

**BLUERAY MARINE PTY LTD**  
**Terms and Conditions**

**1. Definitions and interpretation**

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- 1.1 In these terms, unless the contrary intention appears:  
**Customer** means the person or entity which orders the Product from BlueRay Marine.  
**BlueRay Marine** means BlueRay Marine PTY LTD ACN 105 964 163.  
**Product** means systems and any accessories ordered by the Customer from BlueRay Marine.  
**Specification** means the written specification (if any) for the Product supplied by BlueRay Marine to the Customer.
- 1.2 In these terms (a) mentioning anything after **include**, **includes** or **including** does not limit what else might be included, (b) words denoting the singular include the plural and vice versa, (c) words denoting a gender include all genders, and (d) headings are inserted for convenience and do not affect the interpretation of these terms.

**2. Orders**

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- 2.1 The Customer's order of the Product constitutes its irrevocable offer to acquire the Product from BlueRay Marine subject to these terms. A binding legal agreement for the supply of the Product subject to these terms will come into existence when BlueRay Marine sends the Customer its written invoice for the order or on delivery of the Product, whichever occurs first.
- 2.2 These terms prevail to the total exclusion of any terms and conditions referred to, offered or relied on by the Customer, (including the terms of or attached to any purchase order by the Customer) even if such terms and conditions are submitted to BlueRay Marine after these terms are sent to the Customer. The provisions of the United Nations Convention on Contracts for the International sale of Goods (1980) do not apply to the sale of the Products.

**3. Delivery, risk and title**

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- 3.1 BlueRay Marine will use its reasonable commercial efforts to deliver the Product by any quoted or agreed date but will not be liable for any damages or claims occurring as a result of any delay beyond that date. The customer may cancel if the product is delayed by more than 30 days.
- 3.2 Products delivered within Australia will be supplied ex works. The Customer will be responsible for any freight and insurance charges.
- 3.3 Products shipped internationally will be supplied to the Customer FOB (as defined by INCOTERMS 2000) risk of loss of or damage to the Product will pass in accordance with those terms.
- 3.4 Subject to **clauses 5.2**, if the delivered Product does not conform to the Customer's order, the Customer must notify BlueRay Marine in writing within 14 days of the date of delivery. If the Customer does not do so, the Customer will be deemed to have accepted the delivery.
- 3.5 Title in the Product will pass to the Customer only on payment in full to BlueRay Marine of the purchase price for the Product.

**4. Price and payment**

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- 4.1 BlueRay Marine will render an invoice for the Product when it is delivered to the carrier, in preparation for shipment.
- 4.2 Unless otherwise stated in the Customer invoice, the Customer must pay for the Product as follows: (a) 30 per cent of the purchase price by direct credit to BlueRay Marine's nominated bank account on placement of the Customer's purchase order, and (b) the balance (70 per cent) on delivery.
- 4.3 The Customer must also pay any goods and services tax, sales tax or any other tax, duty, impost or government charge applicable.

**5. Warranty**

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- 5.1 BlueRay Marine reserves the right to make improvements in the product described in the product brochures, marketing material and the manual at any time and without notice.
- 5.2 BlueRay Marine warrants this product materially free from defects in workmanship and materials for two years from the date of purchase. The Warranty applies only to defects notified to BlueRay Marine during the Warranty Period. BlueRay Marine will, at its sole option, repair or replace any components that fail during normal use. Such repairs (for example, by providing to the Customer a software upgrade, if appropriate) or replacement will be made at no charge to the customer for parts or labour. The Customer is responsible for transportation costs.
- 5.3 If any term, warranty or condition is implied by law (including by the operation of Part V Division 2 of the Trade Practices Act 1974) into this Agreement which by law cannot be excluded, but may be limited, BlueRay Marine liability for any breach of any such term, condition or warranty (including to any person claiming through the Distributor) is limited, at BlueRay Marine option, to:
- (i) in the case of goods:
    - (A) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
    - (A) the payment of the cost of replacing the goods or acquiring equivalent goods; or
    - (B) the payment of the cost of having the goods repaired; or
    - (C) in the case of services:
    - (D) the supply of the services again; or
    - (E) the payment of the cost of having the services supplied again.
- 5.4 The Warranty does not apply to any Product for which the Customer has not paid BlueRay Marine the full purchase price. It also does not apply to any defect caused by (a) a negligent or wilful act or omission of the Customer or its contractors, agents or employees, (b) the use or operation of the Product other than in accordance with the Specification or the relevant operating manual or in a manner not reasonably contemplated by BlueRay Marine, (c) modification or repair or attempted modification or repair of the Product without BlueRay Marine's prior written approval, (d) the Product being subjected to unusual or non-recommended physical, environmental or electrical factors, or (e) any other cause external to the Product, including accident or act of God.

- 5.5 To obtain warranty service, return the unit with a detailed description of the problem and a copy of the original sales receipt to your original supplier.
- 5.6 Except as expressly provided to the contrary in this Agreement, all warranties and other terms, whether express, implied, statutory or otherwise relating in any way to the subject matter of this Agreement or to this Agreement generally, are excluded to the full extent permitted by law.

## **6. Licensed Software**

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- 6.1 BlueRay Marine grants to the end Customer a non-exclusive, licence (with no right to sub-license) to use the Licensed Software as installed in the Product.
- 6.2 Except to the extent permitted by law, the Customer must not copy, reverse assemble, decompile, disassemble or otherwise reverse engineer any part of the Software or permit any other person to do so.

## **7. Limitation of liability**

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- 7.1 Except as expressly provided above, BlueRay Marine, its Distributors and dealers make no warranties, either express or implied, with respect to the product, its merchantability or its fitness for any particular purpose. This product is provided on an "AS IS" basis. The entire risk as to its quality and performance is with you.
- 7.2 In no event shall BlueRay Marine be liable for any incidental, special, indirect, punitive or consequential damages or losses, whether resulting from the use, misuse, failure or inability to use the product or from defects in the product. This clause applies notwithstanding that BlueRay Marine or any of its employees, contractors or agents is aware of the likelihood of such loss or damage.
- 7.3 In addition, to the full extent permitted by law, BlueRay Marine's total liability to the Customer and persons claiming through the Customer, whether arising under contract, tort or otherwise, will not in any circumstance exceed the purchase price the Customer has paid BlueRay Marine under this Agreement. That limit applies irrespective of the number of claims or events giving rise to them.
- 7.4 BlueRay Marine will be excused from a failure to perform any of its obligations under this Agreement to the extent that the failure is due to (a) failure of a supplier to provide or BlueRay Marine's inability to obtain any necessary parts, materials, equipment, facilities or services required to meet contractual obligations, (b) an accident, strike, war or act of terrorism or threat of war or an act of terrorism, act of God or government action or interference, or (c) any other cause beyond BlueRay Marine's control.

## **8. Miscellaneous provisions**

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- 8.1 At any time prior to shipment of the Product, BlueRay Marine may make any alteration to the Product it considers necessary to ensure that the Product complies with changed safety or other standards or any law or regulation provided that the altered Product conforms substantially with the Specification.

- 8.2 Notwithstanding any other term of this Agreement, copyright and other intellectual property rights in software installed in the Product remains with the copyright owner and are not transferred to the Customer.
- 8.3 The Customer may not assign its order for the Product or its rights or obligations under this Agreement without BlueRay Marine's prior written consent.
- 8.4 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement will remain otherwise in full force apart from that provision which will be deemed deleted.
- 8.5 This Agreement constitutes the entire agreement between the Customer and BlueRay Marine relating to its subject matter and any prior arrangements, agreements, representations or undertakings are superseded. No alteration of any of these terms will be valid except in writing signed by each party.
- 8.6 The laws of New South Wales, Australia govern this Agreement and each party submits to the jurisdiction of the courts exercising jurisdiction there.
- 8.7 The product, including the all documentation, is copyrighted and contains proprietary information. All rights are reserved. The documentation may not, in whole or in part, be copied, photocopied, reproduced, translated or reduced to any electronic medium or machine readable form without prior consent, in writing, from BlueRay Marine.