



## TERMS & CONDITIONS OF BUSINESS

### 1 Interpretation

#### 1.1 In these conditions:

**"Company"** means EKal Solutions Ltd Registered Number 12890921.

**"Conditions"** means the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Customer.

**"Consumer"** means an individual who is buying the Goods from the Company wholly or mainly for personal use (and not for use in connection with their trade, business, craft or profession).

**"Contract"** means the contract for the purchase and/or sale and/or hire of the Goods and/or the supply of Services.

**"Customer"** means the person who accepts a quotation of the Company for the sale or hire of the Goods and/or Services or whose Order for the Goods and/or Services is accepted by the Company.

**"Customer's Agent"** means the person(s) acting on behalf of the Customer from time to time (including the Customer's client, sub-contractors or representatives).

**"Ethical Trading Guidelines"** means the Ethical Trading Initiative Base Code.

**"Goods"** means the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions being any goods which the Company may supply to the Customer from time to time in accordance with these Conditions including Hire Goods.

**"Hire Goods"** means any machine, software, article, and/or device together with any accessories specified in a Contract which are hired to the Customer.

**"Order"** means the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Company's quotation, or overleaf, as the case may be.

**"Sale Confirmation"** means the document issued by the Company which stipulates and confirms the Order for the Goods and/or Services and the price payable.

**"Services"** means the services carried out by the Company in accordance with the Purchase order, Statement of works, and these Conditions.

**"Writing"** includes e-mail, facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience sake and shall not affect their interpretation.



## **2 Basis of the Sale**

- 2.1 The Company shall sell or hire to the Customer and the Customer shall purchase or hire the Goods and/or Services in accordance with any written quotation of the Company which is accepted by the Customer, or any written Order of the Customer which is accepted by the Company, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such Order is made or purported to be made, by the Customer.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Customer and the Company.

## **3 Orders and Specification**

- 3.1 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information relating to the Goods and/or Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.2 The quantity, quality and description of and any specification for the Goods and/or Services shall be those set out in the Company's quotation (if accepted by the Customer) or the Customer's Order (if accepted by the Company).
- 3.3 Any samples, drawings, images, descriptive matter, advertising or other details about the Goods supplied by the Company, its employees, in any brochure, catalogue, or other media or on our website are for information purposes only and for the purpose of giving an approximate idea of the Goods only. They shall not form part of the Contract or have any contractual force unless expressly set out in the Order.
- 3.4 The Company reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform to any applicable statutory or EU requirements.

## **4 Price of the Goods and/or Services**

- 4.1 The price of the Goods and/or Services shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's Sale Confirmation on the date of acceptance of the Order.
- 4.2 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 4.3 The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Company. If the rate of the value added tax changes between the date of the Customer's Order and the date of delivery, the Company will adjust the value added tax paid by the Customer, unless the Customer has already paid for the Goods or services in full before the change in the value added tax takes effect.



## **5 Terms of Payment**

- 5.1 The Customer shall pay the price of the Goods and/or Services in accordance with the Statement of Works or Purchase Order.
- 5.2 The Company shall be entitled to render an invoice to the Customer in respect of the price or hire of the Goods on or at any time after delivery of the Goods and in the case of the price of the Services, at any time on or after completion of the Services or as agreed in Statement of Work or Purchase Order
- 5.3 The Customer shall pay the price of the Goods and/or Services within 30 days of the date of the Company's invoice, and the Company shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract.
- 5.4 If the Customer fails to make any payment on the due date, then without prejudice to any other right or remedy available to the Company the Company shall be entitled to: -
  - 5.4.1 cancel the Contract or suspend any further deliveries of Goods to the Customer or cease performing any Services for the Customer;
  - 5.4.2 appropriate any payment made by the Customer to such of the Goods or Services (or the goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and
  - 5.4.3 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 4% per annum above HSBC Bank's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.5 Notwithstanding any other provisions under the Contract, all payments payable to the Company under the Contract shall become due and payable immediately upon termination of the Contract.

## **6 Set-Off**

- 6.1 The Company may at any time (without notice to the Customer) set off any liability of the Customer to the Company against any liability of the Company to the Customer, whether any such liability is present or future, liquidated or unliquidated, under this agreement or not and irrespective of the currency of its denomination. Any exercise by the Company of its rights under this Condition shall be without prejudice to any other rights or remedies available to it under the Contract or otherwise.
- 6.2 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law.

## **7 Delivery of Goods**

- 7.1 Delivery of the Goods shall be deemed to have been when the goods are dispatched physically or electronically by the company to the customer's designated delivery address.
- 7.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in writing. The Company shall not be liable for any



loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods. Further, the Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by an event listed in clause 11.9 or the Customer's failure to provide the Company with adequate access or delivery instructions or any other instructions that are relevant to the supply of the Goods. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.

7.3 If the Customer fails to take delivery of the Goods then, except where such failure or delay is caused by an event listed at clause 11.9 or the Company's failure to comply with its obligations under the Contract:

- 7.3.1 delivery of the Goods shall be deemed to have been completed at 9.00 a.m. on the day on which the Company attempted delivery to the Customer or where the Customer has indicated that it will collect the Goods from the Company's premises on the 5th Business Day after the day on which the Company notified you that the Goods were ready; and
- 7.3.2 the Company shall have the right, but not the obligation, to store the Goods until delivery takes place, and charge for all related costs and expenses (including insurance).
- 7.3.3 The Goods shall remain available for collection from the Company's warehouse for a further 10 Business Days or the Company may, in its discretion, agree to attempt delivery of the Goods again. If 10 Business Days after the day on which the Company notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them or arranged a new delivery date, the Company may resell or otherwise dispose of part or all of the Goods.

## 8 Performance of Services

8.1 The Company shall endeavour to perform the Services in accordance with any timescales agreed between the Company and the Customer but time of performance of the Services shall not be of the essence of the Contract.

8.2 The Customer shall: -

- 8.2.1 provide the Company, its employees, agents, consultants or sub-contractors with access to the Customer's systems, premises, office accommodation and other facilities as reasonably required by the Company to provide the Services.
- 8.2.2 provide the Company with such information and material which may reasonably be required by the Company to supply the Services, and ensure that such information is accurate in all material respects.
- 8.2.3 obtain and maintain all necessary licenses, permissions and consents which may be required for the Services before the date on which the Services are to start.
- 8.2.4 keep and maintain all materials, equipment, documents and other property of the Company (**Company Materials**) at the Customer's premises in safe custody at its own risk;
- 8.2.5 obtain further information from the Company if the Goods are to be used for any purpose other than the normal commercial use or for any purpose which is not covered by any warranty which applies to it; and
- 8.2.6 not use the Goods for any purpose which is prohibited by law or to facilitate a breach of law.



8.3 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

8.3.1 the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;

8.3.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 8.3; and

8.4 the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

## 9 Risk

9.1 Risk of damage to or loss of the Goods shall pass to the Customer: -

9.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Goods leave the Company's premises; or

9.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time when the Goods are unloaded at the Customer's designated delivery address.

## 10 Title of Goods (Sale)

10.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title to the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods; and all other sums which are or which become due to the Company from the Customer on any account.

10.2 Until title to the Goods has passed to the Customer, the Customer shall:

10.2.1 hold the Goods on a fiduciary basis as the Company's bailee;

10.2.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

10.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

10.2.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full replacement value against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company;

10.2.5 not sell, offer to sell, assign, underlet, pledge, mortgage, charge, encumber or part with possession of the Goods or any interest in the Goods nor create or allow to be created over the Goods any lien; and

10.2.6 notify the Company immediately if the customer becomes subject to any insolvency events (listed at clause 12).



- 10.3 The Customer may resell the Goods before title has passed to it solely on the following conditions:
- 10.3.1 any sale shall be effected in the ordinary course of the Customer's business at full market value;
  - 10.3.2 any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale; and
  - 10.3.3 the Customer shall ensure (and provide evidence to the Company) that such sale is subject to this Condition 10 and the sub-purchaser is aware of the Company's ownership of the Goods, and that the signed contract between the Customer and the sub-purchaser contains a valid retention of title clause on the same terms as this Condition 10 (proof of such to be provided to the Company).
- 10.4 The Customer's right to possession of the Goods shall terminate immediately if any of the events as set out in Condition 11.9 occurs.
- 10.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 10.6 The Customer grants the Company, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 10.7 Where the Company is unable to determine whether any Goods are the Goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all Goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.

## **11 Warranties and Liability**

- 11.1 Subject to the Conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 30 days from the date of delivery and the Company further warrants that any Services shall be performed with reasonable skill and care.
- 11.2 The above warranties are given by the Company subject to the following Conditions:
- 11.2.1 the Company shall be under no liability in respect of the goods differing due to changes made to comply with statutory/regulatory standards;
  - 11.2.2 the Company shall be under no liability in respect of any defect arising from any drawing, design or specification supplied by the Customer;
  - 11.2.3 the Company shall be under no liability in respect of consumables contained within goods.;
  - 11.2.4 the Company shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval; and
  - 11.2.5 the Company shall be under no liability in respect of any defects or faults of the Customer's systems in conjunction with which the Goods are used or in respect of any problems which are





due to the individual workings of the Customer's systems in conjunction with which Goods are used; and

- 11.2.6 the Company shall be under no liability under the above warranties (or any other warranty, condition or guarantee) if the total price for the Goods and/or any related Services has not been paid by the due date for payment.
- 11.3 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 30 days from the date of delivery. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract..
- 11.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall have the right to reasonably examine the goods and require the customer to return such goods to the Company's place of business at the Customer's cost.
- 11.5 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Customer.
- 11.6 Insofar as the Goods comprise or contain equipment or components which were not manufactured or produced by the Company, the Customer shall be entitled only to such warranty or other benefit as the Company has received from the manufacturer.
- 11.7 It should be noted that where any valid claim is notified by the Customer to the Company based upon any failure by the Company to perform the Services with reasonable skill and care (such claim to be notified to the Company within 7 days from the discovery by the Customer of circumstances giving rise to a valid claim in respect thereof) then the Company shall at its expense take such action as it considers necessary to remedy any such failure but the Company shall have no further liability to the Customer in respect thereof.
- 11.8 Except in respect of death or personal injury caused by the Company's negligence, the Company shall under no circumstance whatever be liable to the Customer whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or Services or their use or resale by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods and/or the Services (as the case may be) or the proceeds of any insurance policy received by the Company in respect of such liability (whichever is the greater), except as expressly provided in these Conditions.



11.9 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control: -

Act of God, explosion, flood, tempest, fire or accident;

11.9.1 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

11.9.2 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

11.9.3 import or export regulations or embargoes;

11.9.4 Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

11.9.5 Difficulties in obtaining raw materials, labour fuel, parts or machinery;

11.9.6 Power failure or breakdown in machinery.

11.10 Unless otherwise agreed in writing, with acceptance of these goods, the Customer accepts the transfer of the WEEE end of life obligations.

11.11 The Customer shall indemnify the Company on demand and keep the Company indemnified from and against all actions, damage, losses, costs (including legal costs), expenses, demands or liabilities arising out of or in connection with the assembly or incorporation by the Customer of the Goods into any system, design, or equipment of the Customer's or any third party.

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## **12 Insolvency of Customer and Termination**

12.1 If the Company becomes subject to any of the events lists in clause 12.2 below or the Company reasonably believes that the Customer is about to become subject to any of them and the Company notified the Customer accordingly, then without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries under the Contract or under any other contract between the Company and the Customer without incurring any liability to the Customer, and all outstanding sums in respect of the Goods delivered to the Customer shall become immediately due.

12.2 The Company may terminate the Contract if: -

- 12.2.1 the Customer commits a material or persistent breach of the Contract or these Conditions and fails to remedy it to the Company's satisfaction within 14 calendar days of written notice being given to the Customer by the Company to do so; or
- 12.2.2 the Customer become insolvent, are unable to pay debts as they fall due or suspend or threaten to suspend payment of its debts or (being a partnership) have any partner to whom any of these circumstances apply; or
- 12.2.3 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 12.2.4 (being a company or limited liability partnership) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer; or
- 12.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 10 Business Days; or
- 12.2.6 (being a company or limited liability partnership) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or



- 12.2.7 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver or administrative receiver is appointed over the Customer's assets; or
- 12.2.8 any event occurs, or proceedings are taken, with respect to the Customer in any jurisdiction to which the subject and effect are equivalent or similar to any of the events mentioned in 12.2.2-12.2.7 (inclusive); or
- 12.2.9 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- 12.2.10 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.3 If Condition 12.2 applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for and Services have been provided but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12.4 Termination of the Contract, however arising shall not affect either or the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

### **13 General**

13.1 The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

13.2 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

13.3 Any notice required or permitted to be given by either party to the other under these Conditions 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.

13.4 No waiver by the Company 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.

13.5 If any provision of these Conditions is held by any competent authority to be invalid, illegal or unenforceable in whole or in part, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

13.6 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

13.7 The Customer agrees that it shall at all times comply with all applicable laws and ethical trading



guidelines, including but not limited to ensuring that the Customer and the Customer's Agent shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 and the Modern Slavery Act 2015 (as may be amended from time to time).

- 13.8 Nothing in these Conditions confers on anyone other than the parties to it any right to enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 13.9 In the event of a dispute between the parties which has not been resolved using normal channels, the Customer can use the EU Commission Online Dispute Resolution (ODR) website to register a dispute, at the following address: <http://ec.europa.eu/consumers/odr/>.
- 13.10 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales, and the Customer agrees to submit to the exclusive jurisdiction of the courts of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims). Where the Customer is a Consumer who is a resident of Northern Ireland, the Consumer may bring proceedings in Northern Ireland. Where the Customer is a Consumer who is a resident of Scotland, the Consumer may also bring proceedings in Scotland.