty Ltd and hereafter referred to as "BlazeCut".

BlazeCut s.r.o, is the BlazeCut group's manufacturing facility in Slovakia.  
All Contracts of sale with BlazeCut shall be on and subject to these Terms and Conditions of Sale

## PARTIES IN AGREEMENT

Company entity: BlazeCut Pty Ltd

Registered address: 45 Evans Street, Balmain NSW 2041 AUSTRALIA

Australian Business Number (ABN): 92 623 022 560

VAT Registration Number (Germany/EC): DE319422957

Office Phone Number: +61 2 8006 1300

Customer Service Email: [customerservice@blazecutgroup.com](mailto:customerservice@blazecutgroup.com)

(Hereinafter referred to as **BlazeCut**)

## **AND**

The "**Customer**" is the person, firm or company to whom a Quotation is provided by BlazeCut or by whom is Purchasing the Goods and/or Services from BlazeCut.

## TERMS and CONDITIONS

These Terms and Conditions will prevail and take precedence over any terms and conditions provided by the Customer, and such terms and conditions will have no legal effect and will not constitute part of these Terms and Conditions (even if BlazeCut accepts or fulfils the Customer's Order).

### **1. Definitions and Interpretation**

(a) In these Terms and Conditions:

**Agreement** means this Agreement of the Terms and Conditions of Sale;

**Australian Customers** means a company or individual that is registered or based within Australia and acts under Australian Laws.

**BlazeCut** means BlazeCut Pty Ltd ABN 92 623 022 560, registered at 45 Evans street, Balmain NSW 2041 Australia.

**BlazeCut s.r.o** means BlazeCut s.r.o registered at Triblavinská 3191, 900 25 Chorvátsky Grob, Slovakia.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in State.

**Customer** means the party to whom a Quotation is provided by BlazeCut or by whom an Order is placed with BlazeCut for Goods and/or Services.

**Goods** mean the materials, equipment and/or goods supplied by BlazeCut.

**GST** means the tax imposed by *A New Tax System (Goods and Services Tax) Act 1999* and related tax imposition Acts of the Commonwealth of Australia.

**Incoterm** means the International Chamber of Commerce (ICC) Incoterms® rule

**Intellectual Property** means trademarks, patents, copyrights, designs, layout-designs (topographies) of integrated circuits and confidential information as may be applicable to the Products and to any advertising and promotional material and any technical materials and user manuals associated with the manufacture or supply of the Products.

**Non-Australian Customers** means a company or individual that is registered or based in a country outside of Australia.

**Order** means any order placed by the Customer for the Goods and/or Services to be supplied by BlazeCut, whether in writing or orally.

**Party** means a party to this Agreement.

**Price** means the cost of the Goods and/or Services as agreed between BlazeCut and the Customer.

**Quotation** means any quotation issued by BlazeCut for Goods and/or Services.

**Services** mean the services provided or to be provided to a Customer.

**Site** means the location where the Services are to be performed, or the location where the Goods are to be delivered, as nominated by the Customer.

**State** means the state of New South Wales, Australia.

**Specifications** mean the drawings, scope of work and/or description of the Goods and/or Services as stated in writing by the Customer to BlazeCut.

**Territory** means the geographical area set out in the Agreement.

**VAT** means the "Value-added Tax" imposed on Goods and Services that is applicable on sales to Customers within the European Union related tax imposition Acts of Germany.

(b) In these Terms and Conditions, unless the context requires otherwise:

(i) any reference to a party includes its successors and permitted assigns;

(ii) headings are for convenience only and have no legal effect;

(iii) the singular includes the plural and vice versa; and

(iv) "including" and similar words do not imply any limitation.

### **2. Quotation and Order**

(a) Quotations are valid for a period of 30 days or as otherwise stated on the quotation.

(b) Quotations may be amended or withdrawn at any time by BlazeCut before acceptance by the Customer.

(c) Any Quotation containing a provision to supply Goods ex-stock is subject to fulfilment of prior contracts at the date of the Order.

(d) The placement of an Order resulting from a Quotation (or otherwise) is deemed to be an Order incorporating these Terms and Conditions notwithstanding any inconsistencies which may appear in the Customer's Order or documentation.

(e) Unless otherwise agreed upon, a minimum order value applies for export customers (Non Australian) €2500 Euros (two thousand five hundred Euros) and AUD\$2500 for Australian based company sales. This is excluding any packing and freight charges.

### **3. Pricing**

(a) Prices do not include delivery of the Goods to the Site or Sales Taxes such as VAT/GST, unless otherwise stated in the Quotation.

(b) Prices do not include Packing, Freight and Customs and maybe supplied on request and this price will not include any costs associated with the receiving Port. All Charges incurred for importing into the country of the purchaser is not the responsibility of BlazeCut and the purchaser will be responsible for all shipping charges.

(c) BlazeCut is entitled to modify the Customers price at any time. Any Price modifications are not applicable to Orders that have already been confirmed by BlazeCut.

(d) If BlazeCut is required to attend the Site, in addition to BlazeCut's fees for providing the Services, the Customer will be liable for payment of:

(i) travel time at the agreed rate or as notified by BlazeCut;

(ii) travel costs (including air fares, car hire, accommodation and meals) at cost plus 20%; and

(iii) any costs incurred by BlazeCut arising from a requirement to be inducted prior to entering the Site (including medical tests and accreditations).

### **4. Payment**

Unless agreed upon otherwise in writing;

(i) the Customer will pay 100% of the Price of the ordered Goods where:

(A) The goods are in stock at BlazeCut in Australia; or

(B) BlazeCut places a special order for non-stocked Goods on behalf of a Customer; or

(C) BlazeCut places an order for Goods to be shipped from the BlazeCut factory to a agreed location;

(ii) all sums due in relation to Goods are payable prior to dispatch of the Goods. Payment will constitute acceptance of all Goods, and BlazeCut will not be liable for any claim by the Customer for any cost, loss, damage, expense or short delivery unless BlazeCut is notified in writing within 5 days of receipt of the Goods by the Customer; and

(iii) all sums due in relation to Services are payable on provision of the estimate by BlazeCut to the Customer. Payment will constitute the Customer's instruction to BlazeCut to commence the Services.

(b) if the Customer has an approved open account with BlazeCut with Payment Terms, invoices are payable by the Customer 7 days after the due date of the invoice, unless otherwise agreed.

(c) If payment is not made on a timely basis, interest on the unpaid balance from time to time outstanding will accrue from the due date until paid in full at a rate of 0.05% per day, without prejudice to BlazeCut's other rights in respect of late or non-payment.

(d) The Customer will pay all cost and expenses (including legal costs on an indemnity basis) incurred by BlazeCut and/or its agents in respect of the Customer, whether relating to any debt, possession of Goods and/or otherwise.

(e) The Customer is liable for all Transaction Fees/Charges to their respective bank or financial institution for any processing or other fees or charges which may arise in relation to the supply, payment and distribution of the Products.

### **5. GST/VAT**

If GST or VAT is imposed on any supply made under or in accordance with these Terms and Conditions, the recipient of the taxable supply must pay to BlazeCut an additional amount equal to the GST/VAT payable on or for the taxable supply. Payment of the additional amount will be made:

(a) at the same time as payment for the taxable supply is required to be made in accordance with these Terms and Conditions; or

(b) within 7 days after the date of any invoice or notice from BlazeCut requesting such payment.

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- (c) EU Customers eligible for a VAT reverse charge must provide a valid VAT number to BlazeCut.
- (d) Any applicable VAT will be shown on the invoice. If the 'VAT' value is not shown, Zero (0%) EC VAT is applied as per 2006/112/EC, Article 141 VAT Simplification Invoice / EC VAT reverse charge supply,
- (e) All Customer sales in Germany will have a 19% VAT applicable.
- (f) All Customer sales in Australia will have a 10% GST applicable.
- 6. Cancellations and Restocking Fees**
- (a) Orders cannot be cancelled by the Customer under any circumstances without BlazeCut's prior written consent and except upon terms which will indemnify BlazeCut against all loss.
- (b) Excluding any defective items, neither all nor any part of an Order may be returned to BlazeCut without prior written agreement of BlazeCut.
- (c) For Australian Customers, BlazeCut reserves the right to charge a minimum restocking fee of 20% the full invoiced amount in respect of Goods returned by the Customer provided the returned Goods are in the same condition as they were upon delivery to the Customer by BlazeCut.
- (d) BlazeCut reserves the right to recover the delivery fee if charged.
- (e) BlazeCut will have no obligation to cancel any orders that a Non-Australian Customer have committed to where an Order has been provided and payment has been made.
- (f) Non-Australian Customer shall pay all costs relating to any losses and damages sustained by BlazeCut in connection with such order termination. A cancellation charge to recover these costs may be specified and the Purchaser agrees to pay the cancellation charges.
- 7. Title & Risk of Loss**
- (a) Title to the Goods and any materials used in the supply of Services will pass to the Customer upon receipt of full payment for the Goods.
- (b) Subject to clause 9(c), the risk of loss or damage to the Goods passes to the Customer on the date and at the time that:
- (i) the Goods are collected from BlazeCut; or
- (ii) where BlazeCut is responsible for the delivery, the Goods are delivered to the Site.
- 8. Delivery**
- (a) Unless otherwise agreed, BlazeCut accepts no responsibility or duty to deliver but may agree to deliver at its discretion, without liability and at the Customer's cost.
- (b) BlazeCut reserves the rights to deliver the Goods by instalments. Any delivery times notified to the Customer are estimates only. If the Customer requests BlazeCut to postpone delivery of the Goods beyond the delivery date or dates specified in the Order, BlazeCut may agree to do so if the Customer agrees to pay an additional fee or variations of shippings costs for such postponement.
- (c) If BlazeCut does not receive delivery instructions sufficient to enable BlazeCut to dispatch the Goods within 14 days of the Customer being notified that the Goods are ready for delivery, the Customer will from the 15<sup>th</sup> day after notification:
- (i) be deemed to have taken delivery of the Goods;
- (ii) be liable for storage charges, payable monthly on demand; and
- (iii) assume risk in the Goods.
- (d) For Non-Australian Customers, all goods are shipped directly from our factory in Slovakia to the agreed place of delivery.
- (e) INCOTERMS - Delivery of the Products shall be in accordance with the chosen Incoterm specified in the Quotation, Order or Invoice.
- (f) COUNTRY OF EXPORT ORIGIN – For Export sales to Non-Australian Customers, all goods are shipped directly from our factory. BlazeCut s.r.o and declares that, except where otherwise clearly indicated, these products are of the EEC/Slovak preferential origin.
- (g) All orders must be thoroughly checked by the Customer at the time of receiving. BlazeCut will allow 5 working days from possession of the order by the Customer to claim on short supply or damage. At time of claim, photos and a fully detailed report in writing need to be received by BlazeCut before a decision will be considered.
- 9. Packing and Shipping for Non-Australian Customers**
- (a) For Export sales to Non-Australian Customers, BlazeCut sales transactions are completed with Head Office, BlazeCut Pty Ltd in Sydney, Australia. All Goods are supplied and shipped directly from the BlazeCut factory in Slovakia, Europe.
- (b) Maximum Gas Volume Allowance – IATA Air Freight transportation regulations limit our packing to having a maximum gas allowance per crate of 75kg total. Road freight has no gas limitations.
- (c) Dangerous Goods Classifications – All BlazeCut systems are shipped under Class 2.2 Dangerous Goods (Fire Extinguishing Agent, Non Flammable, non-toxic compressed gas) for HFC's, Novec and charged cylinder with BlazeCut Powder or Foam agents. Our systems contain HFC-236FA (UN No.3163), HFC-227EA (UN No.3296), NOVEC (UN No.1044). Charged powder or foam cylinders are UN No.1044. If the cylinder with powder or foam is not charged it is not classed as Dangerous Goods.
- (d) Tariff Codes – It is up to the receiver to identify and specify to the receiver's local customs authority the correct tariff code required for importation. However as a guide the following heading codes of 8424.10, 8424.90 or 8531.10 can be used.
- (e) All Dangerous Goods shipment of goods are packaged in the UN approved Dangerous Goods wooden crates with accompanying dangerous goods declaration.
- (f) Unless agreed otherwise, the buyer is responsible for the full export process and charges including Local clearance charges in Slovakia, freight and duty and customs at the final destination. Please ask us for a final quotation including all the applicable packing and handling charges with optional freight according to your requirements. Packing and shipping fees can be finalised on request.
- (g) Additional Documents – Each shipment will only be supplied with the Dangerous Goods declaration. Any additional documentation such as Eur.1 movement, ATR Certificate, Certificate of Origin or similar must be requested as part of the quotation or at time of order. Document charges apply.
- 10. Warranties**
- (a) For Goods sold and manufactured by BlazeCut:
- (i) BlazeCut warrants that the Goods will be of an acceptable quality; and
- (ii) if any defect appears within:
- (A) 24 months from the date the Goods are delivered to, or collected by, the Customer;
- (B) the Customer must promptly notify BlazeCut of the defect in writing and BlazeCut will, at BlazeCut's discretion, repair, replace or refund the Price of the Goods or Services; and
- (C) the cost associated with delivering the Goods to and from BlazeCut will be the responsibility of the Customer.
- (b) The warranties in this clause will not apply to, and BlazeCut is not liable in respect of loss and damage arising from: corrosive matter, operation above rated capacities, electrical or other overload, unsuitable lubricants, dismantling or accident, or damage caused by unforeseen events;
- (i) use of the Goods beyond the parameters set in the Specifications; and
- (ii) Goods which are modified, maintained or repaired by any person not authorised to do so by BlazeCut.
- (c) These warranties are in addition to other rights and remedies that are available to the Customer at law. BlazeCut's goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (d) All other warranties are excluded to the extent permitted at law.
- 11. Insurances**
- The Customer must affect and maintain insurances or similar as legally required by the local authorities of the Distributor to fully indemnify BlazeCut against any and all sums that may become payable due to the actions of the Distributor, its employees and subcontractors during the currency of this Agreement
- 12. Representation and Marketing**
- (a) The Customer agrees that the Goods manufactured by BlazeCut will not be exhibited by any person, firm or company at any show, exhibition or trade fair without prior written consent from BlazeCut. The Customer warrants that such Goods will not be misrepresented in any way to the detriment of BlazeCut as to their origin or source of import.
- (b) The Customer is responsible for ensuring that the Goods and/or Services comply with any requirements of law or as required by any statutory authority and will not rely on BlazeCut's skill or judgement in relation to any particular purpose for which the Goods and/or Services are supplied other than as specified by the Customer to BlazeCut.
- (c) The Customer is to pay its own costs of advertising the Products in the Territory except where there is any separate advertising campaign which BlazeCut and the Customer have agreed in writing to fund jointly in any agreed proportion;
- (d) The Customer must at all times comply with all of the branding guidelines provided by BlazeCut;

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- (e) The Customer allows BlazeCut to use without restriction any photos, images, promotional, advertising or marketing material related to the Products that the Customer creates or obtains;

### 13. Personal Property Securities Act 2009 (“PPSA”)

- (a) This clause is applicable to Goods or Customer located in Australia or any external territories this act may apply to.
- (b) For the purposes of this clause 13, the terms ‘financing statement’, ‘financing change statement’, ‘security agreement’ and ‘security interest’ have the meanings set out in the PPSA.
- (c) The Customer acknowledges and agrees that:
  - (i) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (ii) a security interest is taken in all Goods previously supplied by BlazeCut to the Customer (if any) and all Goods that will be supplied in the future by BlazeCut to the Customer during the continuance of the parties’ relationship.
- (d) The Customer agrees to do anything (including obtaining consents, signing or producing any further documents, and/or providing any further information) which BlazeCut asks and considers necessary for the purposes of:
  - (i) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
  - (ii) enabling BlazeCut to apply for any registration, complete any financing statement, financing change statement or give any notification, in connection with the security interest; and/or
  - (iii) BlazeCut exercising its rights in connection with the security interest.
- (e) Everything that BlazeCut is required to do under this clause 13 is at the Customer’s expense.
- (f) The Customer waives any rights it may have:
  - (i) to receive notices under sections 95, 118, 121(4), 129, 130, 132(3)(d), 132(4), 134(1) and 135 of the PPSA; and
  - (ii) under sections 142 and 143 of the PPSA.
- (g) The Customer agrees to keep separate those Goods for which payment has been made from Goods for which payment has not been made.
- (h) The parties agree that sections 96 and 117 of the PPSA do not apply to these terms and conditions.

### 14. Assignment and Subcontracting

- (a) The Customer may not assign its rights, duties and obligations under these Terms and Conditions without BlazeCut’s prior written consent.
- (b) BlazeCut may sub-contract the performance of any part of its obligations under these Terms and Conditions to any third party or assign any of its rights or obligations under these Terms and Conditions.

### 15. Liability and Indemnity

- (a) To the extent permitted by law, in the case of all Goods and/or Services supplied by BlazeCut, BlazeCut is not liable:
  - (i) for any transport, installation, removal, labour or other costs; or any loss or damage to the Goods in transit; or
  - (ii) to the Customer or any other party for any direct, indirect, consequential or inconsequential injury loss or damage whatsoever by reason of any delay in delivery, deterioration, deficiency or other fault or harm in the Goods and/or Services supplied by or on behalf of or in any arrangement with BlazeCut and whether or not due to the negligence of BlazeCut its servants or agents.
- (b) To the extent permitted by law, BlazeCut’s total liability in connection with these Terms and Conditions:
  - (i) is limited at BlazeCut’s option to one of the following:
    - (A) in the case of the supply of Goods: (1) replacement, repair or resupply of the Goods; or (2) the cost of replacing, repairing or resupplying the Goods;
    - (B) in the case of the supply of Services: (1) supplying the Services again; or (2) the cost of supplying the Services again;
  - (ii) but will not exceed the Price paid by the Customer under these Terms and Conditions.

### 16. Termination

- (a) BlazeCut may terminate an Order immediately if the Customer:
  - (i) breaches any of its obligations under these Terms and Conditions and it does not remedy such breach within a reasonable time as requested by BlazeCut in writing; or
  - (ii) becomes insolvent, is wound up or a receiver or creditor is appointed over any part of the Customer’s business.
- (b) Upon termination, the Customer will pay BlazeCut for all costs incurred with the termination up to the date of termination.

### 17. Force Majeure

- BlazeCut is not liable for failing to comply with these Terms and Conditions as a result of events beyond BlazeCut’s control (including earthquakes, cyclones, floods, fires, lightning, storms or other acts of God, blowouts, strikes or industrial disputes, riots, terrorist acts, civil disturbances, breakages of machinery or industrial conditions or arising out of any other unexpected or exceptional cause, delays in transportation and dispositions or orders of governmental authority, but shall not include lack of funds nor economic hardship). If such events cause a delay in the supply of the Goods and/or Services, the Customer agrees to:
- (a) extend any timeframes specified in the Order to accommodate the delay;
  - (b) pay BlazeCut any additional fees incurred by BlazeCut to complete the Services, as agreed between the parties; and
  - (c) pay BlazeCut standby rates (at the published hourly rates) if BlazeCut personnel are retained on Site.

### 18. Confidentiality

The Customer will treat as confidential all information, data, drawings, specifications, samples and documentation supplied by BlazeCut relating to the Goods and/or Services, and will not disclose them to any third party without the prior written consent of BlazeCut unless such information is:

- (a) a matter of public knowledge;
- (b) lawfully available from another source;
- (c) disclosed as may be necessary in accordance with the PPSA for the security interest to be perfected; or
- (d) disclosed as may be required by law.

### 19. Ownership of Intellectual Property

- (a) All intellectual property created by BlazeCut relating to the Goods and/or Services is from the time of creation, owned by BlazeCut.
- (b) BlazeCut grants to the Customer a non-exclusive, royalty-free licence to use BlazeCut’s intellectual property to the extent such materials form part of, or are integral to, the Goods and/or Services.
- (c) The Customer must not remove any branding, patent, copyright or other proprietary notices incorporated on or in the Goods by BlazeCut.
- (d) The Customer will obtain the prior written consent of BlazeCut before placing any other trademark, company name, brand name or private label on the Goods.
- (e) No Customer is to register the BlazeCut trademark in any domain, website or other registers without the prior consent of BlazeCut
- (f) The Customer will not use the BlazeCut trademark, company name or brand name for sales or marketing purposes, unless with the prior written consent of BlazeCut.
- (g) The Customer agrees not to copy, replicate or manufacture a competitive product using the BlazeCut Intellectual Property.
- (h) The Customer at all times indemnifies BlazeCut, its officers, employees and agents, from and against all loss, damage, costs and expenses (including legal costs) arising out of the infringement or alleged infringement of any intellectual property, because of the purchase, possession or use of the Goods or the outcomes of the Services.

### 20. Governing Law

These Terms and Conditions are governed by, and construed in accordance with the laws of New South Wales. The parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded from these Terms and Conditions.

### 21. Notices

All notices and consents relating to these Terms and Conditions must be in writing.

### 22. General

- (a) These Terms and Conditions contain the entire understanding between the parties concerning the Goods and/or Services and supersedes all prior communications.
- (b) These Terms and Conditions may not be amended or varied except in writing and signed by the parties.
- (c) The failure of either party to enforce any provisions under these Terms and Conditions will not waive the right of such party thereafter to enforce any such provisions.
- (d) If any term or provision of these Terms and Conditions is held by a court to be illegal, invalid or unenforceable under the applicable law, that term or provision will be severed from these Terms and Conditions and the remaining terms and conditions will be unaffected.
- (e) When placing an order to BlazeCut the Customer representative of the

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Company agrees and is in acknowledgment of these Terms and Conditions of Sale.