

ICT PRODUCTS & SERVICES

Terms & Conditions

1. DEFINITION

“Advanced Token(s)”	means the unit of service fee prepaid by Customer, to be consumed upon performance of on-site or remote service by KM under Customer’s ad hoc service request.
“Customer”	means the entity named on the first page of this Quotation.
“Cyber Security Incident”	means any loss or unauthorised destruction, alteration, disclosure of, access to, or control of information technology systems, networks, internet-enabled applications or devices and the data contained therein
“KM”	means Konica Minolta Business Solutions (HK) Ltd.
“License”	means the license to software items of the Products.
“Manufacturer”	means the manufacturer, licensor and/or producer of the Products.
“Minimum Term”	means the minimum period of Services that the Customer has committed with KM, during which the Customer is not entitled to early terminate the Services unless Customer has fulfilled all the payment obligations and other conditions stipulated in Clause 8.2 of this T&C.
“Products”	means the hardware items and licensed software items listed in Product Description of this Quotation.
“Quotation”	means this Quotation to be agreed and signed by both parties.
“Services”	means the services items listed in Service Description of this Quotation.
“Service Location”	means the location as written in Location of Services/Delivery and Installation Address of Products 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 Products will remain with KM until full payment of the purchase price therefor is made by the Customer.

3. USE OF LICENCE

Software provided under this Quotation is not sold to Customer. Customer obtains a right of use under the License, scope Customers right of use shall be subject to terms and conditions of the Manufacturers. In general, Customer may use the License for their own use, Customer may also backup copy of the software solely for the purpose of reinstallation. Customer may not:-

- (a) reverse engineer, decompile or disassemble the software, or to work around any technical limitations in the software, except and only to the extent that applicable law expressly permits;
- (b) publish the software for others to copy;
- (c) rent, lease or lend the software;
- (d) transfer the software or the License to any third party; or
- (e) use the software for commercial hosting service.

4. OWNERSHIP

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

5. TOKEN BASED SERVICES

- 5.1 If Customer subscribed for Advanced Tokens(s) under this Quotation, Customer may draw the token-based remote support services to cater for some basic administrative tasks that can be perform remotely (subject to remote connection approval by Customer) for the customer or provide remote trouble-shooting and problem diagnostic services.
- 5.2 Use of Advanced Token(s) shall be governed by the Deduction Scheme as set out in the Quotation. Any unused Advanced Token(s) for 12 months from the commencement of the Maintenance Period will be forfeited.
- 5.3 Before the Advanced Tokens are depleted by the Customer, Customer shall subscribe for additional Advanced Token(s) before further token based services can be arranged by KM.
- 5.4 In order to arrange Token Based Services, the Customer shall place a call with KM’s helpdesk. KM’s helpdesk will follow up or arrange Employee to handle the tasks. KM shall endeavour to respond all telephone enquiries within one (1) hour of the initial telephone call and, shall mutually agree with the Customer the schedule of on-site visit for the performance of on-site token based services, subject to weather conditions set out in 5.2 above.
- 5.5 The Customer may occasionally require additional services not covered by this Quotation. The Customer understands that separate quotation(s) will be generated for such out of scope additional service request before any additional work to be performed by KM.

6. WARRANTIES

- 6.1 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.
- 6.2 KM makes no warranties of any kind, expressed, or implied regarding the functionality of the Products, but instead relies on the warranties provided by the Manufacturer of each Products item. 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.

- 6.3 The Customer acknowledges and agrees that the use of the Products is at its sole risk. KM makes no warranties of any kind regarding the functionality or use of the Products, 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.
- 6.4 KM does not warrant that the operation of the Products and/ or Service 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 Products will be compatible with the Customer's future products or those of other suppliers.
- 6.5 KM makes no warranty, express or implied whatsoever with respect to the Products manufactured by third party supplier and the Customer acquires the use of the Products in "as is" conditions. If the Products 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.
- 6.6 Customer acknowledges the Services under the Quotation is not cyber security service. Customer shall be solely responsible for prevention of Cyber Security Incident.

7. LIABILITY OF BOTH PARTIES

- 7.1 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.
- 7.2 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.
- 7.3 KM shall not be responsible for any Cyber Security Incident, or 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.
- 7.4 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.
- 7.5 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 License.

8. TERMINATION

- 8.1 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.
- 8.2 Customer is not entitled to early termination of the Minimum Term unless Customer has paid to KM:-
- (a) all arrears of monies accrued due and unpaid under the Minimum Term; and
 - (b) all payments which would have been payable for the remainder of the Minimum Term from the date of termination; and
 - (c) any costs and expenses incurred by KM in collecting any payments due under Customer's order or otherwise in obtaining the due performance of the obligations of the Customer.
- 8.3 After the Minimum Term, the Customer may terminate the Services by giving KM at least two (2) months of prior written notice or pay to KM an amount equivalent to two (2) months' Monthly Price in lieu of such notice. If Customer does not (a) notify KM of renewal or its intention to terminate the Services from the said notice, the Services shall continue on a month-to-month basis until the aforesaid notice is duly received by KM.

9. EFFECTS OF TERMINATION

- 9.1 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).
- 9.2 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.
- 9.3 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.

10. **ACCESS AND FACILITIES**
The Services mentioned in this Quotation shall be carried out in the Service Location, representatives of KM shall be allowed to enter into Customer's premises of the Service Location. Customer shall provide a safe workplace with adequate access to facilities 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 accidental damage.
11. **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.
12. **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.
13. **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).
14. **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.
15. **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.