

## CONDITIONS OF SUPPLY FOR THE BR NETWORK

In these Conditions:

**'BR Network'** means BR Network Limited a company incorporated under the laws of England whose registered number is 3892735 and whose registered office and trading office is at: 2<sup>nd</sup> Floor, Whatman House, St Leonards Road, Maidstone, Kent, ME16 0LS.

**'BS Services'** means the Business Solution Services listed on the order form.

**'Network'** means the comprehensive construction on-line service containing information on companies that operate within the business-to-business construction industry.

**'BR Resource Centre'** means an on-line service depository which helps to manage supply chain information, project data information and business activity within the construction industry.

**'Conditions'** means these standard terms and conditions of sale and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and BR Network.

**'Contract'** means the contract for the purchase of BR Network Service(s).

**'Customer'** means the company and person who accepts the quotation from BR Network for the provision of the BR Network Service(s) or whose order for the BR Network Service(s) is accepted by BR Network to form a Contract.

**'End User'** the Customer's employees or other individuals contracted by the Customer as may be authorised to access and use the Information or BR Network Service.

**'Evaluation Questionnaire ("EQ")'** means an electronic evaluation pre-qualification questionnaire, which is completed by the Customer which updates the information on the BR Network within the BR Resource Centre's on-line service.

**'Information'** all information, materials and data supplied to the Customer under this Contract in any format whatsoever.

**'In Writing'** is a communication on company letterhead, signed and posted by recorded delivery.

**'Service(s)'** means the BR Network service, the BR Resource Centre service, the BS Service, the Project Locator Service and/or any other services as set out in the Contract.

**'App'** means the BR App and/or the Project Locator App which are software applications developed for operation on mobile operating systems, which may be provided and used with certain Services.

1. BR Network shall sell and the Customer shall purchase the Service(s) in accordance with any written quotation of BR Network which is accepted by the Customer, or any written order of the Customer which is accepted by BR Network, subject in either case to the Conditions.
2. NO ORDER WHICH HAS BEEN SIGNED, RECEIVED (BY FAX, POST OR EMAIL) OR AUTHORISED BY YOU VIA THE ONLINE SALES ORDERING PROCEDURE AND ACCEPTED BY BR NETWORK MAY BE CANCELLED BY THE CUSTOMER AFTER RECEIPT AS OUR ORDERING PROCESS IS INSTANT AND AUTOMATIC. In relation to the Online Sales Ordering Procedure, the Contract is formed on acceptance of the Customer's order by BR Network and acceptance is when BR Network emails the order confirmation to the Customer.
3. The Customer's access to and use of the Services shall be governed by the BR Network User Terms at all times, a copy of which is available from the homepage of [www.brnetwork.com](http://www.brnetwork.com) or on request.
4. Subject to clause 3, the Conditions shall govern the Contract to the exclusion of any other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order or other document).
5. The quantity, quality and description of and any specification for Services shall be as set out in the BR Network User Terms and/or the Contract.
6. All orders for supply of data are specific and individual to each Customer's requirement. All such orders are payable prior to the release of the data file and the Customer accepts the terms of such supply.
7. BR Network reserves the right to alter, suspend or discontinue any aspect of the Service(s), including but not limited to access to the BR Network, the BR Resource Centre and the Business Development Services. In such event the Customer shall be entitled to a refund of any charges previously paid relating to an unexpired period (not to exceed the maximum amount of the order value). Unless explicitly stated any new features will be subject to these Conditions and the BR Network User Terms.
8. The price of the Service(s) shall be BR Network's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in BR Network's published price list current at the date of acceptance of the order and is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to BR Network. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer and are subject to annual increase not greater than the cumulative RPI plus 5% or the then current price listed in BR Network's published price list.
9. Once the order has been processed the Customer accepts that it is their sole responsibility, and the Customer has a maximum of ONE month to fully complete the Evaluation Questionnaire, provide content for their video (if applicable), web site (if applicable), after which time the Customer will be charged an additional administration fee to process this information. Failure to complete the Evaluation Questionnaire and provide the information means that the Customer accepts that their entry will remain inaccurate and other Service delivery(ies) delayed.
10. THE MINIMUM TERM OF THIS AGREEMENT IS FOR THE PERIOD SET OUT ON THE AUTHORISATION ORDER FORM, AFTER WHICH TIME THIS AGREEMENT WILL EXTEND FOR THE SAME DURATION PERIOD AS THE MINIMUM TERM ("each hereinafter referred to as a RENEWAL TERM") UNLESS EITHER PARTY GIVES WRITTEN NOTICE TO TERMINATE THIS AGREEMENT NOT LESS THAN 60 DAYS PRIOR TO THE END OF THE MINIMUM TERM OR ANY RENEWAL TERM, SUCH NOTICE TAKING EFFECT AT THE END OF THE MINIMUM TERM OR RENEWAL TERM IN WHICH SUCH NOTICE EXPIRES. ALL NOTICES MUST BE ISSUED ON COMPANY LETTERHEAD, SIGNED AND POSTED BY RECORDED DELIVERY (NOW CALLED ROYAL MAIL SIGNED FOR) AND YOU MUST KEEP A COPY OF THE RECORDED DELIVERY SLIP AS PROOF OF DELIVERY. IF NO NOTICE HAS BEEN RECEIVED IN ACCORDANCE WITH THIS CLAUSE 10, IT IS ACCEPTED BY THE CUSTOMER THAT AN INVOICE WILL BE AUTOMATICALLY ISSUED WHICH WILL BECOME PAYABLE AT THE COMMENCEMENT OF EACH RENEWAL TERM. NOTICES SERVED BY ANY OTHER MEANS INCLUDING BUT NOT LIMITED TO EMAIL WILL NOT BE VALID.
11. The Customer shall pay the price of the Service(s) as set in the order within 7 days following the date of invoice in cleared funds without any deduction or set-off. The time of payment of the price shall be of the essence of the Contract. The Customer hereby authorises BR Network to store the Customer's credit card details for the term of this Contract on our 3rd party secure payment gateway, (Sagepay) and to take via that device any payments that are overdue including any statutory compensation for late payment to which BR Network is entitled.

12. If the Customer fails to make any payment on the due date then all remaining payments to be made by the Customer under the Contract become immediately due, and without prejudice to any other right or remedy available to BR Network, BR Network will take appropriate action to collect the debt and shall also be entitled to:

- (a) Terminate the Contract or suspend access to BR Network and/or the BR Resource Centre and/or Service(s); and/or
- (b) Immediately suspend the provision of any Service(s); and/or
- (c) Charge the Customer an additional £20 administration fee for every declined payment; and/or
- (d) Charge the Customer interest and statutory compensation (both before and after a judgment) in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002. Where that Act is not applicable BR Network may charge the Customer interest (both before and after any judgment) on the unpaid amount at the rate of 3% per annum above Barclays Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

13. When the Customer's order for the Service(s) is accepted under clause 2, BR Network grants the Customer a non-exclusive, non-transferable licence to use the BR Network and the BR Resource Centre, the Service(s) and the Information for the Term. This licence to use the Services and the Information shall be governed by the BR Network User Terms, the provisions of this Condition 13 and the provisions of this Contract:

13.1 The Customer warrants, represents and undertakes that it shall and shall procure that all relevant third parties within its power and control shall: (a) ensure that each End User uses his/her own username and password for his/her own purposes only and does not divulge such name or password to a third party; (b) use the Information and Service(s) only for its own internal requirements and only in the course of its business; (c) keep possession of and control over the Information, keep the Information confidential and not disclose or make available the Information or Service(s) to any third party; (d) adopt and maintain appropriate security measures to prevent access to the Information and Service(s) by any third party and notify us immediately if it become aware of any unauthorised disclosure, use or copying of the Information; (e) ensure that any copyright notice, trade mark, trade name, marking or notice contained in the Information is not removed, amended or obscured; (f) maintain and provide to us upon request a complete and accurate record of its use of the Information (g) ensure that each End User does not allow a third party to use the Service on their device while she/he is signed-in; (h) ensure that each End User does not sign-in to the Service running on a third party's device; and (i) accept that from time to time updates to the App may be issued through the Apple App Store or Google Play. Depending on the update, Customer and/or End User may not be able to use the Service until it has downloaded or streamed the latest version of the App and accepted any new terms.

13.2 Customer shall not, nor knowingly permit any third party to: (a) misuse (including by introducing viruses or other harmful material) the Information or Service; (b) use, publish, reproduce, sell or distribute Information or access to the Service other than in accordance with the permitted uses under this Contract; (c) reproduce or supply physical or electronic copies of the Information (or extracts of such), including but not limited to any third party; (d) alter or attempt to alter the Information or Service(s) or any parts thereof; (e) attempt to gain unauthorised access to the Information or Service(s); (f) copy the Information or Service(s) or any part thereof; (g) copy or use any registered or unregistered trademarks; (h) create or offer a competing product or service on the basis of the Information or Service(s); (i) allow a third party to use the Service on their device while she/he is signed-in; (j) sign-in to a Service running on a third party's device; (k) make alterations to, or modifications of, the whole or any part of the App, or permit the App or any part of it to be combined with, or become incorporated in, any other programs; (l) disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the App or attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the App with another software program. (m) provide or otherwise make available the App in whole or in part (including object and source code), in any form to any person without prior written consent from us; (n) use the App or Service in any unlawful manner, for any unlawful purpose, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the App, any Service or any operating system; (o) transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App or any Service; (p) use the App or any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and (q) collect or harvest any information or data from any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service.

13.3 Customer warrants that all relevant data subjects whose personal data it has supplied to BR Network in connection with the Service (**Customer Personal Data**) have given their informed consent for BR and its suppliers to: (a) process the Customer Personal Data for the purpose of this agreement or the Service; (b) disclose any Customer Personal Data in response to any subject access request relating to this agreement or the Service; and (c) retain the Customer Personal Data for as long as is necessary for the purpose of this agreement and the Service.

13.4 Customer shall indemnify BR Network on demand, against all reasonable costs, charges or losses sustained or incurred by Barbour ABI (including any direct, indirect or consequential losses, loss of profit and loss of reputation) arising from or in connection with any breach by an End User or Customer of any of the obligations set out in this clause 13.

14. Except in respect of death or personal injury caused by BR Network's negligence, BR Network shall not be liable to the Customer, for any "Consequential Loss", costs, expenses or other claims for compensation whatsoever (whether caused by the negligence or breach of statutory duty of BR Network, its employees or agents or otherwise) which arise out of or in connection with the sale and supply of the BR Network and the BR Resource Centre or the BR Network Service(s) or its use by the Customer, and the entire liability of BR Network under or in connection with the Contract shall not exceed the price of the BR Network Service(s), except as expressly provided in the Conditions. "Consequential Loss" shall for these purposes mean

- (i) pure economic loss;
- (ii) loss of profits (whether categorised as direct or indirect);
- (iii) losses arising from business interruption;
- (iv) loss of business revenue, goodwill, anticipated savings,
- (v) losses whether or not occurring in the normal course of business, wasted management or staff time
- (vi) loss or corruption of data.

15. BR Network SHALL NOT BE LIABLE to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of BR Network's obligations in relation to the provision of the BR Network Service(s), if the delay or failure was due to any cause beyond BR Network's reasonable control.

16. Subject as expressly provided in the Conditions, all warranties, conditions or other terms implied by statute or common law are

excluded to the fullest extent permitted by law.

17. Without prejudice to any other right or remedy available to BR Network, in the event the Customer becomes insolvent or commits a material breach of any term of this Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of being notified of the breach, BR Network shall be entitled to terminate the Contract or suspend any further access to the BR Network and/or the BR Resource Centre and/or the Services under the Contract without any liability to the Customer, and if the BR Network and/or the BR Resource Centre and/or the Services have been accessed by the Customer but not paid for by the Customer, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

18. BR Network is a member of a group of companies and accordingly BR Network may perform any of its obligations or exercise any of its rights under the Conditions by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of BR Network.

19. BR Network's employees or agents ARE NOT authorised to make any representations concerning BR Network or the BR Network Service(s) unless confirmed by a BR Network director IN WRITING. In entering into the Contract the Customer acknowledges that it does not rely on any such representations, which are not so confirmed.

20. No variation to these Conditions shall be binding unless agreed IN WRITING between the authorised representatives of the Customer and BR Network. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by BR Network shall be subject to correction without any liability on the part of BR Network. Any literature published by BR Network in respect of BR Network is for guidance only.

21. Any notice required or permitted to be given by either party to the other under these Conditions shall be IN WRITING addressed to that other party at its registered offices or trading offices or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

22. No waiver by BR Network of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

23. If any provision of the Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Conditions and the remainder of the provision in question shall not be affected.

24. The Contract shall be governed by the laws of England and the Customer agrees to submit to the exclusive jurisdiction of the English courts.

25. Solution services are defined below as (these are provided Monday – Friday between 8:30am and 5pm, excluding English public holidays) :-

#### **Admin, Office & Business Support – Full Service**

- 1A **Telephone Answering Service** - Includes 250 received calls per month. Additional received calls are charged monthly in arrears at 40p per minute and calls forwarded cost 5p per minute to a landline and 15p per minute to a mobile.
- 1B **Credit Control** - Up to 10 Companies contacted and a maximum of 100 invoices chased in total per month. If sending statements and chase letters on behalf of the company, we will chase up to 5 companies with a maximum of 50 invoices in total.
- 1C **Diary Control** - Client / Contractor Introductions, Making Initial Contacts, Booking Meetings & Hotel / Travel Sourcing.
- 1D **Price Sourcing** - Includes chasing for product pricing, alternative supplier sourcing, product searching & emergency material sourcing.
- 1E **Pre Qualification Questionnaires** – Includes a maximum of 6 new PQQ completions or a maximum of 10 PQQ updates per month, historical PQQ collection and storage of relevant documents for emergency distribution.
- 1F **Mobile application** – Access to this restricted to members only, subject to fair use policy.

#### **Secured Work, Tender & Pricing Support – Full Service**

- 2A **Network Membership** - Access to over 350,000 sub contractors, plant & material suppliers. Allows you to receive live tenders to price direct from estimators and our Resource Centre.
- 2B **Bespoke Business Development** – Using our existing relationships we will help you price Secured Work, contacting the other Contractors in your Bid Process, using our Resource Centre, Project and Bid information service(s).
- 2C **Tender Control** – To call and confirm receipt of all tender documents, chase progress of submitted prices and get feedback for all unsuccessful bids up to a maximum of 20 tenders per month.
- 2D **Evolution** - A project lead service covering 4 counties chosen at the time of order.
- 2E **Business Request Service** – Sourcing of Sub contractors, Materials and Plant.
- 2F **Email Marketing Campaigns** - This is limited to 1 marketing campaign per month and include up to 2,000 emails per month. We will in addition contact a maximum of 100 bounced emails a month for data cleaning from this exercise.

#### **Admin, Office & Business Support – Platinum Lite**

- 1A **Telephone Answering Service** – Front line telephone answering, simple call switching when cover is needed, messages collected and sent immediately and holiday and sick cover
- 1B **Credit Control** - Up to 5 Companies contacted and a maximum of 50 invoices chased in total per month. If sending statements and chase letters on behalf of the company, we will chase up to 3 companies with a maximum of 25 invoices in total.
- 1C **Diary Control** - Client / Contractor Introductions, Making Initial Contacts, Booking Meetings & Hotel / Travel Sourcing.
- 1D **Price Sourcing** - Includes chasing for product pricing, alternative supplier sourcing, product searching & emergency material sourcing.
- 1E **Pre Qualification Questionnaires** – Includes a maximum of 3 new PQQ completions or a maximum of 5 PQQ updates per month, historical PQQ collection and storage of relevant documents for emergency distribution.
- 1F **Mobile application** – Access to this restricted to members only, subject to fair use policy.

#### **Secured Work, Tender & Pricing Support – Platinum Lite**

- 2A **Network Membership** - Access to over 350,000 sub contractors, plant & material suppliers. Allows you to receive live tenders to price direct from estimators and our Resource Centre.
- 2B **Bespoke Business Development** – Using our existing relationships we will help you price Secured Work, contacting the other Contractors in your Bid Process, using our Resource Centre, Project and Bid information service(s).
- 2C **Tender Control** – To call and confirm receipt of all tender documents, chase progress of submitted prices and get feedback for all unsuccessful bids up to a maximum of 10 tenders per month.
- 2D **Evolution** - A project lead service when and where requested, access to target specific projects and clients, find out which other Main Contractors are in your Bid
- 2E **Business Request Service** – Sourcing of Sub contractors, Materials and Plant.

**By entering your own security answer and password whilst completing the BR Network on-line Sales Order Process, or by signing an order form, you agree to comply with the Authorisation Order Form Terms and Conditions.**