

# **Baanto Terms and Conditions of Sale**

## **PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY**

### **1. OFFER AND ACCEPTANCE**

Unless otherwise agreed in a separate written agreement signed by Baanto International Ltd (“Baanto”) and Buyer, Baanto offers to sell products (“Products”) and/or provide services (“Services”) solely on these terms and conditions (these “Terms”) and any acceptance is expressly limited to these Terms. If Buyer has ordered Products or Services from Baanto (an “Order”) and such Order is deemed to be an offer by Buyer, acceptance by Baanto of such offer is expressly conditional on assent by Buyer to these Terms. Any additional, different, or conflicting Terms proposed by Buyer in any offer, acceptance, or confirmation (including any Buyer purchase order or specifications) are requests for material alterations of these Terms and are hereby rejected and will not be binding in any way on Baanto, unless and until Baanto accepts such alterations by a written agreement signed by Baanto. Baanto hereby notifies Buyer of its objection to all such additional, different, or conflicting terms and conditions. Acceptance of, or payment for, any Products or Services by Buyer will constitute Buyer's assent to and acceptance of these Terms.

These Terms do not constitute an obligation of Baanto to sell Products or Services to Buyer. Baanto reserves the right to accept or reject any Order from Buyer to the maximum extent permitted by law.

All Orders shall be in writing, clearly stating the billing address and contact information of Buyer. Orders may be delivered, mailed, couriered, faxed, or sent by any form of electronic data exchange approved by Baanto. Each Order shall identify the Products, the quantity to be purchased and a shipment date, and any special requests, and in respect of Services, the Services required.

### **2. PRICES**

After Baanto acceptance of a written Order, Baanto will supply the Product at the price stated in the relevant and most recent Baanto Quotation, or if no written quotation exists, at the price in the current and most recent Baanto Price List. All prices are in U.S. dollars. Unless otherwise specified by Baanto, prices for Products and Services sold are for the quantity specified and do not include charges for transportation, insurance, special packaging, marking, applicable sale or use taxes, value added taxes, export or import licenses, fees, taxes, duties and the like. The Buyer shall bear the cost of such charges in addition to the prices quoted or invoiced. Buyer will pay, in addition to the prices stated, the amount of any present or future taxes and customs duties applicable to the sale of Products or performance of Services, or, if appropriate, supply Baanto with an effective tax exemption certificate for each jurisdiction in which taxes otherwise would be due.

### **3. TERMS OF PAYMENT**

(a) Subject to credit approval by Baanto, and unless Baanto otherwise specifies, all payments are due and payable in full thirty (30) days from the date of invoice. Baanto requires the disclosure and evaluation of Buyer's financials to extend credit to Buyer hereunder. Baanto, at its sole discretion, may change or withdraw Buyer's credit. All amounts past due will incur a late payment charge at the rate of 1.5% per month or the highest rate permitted by law, whichever is less. Buyer will make payments at the address specified on the Baanto invoice. If Products or Services covered by these Terms are not delivered or performed at one time, Buyer will pay for the quantity of Products delivered or Services performed. Each shipment will be considered a separate and independent transaction.

(b) Baanto shipments, deliveries, and performance of work will at all times be subject to Baanto approval of Buyer's credit. As part of this credit approval, Baanto may decline to make any shipments or deliveries or perform any work, and/or impose such other terms or conditions or security arrangements as Baanto, in its sole discretion, deems appropriate. Buyer consents to Baanto conducting such credit checks and credit bureau and other searches as Baanto deems appropriate, and authorizes persons contacted by Baanto in the course of such searches to cooperate with Baanto and release to Baanto the requested information.

(c) If Buyer defaults under any obligation to Baanto, Buyer will make Products available so that Baanto can repossess them without a breach of the peace. Such agreement constitutes the grant of a security interest in Products supplied to Buyer in favor of Baanto. Baanto may file a copy of the invoice with appropriate authorities at any time, as a financing statement. Upon written request from Baanto, Buyer will execute any documents to perfect Baanto's security interest in any Products.

#### **4. CHANGE ORDERS AND CANCELLATIONS**

Upon written request by Buyer not less than thirty (30) calendar days prior to a scheduled ship date, Baanto may, at its sole discretion, allow Buyer to (i) change an Order quantity, or (ii) cancel an Order, or (iii) utilize a one-time delay of a scheduled shipment date for up to ninety (90) calendar days from the original requested ship date. Baanto has the right to modify the pricing for any and all Product if the requested change results in a quantity decrease. Baanto may require Buyer to compensate or reimburse Baanto for any raw material and work-in-process costs and administrative costs incurred as a result of agreeing to the change order or cancellation.

#### **5. SHIPMENT, SHIP DATE, TITLE AND DELIVERY**

Products shall be shipped to Buyer ExWorks (Incoterms 2000) the Baanto manufacturing facility or inventory location. Without Buyer's written instructions, Baanto shall select the common carrier but shall not assume liability in connection with the shipment, nor shall the common carrier be construed to be an agent of Baanto. Transportation charges will be collected on delivery or will be invoiced to Buyer, as advised by Baanto to Buyer. Products will be shipped in packaging Baanto deems appropriate. If Buyer requests special packaging, Buyer shall pay for and accept responsibility and risk for such packaging. Title to and risk of loss of or damage to goods shall pass from Baanto to Buyer when Baanto makes goods available to the common carrier or to Buyer. Baanto shall attempt to ship goods within ten (10) calendar days of the calendar date requested by Buyer ("Requested Ship Date"); provided, however, that Baanto shall not be charged with any liability for any delays or failure to meet Requested Ship Date. Shipments may be in installments. Default or delay by Baanto in shipping the whole or any part or installment of goods shall not affect any other portion thereof. Normal manufacturing processing variation of order quantity per line item of good(s) is + 0% / - 5%. Products shipped between 95% and 100% of the ordered quantity shall be considered complete, and Buyer shall accept and pay for the actual quantity shipped. Buyer may not cancel, extend, reschedule or otherwise alter any purchase order placed with Baanto, except with written consent from Baanto once the order has been confirmed and accepted.

#### **6. ACCEPTANCE AND WARRANTY**

(a) Any Product or Service sold or provided by Baanto will be deemed accepted by Buyer upon delivery in the case of Products, or performance in the case of Services. Baanto warrants to Buyer that all Product delivered under these Terms (i) will materially comply with the specifications mutually agreed upon between Baanto and Buyer in writing or if none, the applicable published Baanto Data Sheet and (ii) will be free from material defects in material and workmanship under proper use, service and conditions for a period of three (3) years from the date of invoice. Mutually agreed upon specifications may include cosmetic criteria, however in the absence of such specifications, cosmetic criteria are not covered by this warranty. To the maximum extent permitted by and subject to applicable law, the foregoing warranty will not apply to any (i) Services performed under these Terms, (ii) Products delivered as samples, prototypes, development kits or design verification units, or (iii) Licensed Software or Software Documentation (defined in Section 7 below) whether or not modified by Baanto, all of which are provided or sold by Baanto "AS IS," "WITH ALL FAULTS," and with no warranty whatsoever. In addition, to the maximum extent permitted by and subject to applicable law, Baanto will have no liability for any failure of any Product to conform with the foregoing warranty if such failure is caused by accident, abuse, misuse, neglect, alteration, improper installation, repair, improper testing, use contrary to any specifications for such Product or instructions issued by Baanto, or Baanto's compliance with any designs, specifications or instructions provided by or for Buyer (each of the foregoing, a "Disqualifying Cause").

(b) During the applicable warranty period, (i) Buyer must notify Baanto in writing within twenty (20) business days of discovery that a Product does not conform to the relevant specifications, include a detailed description of such nonconformance, define the number of units affected and request a Failure Analysis Authorization (FAA), (ii)

Baanto shall respond to Buyer with a Failure Analysis Authorization to ship a specified number of the affected Product to the Baanto facility for inspection and test or Buyer will afford Baanto the opportunity to inspect and test such Product at Buyer's location, (iii) Within ten (10) business days of receipt of, or onsite inspection of, the affected Product, Baanto will notify Buyer in writing that such Product is either (a) a Valid Warranty Return as it does not conform to the relevant specifications and that the failure of such Product is not caused by a Disqualifying Cause or (b) that the Product meets the relevant specifications and was caused by a Disqualifying Cause and may not be returned under this warranty. For a Valid Warranty Return, Baanto shall provide Buyer with a production Returned Material Authorization (RMA) number and authorization to ship the specified number of the affected Product to the Baanto facility. Buyer shall return such Product to Baanto, DDP Baanto's facility (Delivered Duty Paid as defined in Incoterms 2000) accompanied by the Baanto RMA form. Baanto will, at its sole discretion, either repair, replace, or credit Buyer the purchase price of such Product. Buyer may not return any Product(s) to Baanto without a Baanto RMA number. Replacement Product(s), parts, and repairs are warranted for the remainder of the original Product's warranty period.

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTY REMEDY IN SECTION 6 HEREIN CONSTITUTES BAANTO'S EXCLUSIVE LIABILITY AND OBLIGATION, AND BUYER'S EXCLUSIVE REMEDY FOR ANY BREACH OF ANY WARRANTY OR OTHER DEFECT OR NONCONFORMITY OF THE PRODUCTS COVERED BY THESE TERMS. THIS WARRANTY IS EXCLUSIVE, AND IN LIEU OF ALL OTHER WARRANTIES. BAANTO MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR THAT MAY ARISE FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE TRADE. BAANTO DOES NOT EXTEND THE FOREGOING WARRANTY, AND BUYER MAY NOT TRANSFER IT, TO BUYER'S CUSTOMERS OR OTHER THIRD PARTIES.

(d) OTHER THAN AS PROVIDED WITH RESPECT TO BAANTO'S EXPRESS WARRANTY OBLIGATIONS IN THESE TERMS, BAANTO IS NOT LIABLE FOR ANY COSTS ASSOCIATED WITH THE REMOVAL, REPLACEMENT OR REPAIR OF ANY PRODUCT, INCLUDING LABOR, INSTALLATION, OR OTHER COSTS INCURRED BY BUYER.

## **7. SOFTWARE**

Unless otherwise agreed in another agreement between Baanto and Buyer, the following terms and conditions will apply to software and firmware that Baanto provides to Buyer, including, without limitation, any software or firmware customized by Baanto for Buyer ("Licensed Software"), and to documentation for such Licensed Software that is provided by Baanto ("Software Documentation"):

(a) Baanto or Baanto's licensor retain full rights, title, and ownership including all patents, copyrights, trade secrets, trade names, trademarks, and other intellectual property rights in and to the Licensed Software and Software Documentation;

(b) With respect to any Licensed Software (including without limitation, software contained in a development kit), subject to these Terms, Baanto grants to Buyer a non-exclusive, nontransferable, non-sublicensable, limited license to (i) use internally such Licensed Software solely in connection with a Baanto Product, (ii) distribute any Licensed Software that is embedded into Baanto Product ("Licensed Firmware") (in machine code only) solely as programmed into such Baanto Product, and (iii) use internally any Software Documentation for such Licensed Software solely in connection with the foregoing;

(c) Subject to mandatory applicable law, Buyer will not (i) engage in (and will take all reasonable steps to prevent), unauthorized use and disclosure of, including without limitation any effort to reverse engineer, disassemble, de-compile, or otherwise attempt to derive the source code of, any Licensed Software or any portion thereof, (ii) copy, reproduce, modify, create derivative works of, sell, distribute, disclose or otherwise exploit any Licensed Software or any portion thereof, except as expressly set forth in this Section 7, (iii) otherwise make any Licensed Firmware available for execution on, or other use with, any products except the Products with which such Licensed Firmware was provided by Baanto, or (iv) program into any Products any Licensed Firmware updates or upgrades (whether

Buyer obtained them from Baanto or otherwise), except as expressly permitted in another agreement between Buyer and Baanto; and

(d) Buyer will not remove or destroy any trademark, copyright markings, legends or notices placed upon or contained within the Licensed Software or Software Documentation.

(e) For avoidance of doubt, (i) the term "Product," as used in these Terms, includes Licensed Software and Software Documentation, but does not include any software or firmware provided to Baanto by or for Buyer.

## **8. INTELLECTUAL PROPERTY**

(a) If Buyer complies with these Terms, Baanto will, at its own expense, defend or settle any suit that a third party institutes against Buyer to the extent based on a claim that the Product in the form provided by Baanto to Buyer under these Terms, infringes such third party's US, Japanese, or EU member country patent(s) (excluding processes or methods claimed by such patent(s)), trademark(s), or copyright(s) ("Third Party IP Rights"), provided that (i) the claimed infringement is not based on an Excluded Claim (as defined in Section 8(c)), (ii) Buyer gives Baanto immediate notice in writing of any such suit, (iii) Buyer gives Baanto sole control over the defense and settlement of such suit through counsel of Baanto's choice, and (iv) Buyer gives Baanto all needed information, assistance and authority, at Baanto's expense, to enable Baanto to defend or settle such suit. Baanto will pay any final judgment awarding damages when due to the extent such award is based upon a finding that the Product in the form provided by Baanto to Buyer infringes such Third Party IP Rights, but will not be liable for any settlement made without its prior written consent or legal fees incurred by Buyer in connection with any such settlement.

(b) In full satisfaction of all of its obligations under Section 8(a), Baanto, at its sole discretion, may (i) replace or modify the allegedly infringing Products with non-infringing products that are functionally equivalent, (ii) obtain a release of claims against Buyer or covering Products sold to Buyer, (iii) obtain a license for Buyer to continue to use or sell the allegedly infringing Products, or (iv) accept the return of allegedly infringing Products and refund the amount paid by the Buyer for such returned Products.

(c) Notwithstanding anything to the contrary in these Terms, Baanto will have no liability for, and the obligations of Baanto under Section 8(a) will not apply to, any claim arising from or related to (i) the use of Products as a part of or in combination with any other devices, parts, processes, methods, or software or firmware including, without limitation any Buyer supplied software or hardware, whether or not modified by Baanto, (ii) Baanto's compliance with any designs, specifications, or instructions provided by or for Buyer, (iii) the use of Products contrary to any Baanto instructions or in breach of these Terms, (iv) modifications or alterations to the Products, (v) the practice of any process or method relating to Buyer's or its customers' use of the Products, (vi) use or purchase of the Products after receiving notice of such claim, (vii) Baanto's compliance with any industry or proprietary standard or Buyer's use of the Products to enable implementation of any industry or proprietary standard, or (viii) Buyer's intentional, knowing, or willful infringement of the Third Party IP Rights (collectively, "Excluded Claims").

(d) THIS SECTION 8 STATES BAANTO'S SOLE AND EXCLUSIVE LIABILITY AND OBLIGATION AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT BY ANY PRODUCTS OR SERVICES DELIVERED HEREUNDER, OR ANY PART THEREOF. THIS SECTION 8 IS IN LIEU OF AND REPLACES ANY OTHER EXPRESS, IMPLIED, STATUTORY OR OTHER WARRANTY RELATING TO ANY SUCH INFRINGEMENT OR MISAPPROPRIATION. IN NO EVENT WILL BAANTO BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR OTHER DAMAGES RESULTING FROM ANY SUCH INFRINGEMENT OR MISAPPROPRIATION, EVEN IF ADVISED IN ADVANCE OF SUCH POSSIBILITY.

(e) Buyer, at its own expense, will indemnify and hold Baanto harmless from and against any liabilities, costs, damages, or losses resulting from any Excluded Claim, and will defend or settle at its own expense, including attorney's fees and costs, any suit against Baanto based on an allegation arising from any Excluded Claim, provided that (i) Baanto gives Buyer immediate notice in writing of any such suit, and (ii) Baanto and Buyer give each other

all needed information, assistance and authority, at its own expense, necessary to defend or settle such suit.

## **9. SAFETY-CRITICAL, MILITARY AND AUTOMOTIVE APPLICATIONS**

(a) Products are not designed for and will not be used in connection with any applications where the failure of such Products would reasonably be expected to result in significant personal injury or death ("Safety-Critical Applications") without a Baanto officer's specific written consent. Safety-Critical Applications include, without limitation, life support devices and systems, equipment or systems for the operation of nuclear facilities and weapons systems. Baanto shall have no liability to Buyer, and Buyer will fully defend (at Baanto's option), indemnify and hold Baanto harmless from and against any cost, loss, liability, or expense arising out of or related to use of Products in Safety-Critical Applications, unless the specific Products used were specifically designated by Baanto as military grade or automotive grade, and were used for their intended purpose.

(b) Products are neither designed nor intended for use in military or aerospace applications or environments unless specifically designated by Baanto as military grade. Buyer acknowledges that any such use of Products not designated as military grade is solely at Buyer's risk, and that Buyer is solely responsible for compliance with all legal and regulatory requirements in connection with such use.

(c) Products are neither designed nor intended for use in automotive applications unless specifically designated by Baanto as automotive grade. Buyer acknowledges that any such use of Products not designated as automotive grade is solely at Buyer's risk, and that Buyer is solely responsible for compliance with all requirements in connection with such use.

## **10. BREACH**

Any one of the following acts by Buyer is a material breach of Buyer's obligations:

(a) Buyer fails to make payment for any Products or Services in full when due;

(b) Buyer fails to accept conforming Products or Services supplied under these Terms;

(c) Buyer's breach of any of sections 7 (c), 7(d), 8(e), or 9 (a); or

(d) the filing of a voluntary or involuntary petition in bankruptcy against Buyer, the institution of any proceeding in insolvency or bankruptcy (including reorganization) against Buyer, Buyer's insolvency, or an assignment for the benefit of creditors of Buyer, or Buyer failing to make Products available so that Baanto can repossess them without a breach of the peace following a default by Buyer. In the event of Buyer's material breach, Baanto (in addition to any other rights or remedies provided herein or at law or in equity), may terminate any of its obligations by written notice to Buyer, without incurring any liability. Buyer will pay all costs, including reasonable attorney's fees, Baanto incurs in any action Baanto brings to collect payments owing or otherwise enforce its rights.

## **11. EXCUSABLE DELAYS**

Baanto will not be liable for any cause beyond its control, including but not limited to acts of God, acts of civil or military authority, fires, epidemics, floods, riots, wars, terrorism, sabotage, labor disputes, yield problems, governmental actions (including inability or delay in obtaining governmental authorizations), or inability to obtain materials, components, energy, manufacturing services or facilities, or transportation on commercially reasonable terms. In the event of any such delay, the date of delivery or performance hereunder shall be extended for a period equal to the delay. Without liability to Buyer, Baanto reserves the right to (i) allocate supply of Products and resources for provision of Services among customers or potential customers, or (ii) defer or delay the shipment of, goods that are in short supply.

## **12. LIMITATION OF LIABILITY**

(a) TO THE EXTENT PERMITTED UNDER APPLICABLE LAW AND NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, BAANTO WILL IN NO EVENT BE LIABLE TO BUYER OR

ANY THIRD PARTIES FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR SPECIAL DAMAGES OR FOR LOST PROFITS OR LOSS OF BUSINESS, WHETHER IN AN ACTION BASED ON CONTRACT, TORT, PRODUCTS LIABILITY, OR ANY OTHER LEGAL THEORY, ARISING FROM OR RELATED TO THE TRANSACTION CONTEMPLATED HEREUNDER, EVEN IF BAANTO IS APPRISED OF OR SHOULD HAVE KNOWN THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS, IN NO EVENT WILL BAANTO'S TOTAL LIABILITY, INCLUDING ANY ATTORNEYS' FEES AND COSTS INCURRED, ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED HEREUNDER (INCLUDING BUT NOT LIMITED TO ANY WARRANTY OR INDEMNITY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNT BUYER PAID TO BAANTO FOR THE PRODUCTS OR SERVICES ACTUALLY GIVING RISE TO SUCH LIABILITY (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN SUCH ACTION OR IF THERE IS NO ACTION THE DATE THE BUYER WAS FIRST PLACED ON NOTICE OF THE CLAIM GIVING RISE TO THE LIABILITY). THIS LIMITATION IS CUMULATIVE WITH ALL PAYMENTS MADE TO BUYER FOR ANY CLAIMS OR DAMAGES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT.

(c) BUYER MAY NOT BRING ANY CLAIM, SUIT OR ACTION AGAINST BAANTO IN RESPECT OF ANY CAUSE OF ACTION MORE THAN ONE YEAR AFTER THE EVENTS GIVING RISE TO THE CAUSE OF ACTION OCCUR.

(d) BUYER ACKNOWLEDGES THAT BAANTO HAS SET ITS PRICES AND FEES AND AGREED TO SELL PRODUCTS AND SERVICES TO BUYER IN RELIANCE UPON THE LIMITATIONS OF LIABILITY, DISCLAIMER OF WARRANTIES, EXCLUSION OF DAMAGES AND EXCLUSIVE REMEDIES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH BAANTO WOULD NOT HAVE AGREED TO SELL PRODUCTS AND SERVICES TO BUYER. SUCH PROVISIONS WILL SURVIVE AND APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

(e) NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, BAANTO WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY EXCESS COSTS OF REPROCUREMENT.

## **12. GENERAL**

(a) Baanto will retain (i) all trademarks, patents, copyrights, trade secret rights, and other intellectual property rights it possesses with regard to any and all design, process, manufacturing and other technologies used in or resulting from the development or production of Products and all Services, and (ii) title to and possession of all tooling, material or equipment Baanto uses in the manufacture, testing or assembly of Products furnished under these Terms. Neither Buyer nor any third party (whether by implication, operation of law, estoppels or otherwise) will have any right or license in or to any trademark, patent, copyright, trade secret right, mask work right, or any other intellectual property right not expressly granted by Baanto in these Terms.

(b) Buyer acknowledges that all or part of the Products may be developed, manufactured, tested, assembled or otherwise worked on, or delivered from any Baanto or any of its contractors' facilities, domestic and foreign.

(c) During this business relationship, Baanto will use Buyer-related data, including but not limited to Buyer address and contact person information. Unless otherwise agreed, Buyer consents that such data may be used and distributed within Baanto and to certain third parties, such as contractors and representatives. All information Buyer obtains from Baanto that Buyer knows, or should know, is confidential to Baanto, including, but not limited to, pricing and lead-time information, will remain Baanto confidential information and Buyer may not disclose such information to any third party.

(d) Buyer will comply with all applicable laws, regulations, and administrative rules and without limiting the

generality of the foregoing, Buyer represents that it is knowledgeable as to Canadian, United States and other relevant laws, regulations and requirements regarding the environment and the export, import or re-export of Products. Buyer will not export, re-export, resell, ship or divert or cause to be exported, re-exported, resold, shipped or diverted, Baanto products, software, or technology to any country, end-use, or end-user that requires an export license or other approval without first obtaining such license or approval. Buyer will comply with applicable anti-corruption laws, including the Canadian Corruption of Foreign Public Officials Act, the US Foreign Corrupt Practices Act, and any similar or other rules. Buyer will conduct its activities in accordance with all Canadian, United States and other environmental regulations, including, without limitation, WEEE, RoHS and any similar or other rules. Baanto may suspend performance if Buyer violates any applicable laws or regulations.

(e) Government procurement requirements and regulations (including but not limited to, certified cost or pricing data, Cost Accounting Standards, Defective Pricing, and Audit requirements) will not be binding upon Baanto unless Baanto otherwise agrees in a writing signed by an officer of Baanto.

(f) Buyer may not assign any of its rights or delegate any of its obligations under these Terms, whether voluntarily, by operation of law, or otherwise without Baanto's prior written consent and any purported assignment or delegation without such consent will be null and void and of no force or effect. In addition, Buyer may not assign any of its rights or delegate any of its obligations to any entity controlled by, controlling or under common control with Buyer or in connection with Buyer's merger or the transfer or sale of all or substantially all of Buyer's assets or stock without Baanto's prior written consent and any purported assignment or delegation without such consent will be null and void and of no force or effect. Baanto may assign its rights and/or delegate its obligations under these Terms upon written notice to Buyer. Subject to the foregoing, these Terms will bind each party and its respective successors and permitted assigns.

(g) Baanto's waiver of any right it may have or default by Buyer will not be a continuing waiver of such right or default or a waiver of any other right it may have under these Terms or other default, nor will Baanto's delay or omission in exercising or availing itself of any right or remedy that it has or may have be a waiver of any right or remedy. No Baanto waiver will be effective except pursuant to a written document signed by a duly authorized representative of Baanto.

(h) These Terms may not be superseded, cancelled, modified, or amended except in a written document signed by an officer of each party. No other act, document, usage, or custom will be deemed to supersede, cancel, modify or amend these Terms. If any provision of these Terms is determined to be invalid, illegal, or unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the parties and the remaining provisions will remain in full force and effect.

(i) Notwithstanding any contrary Term that may be more favorable to Buyer, if Buyer fails to commence litigation regarding a claim or dispute arising out of a Product sale or the Terms and Conditions of Sale within one (1) year after the applicable Product's Warranty period has ended, Buyer has waived its rights and remedies with respect to such cause of action.

(j) These Terms will constitute the entire agreement between Buyer and Baanto with regard to the Products or Services sold under these Terms, and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating to such Products or Services.

(k) The laws of Ontario, Canada, without giving effect to its choice of law rules, will govern the validity, performance and construction of these Terms, and any disputes arising from or relating to these Terms, including any non-contractual disputes arising from or relating to these Terms. All disputes will be subject to the exclusive jurisdiction of the courts in the province of Ontario, Canada and Buyer consents to the personal and exclusive jurisdiction and venue of these courts. Notwithstanding the foregoing, either party has the right to apply to a court of competent jurisdiction for provisional relief, including without limitation, attachment or injunction, as may be necessary to preserve the rights of the applying party. The United Nations Convention on Contracts for the International Sale of Goods and Uniform Computer Information Transactions Act, as enacted and amended from time to time, will not apply to these Terms.



(l) These Terms do not create, and shall not be construed as creating, any rights for any third party who is not party to these Terms.

(m) U.S. GOVERNMENT USERS. In the event any software is provided by Baanto to a U.S. Government User, the Product, including any documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c) (1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Baanto International Ltd., 6470 Viscount Road, Mississauga, ON, L4V 1H3

(n) This document sets forth the master terms and conditions on which Baanto shall have the right, but not the obligation, to sell Products and Services to Buyer. In the event of conflict between the Terms and any additional purported terms and conditions of purchase of Products and Services, these Terms shall have priority, unless otherwise expressly indicated in writing, signed by Baanto.