



# Terms and Conditions of Sale

## 1. Application of Terms and Conditions

The following terms and conditions shall constitute the entire agreement between Kooku Limited ("the Seller") and the purchaser of any goods or services ("the Customer") from the Seller. No contract shall be formed between the Seller and the Customer until the despatch by the Seller to the Customer of the Seller's written acknowledgement of order. By placing an order with the Seller the Customer shall be deemed to have accepted these terms and conditions and any express conditions contained in a quotation provided by the Seller in respect of the goods or services which are the subject of the order. In the event of any inconsistency between these terms and conditions and any express conditions then the express conditions shall prevail. No modifications of these terms and conditions shall have effect unless agreed in writing by the Seller and signed by an authorised representative of each of the parties. These terms and conditions shall not be affected by any documentation or communication from the Customer purporting to give effect to different terms and/or conditions. These terms and conditions shall prevail over any terms and conditions in the Customer's order. No conduct of the Seller shall be deemed to constitute acceptance of any terms put forward by the Customer.

## 2. Invoicing and Payment Terms

Unless otherwise agreed in writing between the Customer and the Seller, the Seller shall be entitled to invoice the Customer for the price of goods on delivery of the goods by the Seller, unless the goods are to be collected by the Customer (or their agent) or the Customer wrongfully fails to take delivery of the good or delays installation, in which event the Seller shall be entitled to invoice the Customer for the price at any time after the Seller has notified the Customer that the goods are ready for collection or (as the case may be) the Seller has tendered delivery of the goods.

Charges for services are payable on completion of the services.

- a) Where credit terms are allowed by the Seller to the Customer, the terms of payment of all invoices issued by the Seller to the customer are strictly 30 days from the date of invoice unless otherwise stated on the invoice. Where credit terms are not given by the Seller, the Customer will be required to pay by pro forma invoice, and only after payment has been received will the Customer's order be processed.
- b) The Seller reserves the right to charge interest on all or any sums not paid within 30 days from the date of invoice at the rate of 2% of the total invoiced amount for every period of 30 days (and pro rata for any part of a period of 30 days whether before or after judgement) from the due date of payment until the date of actual receipt of payment in full by the Seller.
- c) The Customer shall indemnify the Seller against any loss or expense sustained or incurred by the Seller as a result of any change in currency exchange rates or in exchange control or other governmental regulations by reason of or in connection with any failure on the part of the Customer to pay any sum payable hereunder within 30 days of the date of the invoice.
- d) The Seller shall have the right to invoice the Customer for part delivery or provision of goods or services to the Customer notwithstanding the fact that other goods or services are to be delivered or provided to the Customer under the contract.
- e) If the goods or services are cancelled or delayed beyond the original date agreed at time of order acceptance, by customer for convenience – Seller reserves the right to charge for any goods, services and costs already in process which cannot be delayed, deferred or cancelled. This includes hardware ordered or in transit from sub-contractors and suppliers which cannot be delayed or cancelled. Seller also reserves the right to charge for time and travel where additional site visits and work, over and above that originally agreed, are necessary.
- f) The Seller's rights under this paragraph (2) shall be exercisable in addition to all and any other rights the Seller may have under these Terms and Conditions of Sale.

## 3. Prices

All prices quoted/or invoiced for goods are Seller's ex works prices, unless the contrary is specifically stated in writing by the Seller. The Seller's ex works prices will include all customs duties and levies, freight and packing charges, documentation charges, insurance costs and any other costs incurred by the Seller prior to despatch from Seller's works, but where equipment is despatched to a destination outside the United Kingdom, an additional documentation charge will be made to the Customer by the Seller.

- a) All prices quoted in writing or by fax by the Seller to the Customer shall have a validity of 30 days unless otherwise expressly stated on the specific quotation. Thereafter the price must be revalidated in writing or by fax by the Seller to the Customer at the Customer's request
- b) The Seller reserves the right to alter its prices, its published terms of trade and its catalogue and other published material at any time and without prior notice, to Customer.
- c) The Seller reserves the right to alter its quoted prices at any time during the course of a contract for the supply of goods or services in that contract to reflect changes in VAT, Duty and other levies brought about by changes in governmental legislation.
- d) The Seller reserves the right to alter its quoted prices during the course of a contract for the supply of goods or services in that contract to reflect changes in costs brought about by exchange rate fluctuations.
- e) The Seller reserves the right to alter its quoted prices at any time during the course of a contract for the supply of goods or services in that contract to reflect changes in costs brought about by changes in manufacturers' list price.

## 4. Specification

- a) If the goods are to be manufactured or any process is to be applied to the goods by the Seller in accordance with a specification submitted by the Customer, the Customer shall indemnify the Seller against all loss, damages, costs and expenses arising out of or in connection with or paid or agreed to be paid by the Seller in settlement of any claim or infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Customer's specification.
- b) The Seller reserves the right to make any changes in the specification of the goods which are required to conform with any applicable statutory or EC regulatory requirements or, where the goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

## 5. Title and Risk

Risk in the goods shall pass to the Customer when delivery is made to the customer or its agents, subcontractors or carriers except that, where the goods are to be delivered at the Seller's premises, risk in the goods shall pass at the time when the Seller notifies the Customer that the goods are ready for collection.

The Seller and the Customer expressly agree that until the Seller has been paid in full for all goods and services supplied or provided to the Customer, the goods shall be and remain the property of the Seller notwithstanding delivery of the goods to the Customer. Until such time as full payment has been made by the Customer to the Seller, the Customer shall be deemed to be holding the goods as trustee for the Seller, and shall keep the goods separate from those of the Customer and third parties and properly stored, protected and insured. Until such time as the property in the goods passes to the Customer the Seller shall be entitled at any time to require the Customer to deliver up the goods to the Seller and, if the Customer fails to do so forthwith, to enter upon the premises of the Customer and repossess the goods.

#### 6. Insurance of Goods in Transit

The Seller will insure the goods for the total invoice price to the Customer if transport is effected by the Seller or its agent. If the Customer arranges transport either directly or through its agent the Customer must insure the goods at the total invoice price to the Customer of the goods against loss or damage on any account whatsoever. Where the Seller insures goods the liability of the Seller shall be absolutely limited to the amount if any received by the Seller under such insurance from its insurers, from which a reasonable deduction may be made for administrative expenses.

#### 7. Delivery Dates

Delivery dates stated by the Seller to the Customer are estimates given in good faith but in no circumstances whatsoever shall the Seller be liable to the Customer or any third party for any delay in delivery howsoever caused or any losses, damages, costs and expenses resulting therefrom or in connection therewith.

#### 8. Acceptance

Acceptance of delivery of the goods by the Customer or its agent shall be conclusive evidence that the goods were delivered in good operating condition and in all respects in accordance with the contract under which they were supplied and that the goods were fit for any purpose for which they may be required by the Customer. Shortage claims or claims that goods are defective or otherwise not in accordance with the contract, will only be considered if the Seller receives written notification thereof within three days of delivery failing which no liability will be accepted.

#### 9. Warranty

Subject to the conditions set out below the Seller warrants that the goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship:

- a) The Seller shall be under no liability in respect of any defect in the goods arising from any drawing, design or specification supplied by the Customer.
- b) The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the goods without the Seller's approval.
- c) Notwithstanding the terms of sub-clauses (a) and (b) above, the Seller's liability in respect of all goods supplied by it but manufactured by third parties shall be limited to such warranty as shall be provided by the manufacturer to the Seller and the Seller shall have no further or larger responsibility whatsoever.
- d) Where goods are returned by the Customer to the Seller or the Seller's agent under warranty or other repair or calibration the Customer shall be responsible for all costs (including freight, duties and insurance) of delivering the goods to the Seller or the Seller's agent and/or at the Seller's option the manufacturer and the return of the goods thereafter to the Customer and the Customer shall be liable for the cost of repair of the goods if the goods are not under warranty.
- e) All other warranties or representations in respect of the goods expressed or implied by or under statute or custom or trade usage are hereby expressly excluded.

#### 10. Liability

The Seller's entire liability in respect of any claim for loss or damage arising from the supply of goods or services pursuant to this agreement (including the proper use of goods by the Customer) shall be limited to sum's recovered under the Seller's liability insurance and without prejudice to the foregoing, the Seller shall not be liable for any consequential or indirect loss or damage (including, without limitation, loss of profits and goodwill).

#### 11. Provision of Services

- a) Where the Seller provides personnel to the Customer, the Customer shall not, without the prior written consent of the Seller, use such personnel to undertake any work which, in the Seller's opinion, is inappropriate to their qualifications and experience, or which is not directly connected with the services.
- b) If services are to be provided for an indeterminate period, then they will continue until terminated by either party giving to the other thirty days' prior written notice.
- c) The Customer shall be deemed to have been granted a revocable licence to use any programs or related materials supplied by the Seller in performing services for the period during which the services are performed only. This licence shall not entitle the Customer to grant any sub-licence or to provide these programs or materials for use or copying by any third party.

d) The Seller warrants that all services will be performed with reasonable skill and care. The Seller will not be liable for breach of this warranty unless the Customer reports the breach to the Seller within 1 month of completion of the services.

e) The Customer agrees that during a period of 6 months after completion or termination of any service provided by the Seller, it will not solicit the employment or services of any employee of the Seller who has been working in connection with the provision of services to the Customer.

#### 12. Force Majeure

The Seller shall not be liable for any losses, damages, costs or expenses arising out of any delay or failure in the performance of any of its obligation hereunder if the delay or failure is due to causes outside its reasonable control including but not limited to events caused by extreme weather conditions, fire, power failures or strikes.

#### 13. Descriptive Leaflets, Catalogues and Illustrations

All descriptive leaflets, catalogues, illustrations, specifications, drawings and other particulars issued by the Seller are approximate only and shall not form part of any contract between the Seller and the Customer unless specifically stated in writing by the Seller.

#### 14. Representation by Seller's Employees

The Seller's employees or agents are not authorised to make any representations concerning the goods or services provided under the contract unless confirmed by the Seller in writing. In entering into the contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed.

#### 15. Insolvency

If the Customer shall become insolvent or go into liquidation or voluntary arrangement or if a receiver or administrator shall be appointed over the whole or any part of its undertaking, property or assets or a winding up petition is presented against the Customer (or any parent company of the Customer) or in the event that the Customer is not a company incorporated in England, or any events analogous to those specified above shall occur in relation to the Customer, then and in any such events all sums due or becoming due by the Customer to the Seller shall forthwith and without notice immediately become due and payable in full. In addition, the Seller shall have the right at its discretion to decline to perform any contract then not performed by the Seller in whole or in part without prejudice to all and any other rights it may have under these Terms and Conditions of Sale.

#### 16. Copyright

Copyright in all drawings, specifications, designs, descriptions and documents, programs and related materials issued by the Seller to the Customer or other third parties shall be and remain the property of the Seller and no copies shall be taken without the prior written consent of the Seller.

#### 17. Licence Grant

The Seller hereby grants to the Customer a non-exclusive, non-transferrable revocable licence to use any programs supplied by the Seller for internal purposes only for the duration of the services provided by the Seller and on the equipment identified by the Seller. Any other use is prohibited. Such programs may not be used to provide a service to a third party without the prior written agreement of the Seller and subject to such extended use charges as the Seller may require.

#### 18. General

- a) Any notice required or permitted to be given by either party to the other under these Terms and Conditions of Sale shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- b) No waiver by the Seller of any breach of the contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- c) If any of the provisions of these Terms and Conditions of Sale is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions of Sale and the remainder of the provision in question shall not be affected.

These Terms and Conditions of Sale shall be governed and construed in all respects in accordance with the Laws of England. The Customer hereby submits to the exclusive jurisdiction of the English Courts in relation to these Terms and Conditions of Sale and all matters falling to be determined hereunder or in connection herewith.