



Terms of Trade

1. Definitions

In these terms of trade:

'Account' means the Customer's account with the Vendor.

'Customer' means you or any person acting with ostensible authority of the Customer.

'Goods' means goods and/or services supplied by the Vendor to the Customer.

'Order' or 'Orders' means the order or orders of the Customer to the Vendor to supply goods.

'Vendor' means KISS Systems Limited.

2. Orders

Orders will be on such forms as the Vendor may require from time to time.

3. Acceptance

Each Order shall constitute acceptance by the Customer of these terms and conditions of trade.

4. Prices

Prices, minimum fees and travelling costs are subject to change without notice. All Orders will be charged at prices prevailing at the date of delivery of the goods. All pricing is GST exclusive unless otherwise stated.

Recurring Charges have a 30 day written notice to terminate services.

5. Quotes

Quotes are GST exclusive, unless specified. Prices, brands and models are subject to change without notice, variations to quote may apply upon installation, the vendor shall not be liable for change in variations, all

variations will be presented after installation (if applicable), while the vendor takes in consideration for most scenarios while quoting, it can be impossible to quote 100% accurately.

6. Delivery

Where the Order makes provision for delivery then delivery shall take place at the place stated in the Order. If no place is indicated then delivery shall be made at the Customer's premises. The Vendor shall not be liable for failure to deliver or any delay in delivery.

7. Terms of Payment

(a) Unless otherwise arranged, payment for all Goods and services shall be made no later than 20th of the month following supply.

(b) New customers are required to pay in full upon invoice of goods.

(c) A deposit maybe required the amount is at the vendor's discretion.

(d) Monthly accounts are due for payment no later than 20th of month following invoiced date.

(e) Interest will accrue on all amounts overdue at the rate of 10% per month and will be calculated on a day by day basis until payment is made in full.

(f) All costs of or incurred by the Vendor as a result of a default by the Customer

including but not limited to debt collections costs and legal costs as between solicitor and client shall be payable by the Customer.

(g) If the Customer defaults in any payment or commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or if a receiver is appointed for all or any assets of the Customer, the Vendor may cancel any Order without prejudice to any other rights it may have and payment for all completed Orders shall immediately become due.

8. Risk

From the time of dispatch to the Customer by the Vendor, risk in all Goods supplied shall pass to the Customer and any loss, damage or deterioration to the Goods shall be borne by the Customer. The Customer shall notwithstanding any loss, damage or deterioration to the Goods remain liable to pay for the Goods.

9. Ownership/General Lien

(a) The Vendor shall retain ownership of all Goods supplied until it receives payment in full of all amounts owing by the Customer for all Orders.

(b) If any of the Goods are incorporated in or used as material for other goods before payment is made ownership in the whole of the other goods shall be and remain with the Vendor until payment is made.

The Vendor's Security Interest in the Goods shall continue in the terms of section 87 of the PPSA.

(c) The Vendor shall have a right to stop and retrieve the Goods in transit whether or not delivery has been made or ownership has passed.

10. Recovery of Goods & Services Supplied

(a) In the event of non-payment or if payment of the Customer's Account is overdue, the vendor shall be entitled without prejudice to any right it has at law or in equity to restrict any services, restrict computer network access, website and or email services and or enter onto the place where the Goods supplied are stored whether the Customer's premises or property or the premises or property of a third party for the purpose of recovering and taking possession of the Goods supplied.

(b) The Customer warrants to the Vendor that where the Goods are stored on the premises or property of a third party the Customer is acting as agent for the third party and has the full authority of the third party to authorise entry on to the premises or property of the third party for the purpose of recovering the Goods supplied without releasing the Customer from liability.

(c) The Vendor will not be responsible for any damage caused in the course of either a 'lockout' or removal of Goods supplied either in the possession of the Customer or a third party and the Customer indemnifies the Vendor to the full extent in respect of damage caused in the course of removal from the property of a third party.

(d) The Vendor may resell the Goods and apply the proceeds towards payment of the Customer's outstanding Account with the Vendor. Any shortfall will remain the liability of the Customer. The Customer indemnifies the Vendor for all costs and expenses including legal costs as between solicitor and client which the Vendor may incur in recovering the Goods and any monies owed to it.

11. Warranties

(a) The Vendor gives no warranty express or implied as to the quality, description or fitness for any particular purpose of the Goods supplied;

(b) Where applicable, manufacturer's warranties will attach to the Goods.

(c) Where the Consumer Guarantees Act 1993 applies the Customer shall have all the rights and remedies provided under this Act but no others. The Customer warrants to the Vendor that any Goods supplied by the

Vendor under any Order with the Vendor are being acquired by the Customer for the purpose of its business and the Consumer Guarantees Act 1993 does not apply to the supply of those Goods.

(d) Where Goods supplied are defective in terms of any condition warranty or guarantee or otherwise do not conform to the Order, the Vendor will at its discretion replace or repair any faulty Goods or pay the cost of replacing them, but only if a claim is made by the Customer within seven days of delivery of the Goods time being of the essence.

12. Returns

The Customer shall not be entitled to return goods or cancel an Order other than as allowed pursuant to these terms and conditions of trade.

13. Personal Property Securities Act 1999 (“PPSA”)

Acceptance by the Vendor of the Customer’s Application for Credit and the supply of Goods pursuant to these terms and conditions of trade shall comprise a Security Agreement as defined in the PPSA for the purposes of the PPSA. The Vendor shall retain a Security Interest as defined in the PPSA in all Goods supplied in terms of its retention of ownership pursuant to these terms and conditions of trade. The Customer and the Vendor agree in terms of section 107 of the PPSA that sections 114(1) (a), 117(1) (c), 113 and 114 of the PPSA shall not apply to the enforcement by the Vendor of its Security Interest. The Customer waives any rights it may have under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA upon enforcement. The Customer waives its right to receipt of a financing statement or financing change statement in the terms of section 148 of the PPSA.

14. Authority to Sell Goods Supplied

Notwithstanding that title in all Goods is retained by the Vendor, the Customer is authorised to sell the Goods in the ordinary course of business provided that the authority may be removed by written notice if the Vendor considers the credit of the Customer to be unsatisfactory or if the Customer is in default in the performance of its obligations to the Vendor and shall be deemed automatically revoked if the Customer commits any act of bankruptcy or any act which would render it liable to be wound up or if a resolution is passed or proceedings are filed for the winding up of the Customer or a receiver is appointed for all or any assets of the Customer.

15. Minimum fees

(a) The customer agrees to pay any minimum diagnosis fees and or any related onsite travelling costs.

(b) The vendor may provide upon request to the customer, any documentation relating to a contracted job and or services rendered.

(c) The customer has the right to ask the vendor approx costs before any job is undertaken, the vendor can provide the customer a written quote upon request.

16. Travelling costs

(a) The vendor charges travelling costs at a minimum of \$25.00+gst per site visit, travelling costs and expenses are charged at the vendors discretion and may change without notice.

(b) Travelling outside the Hamilton area may incur additional related costs, the customer has the right to ask the vendor approx travelling costs.

(c) If more than 1 technician is required for a site visit, additional travelling costs maybe incurred by the customer.

17. Sale of Goods Supplied

(a) Where Goods in respect of which property has not passed to the Customer are sold by the Customer in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received shall be held by the Customer for the Vendor in terms of section 45 of the PPSA.

(b) Where any proceeds of sale are placed in the Customer's bank account the funds in the Customer's bank account shall be deemed to be held on trust for the Vendor to the extent of proceeds of sale.

(c) Where any payments are made from the Customer's bank account otherwise than to the Vendor payment shall be deemed to have been made from all other funds in the Customer's bank account and not from funds held on trust for the Vendor.

(d) The trust obligation imposed by this clause and the Vendor's entitlements under the PPSA shall continue for so long as the Vendor is unpaid for all Goods supplied to the Customer.

18. Security Interest

The Customer gives the Vendor a Security Interest in all of the Customer's present and after acquired property that the Vendor has performed services on or to or in which goods or materials supplied or financed by the Vendor have been attached or incorporated.

19. Liability

(a) The Vendor's liability to the Customer shall be limited to the value of the Order supplied.

(b) The Sale of Goods Act 1908, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon the Vendor which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on the Vendor the Vendor's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

(c) Except as otherwise provided above the Vendor shall not be liable for any loss or damage of any kind whatsoever, arising from the supply of Goods by the Vendor to the Customer including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by the Vendor to the Customer; and

(d) The Customer shall indemnify the Vendor against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of the Vendor or otherwise, brought by any person in connection with any matter, act, omission, or error by the Vendor its agents or employees in connection with the Goods.

(e) Refunds are only authorized under certain circumstances, administration and or depreciation on goods & services will be deducted.

(f) The vendor is not liable for any data loss due to faulty hardware equipment during or outside warranty periods of manufactures warranty period.

(g) The vendor is not liable for any data loss during upgrade processes, this includes onsite and workshop service.

(h) Backups are recommended before any service work is undertaken by the vendor, this includes clauses (f) & (g) above.

20. Remote Access

(a) The vendor is not responsible for any unauthorised remote access.

(b) The vendor can provide customers upon request any security breaches and or hardware / software upgrades as required.

(c) The customer is responsible for keeping their passwords confidential this clause applies to staff and other users associated to the customer's network.

(d) The vendor has the right to access the customer's network during and outside normal working hours with or without permission from the customer.

(e) The vendor endeavours to keep the customers remote access as secure as possible but cannot be held responsible for any 3rd party security intrusions.

(f) The customer must contact the vendor in writing if they do not require remote access within 14 days of termination, the vendor will remove any remote access at the customers cost.

(g) The vendor has the right to monitor any incoming / outgoing electronic information.

21. Copyright And Intellectual Property

The Vendor owns and has copyright in all designs, specifications, documents, and software produced by the Vendor in connection with the Goods provided pursuant to these terms and conditions of trade and the client may use the Goods only if paid for in full and for the purpose for which they were intended and supplied by the Vendor.

22. Suitability of Goods and Services

The Customer must satisfy itself that the Goods as ordered are fit and suitable for the purpose for which they are required. The Vendor makes no warranties or representation and expressly negates any implied or expressed condition that the Goods will be suitable for a particular purpose or use for which the Customer may use them. The Customer accepts all risk and responsibility for consequences arising from the use of the Goods whether singularly or in combination with other Goods.

23. Tampering

(a) No goods supplied by the Vendor may be altered, have anything added or removed or in any way be tampered with by the Customer (or any other person at the Customer's request) unless otherwise agreed to by the Vendor.

(b) The Vendor retains the right to make void any warranty pursuant to this contract (or otherwise express or implied) should any evidence of "tampering" in the manner outlined above be detected.

24. Validity

If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

25. Changes of General Terms and Conditions

(a) The Vendor may at any time refuse the placement of an order by the Customer or decline to approve any application of the Customer for any reason whatsoever.

(b) The existence of an account with the Vendor does not automatically entitle the Customer to credit in the future.

(c) Failure by the Vendor to enforce any of the terms and conditions contained in these terms and conditions of trade shall not be deemed to be a waiver of any of the rights or obligations the Vendor has under these terms and conditions of trade.

(d) The Vendor may from time to time by written notice to the Customer amend, add to or repeal the trading conditions covered by this Agreement or may substitute any fresh trading conditions and such amendment, addition or substitute trading conditions shall be binding on the Customer as from fourteen days after the date of delivery of the notice.

26. Entire Agreement

These terms and conditions of trade constitute the entire agreement and supersede and extinguish all prior agreements and understandings between the Vendor and the Customer.