

# TERMS AND CONDITIONS OF SALE AND DELIVERY BYRD TECHNOLOGIES GROUP

Version July 2016

These terms and conditions shall apply to all agreements between the byrd technologies group companies set out in article 1 (hereinafter referred to as "**byrd**") and a customer (hereinafter referred to as the "**Customer**") for the sale and delivery of services from byrd (hereinafter referred to as the "**Services**").

## **Article 1: Definitions and interpretation**

Unless defined in the Agreement, capitalised terms shall have the meaning given to them below and as otherwise determined:

- "**Agreement**": shall mean the service agreement signed between byrd and the Customer and incorporating by reference these Conditions;
- "**Background IPR**": shall mean IPR developed prior to the Effective Date or after the Effective Date and created independently from the performance of a Party's obligations under the Agreement;
- "**Business Day**": shall mean a day (other than a Saturday or Sunday) on which the banks are ordinarily open for business in Germany, in the federal state where the Warehouse premises are located.
- "**byrd**": shall mean the following legal entities:
  - byrd technologies GmbH (Vienna, Austria),
  - byrd technologies Germany GmbH (Berlin, Germany),
  - byrd technologies France SAS (Paris, France),
  - byrd technologies Greece P.C. (Patras, Greece),
  - byrd technologies Italy S.R.L. (Milan, Italy),
  - byrd technologies Poland Sp. z o.o. (Warsaw, Poland),
  - byrd technologies Spain Sociedad Limitada (Barcelona, Spain),
  - byrd technologies UK Ltd (London, United Kingdom).
- "**byrd's Data**": shall mean all data, information, text, drawings, statistics, analysis and other materials embodied in any form and which are supplied by , byrd or any member of byrd's group (and/or their respective customers) to the Customer for the purposes of byrd performing the Services in accordance with the Agreement and /or which byrd (and/or any of its Subcontractors) in connection generates or prepares specifically for the Customer;
- "**byrd's ICT System**" shall mean the combination hardware, software, computer and telecoms devices and equipment used by and/or supplied by byrd or its Subcontractors (but not hired, leased or loaned from the Customer) for the provision of the Services including the system required for the stock management at the Warehouse(s), which might be made available by byrd or as used by or interfaced to by the Customer;
- "**Carrier**": shall mean the legal entity which carry and deliver Goods on behalf of byrd;
- "**Change**": shall mean any actual or proposed change to the nature, scope, level and/or extent of the Services or the manner in which byrd provides or is to provide the Services (whether resulting in additions to, reductions in, or amendments to the Services);
- "**Charges**": shall mean the charges set out in the Agreement in relation with the delivery of the Services by byrd and to be paid by the Customer;
- "**Conditions**": shall mean the agreed terms and conditions in this document, updated time to time by byrd, being agreed between the Parties that byrd will notify the Customer of any change of the Conditions;
- "**Confidential Information**": shall mean all information which is disclosed by one Party to the other whether before or after the date of the Agreement, which is designated in writing as confidential or would appear to a reasonable person to be confidential and which relates to a Party's (or any member of that Party's group's or any customer of that Party's) business including its Goods, operations, processes, plans or intentions, developments, trade secrets, know-how, design rights, market opportunities, personnel, suppliers and customers of the party disclosing it, all byrd's Data and all information derived from any of the above together with the existence or provisions of the Agreement and the negotiations relating to it;
- "**Customer Factsheet**": shall mean the questionnaire provided by byrd about requirements and Services need by the Customer prior to the signing of the Agreement, and the answers of which are attached in the annex of the Agreement;
- "**Damage Event**": shall mean a claim due to an external process and made on the basis of the Agreement or in lieu of a freight forwarding claim by the Customer in relation to the Goods;
- "**Delivery**": shall mean the inbound delivery of the Customer's Goods to the Warehouse to be stored as inventory in the Warehouse;
- "**Dispute**": shall mean any dispute, difference or question of interpretation arising out of or in connection with the Agreement, (including any dispute regarding pre-contractual negotiations, the existence, validity or termination of the Agreement or the consequences of non-existence or invalidity of the Agreement) whether contractual or non-contractual;

- **"Force Majeure Event"**: shall mean an event which is beyond the reasonable control of the party affected including an event which falls into one or more of the following categories: act of God, fire, flood and storm; war, military action, riot, civil commotion, terrorism, epidemic, explosion; industry wide strike or malicious damage; and in each case provided that mere shortage of materials, equipment, local labour or supplies (or a failure to maintain such) shall not constitute a Force Majeure Event unless this shortage is caused by events or circumstances which are themselves a Force Majeure Event;
- **"Goods"**: shall mean the Customer's range of products as advised by the Customer to byrd from time to time in respect of which byrd is to provide the Services to the Customer under the Agreement;
- **"ICT"**: shall mean Information Communications Technology;
- **"Intellectual Property Rights" or "IPR"**: shall mean all patents, know-how, registered and unregistered trademarks and service marks (including, but not limited to, any trade, brand or business names), domain names, registered designs, design rights, utility models, copyright (including, but not limited to, all such rights in computer software and any database rights) and moral rights (in each case for the full period thereof and all extensions and renewals thereof), applications for any of the foregoing and the right to apply for any of the foregoing in any part of the world and any similar rights situated in any country;
- **"Offboarding"**: shall mean the process following the termination of the Agreement, which entails the physical packing and removal of the Customer's Goods from the Warehouse;
- **"Offer"**: shall mean the commercial proposal document provided by byrd to the Customer and describing byrd's Services and Charges related to such Services;
- **"Party" / "Parties"**: shall individually mean either byrd or the Customer and collectively byrd and the Customer;
- **"Personal Data"**: shall have the meaning given to it in the Data Protection legislation;
- **"Relief Event"**: shall mean a failure by the Customer to comply with its obligations under the Agreement or a Force Majeure Event;
- **"SDR"**: shall mean the Special Drawing Rights, an unit of account of the International Monetary Fund;
- **"Services"**: shall mean the services, functions, responsibilities and outputs to be provided and fulfilled by byrd under the Agreement and the Conditions, as described in the Offer and including but not limited to (1) Goods acceptance, (2) commissioning, (3) shipping, (4) returns management and (5) other services as stated in the Offer;
- **"Shipment"**: shall mean a single consignment of one or more pieces, from one Customer at one time at one address, receipt for in one lot and moving on one transportation document, to one End Customer at one final destination address;
- **"Shipment Peak"**: shall mean the cases where the daily Shipment quantity of the Customer is more than 25% above the average volume of the Customer of that referred working day during the last eight weeks;
- **"SKU"**: shall mean Stock Keeping Unit;
- **"Subcontractor"**: shall mean a subcontractor of byrd engaged by byrd under a subcontract for the provisions of the Services;
- **"Third Party"**: shall mean any person or entity which is not a party to the Agreement;
- **"Warehouse"**: shall mean the premises where the Customer's Goods are stored by byrd and/or its approved Subcontractors.

## **Article 2: Exclusive application**

The Customer acknowledges that all existing and future sales and service agreements for Services shall be governed by these Conditions to the exclusion of all other terms and conditions. Any separate sales conditions of the Customer are expressly not acknowledged by byrd. The same shall apply to sales conditions of commercial agents.

## **Article 3: Contractual subject-matter**

The contractual subject-matter comprises the Agreement, the Offer from byrd together with these Conditions. In the event of a conflict between these Conditions and any special terms and conditions referred to in the Agreement or in the Offer, the order of prevalence shall be as follows:

- The terms of the Agreement
- The terms of the Offer
- The Conditions

Any subsidiary oral arrangements are subject to confirmation in writing by byrd. The failure on the part of the Customer to return the countersigned Offer to byrd shall not affect the validity of the terms stated above and hereinafter.

Notwithstanding the foregoing, byrd shall have the right to unilaterally amend, modify or alter the agreed Conditions at any time and without the prior consent of the Customer. byrd will however notify the Customer of any changes by informing the Customer and posting the updated version of the Conditions on its website. The updated version of the Conditions shall then be deemed to be agreed by the Customer if the Customer did not object in writing within a fifteen (15) calendar days period after having received such a notification from byrd. In case of rejection of the updated version by the Customer, this later shall have a special right to terminate the Agreement with byrd, taking into account that a two (2) months termination period shall be observed.

## **Article 4: Duration**

These Conditions shall become effective on, and will continue in effect for the same duration as the Agreement, as of the day when the Offer is received by the Customer.

#### **Article 5: Changes**

At any time during the Initial Term or the Term, either Party may request a change to the Services, including but not limited to update of the Charges, temporary suspension in the performance of the obligations of a Party, change of a Party's business details (hereinafter referred to as a "Change"), since this Change is made in writing. This Change may be used in the case of Customer additional Services or extension of the Services to other territories, under the following procedure:

- a. The Customer shall request the Change in writing and byrd will notify the Customer of any time required to investigate the effect upon the Agreement of implementing the Change, such time to be reasonable;
- b. byrd shall then reply in writing to the Customer stating whether the Change is possible and the change (if any) which will be required to the Charges and the amendment (if any) which will be required to the Agreement;
- c. The Change shall not take effect unless and until both Parties agree in writing to proceed with the Change, in which case the Agreement shall be deemed amended as set out in byrd's response.

The timescales for the implementation of proposed Change shall be agreed between the Parties prior to the implementation of the Change.

Notwithstanding the foregoing and falling not in the scope of the Change's procedure, it is agreed that byrd is entitled to relocate warehouse assignment, including but not limited to stock location, at its own discretion across its network of Warehouses at any time. byrd will however inform the Customer in the event of the relocation of a location.

#### **Article 6: Charges adjustment**

Notwithstanding the foregoing, byrd reserves the right to adjust the Charges during the Initial Term and/or the Term, and to communicate this to the Customer in writing with at least one month's notice. Charges' changes may arise, including but not limited to price adjustments of the individual shipping service providers, an increase or changes in wage and labour agreements. In addition, byrd reserves the right to apply an inflation adjustment to all non-shipping related costs once a quarter, based on the consumer price index (CPI) of the corresponding country.

In the above cases, the Customer has a special right of termination, which he can make use of within 14 days after being informed about the Charges' increase. After this period, the Charges' increase is deemed to be agreed.

It is agreed that changes to fuel surcharges and other dynamic surcharges, as well as storage charges as indicated in the Offer are excluded from this special right of termination, since they are agreed to be dynamic in nature and can change at any time without notice from byrd to the Customer:

- The agreed storage charges to be invoiced to the customer by byrd in relation with the Services shall be revised on a monthly basis by byrd, based on a ratio of inventory quantity held across warehouses divided by total forecasted weekly volume based on historical performance of the last three (3) months, as further detailed under the following [link](#) (hereinafter referred to as the "Ratio"). The calculation of the Ratio is done monthly by byrd.
- Based on the calculation of the Ratio under the following [link](#), in case the Ratio:
  - is equal or higher than twenty-four (24) weeks in any given monthly calculation, byrd shall be allowed to increase the storage charges of the current month up to one hundred percent (100%).
  - is equal or higher than twenty-four (24) weeks consecutively for 12 months, on top of the last invoiced amount, byrd shall charge to the Customer 10 EUR / 10 GBP, as applicable per pallet per month and 5 EUR / 5 GBP, as applicable, per shelf per month.
- Notwithstanding the foregoing, it is agreed between the Parties that byrd shall not revise (by increasing or decreasing) the agreed Charges of the above-mentioned Services, including the charges for storage, during the first six (6) months of the Services. This means that the Ratio will only be used as of the beginning of the seventh month after the Delivery Date.

Should the Customer wish to request a Charges' review by byrd, any adjustments will be based on the shipping volume of the previous three (3) fulfilment months. During these three (3) months an increase in monthly shipping volume must be visible in order to be considered for a Charges' adaptation (Shipment Peak times excluded).

#### **Article 7: Obligations of the Parties**

Instructions. The Customer is expected in due course to give to byrd the precise instructions required for the fulfilment of the Services. byrd is not obliged to check the documents (such as the commercial invoice, packing list) supplied by the Customer. The Customer undertakes to provide byrd with the characteristics of the Goods entrusted (such as the composition and classification of the Goods, the value of the Goods, the packaging, the number of units per package, the dimensions of the packaging, the height and the type of the pallets, the weight, the safety notices, the constraints of storage and handling) and to immediately communicate to byrd any change in these characteristics. In the event of an incomplete or inaccurate or late declaration concerning the information above, the Customer will bear sole all the direct and indirect consequences incurred and shall hold byrd harmless for any damage, expense, cost, fee, charge whatsoever that could incur in that respect.

Prohibited Goods. Except under special arrangements previously made in writing, byrd will not provide Services to any following Goods, unless otherwise agreed by byrd:

- dangerous materials;
- chemicals, explosives, inflammables, radioactive and other dangerous materials as well as infectious materials and solid carbon dioxide (carbon dioxide snow);
- drugs, narcotics and psychotropic substances;
- arms, including knives, daggers and any other sharp or pointed object;
- vegetable produce, live animals, parasites or animal Goods;
- items bearing external obscene or immoral indications or drawings;
- objects, texts or general substances of which the import, export, production, circulation, distribution, possession, sale or use of which is banned by law or for which information and labelling obligations are not met or for which a mandatory EU-product registration and/or notification has not been completed;

- objects whose shape, form, nature or packaging is likely to be dangerous to persons or damaging to other mail items, byrd's equipment or third party property;
- bearer securities, coins, bank notes, currency notes, jewellery (except fantasy jewellery which value does not exceed 500 EUR) or other precious objects;
- batteries, unless prior written agreement of byrd;
- Dangerous goods in accordance ADR/IATA goods, unless prior written agreement of byrd;
- temperature sensitive Goods;
- Goods that would require byrd's fulfilment centre to be registered with a Food, Cosmetics, Drug or Medicine Administration regulatory body (i.e. EFSA or similar)

Weight and size. The Customer shall submit the weight and the size of Goods to byrd. Byrd will then weigh each parcel. It is agreed that byrd shall not accept Goods more than 15kg per item in weight or more than 120 cm in length or more than 250 cm in girth, unless otherwise agreed by byrd.

The weight and size taken into account for billing the Services (rounded up to the nearest point) will be the higher of the actual volumetric dimensions or the actual weight of the final parcel, depending on the service to be offered by byrd and to be communicated in due course by byrd to the Customer. In addition, byrd may refuse to carry the Goods, without any liability, corresponding to the gap between the declared weight / size and the actual weight /size if the transport of such Goods risks rendering the transport operations contrary to the applicable regulation.

Delivery / refusal or defaulting of the End Customer. If the Goods are refused by the End Customer, or in absence of the End Customer for any reason whatsoever, all initial and additional expenses and costs which are due and incurred in relation with the Goods will be paid by the Customer.

Licences and customs clearance: The Customer shall obtain in due time and maintain throughout the Term of the Agreement, and at its own expenses and costs, any and all approvals, permits, authorizations, licences and clearances (including but not limited to customs clearance) for the export of the Good(s) that are required to be obtained by the Customer under the applicable law.

## **Article 8: Warehousing and inventory management**

Unless otherwise agreed, takeover of the Goods for warehousing begins once the Goods have entered into the Warehouse and the Delivery ends with the handover of the Goods to the Carrier.

The Parties define the following procedure within the Warehouse management process for each stored Good or Good group in each storage site on the basis of the information provided by the Customer:

- Which Goods or groups of Goods are stored on pallets or shelves;
- The quantities in which the Customer's Goods are stored;
- Storage characteristics of the Goods to be stored, in particular with regard to their perishability or expiry date, fragility or sensitivity to temperature or humidity;
- Any notification of the Customer by byrd, should the stock of a Good or a Good group fall below a predefined threshold value;
- Any pre-picking of the Goods; and further relevant characteristics, in particular those referred to in the Agreement.

Unless explicitly stated otherwise in the Agreement, the storage conditions are not temperature-controlled storage, on pallets or in shelf spaces. The storage conditions provided by byrd are meant for fast moving products. byrd is not liable for deterioration (including but not limited to expiry) of Goods that result from them being stocked for a long period of time. Additional requirements such as but not limited to dangerous Goods storage, organic storage, temperature monitoring or temperature control are not included as standard in Services and shall be agreed separately depending on availability of the service, at extra costs for the Customer, to be agreed between the Parties. Other handling requirements such as but not limited to batch number tracking, best-before-date tracking or serial number tracking are also not included per default and shall be agreed separately and at extra costs between the Parties.

byrd undertakes to store the Goods in good, marketable quality. byrd shall keep correct and up-to-date records of the Goods and to make them available electronically via the Customer Dashboard. At the Customer's request, byrd can carry out an inventory of the Customer's Goods and will correct any changes in the stock and communicate them to the Customer accordingly. Inventory counts carried out at the Customer's request shall be invoiced to the Customer. Barcodes are required on all individual SKUs for accurate fulfilment operations. In case barcodes are missing, byrd can (i) either decline the Goods or (ii) create labels and take care of labelling the Goods at an extra cost for the Customer, to be paid by the Customer to byrd. Branding and packaging materials are excluded from this requirement. In cases where the Customer wishes to use packaging units, both individual units and packaging units must contain barcodes and these have to be different from each other.

The Customer shall inform byrd about the Delivery of new Goods at least five (5) Business Days beforehand via the online interface provided by byrd. In the event that the information is not provided on time or not completely, byrd is entitled to refuse to accept and store the Goods. The Customer is required to deliver the Goods according to the byrd delivery standards including the correct labelling. If a Delivery doesn't meet the requirements, it's automatically excluded from the inbound SLAs and any additional processing costs will be charged at the hourly rate according to the offer. The Customer is responsible for the correct customs declaration and customs clearance of the goods when importing them from abroad. Thereby the Delivery has to take place by Incoterm DDP (Delivery Duty Paid). For deliveries that are not made by Incoterm DDP, and for which customs charges are incurred by byrd or the Warehouse, an administrative fee of 100 EUR per Delivery will be charged by byrd to the Customer, with the option to be increased in case of repeated non-DDP deliveries. byrd reserves the right to refuse deliveries from customers who make multiple deliveries by the wrong Incoterm.

In the case of Delivery of Goods which are booked into the byrd's ICT System without counting, there is no liability towards byrd for the correct stock of that Good and no liability in the case of stock deviations arising as a result.

The Parties do agree that byrd shall do its best endeavours to ensure an inventory accuracy of 98% of the stored Goods of each Customer in the calendar year.

Unless otherwise agreed, byrd shall be liable for net deviations per Customer exceeding 2% of the (i) the original inventory, being the Goods present in the Warehouse, plus (ii) all incoming Goods, being the Goods scanned as "accepted" by the Warehouse at the moment of Delivery in the Warehouse by the Customer (hereinafter referred to as the "Permissible Shrinkage and Breakage").

The Permissible Shrinkage and Breakage is calculated on volume, on the basis of the sum of lost and damaged Goods (expressed in pieces, minus the extra inventory identified that exceeds the theoretical inventory) and not the value of the Goods. It is agreed between the Parties that the Customer will not hold byrd liable for loss and break not exceeding the Permissible Shrinkage and Breakage. Loss and break exceeding such threshold shall be compensated by byrd as set forth below.

To determine the compensation owed by byrd, the costs of all Goods being lost/broken will be ascertained. Such amount shall be divided by the number of lost/broken Goods to define the average cost for lost/broken Goods. The amount established by multiplying the number of Goods exceeding the Permissible Shrinkage and Breakage with the average cost per Good shall be compensated by byrd (via credit note), once per Agreement's year, within three (3) months after each anniversary of the Delivery Date. Any such credit note shall be subject to prior written approval from byrd and shall be deducted from the following invoice by byrd. Costs taken into account when calculating this compensation are the agreed value of the Goods into article 16 of these Conditions.

byrd shall not be liable in case the value of the Goods would supersede this amount or for any additional coverage that should be taken into account. For the avoidance of doubt, in case loss and break does not exceed the Permissible Shrinkage and Breakage, no action will be taken and no cost will be charged except in the event of gross negligence or willful misconduct of byrd.

Subject to written request made to byrd no later than ten (10) Business Days before the requested date, the Customer is entitled to inspect or have inspected the storage areas. This right of inspection is however limited to 2 per year. Objections or objections to the storage of the Goods or to the choice of storage space must be raised by the Customer without delay. If the Customer does not make use of the right of inspection, the type and manner of accommodation shall be deemed to have been approved by the Customer.

byrd is entitled to refuse the acceptance and storage of Goods of any kind at its discretion, including but limited to the following cases:

- The Goods may cause damage of any kind to the logistics centre or the (other) goods stored in it;
- The Goods appear to have been unlawfully manufactured or taken into possession or to be unlawful for any other reason;
- In case of late or incomplete information according to the Agreement.

In case of justified refusal of acceptance and storage, byrd is not liable for damages resulting therefrom.

Notwithstanding any lien or right of retention provided in the Agreement, all Goods of the Customer which are stored by byrd remain the property of the Customer.

Returns of Goods have to be directed to the original Warehouse where the Order was sent from but might be subject to restrictions decided by byrd at its own discretion and without possibility to contest from the Customer. For Orders that are returned to a Warehouse that has not fulfilled the Order, in addition to standard returns costs, an additional administrative fee of 80 EUR per Order, as well as picking, packing, shipping and storage costs shall be charged by byrd to the Customer to ensure the identification and transfer to the original Warehouse.

#### **Article 9: Offboarding**

In the event of termination of the Agreement for any reason, any work related to the Offboarding of the Customer shall be paid by the Customer to byrd as per the agreed hourly rate in the Offer. Additional costs incurred, including but not limited to material costs for packaging and transport securing of the Goods, disposal of Goods, booking of further transportation, shall be charged separately by byrd to the Customer and to be paid by the Customer to byrd.

#### **Article 10: Subcontracting**

It is agreed between the Parties that byrd is entitled to provide all Services itself or by Subcontractors of its choice (such as Warehouse agents, Carriers, couriers) also in various countries.

Communication regarding the Services is exclusively between the Parties. A direct communication between the Customer and byrd's Subcontractor is not intended.

#### **Article 11: Insurance**

Each Party undertakes to take out, at its own costs and expenses, an insurance coverage for professional liability with one or more reputable insurance companies known to be solvent and domiciled within the European Union for the entire duration of the Agreement and surviving one (1) year after its termination.

The Customer shall enter into and maintain an all-risks insurance covering the value of their Goods under the Agreement, including a coverage against theft with burglary with respect to the Goods, or any other assets or property owned by the Customer and stored under the care of byrd.

Each Party shall be responsible for any deductibles applicable in the insurance policies it has taken out. Upon request, each Party shall provide a copy of the relevant insurance certificates to the other Party.

#### **Article 12: byrd's responsibility**

Principle. byrd is liable for damage to Goods according to the statutory provisions, in so far as they happen during its period of custody according to the Agreement, and subject to the applicable Incoterm. However, and notwithstanding the foregoing, the following provisions shall apply, in as much as they do not contradict mandatory regulations. In all cases, where byrd is fault-based liable for losses or damage to the Goods during its period of custody and subject to the applicable Incoterm, according to the below provisions, byrd shall only pay the value and reimburse the costs according to below provisions instead of damage compensation.

Subrogation. If byrd has claims, for which byrd is not liable for, against a third party in case of damages, or in cases when byrd has claims exceeding the sum for which byrd is liable, byrd shall subrogate such claims to the Customer upon request, unless byrd has a separate agreement to pursue claims on behalf and at the expense of the Customer.

Liability for damage caused by transportation. The liability of byrd is limited in the same conditions as the responsibility of the Carrier with respect to the transport operation it is entrusted with. If the compensation limits of the Carriers are unknown or if the regulation in force does not provide limits, the lowest limits set forth in the below-listed conventions shall apply. Claims are limited to one claim per Shipment on which will be full and final settlement for all loss or damage in connection therewith:

- For carriage by road: Convention on the Contract for the International Carriage of Goods by Road signed on 19/05/1956 ("CMR");
- For carriage by sea: Convention of Brussels signed on 25/08/1924 (The Hague Rules) and Visby Protocol dated on 23/02/1968 and also the Protocol of 1979 ("Brussels Convention");
- For carriage by air: Convention for the unification of Certain Rules for the International Carriage by Air signed on 28/05/1999 ("Montreal Convention");
- For carriage by rail: Convention signed on 1890 in Bern, CIM rules dated on 09/05/1980, Protocol dated on 1990 and Vilnius Protocol dated on 03/06/1999 or the SMGS for the part of the carriage by rail that takes place in a signing country of the SMGS;
- For carriage by river: Convention signed on 22/06/2001 in Budapest ("CMNI").

Liability limitations for ordered warehousing. In the case of ordered warehousing, the liability of byrd for damage to Goods is limited to:

- 8,33 SDR/kg corresponding;
- A maximum of thirty-five thousand (35.000,00) EUR per Damage Event;
- Seventy thousand (70.000,00) EUR per year, in cases where the damage claimed by the Customer bases, contrary to above sub-article, on a difference between calculated stock and actual stock of the inventory, irrespective of the amount and type of inventory taking and the amount of Damage Events causing the difference in inventory.

Exclusion of liability for carriage of Goods by sea and inland waterway transportation. In accordance with this article 12, it is agreed that:

- byrd is not responsible for any fault or neglect on the part of the Carrier's servants or of the ship's company, insofar as the corresponding damage was caused in the course of steering or otherwise operating the ship, or was caused by fire or explosion on board the ship and the measures taken were not predominantly for the benefit of the cargo;
- byrd is not liable for damages and losses arising from (1) an act or omission by the master of the vessel, the pilot or any other person in the service of the vessel, pusher or tower during navigation or in the formation or dissolution of a pushed or towed convoy, unless the act or omission results from an intention to cause damage or from reckless conduct with the knowledge that such damage would probably result, (2) a fire or an explosion on board the vessel, where it is not possible to prove that the fire or explosion resulted from a fault of byrd or the actual Carrier or their servants or agents or a defect of the vessel, or (3) the defects existing prior to the voyage of its vessel or of a rented or chartered vessel if it can prove that such defects could not have been detected prior to the start of the voyage despite due diligence.

Notwithstanding the above, byrd shall under no circumstances be liable to the Customer in the following cases:

- For the natural wear and tear that the Goods may suffer, where applicable, as a result of the course of time.
- When the deterioration, damage, loss or destruction, total or partial, of the deposited Goods occurs due to Force Majeure Event, catastrophes or any other circumstance or act beyond the control of the Parties.
- In the event of damage that existed prior to the goods entering the Delivery Date.

### **Article 13: Exclusions of liability**

Liability exclusions and limitations listed in above articles do not apply when the damage has been caused by intent, gross negligence or willful misconduct of byrd.

### **Article 14: Customer's liability**

The Customer is responsible for the compliance with legal regulations regarding its Goods, such as, but not limited to, import sales taxes, customs matters, Goods piracy, and Goods protection in the broadest sense (including but not limited to Goods safety for children's toys). In case of non-compliance with these regulations on the part of the Customer, byrd shall be exempted from liability.

The liability of the Customer is limited to the value of the damage caused per Damage Event.

The aforementioned liability limitation does not apply in case of personal injuries, such as injury of life, body and health, if the damage was caused by gross negligence or willful intent of the Customer or its vicarious agents, or infringement of material contractual obligations, whereas the latter is limited to predictable and typical damages.

### **Article 15: Notice of claim and time for suit**

Unless notice of loss or damage to the Goods specifying or describing the exact nature of such loss or damage is given in writing to byrd before or at the time of final reception of the Goods to the End Customer or, if the loss or damage is not apparent, within three (3) consecutive days after reception by the End Customer or the date at which the Goods should have been received by the End Customer, the Goods shall be deemed to have been delivered to the End Customer as described in the Agreement. In any event byrd shall be discharged from all liability in respect of no reception, mis-reception, delay, loss or damage unless suit is brought within one (1) year (i) after reception, delivery of the Goods, or the date when the Goods should have been delivered to the End Customer, or (ii) after the date of occurrence of the loss or damage of the Goods, whichever is the earliest.

### **Article 16: Liability's provisions**

Basis of compensation. Without prejudice to any applicable limitation of liability in accordance with the provision set forth in article 12 of these Conditions, the basis of compensation shall be limited to the production or purchase value of the Goods so damaged or lost, whichever is applicable (excluding insurance, custom fees, taxes, freight and retail value). The value of the Goods shall be determined by reference to the commercial invoice or the custom declaration.

In no event will byrd be liable for any indirect, punitive, exemplary, incidental, special, or consequential damages, including without limitation damages for loss of profits, goodwill, use, data or other intangible losses, arising under or relating to this Agreement.

Where compensation is payable, byrd is entitled to deduct therefrom any sum then due or which at any time thereafter may become due to byrd by the Customer under the Agreement between the Parties. byrd also reserves the right to settle any compensation payable to the Customer by way of a credit note.

**Ad Valorem liability.** For the purposes of byrd's liability under this Conditions, and in case the Customer wants to receive a higher compensation than that provided in the Agreement, it shall inform byrd, get byrd's first written approval and separately declare the value of the Goods (by providing relevant commercial invoices) prior the Delivery Date, being understood that extra Charges shall be paid by the Customer to byrd for this purpose. In such a case, the amount of the declared value shall be substituted for the limits laid down in the Agreement. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value. In any event, the compensation shall not exceed the actual commercial value of the Goods.

**Delay.** Notwithstanding the agreed SLA between the Customer and byrd, the Delivery, shipping or other transit times stated in the Offer or in the Agreement are based on information provided by byrd and are not binding. byrd does not undertake that the Goods shall arrive at the End Customer's address at any particular time or to meet any particular market or use and byrd shall in no circumstances whatsoever, and however arising be liable for direct, indirect or consequential loss or damage caused by delay. If notwithstanding the foregoing byrd is held responsible for any delay related to its Services, it is hereby expressly agreed that byrd's liability shall be limited to 10% of the value of the fulfilment costs paid under the Agreement for the delayed Goods, exclusive of shipping costs, local charges and/or demurrage.

#### **Article 17: Suspension of Services**

byrd may suspend the Services at any time and without notice in the following situations:

- Any attack on the byrd's ICT System, notably via a virus, which may alter the capacity, the integrity and/ or the security of the Services; or
- Suspension or restricted access to the Services requested by a judicial or administrative authority.

byrd shall not be liable for any failure to provide the Services in accordance with the Service performance in the event of any suspension in accordance with this article.

#### **Article 18: Force Majeure**

Neither Party shall be responsible for delays or failure to perform any of its obligations herein (other than payment obligations) resulting from acts beyond the reasonable control of such Party. Such acts shall include, but shall not be limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, power failure, earthquakes or other disasters.

Where a Party is delayed or prevented from performing its obligations under the Agreement by a Force Majeure Event:

- The affected Party shall notify the other as soon as reasonably possible with details of the Force Majeure Event, its effect on the relevant obligations and its estimated duration;
- The affected Party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event upon the performance of its obligations under the Agreement; and
- The Parties will enter into discussions with a view to alleviating the effects of the Force Majeure Event and to agreeing such alternative arrangements as may be fair, reasonable and practicable.

If byrd is prevented from, or delayed in, performing any of its obligations under the Agreement by a Force Majeure Event, the Customer may engage a third party to perform all or the relevant affected Services at Customer's costs and expenses until byrd has given the Customer reasonable notice in writing that it is able once again to perform in accordance with the Agreement.

If any Force Majeure Event prevents byrd from fulfilling its obligations under the Agreement for a continuous period of more than thirty (30) Business Days, the Parties may terminate the Agreement in accordance with the provisions of the Agreement.

#### **Article 19: Lien and right of retention**

byrd is entitled to secure its demands arising from the Services according to the legally permitted regulations regarding lien and retention rights as well order for payment.

byrd shall have a lien on the Goods and any documents related thereto and a right to sell the Goods whether privately or by public auction for all Services and Charges and all other charges and expenses whatsoever which are for the account of the Goods or of the Customer and for the costs and expenses of exercising such lien and of such sale and also for all previously unsatisfied debits whatsoever due to him by the Customer.

If the Goods are unclaimed or the Services unpaid during a reasonable time, or whenever in byrd's opinion, the Goods are likely to become deteriorated, decayed or worthless, byrd may, at its discretion without responsibility whatsoever, auction, sell, abandon or otherwise dispose of such Goods solely at the risk and expense of the Customer. Nothing in this article shall prevent byrd from recovering from the Customer the difference between the amount due to him by the Customer and the amount realised by the exercise of the rights given to byrd under this article.

The Customer is entitled to prohibit the exercise of the lien or the disposal of the Goods by granting an equivalent security for its claims, such as a directly enforceable bank guarantee.

#### **Article 20: Relief Event**

Should byrd suffer loss or incur extra expense or its obligations under the Agreement be increased by reason of any delay, variation, interruption or suspension of or to the Services arising from or relating to the following (hereinafter referred to as the "Relief Events"):

- Any act or omission of the Customer, its officers, directors, employees, agents or Subcontractors; or
- Any delay or failure by the Customer to comply with any of its obligations as set out in the Agreement; or

Then, without prejudice to byrd's other rights and remedies:

- byrd shall be granted an extension of time in respect of the performance of the Services to the extent that any Relief Event causes any delay and byrd shall not be in default by reason of such delay; and
- byrd shall be relieved of its obligation to perform the Services to the extent that any Relief Event necessarily prevents or hinders byrd from performing the relevant Services and byrd shall not be in default to the extent that it is so prevented or hindered from performing the Services; and
- The Customer shall indemnify and hold byrd harmless from and against any loss, damage or liability which it may suffer as a result of the Customer failing to comply with its obligations under the Agreement.

### **Article 21: Confidentiality**

The term "Confidential Information" shall include information of any kind transmitted in writing by one Party (hereinafter referred to as the "Disclosing Party") to the other Party (hereinafter the "Receiving Party") and in particular technical, industrial, commercial or organisational knowledge relating to the Disclosing Party including all exchanges between the Parties.

The Receiving Party undertakes:

- to receive, process and maintain the Confidential Information in a confidential manner;
- not to use the Confidential Information, directly or indirectly, for any purpose other than the purpose of the Agreement or for any cooperation between the Parties;
- to limit disclosure of the Confidential Information to those members of its staff who have a genuine need to know and who are bound by an obligation of secrecy in relation to the Confidential Information;
- not to disclose the Confidential Information to any other person, organisation or entity, unless it has received prior written authorization from the Disclosing Party.

The obligations imposed on the Receiving Party do not apply to Confidential Information or portions thereof disclosed by the Disclosing Party for which the Receiving Party can prove:

- it was in the public domain or publicly available at the time of its transmission to the Disclosing Party;
- that it subsequently entered the public domain or became publicly available for reasons other than an act or omission in violation of the Agreement attributable to the Receiving Party;
- they were already in the possession of the Receiving Party;
- that it was obtained in good faith and without undertaking as to confidentiality, from a third party who was authorised to transmit it;
- that it is or was developed independently by the Receiving Party without using the Confidential Information of the Disclosing Party.

These obligations also do not apply to Confidential Information that are required to be disclosed pursuant to a court order or governmental action, provided that the Receiving Party notifies the Disclosing Party in order to give the Disclosing Party an opportunity to seek a protective order.

Confidential Information shall remain the property of the Disclosing Party. Nothing in the Agreement shall be construed as granting the Receiving Party any licence or right to the Confidential Information or any intellectual property rights of the Disclosing Party. The Confidential Information is provided as is. Further, the Receiving Party acknowledges that it is responsible for all conclusions it draws from the Confidential Information and that the Disclosing Party has no liability with respect to the Confidential Information and its use by the Receiving Party. The execution of the Agreement and the exchange of Confidential Information do not imply any obligation on the part of the Parties to enter into a collaboration agreement or any other agreement.

The Receiving Party acknowledges that unauthorised disclosure of Confidential Information may cause irreparable harm to the Disclosing Party for which monetary damages are not sufficient and that the Disclosing Party may be entitled, without waiving other available rights and remedies, to obtain interim or other similar relief from a court of competent jurisdiction. The Receiving Party shall then be liable according to the provisions of applicable law.

### **Article 22: byrd's ICT System**

The Customer shall do its best endeavours to ensure that byrd's ICT System is available as is necessary to perform the Services and interface with the Customer's own IT systems and are capable of receiving and reading any electronic information provided by the Customer and making data available to the Customer in accordance with the interface specification agreed between the Parties.

byrd shall provide the Customer with reasonable notice of any changes, amendments and new installation of software, or computerised equipment which relate to byrd's ICT System, or otherwise relate to the provision of the Services where such changes, amendments or new installations impact on the provision of the Services.

Where in the course of providing Services byrd provides the Customer with the use of or access to byrd's ICT System, the Customer agrees and undertakes to use such ICT (i) in compliance with the terms and conditions of use set out in the Agreement; and (ii) in accordance with byrd's reasonable instructions relating to the use of such ICT to the extent they do not conflict with part (i) of this article.

The ICT System shall remain the property of byrd and/or its Subcontractors and, save as expressly provided for in the Agreement, the Customer has no, and shall not acquire any, right, title or interest in it.

Title or licence to any software or other equipment bought by byrd for the Customer shall not pass to the Customer unless and until byrd has received payment of the purchase price in full.

### **Article 23: Intellectual property rights**

All Background IPRs shall remain vested in that Party, i.e byrd or the Customer.

All Intellectual Property Rights in the trademarks and brands of a Party (being the "Owning Party" for the purposes of this article) shall not be used by the other Party for any purpose whatsoever without the Owning Party's prior written consent and then only if used in compliance with the Owning Party's brand guidelines or other reasonable written instructions.

The Customer shall indemnify and hold byrd harmless against any claim by any third party based upon alleged infringement of any copyright or other intellectual property right which arises as a result of or in relation to:

- The storage or processing or use by byrd of any software, data or Confidential Information supplied by the Customer for use by byrd in connection with the provision of the Services; or
- Anything which the Customer does or supplies; or
- Anything which byrd uses at the request or with the consent of the Customer; or
- The Customer's failure to provide or procure for byrd any rights of use to be provided or procured in accordance with the Agreement.

#### **Article 24: Data protection**

The Parties shall ensure that they shall at all times comply with the provisions and obligations imposed by the General Data Protection Regulation 2016/679 and the data processing addendum as stated in the Agreement, with any subsequent re-enactment or amendment thereof in storing and processing personal data, and all personal data acquired by either Party from the other shall be returned to the disclosing part on request. The Parties hereby acknowledge that performance of a duty imposed by the General Data Protection Regulation 2016/679, the data processing agreement shall not constitute a breach of any obligation in respect of confidentiality which may be owed to the other Party.

#### **Article 25: Sanctions and anti-boycott**

Each Party respectively represents and warrants to the other to best of its knowledge that neither it nor any person or entity that owns or controls it or that it owns and controls is a designated target of any trade, and/or economic and/or financial sanction or sanctions (including without limitation any relevant law, regulation, order, ordinance, resolution, decree, restrictive measure or other requirement having the force of law), adopted by the United States of America, European Union (or its respective member states), United Nations, Switzerland, or the country of origin of the Goods (collectively referred to as "Sanctions"). Each Party respectively agrees and undertakes to the other that it and its agents, contractors, and representatives will fully comply with the requirements of all applicable Sanctions in the performance of the Agreement.

The Customer agrees and undertakes to byrd that the Goods will not directly or indirectly originate from, be provided by or be transported on a vessel or by a carrier owned, flagged, chartered, managed or controlled, directly or indirectly, by any country, person, entity, or body, or for the purpose of any commercial activity, that would cause byrd or a person subject to U.S. jurisdiction to be in violation of applicable Sanctions and/or export or re-export controls. If byrd requires, the Customer shall provide byrd with appropriate documentation for the purposes of verifying the origin of the Goods. byrd has the right to reject any restricted originating country, vessel, transit route, person or entity that would cause the performance of the Agreement to violate any applicable Sanctions or which would cause byrd or its agents, contractors or representatives or a person subject to U.S. jurisdiction to be in violation of or be penalised by any applicable Sanctions.

The Customer agrees and undertakes to byrd that the Goods will not be:

- (i) resold to;
- (ii) disposed of by; or
- (iii) transported on a vessel, or by a carrier, owned, flagged, chartered, managed or controlled by, directly or indirectly to, any country, person or entity, or for the purpose of any commercial activity, which would cause byrd or a person subject to U.S. jurisdiction to be in violation of applicable Sanctions and/or export or re-export controls. If byrd requires, the Customer shall provide byrd with appropriate documentation for the purposes of verifying the final destination of the Goods. byrd has the right to reject any restricted destination, vessel, transit route, person or entity that would cause the performance of the Agreement to violate any applicable Sanctions or which would cause byrd or its agents, contractors, or representatives or a person subject to U.S. jurisdiction to be in violation of or be penalised by any applicable Sanctions.

The Customer further represents and warrants that it will not make payment for the Goods through or via such country, bank, or other entity or body or facility, as would cause byrd or a person subject to U.S. jurisdiction, directly or indirectly, to be in violation of or be penalised by any applicable Sanctions. Should payment for the Goods be impeded, blocked, delayed, or prevented, for longer than three Business Days, by reason of Sanctions or their alleged applicability, the Customer shall use its best endeavours to make payment by alternative lawful means that do not, directly or indirectly, violate any Sanctions, (insofar as they apply or are applied or implemented by banks, governments, or other lawfully-constituted authority whatsoever), unless any such payment problems are a result of byrd's violation of the Sanctions.

The Parties will not cooperate with, agree to, or comply with any terms or requests, including documentary requests, which violate or are otherwise prohibited or penalised under the anti-boycott laws or regulations of the United States of America.

#### **Article 26: Anti-corruption**

Without prejudice to the foregoing, the Parties agree to cooperate with each other's reasonable requests for information and/or documentary evidence to support and/or verify compliance with this article.

Each Party respectively agrees and undertakes to the other that, in connection with the Agreement, it will fully comply with all applicable laws, regulations, orders, ordinances, resolutions, decrees, or restrictive measures and/or other requirements having the force of law of the United States of America, European Union (or its respective member states), United Nations, Switzerland, or the country of origin of the Goods relating to anti-bribery and anti-money laundering (hereinafter referred to as the "Applicable Legislation"). In particular, each Party respectively represents, warrants and undertakes to the other that it shall not, directly or indirectly,

- pay, offer, give or promise to pay or authorise the payment of, any monies or other things of value to, or confer a financial advantage on:
  - a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
  - an officer or employee of a public international organisation;
  - any person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality of such government or of any public international organisation;
  - any political party or official thereof, or any candidate for political office;
  - any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities; or

- engage in other acts or transactions

in each case if this is in violation of or inconsistent with the Applicable Legislation, including, without limitation, the U.S. Foreign Corrupt Practices Act and applicable country legislation implementing (in whole or in part) the OECD convention on combating bribery of foreign public officials in international business transactions.

#### **Article 27: Indemnification**

In relation to any indemnity given in the Agreement related to confidentiality, intellectual property rights, international sanctions, anti-boycott and anti-corruption, the Party receiving the benefit of the indemnity (hereinafter referred to as the "Indemnity Beneficiary") shall:

- notify the other Party (hereinafter referred to as the "Indemnifier") promptly if it receives any notice, demand, letter or other document concerning any claim for which it appears that the Indemnity Beneficiary is, or may become entitled to indemnification under the Agreement;
- not make any admissions nor attempt to settle or compromise any such claim or action without the Indemnifier's written consent (such consent not to be unreasonably withheld or delayed);
- give the Indemnifier the sole conduct of the defence to any such claim or action
- use its best endeavours to mitigate any costs, losses, charges, damages, expenses, claims and demands whatsoever covered by the indemnity; and
- act in accordance with the reasonable instructions of the Indemnifier and give the Indemnifier such assistance as the Indemnifier shall reasonably require in relation to any such claim or action.

The Indemnifier shall reimburse the Indemnity Beneficiary's reasonable costs in complying with this article.

#### **Article 28: Public communication**

The Customer agrees to being named as reference by byrd, including the use of their company logo. This includes, for example, being referenced in conversations with potential new customers, the publication in Offers or on websites, as well as being mentioned in press articles or presentations.

Each Party agrees that all postings, communications or statements on digital and/or social channels made by or on behalf of such Party shall comply with applicable laws, rules, regulations and guidelines and the rules, regulations and policies of each applicable digital and/or social channel.

#### **Article 29: Assignment**

byrd may, on notice to the Customer, assign its rights and obligations under the Agreement to any of its affiliates, subsidiaries and/or branches.

byrd shall have the right to assign its right to receive due payment of any Charges to a third party and byrd shall inform the Customer of the identity of such third party if and when such assignment takes place.

Neither Party may otherwise assign the Agreement without the written consent of the other Party, such consent not to be unreasonably withheld or delayed.

The Agreement and the Conditions are binding upon and shall ensure for the benefit of the Parties' personal representatives, assigns and successors in title.

#### **Article 30: Waiver**

The waiver or modification by either Party of any term or condition of the Agreement and the Conditions shall not void, waive, or modify any other term or condition. The failure of either Party to insist, in any one or more instances, upon the performance of any terms of the Agreement and the Conditions shall not be construed as a waiver or relinquishment of that Party's right to such performance or to future performance of such term.

#### **Article 31: Warranties**

Each Party represents and warrants that: (i) it has all rights necessary to enter into and perform its obligations under the Agreement and that there are no other approvals, releases, permissions or authorizations required from any third party; (ii) the performance of its obligations under the Agreement, including with respect to the Services, any other content and materials provided by or on behalf of such Party and the permitted use thereof by the other Party, as set forth herein: (a) will comply with all applicable laws, rules and regulations (including, without limitation, all labour laws and union or association requirements); (b) will not violate, misappropriate or infringe upon the rights of any third party; and (c) will not give rise to any allegations of libel, slander or similar claims.

The Customer shall indemnify byrd for any loss, damage, cost, claims or expenses (including the consequences of any deterioration of the Services and the cost of rectification thereof) arising as a result of:

- The action, negligence or default of the Customer, its employees, servants or agents;
- Any third party contracts assigned or novated to byrd insofar and to the extent that the action or claim or demand in question relates to any date or period prior to the date of the relevant assignment or novation to byrd or any date or period after the date of the relevant assignment or novation back to the Customer;
- Any legal or other proceedings brought against byrd in a foreign jurisdiction to the extent that byrd's liabilities under such proceedings is greater than it would have been had the matter been determined under the applicable law;
- Any third party claims in respect of the breach of its intellectual property rights by byrd's use of the Customer assets or any other software or Goods supplied by the Customer; and
- Any other claims or demands which arose or were otherwise incurred prior to the date of the Agreement and would have resulted in the loss, damage, cost, claim or expense being borne by the Customer had the Agreement not been entered into.

### **Article 32: Relationship of the Parties**

Nothing in the Agreement shall be taken to create any joint venture, partnership or other similar arrangement; the Parties shall at all times stand in relation to each other as independent contractors. Save as otherwise provided in the Agreement, neither Party is or may hold itself out to any third party as being the agent of the other.

### **Article 32: Entire agreement**

The Customer and byrd agree that the Agreement and the Conditions are the complete and exclusive statement of the agreement between the Parties which supersedes all proposals or prior agreements, oral and written, and all other communications (whether negligently or innocently made) between the Parties relating to its subject matter.

The Customer acknowledges that no reliance is placed on any representation, warranty, statement, undertaking or expression of opinion (whether negligently or innocently made) which is not expressly set out in the Agreement and the Conditions unless fraudulent. The Customer shall not have any right or remedy against byrd arising out of or in connection with any such representation, warranty, statement, undertaking or expression of opinion unless fraudulent.

All warranties, conditions and other terms implied by applicable law are excluded to the fullest extent permitted by law.

Nothing in this article shall limit or exclude any liability or remedy for fraud.

### **Article 34: Severability**

If any provision of the Agreement or the Conditions is or becomes illegal, invalid or unenforceable, in any respect, it shall not affect or impair the legality, validity or enforceability of any other provision of the Agreement or the Conditions; and the Parties will use reasonable endeavours to negotiate in good faith with a view to replacing it with a valid and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the illegal, invalid or unenforceable provision but differing from the replaced provision as little as possible.

If any illegal, invalid or unenforceable provision would be legal, valid or enforceable if some part of it were deleted, such provision shall apply with the minimum modifications necessary to make it legal, valid or enforceable.

### **Article 35: Notices**

Any notice or communication to be given under the terms of the Agreement is sufficiently served if it is personally delivered or sent by registered letter to the other Party at its address at the top of the Agreement or at any other address for notices which the other Party has notified to the sender in writing.

Every notice or communication shall be deemed to have been received at the time of delivery if delivered personally:

- five (5) Business Days later if sent by post to an address in a country different from the sender's,
- two (2) Business Days later if sent by post to an address in the same country as the sender's.
- on the next Business Day after being sent if sent by email (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

If the deemed receipt under this article does not fall within normal working hours on a Business Day, receipt shall be deemed to be on the next Business Day.

### **Article 36: Costs**

Unless otherwise expressly provided in the Agreement each Party shall bear its own costs and expenses incurred in relation to the negotiation, preparation and execution of the Agreement.

### **Article 37: Variation**

The Customer shall not have the power to waive or vary any of the terms of these Conditions, unless such waiver or variation is in writing and is specifically authorised or ratified in writing by byrd.

### **Article 38: Validity**

In the event that anything herein contained in these Conditions is inconsistent with any applicable international Convention or national law which cannot be departed from by private contract, the provisions hereof shall to the extent of such inconsistency but no further be null and void.

### **Article 39: Governing law and disputes resolution**

The Conditions shall be construed in accordance with and governed by the laws of Austria, to the exclusion of the UN convention on contracts for the international sale of goods and the conflict of laws provisions of private international law.

In the event of a dispute between the Parties concerning the performance and/or interpretation of these Conditions, the Parties undertake to seek an amicable solution through direct negotiation and conciliation. In the event that the Parties fail to reach the aforementioned resolution within sixty (60) after the request of either Party to the other Party, the Parties expressly submit to the exclusive jurisdiction of the courts of Vienna, Austria, and waive the right to be judged by any other jurisdiction that they may avail themselves of. Notwithstanding the foregoing, byrd shall also have the option of bringing any claim or action before the court of the place where the defendant has its registered office.