

This document sets out the relationship between us. Such documents can be long and complex but we have tried to keep this to a minimum in two ways:

- We have attempted to use plain English but if there are areas you do not understand; please ask.
- The Terms are divided into Sections: the first applies to all contracts with us (these General Terms) and there are further terms for specific services and licences for software (Specific Terms). Accordingly, some of the Specific Terms may not apply to you.
- The Specific Terms are:
  - Software Licence
  - Gift Aid Terms

## 1. Definitions

1.1. So as to be clear, the following words shall have the following meanings:

**Contract:** these terms, any Specific Terms applying to your order, your order and our Order Confirmation.

**Good Industry Practice:** that degree of skill, care, prudence, foresight, operating systems and practice which would ordinarily be expected of a skilled and experienced supplier engaged in the same or similar type of undertaking as that of the Supplier under similar circumstances.

**Hardware:** all physical items listed in the Order Confirmation.

**Location:** your premises where the Products is to be installed as specified in the Order Confirmation, or, if none, your principal place of business.

**Products:** the Hardware and Software agreed to be purchased by you from us as set out in the Order Confirmation or subsequently requested by you.

**Services:** all services to be supplied by you listed in the Order Confirmation or subsequently requested by you.

**Software:** any software listed in the Order Confirmation.

## 2. The terms that apply to the Contract

- 2.1. These terms and conditions shall apply to all dealings between us and you and take precedence over anything inconsistent in or referred to in your purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2. Only additions to, variations of, exclusions or attempted exclusions of any term of the Contract will be binding on us if they are in writing and signed by a Director.

## 3. Quotations and Orders

- 3.1. A binding contract shall not come into existence between us and you unless and until we receive an Order Confirmation from you, or, if earlier, when we begin to deliver the Products or Services.
- 3.2. The Products and the Services shall be as set out in our Order Confirmation or (if there is no Order Confirmation), our quotation.
- 3.3. Upon our request, you will appoint an individual with authority to bind you and through whom all communication will be passed.
- 3.4. All drawings, descriptive matter, specifications and advertising issued by us are provided for illustrative purposes only and do not form part of the Contract.
- 3.5. We reserve the right to make any changes in the specification of the Products which do not materially affect their quality or performance.
- 3.6. Our employees are not authorised to make any contractually binding promises or representations concerning the Products or the Services. In entering into the Contract, you acknowledge that you do not rely on, and waive any claim for breach of, any such representations which have not been confirmed in writing by a Director or Senior Manager.
- 3.7. Any advice or recommendation given by us or our employees to you or your employees about the storage, application or use of the Products or the Services, which is not confirmed in writing, is followed or acted on entirely at your own risk.

## 4. Payment and Price

- 4.1. All prices shall be as stated in our Order Confirmation. All prices are exclusive of VAT.
- 4.2. Hardware prices are based on the manufacturers price at the date of our Order Confirmation. If we notify you of an increase prior to delivery then you may cancel this Contract by giving notice within 3 working days of being notified of the increase.
- 4.3. We may, by notice to you before delivery, increase the price of any undelivered Products to reflect any change in delivery dates, quantities or specifications requested by you, or any delay caused by you.
- 4.4. Invoices shall be paid, unless otherwise specified, within 30 days of their date, whether or not delivery has taken place or title in the Products has passed to you.
- 4.5. Time for payment of our invoices shall be of the essence of the Contract.
- 4.6. If you do not pay on time, the whole of the balance of the price of the Products and the Services then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to us, we may appropriate any payment made by you to any outstanding sum, charge interest on the amount and suspend all further delivery of Products and the provision of any services.

## 5. Delivery and Installation of Products

- 5.1. We will use our reasonable endeavours to deliver the Products and provide the Services on the date or dates specified in our Order Confirmation, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time. Time is not of the essence as to the delivery of the Products or the provision of the Services.
- 5.2. Delivery shall be made during normal business hours and we may levy additional charges for any deliveries made outside such hours at your request.
- 5.3. You shall be responsible (at your cost) for preparing the Location and the platform (including, in the care of Software, hardware complying with Kudos' recommendations) for the delivery and installation of the Products.
- 5.4. You must ensure that any premises where our employees are required to attend are suitable and comprise a safe place of work for our employees. You must comply with all health and safety regulations in respect of our employees whilst they are on your premises. You must also provide all necessary facilities that we may reasonably request.
- 5.5. Where we are not installing the Products:
  - 5.5.1. We will be responsible for any damage, shortage or loss in transit, provided you notify us (or our carrier, if applicable) within 3 working days of delivery or the proposed delivery date of the Products. Any remedy under this condition shall be limited, at our option, to the replacement or repair of such Products which is proven to our satisfaction to have been lost or damaged in transit; and
  - 5.5.2. You will be deemed to have accepted the Products when you have had 3 working days to inspect it after delivery or, if earlier, when you use the Products other than for test purposes.

## 6. Risk and ownership

- 6.1. You will not own the Products (or be entitled to the relevant licence, in the case of software) until you have paid everything due to us (or if later, on installation).
- 6.2. You grant us and our employees an irrevocable licence at any time to enter any premises where the Products is or may be stored to inspect them, or where your right to possession has terminated, to remove them. All costs incurred by us in repossessing the Products shall be borne by you.
- 6.3. On termination of the Contract for any reason, our rights in this condition shall remain in effect.

## 7. Software licence

- 7.1. If Software is included the Order Confirmation, the price of the Products includes the licence fee for your right to use the Software in accordance with the relevant current Software Support and Licence and any further restrictions included in the Order Confirmation.

## 8. Training

- 8.1. We undertake to provide training in the use of the Products for your staff as set out in our Order Confirmation.
- 8.2. Any additional training required by you will be provided in accordance with our then current scale of charges.

## 9. Ad Hoc Support

- 9.1. We will, on request and subject to availability provide ad hoc support to assist you when required. This can include software configuration, training and general support.
- 9.2. The charges for ad hoc support will be in accordance with our then current scale of charges.

## 10. Warranties

- 10.1. We will carry out our duties in accordance with Good Industry Practice.
- 10.2. In respect of Hardware manufactured, or Software created, by others we will use all reasonable endeavours to pass on the warranties provided by the manufacturer of the same.
- 10.3. In respect of Software not produced by us, we will during the manufacturer's warranty period, provide assistance in communicating with the licensor of the Software regarding faults so far as it is reasonable to do so. In respect of Hardware, we undertake, at its option, to repair or replace Products (other than Software or consumable items) which is found to be defective as a result of faulty materials or workmanship within the manufacturer's warranty period.
- 10.4. The person or persons signing the form of acceptance or delivery note warrant that they have authority to sign the same on your behalf.

## 11. Remedies

- 11.1. We will not be liable for any non-delivery of Products (even if caused by our negligence) unless you notify us in writing of the failure to deliver within 7 days after the scheduled delivery date.
- 11.2. Our liability for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Products.
- 11.3. If our performance of our obligations under the Contract is prevented or delayed by your act or omission (other than by reason of a Force Majeure Event), you shall pay us all reasonable costs, charges or direct losses sustained by it as a result, subject to us notifying you in writing of any such claim it might have against you in this respect.
- 11.4. We will not be liable for a breach of the warranty contained in condition 10 unless:
  - 11.4.1. You give written notice of the defect to us within fourteen days of when you discover or ought to have discovered the defect; and
  - 11.4.2. We are given a reasonable opportunity of examining such Products and you (if asked to do so) return such Products to our place of business at our cost for the examination to take place there.

## 12. Limitation of liability

- 12.1. The following provisions set out our entire liability (including any liability for the acts or omissions of our employees) to you in respect of any breach of the Contract and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.
- 12.2. All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.

- 12.3. Nothing in these conditions excludes or limits our liability for death or personal injury caused by our negligence or fraud or fraudulent misrepresentation.

## 12.4. Subject to condition 12.3:

- 12.4.1. Because we cannot work out the potential harm to your organisation, we will not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and
- 12.4.2. Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to two times the price payable for the Products and Services under condition 4 in the first 12 months.

## 13. Intellectual Property Rights

If we manufacture or modify the Products or incorporate data or other information at your request, you shall indemnify and keep us indemnified against all losses, damages, costs, claims and expenses incurred by us in connection with any claim for infringement of any third party Intellectual Property Rights which results from that request.

## 14. Termination for Cause

- 14.1. Either party may terminate this agreement forthwith on giving notice in writing to the other if one party ceases to carry on business or commits any serious breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 7 days after the receipt of the request in writing from the other to do so, to remedy the breach.
- 14.2. Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

## 15. Dispute Resolution Procedure

- 15.1. If any dispute arises in connection with this agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, meet either in person or by telephone, promptly and in good faith to resolve the dispute.
- 15.2. If the dispute is not resolved in accordance with condition 15.1, the dispute shall be referred to mediation and the mediator shall be appointed by the Centre for Dispute Resolution.

## 16. Force Majeure

- 16.1. We will not be liable to you for any breach of our obligations under this the Contract if such breach is due to an act, event, omission or accident beyond our reasonable control (Force Majeure Event).
- 16.2. If a Force Majeure Event occurs, we will inform you as soon as possible and take all reasonable steps to mitigate the effects of the Force Majeure event and resume performance of its obligations as soon as possible.

## 17. Waiver

- 17.1. A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

## 18. Entire Agreement

- 18.1. The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

18.2. Each party acknowledges that, in entering into this Contract, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.

19. Assignment

You shall not, without our prior written consent (such consent not to be unreasonably withheld), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

20. Notices

Any notice required to be given pursuant to this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in these conditions, or, if to us, by email to [support@kudos-software.co.uk](mailto:support@kudos-software.co.uk) or such other address as may be notified by one party to the other.

21. Governing law and jurisdiction

The Contract is governed by the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.