

Standard Terms & Conditions for SI Products and Services

1. DEFINITION

- “Customer” means the entity named on the first page of this Quotation.
“KM” means Konica Minolta Business Solutions (HK) Ltd.
“Products” means the hardware items listed in Section (II) – Hardware (“Products”) of this Quotation.
“Quotation” means this Quotation to be agreed and signed by both parties.
“Services” means the services items listed in Section (I) – Services (“Services”) of this Quotation.
“T&C” means this standard terms and conditions which forms an integral part of this Quotation.

2. TITLE AND RISK OF PRODUCTS

The risk of loss and damage to the Products shall pass to the Customer upon delivery to the Customer’s premises. Title of such Product will remain with KM until full payment of the purchase price therefor is made by the Customer.

3. GRANT OF LICENCE

Subject to the T&C of this Quotation and the T&C of the Developer, KM grants to the Customer a non-exclusive, non-transferable Licence on any single computer or computers that the Customer intends to use directly. The Customer may use the Licence for its own use, and may translate or modify the Licence or incorporate them into other software. The Customer may also make copies of the Licence as necessary for backup and archive purposes, provided that the copyright notice is reproduced in its entirety on the backup copies. The Customer, may not, however, transfer or sublicense the Licence to any third party, in whole or in part, in any form, whether modified or unmodified.

4. OWNERSHIP

Title, ownership rights, and intellectual property rights in and to the Licence and any copies thereof shall remain with KM or the developer of the Licence. The Customer also agree not to remove or alter any copyright and other proprietary notices on any copies of the Licence.

5. WARRANTIES

- 5.1 KM hereby warrants that any equipment or materials or devices or hardware to be used by KM (regardless it is developed and maintained by KM or by other third party supplier) under this T&C shall be performed or installed by KM in a workmanlike manner, consistent with generally prevailing industry standards for comparable services, and in compliance with the requirements of this T&C.
- 5.2 KM makes no warranties of any kind, expressed or implied regarding the functionality of hardware or software or system, but instead relies on the warranties provided by the manufacturer of each equipment or device or hardware or software or system. Except as expressly stated in any service agreement or their general terms and conditions, KM does not make, and hereby disclaims, any and all express or implied warranties, including, but not limited to, warranties of merchantability, fitness for a particular purpose, non-infringement and title, and any warranties arising from a course of dealing, usage or trade practice.
- 5.3 The Customer acknowledges and agrees that the use of the Licence is at its sole risk. KM makes no warranties of any kind regarding the functionality or use of the Licence, whether expressed, implied or statutory, but instead relies on the warranties provided by the manufacturer of each software or system, including but not limited to, warranties of merchantability, fitness for a particular purpose, non-infringement and title, and any warranties arising from a course of dealing, usage or trade practice.
- 5.4 KM does not warrant that the operation of the Licence will be uninterrupted or error free or conform to any reliability or performance standards beyond those specified in the applicable criteria. KM does not warrant that the Licence will be compatible with the Customer’s future products or those of other suppliers.
- 5.5 KM makes no warranty, express or implied whatsoever with respect to the Licence manufactured by third party supplier and the Customer acquires the use of the Licence in “as is” conditions. If the Licence is unsatisfactory for any reason, the Customer shall make any claim on account thereof solely against the third-party supplier. The Customer agrees that it will not assert any defenses, deduction, abatement, counterclaim or set-off against KM.

6. LIABILITY OF BOTH PARTIES

- 6.1 KM shall have no responsibility or liability for Products or Services supplied by persons other than KM or for modifications to any Products that are made by persons other than KM’s employee.
- 6.2 KM shall not be liable for any delay or deficiency in providing the Services if such delay or deficiency results from the Customer’s failure to perform its duties hereunder or due to any cause beyond KM’s reasonable control.
- 6.3 KM shall not be responsible for any damages or loss to the information/data saved in the Customer’s network or any damages or loss caused to the Customer or its employees or properties save and except the same is caused by the wilful act or default of the employee of KM.
- 6.4 The Customer shall keep KM and its employees fully indemnified against any loss of or damage to any property on injury to or death of any person caused by any negligent act or omission or breach of this Quotation by the Customer, its employees, agents or servants and shall pay to KM all costs, charges and losses sustained or incurred by KM as a result of KM being prevented or delayed from performing its obligations hereunder by reason of any act or omission of the Customer, its employees, agents or servants.
- 6.5 In no event shall KM be liable for punitive, incidental, special, direct or indirect, or consequential damages, software restoration, procurement of substitute products or services, downtime costs (including but not limited to, loss of use, loss of data/information/files, loss of business and loss of profits arising under or in connection with this Quotation) or other damages whether based on contract or tort arising out of or related to the selling of the Licence.

7. TERMINATION

The parties hereto may terminate this Quotation, and its respective obligations hereunder, as follows:

- (a) by KM, if any of the sums payable hereunder or any other indebtedness is not paid by the Customer within 14 days from the due date;
- (b) by KM, if a bankruptcy petition relating to the Customer is presented, or the Customer enters into compulsory or voluntary liquidation, or have a receiving order made against it, or makes any arrangement with its creditors or makes any assignment for the benefit of such creditors;
- (c) by any party hereto upon written notice to the other party if the other party hereto materially breaches any term of this T&C or otherwise fails to satisfy any promise or covenant made herein, and further provided that such party shall fail to cure said breach or failure within 30 days’ period;
- (d) by KM, with or without cause, upon 30 days’ written notice of intent to terminate to Customer;
- (e) by either party, if any of the Force Majeure events eg act of God, fire, natural disaster, accident happened.

8. EFFECTS OF TERMINATION

- 8.1 Termination of this Quotation for any reason shall not affect the right of KM to recover from the Customer:-
- (a) any monies due to KM on or before such termination or in consequence thereof including any sums which, if incurred prior to the relevant date, would be payable;
 - (b) any costs and expenses incurred by KM in collecting any payments due hereunder or otherwise in obtaining the due performance of the obligations of the Customer hereunder;
 - (c) any damages for breach of this Quotation;
 - (d) regain possession of the Products and/or other devices or equipment provided to the Customer; and
 - (e) suspend any further Services or other obligations to the Customer (without being liable to Customer for any losses so caused).
- 8.2 Termination of this Agreement by KM shall not discharge the Customer from any existing obligations accrued due on or prior to the date of termination.
- 8.3 The rights and remedies granted to KM pursuant to this Agreement are in addition to, and shall not limit or affect, any other rights or remedies available at law or equity.

- 8.4 Upon termination of this Quotation, the Customer shall promptly discontinue the use of the Licence and destroy all the original and copies, in whole or in part and in any form of the Licence.
9. **ACCESS AND FACILITIES**
The Services mentioned in this Quotation have to be carried out in the premises of the Customer, the employee of KM shall be allowed to enter into the premises. The Customer shall provide a safe workplace with adequate access to facility with appropriate assistance and information for the performance of the Services. KM will take all reasonable measures to avoid damages to the premises or properties of the Customer but KM will not accept any liability and/or responsibility for any damage done accidentally.
10. **UPDATE AND WAIVER**
The Customer acknowledges and agrees that this T&C shall be updated by KM from time to time upon business need. It is sole responsibility of the Customer to read and understand the updates regularly. The Customer shall be deemed to accept the changes upon using the Products and Services after the T&C is updated.
11. **INDEPENDENT CONTRACTOR**
KM is acting as an independent contractor and not as an employee or agent of the Customer. KM and the Customer acknowledge that this Quotation does not create a partnership, agency, franchise relationship or joint venture between them.
12. **CONTRACTS (RIGHTS OF THIRD PARTIES) ORDINANCE**
The parties hereby declare that nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong Special Administrative Region).
13. **ENTIRE AGREEMENT**
This T&C and other attachments constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, quotation, purchase orders, understandings and negotiations, whether oral or written, between the parties hereto with respect to such subject matter, unless otherwise explicitly agreed in writing by the parties.
14. **LAWS AND JURISDICTION**
This Quotation shall be governed and construed in accordance with the laws of the Hong Kong Special Administrative Region and any disputes arising from this Quotation shall be subject to the exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region.