

Klotz Media Solutions Limited Standard terms and conditions for the sale of goods and/or the supply of goods and services

1 DEFINITIONS

In these Terms & Conditions, the following terms shall have the meanings set out against them:-

1.1 'the Buyer' means the person who agrees to buy the Goods and/or Services from the Seller.

1.2 'Order Acknowledgment' means acceptance of the buyers offer by the Seller.

1.3 'the Dispatch Date' means the date or dates specified by the Seller on the quotation or tender or any other communication when the Goods are to be dispatched to the Purchaser or provision of the Services is to be commenced.

1.4 'the Goods' means the Goods and/or Software or other Licenses the Seller is to supply in accordance with these Conditions of Sale. Any reference to 'the Goods' shall, where appropriate, include a reference to part of them.

1.5 'Receipt' means receipt at the Buyer's address by means of post, facsimile, electronic mail, document exchange, or personal delivery.

1.6 'the Seller' means Klotz Media Solutions Ltd (Company Number 696892), whose registered office is at 4 Royal Crescent, Glasgow, Scotland, G3 7SL, UK.

1.7 'the Services' means the services the Seller is to supply in accordance with these Conditions of Sale.

1.8 "Terms & Conditions" means the terms and conditions for the sale of Goods and provision of services as specified in this document.

2 TERMS OF SALE

2.1 The Terms & Conditions shall apply to every contract, unless the Seller agrees otherwise in writing. No servant or agent of the Seller has the power to vary the Terms & Conditions orally.

2.2 Any tender proposal or quotation submitted by the Seller is an invitation to transact business and not an order. All orders for Goods and/or Services shall be

deemed to be an offer by the Buyer to purchase Goods and/or Services pursuant to these conditions.

2.3 The Seller issuing an Order Acknowledgement shall be conclusive evidence of the Seller's acceptance of any offer and the conclusion of a contract.

2.4 Where a contract is concluded, in the event of any conflict between the Terms & Conditions and the terms of any offer made by a Buyer to purchase Goods and/or services, the Terms & Conditions shall override and prevail over the terms of any such offer.

2.5 The Seller shall, at its sole discretion, be entitled to substitute Goods of a similar standard with equivalent specification and functionality where for any reason any item specified in the Contract documentation is unavailable.

2.6 In the event of the buyer wishing to cancel their order in part or whole after issuing an offer, irrespective of acceptance, the seller reserves the right to invoice for the Goods and services in full as per the offer/contract. In the event that the seller agrees not to complete the contract a restocking fee of 50% will be incurred by the buyer payable in 14 days from the date of cancellation.

3 THE PRICE

3.1 The Price of the Goods and/or Licenses is the price stated in the Seller's quotation or such other price as is expressly agreed in writing by the Seller and the Buyer. Any quotation given by the Seller is valid for 14 days only unless stated otherwise in writing.

3.2 The Seller may adjust the price appropriately where at any time before the Dispatch Date Goods or handing over Licenses:-

3.2.1 if there is an increase in the cost of raw materials, component parts or labour, or

3.2.2 if there are any currency fluctuations increasing the cost of raw materials or component parts.

3.2.3 if there are any currency fluctuations or increase of third-party cost increasing the cost of software licenses, programming fees or purchasing cost.

3.3 Where the Price of Licenses is estimated, and the time taken to provide the Licenses exceeds that in the Seller's quotation, the Seller may adjust the Price

accordingly. Any increase in the Price will be calculated using the hourly rate specified in the Seller's quotation.

4 DISPATCH

4.1 Where the Goods are to be delivered by carrier, delivery of the Goods for the purposes of the Contract of sale shall be made by the Seller of the dispatching of the Goods to an independent carrier chosen by the Seller for transportation to the Buyer in accordance with the Buyer's delivery instructions. The Buyer will be liable for the cost of the carrier, unless there is written agreement to the contrary.

4.2 Where the Goods are to be delivered by the Seller, delivery of the Goods shall be made at the Buyer's address on the Delivery Date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

4.4 Where the Goods are to be collected by the Buyer, delivery of the Goods shall be made at the Seller's address on the delivery date stipulated in the contract.

4.5 If the Buyer fails to accept the Goods, to collect them, or to give the Seller adequate delivery instructions, then the Seller may-

4.5.1 store the Goods until actual delivery to the Buyer or until the Goods are disposed of under clause 4.5.2; and

4.5.2 sell the Goods at the best price readily obtainable.

4.6 The Buyer is liable for any costs incurred under clauses 4.5.1 or 4.5.2 and if the Goods are sold under clause 4.5.2 for less than the price payable by the Buyer, the Buyer must pay the Seller the difference in price, or where the Buyer has paid for the Goods in advance of delivery, the Seller is entitled to retain the difference in price

4.7 Any dates for delivery of Goods and the provision of Services are approximate only and the Seller is not liable for any delay however caused. Time of delivery of Goods and provision of Services is not of the essence of the contract.

4.8 The Seller shall provide the services as specified in the contract, which may be varied, modified or extended from time to time by written agreement between the parties. If the parties fail to agree on a variation, modification or extension to the said services, the Seller shall continue to provide said services

up to the limit prescribed in the contract. Any ideas, concepts, know-how or techniques developed or used by the Seller during the provision of the services will be owned by the Seller.

5 PAYMENT

5.1 The Seller may invoice the Buyer for the price of the Goods and/or Licenses before, on or at any time after the Seller: –

5.1.1 delivers the Goods in accordance with clause 4.1, 4.2, 4.3 or 4.4; and or

5.1.2 provides the Service.

5.2 The Buyer must pay the price of the Goods and/or Services by the date specified in the Seller's invoice. Where no date is specified, the Buyer must pay the price of the Goods upon their delivery under clause 4.1, 4.2, 4.3 or 4.4., and must pay the price for Services upon completion of the Service. The time of payment of the price is of the essence of the contract.

5.3 In the event that delivery of the Goods and/or provision of the services cannot be achieved by reason of some act, omission or default of the Buyer, the price shall become due and payable on the date laid down for the same in the contract, and interest shall accrue on such sum in accordance with Clause 5.5 below.

5.4 If the Buyer shall fail to take delivery of the Goods in accordance with these Terms & Conditions. The Buyer shall be liable in addition to any sum due under Clause 5.3 hereof, for the expenses incurred by the Seller in storing the Goods and in rescheduling delivery of same to the buyer at a later date.

5.5 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at the rate of 4% above the Royal Bank of Scotland pic's base rate from time to time in force and shall accrue at such rate after as well as before any judgement.

6 PROPERTY AND RISK

6.1 Ownership of the Goods remains with the Seller and will not pass until the Seller is paid for all of the Goods and/or Services and no other amounts are owed by the Buyer to the Seller in respect of any Goods or services supplied by the Seller.

6.2 The Buyer must not remove any label or serial number which identifies the Goods as the Seller's property until the Goods become the Buyer's property.

6.3 If the Buyer is overdue in paying for the Goods and/or Services or any other Goods or services supplied by the Seller, the Seller may, if still the owner of the Goods recover and resell them. The Seller or its agents or authorised representatives may enter the Buyer's premises for this purpose and may, if necessary, detach or remove the Goods from any other Goods. This does not affect any other right of the Seller. Seller, who shall also be entitled to seek a Court Injunction to prevent the Buyer from selling, transferring or otherwise disposing of the said Goods.

6.4 Risk in the Goods passes to the Buyer when the Seller dispatches the Goods for delivery to the Purchaser in accordance with clause 4.1, 4.2, 4.3 or 4.4.

6.5 The Buyer must insure the Goods against all insurable risks for the price due to the Seller for the Goods.

6.6 If the Goods are destroyed by an insured risk before the Buyer has paid for them, the Buyer shall hold the insurance proceeds as the Seller's trustee.

7 GUARANTEES

7.1 Subject to Clause 7.2 hereof, any Warranty or Guarantee in respect of the Goods will commence from the Dispatch Date.

7.2 Subject to Clause 7.3 hereof, all Goods are guaranteed for 12 months from the date of delivery against faulty materials or workmanship. During this period the Seller will repair or replace parts free of charge provided that:-

7.2.1 the Goods are returned to the Seller at the Buyer's expenses, with evidence of the date of delivery; and

7.2.2 the Goods have been purchased by the Buyer and not used for hire purposes; and

7.2.3 the Goods have not been misused or handled carelessly or used on a voltage supply other than that stamped on the product; and

7.2.4 repairs have not been attempted other than by the Seller.

7.3 Where the Goods comprise any item manufactured by a third party, then the Seller will pass on to the Purchaser the benefit of any manufacturer's warranty or

guarantee available to it. For the avoidance of doubt, where Goods manufactured by third parties are supplied from stock, the Purchaser shall only be entitled to the balance of any manufacturer's warranty or guarantee available.

7.4 During the guarantee period, the Seller will answer any technical enquiries from the Buyer concerning Goods still under guarantee, free of charge, between 0900hrs and 1700 hrs from Monday to Friday UK time, excepting public holidays. All such enquiries must be made first by email and be in accordance with standard reporting procedures.

7.5 If a problem is found upon investigation not to be the Seller's responsibility the Seller may charge the Buyer immediately for all reasonable costs and expenses incurred by the Seller in the course of or in consequence of such investigation.

7.6 No guarantee confers any rights other than those expressly set out above and specifically do not guarantee any claim for consequential loss or damage. All Guarantees are offered as an extra benefit and do not affect your statutory rights.

7.7 Except as otherwise provided in this Clause, the Seller makes no other representations or warranties, and expressly excludes the same, whether implied, statutory or otherwise, especially as to quality or fitness of the Goods for any particular purpose.

8 LIABILITY

8.1 The Buyer must carefully examine and test the Goods immediately on receipt of them and must notify the Seller in writing of any short delivery or any defects reasonably discoverable by careful examination or testing.

8.2 If the Buyer does not notify the Seller under clause 8.1, the Seller shall not be liable for any short delivery or any defect that should reasonably have been discovered on careful examination or testing.

8.3 Notification under clause 8.1 must be received by the Seller within 48 hours beginning with the day of delivery to the Buyer.

8.4 The Buyer is not entitled to reject the Goods under any circumstances. Any claim that the Buyer may have against the Seller is limited to damages only, such liability being limited to the contract price of the Goods.

8.5 Except to the extent that by the law relating to the Terms & Conditions, liability may not be excluded, the Seller shall not be liable to the Buyer for any loss or damage whatsoever or howsoever caused, arising directly or indirectly in connection with the supply of the Goods and/or the provision of the services to the Buyer or otherwise. Notwithstanding the generality of the foregoing, the Seller expressly excludes liability for consequential loss or damage, including but not limited to loss or damage to other equipment or property or for loss of profit, business revenue, goodwill or anticipated savings.

8.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller's total liability for any one claim or for the total of all claims arising from any one act or default of the Seller (whether arising from the Seller's negligence or otherwise) shall not exceed the price of the Goods as defined in clause 3.

8.7 The Seller is not liable for any failure to deliver the Goods or provide Services arising from circumstances outside the Seller's control;

8.7.1 Non exhaustive illustrations of circumstances outside of the Seller's control include act of God, war, riots, explosion, abnormal weather, conditions, fire, flood, Government action, strikes, lockouts, delay by suppliers, accidents and shortage of materials, labour and manufacturing facilities;

8.7.2 If the Seller is prevented from delivering the Goods or providing the services in the above circumstances, it will notify the Buyer of the fact in writing. The Seller accepts no liability to compensate the Buyer for any further loss or damage caused by the failure to deliver;

8.8 This Clause 8 does not affect the guarantee conferred by Clause 7.

8.9 The Purchaser, by issuing a purchase order or confirming acceptance of the Seller's quotation or proposal, confirms or accepts that any design specification prepared by the Seller on the basis of information supplied by the Purchaser adequately satisfies their operational requirements. The Seller Warrants that the completed installation will be in accordance with the design specification

9 SUPPORT

Where a Support Contract has been purchased by the Buyer, support will be provided on the following terms:-

9.1 Support includes email advice on enquiries in respect of understanding and operating the Goods to the extent that these are not covered in any user operating manuals provided by the Seller.

9.2 No support service of any description will be provided in respect of any error or problem:-

9.2.1 resulting from any modification to the Goods by any person other than the Seller;

9.2.2 resulting from environmental damage, incorrect use of the Goods or operator error;

9.2.3 in or attributable to equipment not provided by the Seller or other programs used in conjunction with the Goods or any other reason external to the Goods; or

9.2.4 relating to a previous release of the Goods being operated by the Buyer for longer than 90 days following the offer of the latest release.

10 INSOLVENCY

If the Buyer-

10.1 being a company:-

10.1.1 has a petition presented for its winding up; or

10.1.2 passes a resolution for voluntary winding-up (other than for the purposes of a bona fide amalgamation or reconstruction); or

10.1.3 enters into a voluntary arrangement with its creditors; or

10.1.4 becomes subject to an administration order; or

10.1.5 has a receiver appointed of all or any of its assets; or

10.2 being an individual or firm:-

10.2.1 becomes bankrupt or insolvent; or

10.2.2 enters into a voluntary arrangement with creditors, then the Seller shall be entitled to treat the contract as being at an end or suspend any further deliveries under the contract. If the Goods and/or Services have been delivered and/or

provided but not paid for, the price shall become due immediately regardless of any previous arrangement to the contrary.

11 COPYRIGHT, PATENTS, TRADE MARKS AND OTHER INTELLECTUAL PROPERTY RIGHTS

11.1 The Buyer acknowledges that any and all of the copyright, trademarks, and other intellectual property rights used or subsisting in or in connection with the Goods and/or Services are and shall remain the sole property of the Seller or such other party as may be identified therein or thereon (the "Owner") and the Buyer shall not during or at any time after the date of delivery in any way question or dispute the ownership thereof by the Seller or the Owner.

11.2 In the event that new inventions, designs or processes evolve in performance or as a result of supply or delivery of the Goods, and/or provision of the Services, the Buyer acknowledges that the same shall belong to the Seller unless otherwise agreed in writing by the Seller.

11.3 The Buyer shall indemnify the Seller fully against all liabilities, costs and expenses which the Seller may incur as a result of work done in accordance with the Buyer's specifications involving infringement of any copyright or other intellectual proprietary right.

12 CONFIDENTIAL INFORMATION

12.1 All information, drawings, specifications, documents, and other data which the Buyer may have imparted and may from time to time impart to the Seller relating to its business, customers, prices, services, requirements, software, bespoke software, the System, parts or sub-assemblies (including hardware and software or maintenance thereof) and including any technical specifications is proprietary and confidential.

12.2 The Seller hereby agrees that it shall use such confidential information and all other data solely for the purposes of this Agreement and that it shall not, at any time during or any time after the completion, expiry or termination of this Agreement disclose the same whether directly or indirectly, to any third party without the Buyer's prior written consent.

12.3 The Seller further agrees that it shall not itself or through any subsidiary or agent sell, license, sub-license, create, manufacture or otherwise deal in any

confidential information supplied to it by the Buyer or obtained while performing this Agreement.

12.4 The Seller shall ensure that each of its said employees and sub-contractors will comply with these provisions.

12.5 The foregoing provisions shall not prevent the disclosure or use by the Buyer of any information which is or hereafter, through no fault of the Buyer, becomes public knowledge or to the extent permitted by law.

13 FORCE MAJEURE

The Seller shall be under no liability to the Buyer in any way whatsoever for destruction, damage, delay or any other matters of that nature whatsoever arising out of war, rebellion, civil commotion, strikes, lock-outs and industrial disputes, fire, explosion, earthquake, acts of God, flood, drought, or bad weather, the unavailability of deliveries. Goods, Software or supplies or the requisitioning or other act or order by any Government department, council or other constituted body. The Seller shall further be under no liability to the Buyer in any way whatsoever for any other circumstances or happenings (whether of the foregoing classes or not) beyond the Seller's control.

14 PROPER LAW OF CONTRACT

14.1 This contract is subject to the law of Scotland.

14.2 All disputes arising out of this contract shall be subject to the exclusive.