

TERMS AND CONDITIONS OF SALE

1. INTERPRETATION 1.1. In these terms ("Terms"):

"**AO**" means the acceptance of an Order by BHA Medical in writing which shall confirm the Price, identity and quantity of Products and estimated delivery date;

"**Contract**" means the agreement between the Purchaser and BHA Medical for the supply of the Products;

"**Delivery**" means delivery in accordance with clause 6.1;

"**Intellectual Property**" means inventions, discoveries, processes, formulae, specifications, designs, trade secrets, know-how, data, confidential information and similar items and all rights of any nature in or relating to the same;

"**Order**" means an order placed by the Purchaser for Products in accordance with these Terms;

"**Price**", subject to these Terms, means the price for the Products as quoted and confirmed in an AO;

"**Products**" means the goods listed in the AO or which BHA Medical otherwise agrees in writing to supply to the Purchaser (including any instalments or parts of the goods);

"**Purchaser**" means the purchaser of the Products as stated in the applicable AO;

"**BHA Medical**" means a Division of Blackhive Africa (Pty) Ltd., company registration number 2012/048141/07, incorporated in South Africa, whose registered office is at 151 Cowey Road (Problem Mkhize), Morningside, Durban 4001 Kwa Zulu Natal, South Africa

"**Warranty**" has the meaning given to it in clause 8.

1.2. Any Contract provision invalid or unenforceable for any purpose shall be severed for that purpose but otherwise remain valid and enforceable and shall not affect the validity of the remainder of the Contract.

1.3. A payment shall be deemed made when credited to the payee's bank account and is in cleared funds.

1.4. Save as otherwise agreed in writing by BHA Medical the Contract shall comprise solely these Terms, any AO and any relevant quotation issued by BHA Medical to the Purchaser. Variations of the Contract shall be effective only if agreed in writing between the Purchaser on the one hand and a Sales Director, the Finance Director or the Chief Executive of BHA Medical on BHA Medical's behalf, and will then prevail over these Terms.

1.5. English is the authentic text of the Contract and all notices or other communications under or relating to it shall be in writing in English. Any translation will be for guidance only.

2. QUOTATIONS, SPECIFICATION AND VARIATION

2.1. A quotation is not an offer and may be withdrawn or modified. Save as otherwise agreed in writing by BHA Medical no contract or commitment shall exist until BHA Medical sends its AO to the Purchaser or until BHA Medical commences work on or appropriates Products to the Contract.

2.2. BHA Medical may alter the specification of any Products (i) to conform with any law, regulation or safety recommendation, or (ii) otherwise if this does not materially affect their performance or utility.

2.3. If any variation in the Products or the Contract is agreed or is required for compliance with any applicable law, regulation or safety recommendation the Purchaser shall pay such additional amount as is fair and reasonable and BHA Medical shall have reasonable additional time to perform the Contract.

3. PRICES

3.1. The Price for local distribution in South Africa shall include value added tax and any other applicable taxes and duties, and carriage. Unless costed for in the AO, BHA Medical may make reasonable additional charges for complying with any special and agreed requirements of the Purchaser.

3.2 The Price for across border shall exclude value added tax and any other applicable taxes and duties, packaging, carriage, insurance, documentation. Unless costed for in the AO, BHA Medical may make reasonable additional charges for complying with any special and agreed requirements of the Purchaser.

3.3. If the Price has been based on the purchase of a specific quantity of Products to be delivered over a specified period and the Purchaser fails to purchase the agreed quantity within the specified period, BHA Medical shall invoice and the Purchaser shall pay for the difference between the unit price charged to the Purchaser for the Products and BHA Medical's standard unit price for the Products.

3.4. For the avoidance of doubt, BHA Medical does not operate a price protection policy. The Purchaser will not be entitled to a refund, credit or price reduction in respect of any Products unless agreed in writing by BHA Medical.

4. PAYMENT

4.1. Payment shall be made prior to Delivery unless otherwise stated in the AO or agreed in writing by BHA Medical. If alternative terms of payments are agreed in writing by BHA Medical and the Purchaser does not comply with the alternative terms of payment, the payment terms in respect of the current and all future invoices shall automatically revert, without notice, to payment prior to Delivery or (if Delivery has already been made) to payment in full immediately upon BHA Medical's first request for payment. Payment shall be made in the currency stated in the AO (or in South African Rand if no currency is stated in the AO) by transfer to such bank account as BHA Medical specifies to the Purchaser in writing. Payment shall be made in full, clear of any banking transaction charges and without deduction, set-off or counterclaim.

4.2. If the Purchaser fails to pay any sum when due, it shall (a) pay interest on the amount overdue at the rate of five percentage points above the base rate from time to time of ABSA Bank calculated from the date payment fell due until the date of actual payment and (b) indemnify BHA Medical against any loss suffered by BHA Medical as a result of any change in the rate of exchange between EURO and the amount payable that occurs between the date that payment fell due and the date on which payment is made. BHA Medical may cancel the Contract and any other contracts and suspend deliveries to the Purchaser and if it suspends Delivery shall be entitled to an appropriate extension of time.

5. OWNERSHIP AND RISK

Risk of damage to or loss of the Products shall pass to the Purchaser as provided by EXW INCOTERMS 2010.

6. DELIVERY 6.1. Delivery shall be EXW BHA Medical's premises INCOTERMS 2010 or as per delivery arrangements made with the Purchaser, the provisions of which shall have effect in the Contract, save as otherwise provided in the Contract. Prices are based on the Products being delivered in one consignment and do not include the cost of delivery unless otherwise stated.

6.2. Unless the Purchaser requests otherwise, BHA Medical will arrange shipment to the address specified on the Purchaser's Order at BHA Medical's prevailing delivery rates (particulars available on request), which the Purchaser shall pay as stated in the Contract (or, if not so stated, within fifteen days from invoice); Products will be shipped in BHA Medical's standard packaging.

6.3. Whilst BHA Medical will seek to meet the stated Delivery time, it is approximate and BHA Medical shall not incur liability in relation to late Delivery, nor for any delay in their arriving at their shipment destination. If no time for Delivery is agreed the Purchaser shall accept the Products when ready for Delivery.

7. INSPECTION AND ACCEPTANCE

The Purchaser shall inspect the Products promptly upon Delivery for any damage, incorrect quantity or other non-conformity with the Contract which is reasonably apparent on such inspection and, within four days from Delivery, shall give written notice to BHA Medical of any such damage, incorrect quantity or other non-compliance with the Contract. As soon as practicable and in any event within ten days from Delivery the Purchaser shall fully test the Products and within that ten days shall give written notice to BHA Medical of any damage or other non-conformity with the Contract. Save as stated in such notices but subject to the terms of the Warranty, the Products shall be deemed to comply with the Contract and the Purchaser shall accept them. The Products are sold as singular or a batch and without prejudice to the Purchaser's right to reject all the Products the Purchaser may not reject some only of the Products.

8. WARRANTY

BHA Medical provides the warranty as per the manufactures as set out in the Schedule to these Terms ("**Limited Warranty**").

9. CANCELLATION AND RESCHEDULING

9.1. No Order may be cancelled or Order shipment rescheduled unless agreed in writing by BHA Medical in its discretion.

9.2. If BHA Medical accepts cancellation of an Order the Purchaser shall pay:

(a) for requests received between 1 and 60 days (inclusive) before the applicable delivery date – **the full purchase price**;

(b) for requests received between 61 and 120 days (inclusive) before the applicable delivery date – **50% of the full purchase price**;

(c) for requests received 121 days or more before the applicable delivery date – **10% of the full purchase price**.

9.3. If BHA Medical accepts rescheduling of an Order shipment the Purchaser shall pay to BHA Medical all costs incurred by BHA Medical as a result of such rescheduling and its reasonable storage charges.

10. RESALE

BHA Medical may refuse to ship the Products to a territory to which export is prohibited by any applicable law or if it has reason to believe that the Products will be re-delivered to any such territory. The Purchaser shall obtain all licences, consents and other regulatory requirements for shipment of the Products to the destination required by the Contract, shall upon request provide a copy of the same to BHA Medical and shall indemnify BHA Medical against any cost, liability or expense suffered or incurred by BHA medical as a result of any failure to do so or otherwise as a result of shipment of the Products being in breach of any applicable law.

11. USE OF GOODS, SAFETY AND TRAINING

11.1. If requested, BHA Medical agrees to provide and the Purchaser agrees to pay for the training of the Purchaser's personnel in the proper use of the Products. BHA Medical shall charge for such training at its prevailing training rates (particulars available on request).

11.2. The Purchaser shall:

(a) procure that the Products are used only for the purposes and in the manner for which they were designed and supplied, and in accordance with the instructions provided by BHA Medical / D-Heart; that all persons likely to use or come into contact with the Products receive appropriate training and copies of applicable literature supplied by BHA Medical; that all third parties who use or may be affected by or rely upon the Products are given full and clear warning of any hazards (both patent and latent) associated with them or limitations of their effectiveness and that safe working practices are adopted and complied with. Any warning notices displayed on the Products must not be removed or obscured; the Purchaser shall procure that any third party to whom the Products are supplied agrees not to remove or obscure such warning notices and shall take such steps as are reasonable to enforce such agreement;

(b) promptly comply with any safety recommendation made to it in respect of the Products (including recall of them) and shall procure compliance by all relevant persons and shall pay BHA Medical's reasonable charges for additional or replacement parts supplied by BHA Medical for this purpose;

(c) maintain and make available to BHA Medical all records necessary to enable Products to be traced to their ultimate buyer or user;

(d) indemnify BHA Medical against any liability in relation to any breach of the Purchaser's obligations under this clause 11.

12. INTELLECTUAL PROPERTY

- 12.1.** BHA Medical retains ownership of all Intellectual Property relevant to the Products or issued by or on behalf of BHA Medical and the Purchaser shall have no rights in the same except as expressly granted in these Terms.
- 12.2.** BHA Medical grants to the Purchaser a personal and non-exclusive licence to use software that is incorporated into those Products (“Software”), subject to these Terms and for the sole purpose of enabling the Products to function according to their specification. The Purchaser may make one backup copy of the Software, provided that the Purchaser reproduces on that backup copy all of the original copyright notices and other statements. Except to the extent permitted by applicable law, the Purchaser shall not copy, modify, reverse engineer, decompile or disassemble the Software, or sublicense, rent, lease, assign or otherwise transfer the Software or this licence to anyone except as specifically provided for in clause 12.3.
- 12.3.** The Purchaser may transfer possession of the Software to a third-party transferee of the Products provided that: (i) the transfer is in conjunction with the transfer to the third party of the Products into which the Software is incorporated; (ii) the third-party transferee is furnished with a legible and complete copy of these Terms; and (iii) the third party-transferee agrees to be bound by these Terms. Unless agreed otherwise in writing by BHA Medical, the Purchaser must ensure that any third party transferee accepts the Software and the Products on an “as is” basis, and neither BHA Medical nor any of its licensors shall have any liability whatsoever to the third-party transferee for any claims relating to the Software or the Products.
- 12.4.** The Purchaser shall cease use of the Software immediately if and when the Purchaser is no longer in possession of the Products or the Purchaser is in violation of any of these Terms and shall then immediately destroy or return (at BHA Medical’s option) all copies it has of the Software.

13. CONFIDENTIALITY

- 13.1.** Where RDT discloses to the Purchaser information relating to the existence of or technical details of any of BHA Medical’s products prior to the release of that information by BHA Medical to the general public, such information will be confidential and the Purchaser shall not disclose, and shall procure that its staff and representatives do not disclose, such confidential information to any third party, unless expressly so authorised by BHA Medical in writing until such information is released to the general public.
- 13.2.** The Purchaser shall not seek to abstract from the Products any confidential information regarding their design, construction or otherwise.
- 13.3.** The Purchaser shall not use or allow to be used any confidential information of BHA Medical except for use of the Products or for another purpose expressly permitted by BHA Medical in writing.
- 13.4.** The Purchaser will not disclose nor knowingly allow to be disclosed the terms or contents of any Order, the Contract or any other contract or agreement between BHA Medical and the Purchaser without the prior written consent of BHA Medical.

14. EXCLUSION AND LIMITATION OF LIABILITY

- (a)** BHA Medical shall have no obligation in respect of the Products except for the Warranty and as expressly stated in the Contract;
- (b)** if BHA Medical has repaired or replaced the Products pursuant to the Warranty, it shall have no further liability in respect of such defect or fault in the Products;
- (c)** the Purchaser acknowledges that BHA Medical’s obligations and liabilities in respect of the Products are exhaustively defined in these Terms and that such express obligations are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to the Products including, without limitation, as to the condition, quality, performance or fitness for the purpose of the Products or any part of them.
- 14.1.** Nothing in these Terms excludes or limits BHA Medical’s liability for (i) death or personal injury arising from its negligence, (ii) fraud or fraudulent misrepresentation, or (iii) any other liability that cannot be excluded or limited by South African law.
- 14.2.** Neither BHA Medical nor the Purchaser shall be liable to the other for any (i) loss of profits, sales, business, or revenue, (ii) loss or corruption of data, (iii) loss of software or use of computer equipment, (iv) business interruption, (v) loss of anticipated savings, (vi) loss of business opportunity, goodwill or reputation, or (vii) any indirect or consequential loss.
- 14.3.** BHA Medical shall not be liable for any failure of any form of internet, telecommunication or other electronic communication medium to transfer (whether at all or in uncorrupted form) any data issued by or derived from the Products.
- 14.4.** In an effort to keep the Price as low as possible and as the Purchaser is better able than BHA Medical to quantify loss which it may suffer from a breach of contract and to insure accordingly, the Purchaser agrees to BHA Medical limiting its liability and therefore agrees that save as expressly agreed in writing or as mandatorily implied by law:
- 14.5.** The aggregate liability of BHA Medical (whether in contract, tort, breach of statutory duty or otherwise) for all breaches under or non-performance of its obligations or contemplated by any Contract shall not exceed a sum equal to one and a half times the Price payable under that Contract.
- 14.6.** The Purchaser shall not rely upon any representation concerning the Products unless made by BHA Medical in writing in the Contract.

15. FORCE MAJEURE

Neither BHA Medical nor the Purchaser will be liable for any failure to perform their respective obligations, or delay in the performance of their obligations, if the failure or delay is due to causes outside that party’s reasonable control. This clause 15 shall not affect or limit the Purchaser’s obligation to pay when due sums properly payable under the Contract.

16. GENERAL

- 16.1.** No indulgence, forbearance, partial exercise of any right or remedy or previous waiver shall prejudice any rights or remedies. Remedies shall be cumulative and no choice of remedy shall preclude any other remedy.
- 16.2.** The Purchaser shall not assign, mortgage, charge, sub-let or otherwise dispose of the Contract or any rights thereunder in whole or in part.
- 16.3.** After termination (howsoever caused) or cancellation, clauses 1, 4, 7, 8, 12, 13, 14 and 16 shall continue in full effect, in addition to those provisions which by their terms or intent are to survive.
- 16.4.** A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which is available apart from that Act.
- 16.5.** All Contracts shall be governed and construed in accordance with South African law and the Purchaser irrevocably submits to exclusive jurisdiction of the Courts of South Africa, without prejudice to which BHA Medical may apply for any provisional or conservatory measures or interim relief in any court having jurisdiction in the Purchaser’s country or the country where the Products are then located. The parties waive the defence of an inconvenient forum, and agree that a final judgment in any such action or proceeding shall be final, binding and enforceable in any court of competent jurisdiction and consent to its enforcement in any jurisdiction.

LIMITED WARRANTY

South Africa

In this Limited Warranty, “**BHA Medical, Division of Blackhive Africa**” or “**BHA Medical**” refers to a company incorporated and registered in South Africa with company registration number 2012/048141/07 whose registered office is at 151 Cowey Road (Problem Mkhize), Morningside, Durban 4001 Kwa Zulu Natal, South Africa.

“**First Owner**” means the invoiced first purchaser of the applicable Product listed below from BHA Medical.

“**Purchaser**” refers to every purchaser of a Product, including the First Owner.

Warranty

Subject to the limitations and exclusions set forth below, BHA warrants to the First Owner that BHA products which are imported from Italy and purchased in South Africa (“**Products**”) will be free from defects in materials and workmanship and will meet the specifications during the applicable Warranty Period as defined below:

D-HEART® ECG Device: 8 leads portable electrocardiograph that connects via Bluetooth to any type of smartphone or tablet including electrodes.

Warranty Period

One Year

Product

D-Heart ECG Device

Disposable Electrodes

Proper Use – The warranty is contingent upon the proper use of the Products, and does not cover: (i) Products that have been modified without **BHA Medical**’s prior written approval, or that have been subject to physical stress, misuse, unauthorized use, negligence or accident, or that have been improperly stored or have passed their expiration date; (ii) defects in the Products which have been caused in transit or after the time of delivery by **BHA Medical EXW at BHA Medical**’s facility, as specified in Section 5(e); or (iii) defects caused by **Purchaser** or others, or otherwise arising out of or attributed, directly or indirectly to the conduct, operations or performance of **Purchaser**.

Accessories – **BHA Medical** makes no warranty in respect of any accessories and other parts made by others that have been attached or connected to the Products.

Returns Procedure.

No Products may be returned to BHA Medical after delivery without BHA Medical’s prior written consent. The Purchaser must notify BHA Medical in writing, stating the reason for the return, the date and the number of BHA Medical’s invoice for the Products. If BHA Medical agrees that the Products may be returned, it will issue a Return Material Authorisation Number (“**RMA**”). THIS RMA MUST BE QUOTED ON ANY ACCOMPANYING PAPERWORK WITH RETURNED PRODUCTS. ANY PRODUCTS RETURNED WITHOUT AN RMA MAY BE DISPOSED OF BY BHA Medical AS IT SEES FIT WITHOUT OBLIGATION TO ACCOUNT TO THE FIRST OWNER OR ANY SUBSEQUENT OWNER.

For Products shipped to an BHA Medical service location, all Products and/or assemblies requiring service should be sent freight prepaid, and must be accompanied by a written, detailed explanation of the claimed failure or service required. The risk in returned Products shall at all times remain the Purchaser’s and the Purchaser shall be liable for all freight and return costs, and the costs of BHA Medical and its authorised representatives and distributors in reviewing a returned Product if BHA Medical determines that the Product does not satisfy the terms of this Limited Warranty. The Purchaser agrees to return Products clean and free of contamination or otherwise to accept and pay BHA Medical a charge for cleaning and decontamination.

Unless otherwise agreed in writing, if Products are replaced or repaired under Warranty, BHA Medical aims to ship the replacement or repaired Products back to the First Owner within ten working days of its receipt, but it does not guarantee this turnaround estimate. Delivery of the replacement or repaired Products back to the First Owner shall be EXW BHA Medical’s premises INCOTERMS 2010.

If Products are returned under a Warranty claim which is not a valid claim BHA Medical shall so inform the Purchaser and request its instructions. If instructions are not received within seven days of such request BHA Medical may deal with the Products as it sees fit. If BHA Medical returns the Products to, or at the direction of, the Purchaser, the Purchaser shall pay all costs of such return and the return shall be at the Purchaser’s risk. If BHA Medical stores the Products, the Purchaser shall pay BHA Medical’s reasonable storage charges. If it is agreed that BHA Medical will carry out work on the returned Products that are not required by the Warranty, the Purchaser shall pay BHA Medical’s charges for such work as agreed by the parties. The Purchaser shall pay BHA Medical all sums payable under this clause within fifteen days from invoice or as otherwise agreed.

Limitation of Liability.

The Purchaser acknowledges that BHA Medical’s obligations and liabilities to it in respect of the Products are exhaustively defined in this Limited Warranty. Except for the Limited Warranty provided above and to the maximum extent permitted by law, BHA Medical MAKES NO UNDERTAKING, CONDITION, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING FROM STATUTE, COMMON LAW, CUSTOM OR OTHERWISE. THIS LIMITED WARRANTY SHALL BE THE SOLE REMEDY AVAILABLE TO ANY PERSON. RDT IS NOT LIABLE FOR ANY (I) LOSS OF PROFITS, SALES, BUSINESS, OR REVENUE, (II) LOSS OR CORRUPTION OF DATA, (III) LOSS OF SOFTWARE OR USE OF COMPUTER EQUIPMENT, (IV) BUSINESS INTERRUPTION, (V) LOSS OF ANTICIPATED SAVINGS, (VI) LOSS OF BUSINESS OPPORTUNITY, GOODWILL OR REPUTATION, OR (VII) INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN ALL CASES WHETHER BASED ON CONTRACT, TORT, BREACH OF STATUTORY DUTY OR ANY OTHER LEGAL BASIS.

Any claim or legal action by a Purchaser or user of a Product arising from such purchase or use shall be commenced by such person within either one year from the accrual of the cause of action or the Warranty Period (whichever period is longer), or be irrevocably waived, and in no event shall BHA Medical’s liability under this Limited Warranty or otherwise exceed the greater of R10,000 or the purchase price of the Product giving rise to the cause of action.

Products are warranted in conformance with applicable laws. If any part or term of this Limited Warranty is held to be illegal, unenforceable or in conflict with applicable law by any court of competent jurisdiction, the validity of the remaining portions of the Limited Warranty shall not be affected, and all rights and obligations shall be construed and enforced as if this Limited Warranty did not contain the particular part or term held to be invalid. This Limited Warranty gives the user specific legal rights.