



Kick

Terms and Conditions

Terms & Conditions

Kick ICT Group Ltd Standard Terms & Conditions of Sale

This document sets out the Terms and Conditions under which Kick ICT Group Ltd, company number SC503166 and whose registered office is Solais House, 19 Phoenix Crescent, Strathclyde Business Park, ML4 3NJ ("the Company") will supply hardware, software and services.

1. Third Party Products and Services

1.1. In the event that the Company is supplying software and / or hardware manufactured by a Third Party, then such software will be licensed to the customer in accordance with the relevant Third Party's terms and conditions or end user license agreement.

1.2. In the event that Hardware is supplied to the customer, it will include the relevant manufacturer's warranty.

1.3. Kick will comply with WEEE (Waste electrical and electronic equipment) legislation. In the event that the Customer wishes to dispose of any such equipment supplied by the Company either now or in the future, the Company should be contacted and it will provide information on how the equipment can be disposed of or recycled in line with legislation.

2. Price

2.1. Prices quoted by the Company, either verbally or in any document supplied, are exclusive of VAT, and are valid for 30 days, subject to point 2.3 below.

2.2. The price quoted for any Project is the price for the supply of all of the goods and services quoted as part of that Project. In the event that the Customer reschedules or cancels any part of the Project, the Company reserves the right to levy a one off Price Adjustment Charge on the basis that the discounts and prices quoted were based on the volume of goods and services and delivery originally scheduled.

2.3. The Company reserves the right to revise without notice the price or specification of any Item contained in any proposal or quotation in the event of products being withdrawn, replaced, or the price or specification being changed by the Company's suppliers, or in any other circumstances where it is deemed necessary by the Company acting reasonably.

2.4. All prices quoted for services exclude proper and reasonable expenses unless specifically indicated otherwise. These expenses will be re-

charged to the customer at cost. Expenses include (without limitation) travel, accommodation, subsistence and carriage.

2.5. In the event that the price for services is quoted inclusive of expenses then, notwithstanding this, should a situation arise where, at the request of the Customer, service days have to be scheduled at short notice or service days are cancelled or rescheduled then such additional expense incurred by Kick as a result of this will be invoiced to the Customer at cost.

2.6. Any discounts provided on standard Company service rates as part of the quotation for the Project apply only to services delivered as part of the Project within twelve months of the original order. For services supplied out with the Project and for all services delivered more than twelve months from the date of the order, standard Company service rates will apply.

2.7. The Company reserves the right to charge interest on late payments.

3. Delivery and Service

3.1. Delivery timescale for hardware and software is normally between two and three weeks from date of order/lease acceptance, unless stated otherwise. Services will be scheduled on receipt of order, deposit payment and completion of a PQIS Terms of Reference (see PQIS 10 Step Plan information – Professional Quality Implementation Services), where applicable. The Company will use all reasonable efforts to ensure that agreed delivery timescales are met, however, the time of delivery is not of the essence. All software ordered for a Project will be delivered at the start of a Project.

3.2. Software maintenance shall commence on delivery of software to the customer unless a different date is agreed with the original Third Party supplier of the software and detailed in the Terms of Reference document governing the Project, and in any event not later than 12 months after the date of the original order. Software Maintenance shall be governed by the terms and conditions of a separate Maintenance Agreement.

3.3. Hardware maintenance shall commence on delivery of hardware to the customer and shall be governed by the terms and conditions of a separate Maintenance Agreement.

3.4. If this proposal is for a networked solution, cabling is normally estimated and subject to a site survey if the customer proceeds with an order. A firm price will be provided after the site survey.

3.5. Installations are normally carried out between the hours of 9.00am and 5.30pm Monday to Friday, excluding bank holidays. Installations out-with these hours may be subject to an additional charge, which will be notified to the customer prior to carrying out any work.

3.6. Service desk telephone support is offered as a supplement to a

fully trained operator and not as a substitute to recommended training. If support calls are being logged for issues which the Company, acting reasonably, deem to be driven by lack of training, the Company may charge extra for support until any recommended training is completed. The customer for remote support purposes should provide suitable remote access facilities.

4. Invoicing and Payment

4.1. Software: A non-refundable deposit of 50% of the Software Application price is due with order. The remaining 50% of the Software Application price will be invoiced on delivery of the software to the customer, payment being due within 30 days from the date of invoice.

4.2. Software Maintenance: Annual Software Maintenance will commence on the date of delivery of software to the customer and payment shall be collected annually in advance by direct debit.

4.3. Services excluding Maintenance Services will be invoiced fortnightly on an as used basis, payment being within 30 days of the date of invoice. In the event that the customer delays the project, which causes any of the PQIS milestone steps (see PQIS 10 Step Plan information – Professional Quality Implementation Services) to be missed by more than one month (by reference to the agreed Terms of Reference and Project Plan), the Company reserves the right to invoice all outstanding services for the project. Payment for these services shall be due within 30 days of the date of invoice.

4.4. Hardware: A minimum non-refundable deposit of 50% of the Hardware price is due with order. The remaining balance of the Hardware price will be invoiced on delivery of hardware to the customer. Payment will be due within 30 days of the date of invoice.

4.5. Hardware Maintenance: Annual hardware maintenance will commence on the date of delivery of hardware to the customer and payment shall be collected annually in advance by direct debit.

4.6. Leasing: In the event that the customer enters into a lease for any of the hardware, software or services supplied by the Company, then the Company may require payment of the above-mentioned deposits, which will be refunded to the customer when the Company receives payment in full for all hardware, software and services supplied from the finance leasing company. Please note that if leasing is chosen as the customer's preferred payment method, the Company cannot order any items until it receives a letter of acceptance from the finance leasing company.

4.7. With regard to all payment terms, time is considered to be of the essence.

5. Warranties

5.1. Other than as provided for in the Third Party end user license agreements in respect of software supplied by the Company or in respect of manufacturer's warranties in respect of hardware supplied by the Company, no warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, merchantability or fitness for purpose of the software, hardware or services is given or assumed by the Company and all such warranties, conditions, undertakings and terms are hereby excluded.

6. Limitation of Liability

6.1. Except in the case of death or personal injury, the Company's liability to the customer for any cause whatsoever (whether in the form of a refund, the additional cost of remedial services or otherwise) shall be limited to an amount not greater than the price of the hardware, software and services supplied.

6.2. In no event will the Company be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of the Company whether such damages were reasonably foreseeable or actually foreseen.

7. Title and Copyright

7.1. The copyright in the software is owned by the proprietary owner and is supplied by the Company under licence from the proprietary owner. Under no circumstances does the use of such software transfer copyright to the customer.

7.2. Title of all hardware will remain with the Company until payment is received in full for such hardware.

7.3. All software supplied is provided under license from the manufacturer. No title passes to any software under any circumstances.

7.4. Risk in all Media will pass to the customer upon delivery. Title to any Media will pass to the customer when the Company has been paid for the related software and associated documentation in full.

8. Additional Charges

8.1. If this proposal includes the implementation of any of the customer's existing computer hardware/software, the Company would recommend, prior to the order being placed, that a chargeable engineering site

survey be carried out to ensure compatibility of these items with the proposal. The price of a site survey will be agreed by both parties prior to any survey being carried out. If the customer elects not to have this survey, the Company can only attempt to install these items on a reasonable endeavours basis. Time spent on unsuccessful installation of these items will be deducted from Services time purchased.

8.2. If, during installation, the Company discovers viruses' resident on the customer's existing hardware/software, which the customer requires the Company to integrate, then the Company will charge for any anti-virus software required and for any time spent in attempting to remove these viruses.

9. Termination

9.1. The Company or the customer may terminate a purchase order for the supply of hardware, software or services if:

9.1.1. the other party commits any material or persistent breach of any of the Terms or Conditions detailed in this document in relation to that purchase order and (in the case of a breach capable of being remedied) shall have failed, within thirty (30) days after the receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate); or

9.1.2. the other party makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes subject to an administration order or goes into liquidation otherwise than for the purpose of amalgamation or reconstruction; or

9.1.3. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of that other party; or

9.1.4. that other party ceases, or threatens to cease, to carry on business; or

9.1.5. either party reasonably apprehends that any of the events mentioned above is about to occur in relation to the other party and notifies the other party accordingly.

9.2. Termination of a purchase order or part thereof shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuation in force of any provision of these Terms and Conditions which expressly or by implication is intended to come into or continue in force on or after such termination.

10. Rescheduled Service Days or Delay

10.1. Cancellation charges for service days rescheduled at short

notice are as follows:

- 21 days or more notice 0%
- Between 14 and 20 days 25%
- Between 7 and 13 days 50%
- Less than 7 days 100%

In addition, all expenses incurred by the Company in relation to the cancelled days will be chargeable to the customer at cost. For the avoidance of doubt, full cost will be chargeable even if a fixed expenses rate had been previously agreed. The Company reserves the right to invoice in full any services ordered, which have not been scheduled by the customer for delivery within 12 months from date of order. 30-day payment terms will apply.

10.2. If the Company purchases goods to comply with an agreed delivery date and the customer subsequently defers this date, the Company will be entitled to payment for these goods on the original scheduled date.

11. Confidentiality

11.1. All written information and data expressed to, be confidential and made available by one party to the other will be treated as confidential, and each party undertakes to treat such confidential information with the same care as it would reasonably treat it's own confidential information.

12. Severability

12.1. If any provision of these Terms and Conditions is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these Terms and Conditions and rendered ineffective as far as possible without modifying or affecting the validity and enforceability of the remaining provisions of these Terms and Conditions.

13. Precedence and Variation

13.1. These Terms and Conditions take precedence over all other terms and conditions exchanged between the Company and the customer regardless of when such other terms and conditions may have been exchanged.

13.2. These Terms and Conditions of sale together with any relevant software and / or hardware manufacturer's terms and conditions and / or end user licence agreements constitute the entire agreement between the Company and

the customer relating to the supply of hardware, software and services (excluding Maintenance).

13.3. No variation or amendment to these Terms and Conditions shall be effective unless agreed in writing and signed by a Director of the Company.

13.4. Any proper and reasonable legal expenses which the Company may incur as a result of the customer requesting a variation to the Company's standard Terms and Conditions shall be invoiced in full to the customer and payment shall be due on receipt of invoice.

14. Force Majeure

Neither party shall be liable to the other if its performance of its obligations under these Terms and Conditions (other than an obligation to pay money) is prevented or hindered due to any circumstances outside its control.