

1. Definitions

- 1.1 In these Terms the definitions listed below will apply:
- “Barron McCann”** means Barron McCann Limited (registered in England and Wales No. 01071331) whose registered office is at Meteor Centre, Mansfield Road, Derby, DE21 4SY.
- “Charges”** means the charges for the Equipment as set out in the Order.
- “EEE”** means equipment classed as electrical or electronic equipment under the WEEE Legislation.
- “Contract”** means a contract between Barron McCann and the Customer consisting of these Terms and the Order. In the event of an inconsistency, the order of precedence shall be: (i) any provision of the Order expressly taking precedence; (ii) these Terms; and (iii) the remainder of the Order.
- “Customer”** means the entity named as such in the Order.
- “Equipment”** means the equipment (including any software or firmware associated with such equipment) set out in the Order.
- “Insolvent”** means in administration, in receivership, in liquidation, subject to deed of company arrangement, subject to any arrangement, assignment or composition or protected from any creditors under any statute (other than to carry out a reconstruction while solvent) or otherwise incapable of paying debts as they fall due.
- “Order”** means Barron McCann’s order form setting out the details of the Equipment, the Charges and all associated matters.
- “Terms”** means these standard terms and conditions.
- “WEEE Legislation”** means as appropriate the Waste Electrical and Electronic Equipment Regulations 2013 or Directive 2012/19/EU of the European Parliament and the Council of 4 July 2012 on waste electrical and electronic equipment.

2. Basis of Contract

- 2.1 Barron McCann shall set out the details of the proposed transaction in an Order. The Customer shall be deemed to have accepted an Order upon the earlier of:
- the Customer’s written acceptance of the Order (including by email);
 - the Customer issuing any delivery instruction or acting in any other way consistent with accepting the Order; or
 - the Order not being rejected by the Customer in writing within five (5) days of the date of issue,
- at which time the Contract shall be deemed to commence.
- 2.2 Each Contract will be subject to and be deemed to include these Terms to the exclusion of all other terms and conditions (including any terms or conditions which either party purports to apply under any purchase order, confirmation of order, specification, course of dealing or other document whatsoever and whenever), save only as to any additional terms and conditions expressly set out in the Order.

3. Supply and Delivery

- 3.1 Barron McCann undertakes that the Equipment shall correspond with its general description and any applicable specification set out in the Contract but Barron McCann shall not be liable in any way for the life or wear of the goods or their performance or fitness for any particular purpose or for their use under any specific conditions notwithstanding that such purpose or conditions may be known or made known to Barron McCann and any express or implied warranties or conditions to that effect (statutory or otherwise including to the greatest extent permissible any terms implied by the Sale of Goods Act 1979) are excluded.
- 3.2 In acting on any advice, recommendations or guidance by Barron McCann in selecting the Equipment or any element of them, the Customer acknowledges that:
- it accepts responsibility for its decisions to achieve the Customer’s intended results; and
 - it has satisfied itself that any Equipment meets the requirements of the Customer’s business, whether or not its selections or decisions were based on or influenced by any advice, recommendations or guidance by Barron McCann.
- 3.2 Barron McCann shall use reasonable endeavours to deliver the Equipment in accordance with any dates agreed with the Customer but the Customer acknowledges and agrees that any dates are estimates only and Barron McCann has no liability for any failure to meet any date. Where delivery is delayed due to the acts or omissions of the Customer or its contractors or agents for more than twenty-eight (28) days, Barron McCann reserves the right to deem the Equipment delivered and

accepted and invoice the Customer accordingly. If the Customer or any third party acting for or under the direction of the Customer delays or prevents the delivery or installation of the Equipment, Barron McCann may apply reasonable additional charges for any costs that it incurs and also claim a commensurate extension to any date or dates.

- 3.3 For shipments to UK addresses, unless stated otherwise in the Order delivery shall be the Customer’s responsibility and cost.
- 3.4 For shipments to non-UK addresses, the parties’ respective responsibilities for any shipment of Equipment shall be defined by an agreed Incoterms rule as set out in the Order. Unless explicitly agreed otherwise in the Contract all Equipment:
- are delivered on an ex-works Derby UK basis (EXW Incoterms); and
 - where insurance is designated by Incoterms as negotiable such insurance shall be the responsibility and cost of the Customer.
- 3.5 Barron McCann may deliver the Equipment in instalments; and where the Equipment is delivered in instalments each instalment may, at Barron McCann’s discretion, be invoiced and paid for separately.
- 3.6 It shall be the duty of the Customer to obtain all necessary licences for export or import of the Equipment and there shall be no implied warranty or condition on the part of Barron McCann that the Customer will obtain any licence for such export or import or other licences required for the delivery or sale of the Equipment to or in the country to which the Equipment is to be exported or for the transit of the Equipment through any country in the course of delivery.

4. Risk and Property

- 4.1 Risk of damage to or loss of the Equipment shall pass to the Customer at the time of delivery to the Customer.
- 4.2 The property in the Equipment shall pass to the Customer at the time of payment in full for the Equipment. Where the Customer has possession of the Equipment prior to payment, until such time as Barron McCann has received payment in full for the Equipment, the Customer must:
- store the Equipment separately from any other goods;
 - maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price from the date of delivery; and
 - not pledge or in any way charge by way of security all or any part of the Equipment.
- 4.3 If the Customer fails to make payment of the Charges for the Equipment in full by the due date, if the Customer is Insolvent or if either party terminates the Contract, Barron McCann shall be entitled, in addition to any other rights it may have, to:
- immediately enter any premises of the Customer or any third party where the Equipment is stored and repossess the Equipment; and
 - charge the Customer an amount equal to 15% of the Equipment Charges (which amount represents a true estimate of the re-stocking costs).

5. Acceptance

- 5.1 The Customer shall not reject, refuse or unreasonably delay acceptance of the Equipment if it substantially meets the manufacturer’s specification (if any).
- 5.2 In accepting Equipment, the Customer agrees to be bound by all third party licence terms associated with the included software or firmware (if any).
- 5.3 The Customer shall (subject to clause 5.5) test the Equipment on delivery.
- 5.4 If the Equipment, on delivery, fails to substantially meet its specification then Barron McCann may, at its discretion either (a) replace the Equipment (or the part in question) free of charge or, (b) refund to the Customer the relevant Charges paid for the Equipment and such replacement or refund shall be the Customer’s sole remedy in relation to such failure to meet the specification.
- 5.5 If Barron McCann installs the Equipment, Barron McCann will test it to ensure that it is ready for use. In such case acceptance of the Equipment by the Customer will take place on the earlier of:
- the date when Barron McCann notifies the Customer that the Equipment has passed Barron McCann’s tests and is ready for use; or
 - the date when the Customer makes first use of the Equipment.
- 5.6 Acceptance will not be prevented by minor or cosmetic faults that do not impair the Equipment’s performance.

6. Warranty

6.1 Barron McCann makes no express warranties in relation to the Equipment and does not make any provisions other than those provided by the manufacturer with regard to the functionality, security, practicality, fitness for a particular purpose, quality or any other aspect of the Equipment. Any claim under the manufacturer's warranty shall be made by the Customer to the manufacturer directly.

7. Waste Electrical or Electronic Equipment (WEEE)

7.1 For the purposes of the WEEE Legislation any EEE sold to the Customer is classed as WEEE from users other than private households.

7.2 The Customer and Barron McCann acknowledge that for the purposes of the WEEE Legislation this paragraph 7 shall be an agreement stipulating alternative arrangements between themselves to finance the costs of the collection, treatment, recovery and environmentally sound disposal of WEEE.

7.3 When the Customer has no further use for the Equipment the Customer shall ensure that the Equipment is not mixed with other commercial or household waste on disposal. The Customer is entitled to return to Barron McCann on a one for one basis any equivalent electronic and electrical equipment which is being replaced with new Equipment as part of a service from Barron McCann. If returned to Barron McCann, the Customer shall arrange for and pay for the collection of same and Barron McCann shall be entitled to charge a return fee to arrange for the disposal of the EEE in accordance with its obligations of either a producer or distributor (whichever the case maybe) in the WEEE Legislation.

7.4 If the Customer elects to dispose of the WEEE itself, the Customer acknowledges:

- a. that it will do so at its sole cost and indemnify Barron McCann against all responsibilities due to improper disposal of the waste product;
- b. if Barron McCann is the "producer" for the purposes of the WEEE Legislation, Barron McCann shall upon written request from the Customer and without cost or charge to the Customer provide all information and data on any dangerous substance or preparation or hazardous substance contained in the Equipment;
- c. the Customer shall take on the obligations in the WEEE Legislation for the sound environmental management of EEE and hence the Customer shall be responsible for such information recording or reporting obligations imposed by the WEEE Legislation;
- d. the Customer shall ensure that the EEE is treated in accordance with the requirements of the WEEE Legislation; and
- e. the Customer will be responsible for achieving the recovery of the EEE.

8. Charges and Payment

8.1 Barron McCann shall invoice the Customer for the Charges following delivery of the Equipment or where the Customer collects the Equipment following collection. The Customer must pay all Charges not subject to a bona fide dispute within thirty (30) days of the date of Barron McCann's invoice without any set-off, counterclaim or deduction.

8.2 Charges are exclusive of applicable value-added, sales, use, excise, customs duties or other taxes, fees or surcharges including, but not limited to withholding taxes, or regulatory fees which, where applicable, will be charged separately.

8.3 The Customer will promptly, but in no event later than fourteen (14) days from the date of invoice, notify Barron McCann in writing of any disputed invoice, together with all information relevant to the dispute. The Customer must pay all undisputed amounts including part payment of those invoice amounts not in dispute in accordance with the terms of the Contract.

9. Limitation of Liability

9.1 Neither Party excludes or restricts in any way its liability under or in connection with the Contract for death or personal injury caused by its negligence or to any extent not permitted by law.

9.2 Subject to clause 9.1 Barron McCann shall have no liability however caused in each case whether suffered by the Customer or any third party for any:

- a. direct or indirect loss of or damage to: revenue, actual or anticipated profits (including without limitation loss of profits on contracts), money or use of money, anticipated savings, business, contract, opportunity, goodwill, reputation, data or corruption of data;
- b. any indirect, special or consequential loss or damage however caused;
- c. any losses arising as a result of any third party bringing a claim in respect of any of the above types of loss.

9.3 Subject to clauses 9.1 and 9.2 Barron McCann's liability to the Customer under or in connection with the Contract for all and any direct loss or damage arising at any time shall not in any event exceed an amount equal to 100% of the value of the Contract (excluding VAT).

9.4 Each part of this clause 9 operates separately. If any part of the clause is held by a Court to be unreasonable or inapplicable the rest of the clause will continue to apply.

10. Miscellaneous Provisions

10.1 **Termination:** Barron McCann may immediately by notice terminate the Contract if the Customer becomes (or Barron McCann has reasonable grounds to suppose that the Customer is about to become) Insolvent.

10.2 **Force Majeure:** Barron McCann shall not be liable for failure or delay in the performance of its obligations caused by or resulting from any event that is outside of its reasonable control.

10.3 **Assignment:** Neither Party shall assign or transfer any of its rights or obligations under the Contract in whole or in part.

10.4 **Severability:** If any part, term or provision of the Contract not being of a fundamental nature, is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Contract shall not be affected.

10.5 **Entire Agreement:** The Contract and any documents referred to in it constitute the entire agreement between the Parties and supersede and extinguish all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of the Contract.

10.6 **Governing Law:** The Contract (and all matters under or in relation to it) is governed by English Law and the English Courts shall have exclusive jurisdiction in relation to any dispute under or in relation to the Contract.

10.7 **No Waiver:** Except as otherwise specifically provided in the Contract, no failure to exercise, or delay in exercising, any right, power or privilege set forth in the Contract will operate as a waiver of any right, power or privilege. If either party waives a breach of the Contract that waiver is limited to that particular breach.

10.8 **Rights of Third Parties:** Except as explicitly specified herein the Contract does not create any right enforceable by any third party under the Contract (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

10.9 **Capacity:** Each party warrants that it has the necessary rights, licences and permissions to enter into and perform its obligations under the terms of the Contract.

10.10 **Changes:** The Contract will not be amended, modified or supplemented in any way unless made in writing and signed by an authorised representative of each of the parties.