

## KYONET-IT LTD – TERMS AND CONDITIONS

**1. Acceptance:** The acceptance of this quotation or Support Contract, or the placement of an order, includes the acceptance of these terms and conditions which shall apply between us, Kyonet-IT Ltd of 3 Canberra House, CorbyGate Business Park, Corby, Northants, NN17 5JG (the "Company"), and the Client who shall be the party accepting this quotation or placing an order with us. No terms or conditions stipulated or referred to by the Client in any form whatsoever shall in any respect vary or add to these terms and conditions unless otherwise agreed by the Company in writing.

**Entire Contract:** These terms and conditions shall apply as the binding and entire Contract between the Company and the Client and are to be read in conjunction with the particulars of any quotation or Support Contract documentation.

**Errors or Discrepancies:** The Client shall be responsible for the accuracy of any information submitted to the Company and for ensuring that the quotation or Agreement reflects the requirements of the Client. Our quotation is based on the information provided to us at the time of preparing such quotation. Should any errors or discrepancies become evident which affect our order value, we reserve the right to make adjustments to it.

**Scope of Works:** Our quotation shall constitute our entire scope of works but shall be subject to amendment in accordance with clauses 4 and 12 below.

**Validity:** Our quotation is open for acceptance within 30 days from the date of quotation.

**Lead in periods:** If appropriate, these are as stated within our quotation.

Unless the context otherwise requires, each reference in these Terms and Conditions to: "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means; a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time; a Clause or paragraph is a reference to a Clause of these Terms and Conditions; and a "Party" or the "Parties" refer to the parties to the Agreement.

The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions. Words imparting the singular number shall include the plural and vice versa. References to any gender shall include the other gender.

### 2. Supply Only

2.1 The Company agrees to provide the products as specified in the quotation.  
2.2 The Client shall be required to pay for the products in full in advance, unless otherwise stated in writing. Orders shall not be deemed confirmed until the payment has been made in full.

2.3 Once we have confirmed the Order, all payments received shall be non-refundable in all circumstances. Any cancellations made after the Order has been confirmed will also be subject to reasonable cancellation charges, including but not limited to, any restocking costs, administration costs, procurement costs, loss of contract and loss of profit, and these shall fall due for payment immediately. **3. Supply and Installation**

3.1 The Company agrees to provide the products and services as specified in the quotation.  
3.2 The Client shall be required to pay a Deposit to the Company, which shall be 50% of the quoted fee unless otherwise stated in writing. Orders shall not be deemed confirmed until the Deposit is paid in full. Subject to the provisions of Clause 15, the Deposit shall be non-refundable.

3.3 The Company shall issue the final invoice to the Client when the provision of the Services is complete. However, the Company reserves the right to charge interim progress payments as the works progress and will notify the Client of the same. Payments shall be made within 7 days of the date of the relevant invoice.

3.4 Once we have confirmed the Order, all payments received shall be non-refundable in all circumstances. Any cancellations made after the Order has been confirmed will also be subject to reasonable cancellation charges, including but not limited to, any restocking costs, administration costs, procurement costs, loss of contract and loss of profit, and these shall fall due for payment immediately.

3.5 Should the Client wish to cancel or reschedule an installation date, the provisions of clause 15 below will apply.

3.6 Where the Company is required to install Products purchased by the Client, the Company shall not be held responsible for any faults in the Products, or for any delay in the delivery or installation of such Products. In the event that we are delayed whilst working on site or the installation date is delayed as a result, the delays and any resulting expenses will be chargeable at our discretion.

### 4. Support Contracts

4.1 The Company agrees to provide the services as specified in the Support Contract attached hereto. The Contract between the Company and Client is formed upon receipt by the Company of its signed Support Contract, which shall detail the entire scope of works.

4.2 With effect from the Commencement Date the Company shall, in consideration of the Fees being paid in accordance with the terms of Payment herein, provide the Services to the Client as described above.

4.3 Payment shall be made in advance on the 1st of each calendar month by standing order prior to the start of each support month.

4.4 Should the Client wish to cancel or reschedule a Support date, the provisions of clause 15 below will apply.

4.5 We shall be entitled to terminate the Support Contract forthwith in the event that:  
4.5.1 The Client has failed to pay the Support Fees for a period exceeding 30 days and fails or refuses to do so following the expiry of a written notice from us requesting such payment within 7 days;

4.5.2 We give the Client 30 days' written notice whereby there will be no continuing liability by either Party.

4.6 The Client shall be entitled to terminate this Support Contract:  
4.6.1 By giving 3 months' written notice of termination to the Company, whereby there will be no continuing liability by either Party. In this event, any sums payable for the remainder of the term of the Support Contract must be paid to us at the same time as notice to terminate is given.

4.7 Either Party has the right to terminate the agreement immediately if the other:  
4.7.1 has committed a material breach of this agreement, unless such breach is capable of remedy, in which case the right to terminate immediately will be exercisable if the other Party has failed to remedy the breach within 14 days after a written notice to do so; or

4.7.2 goes into bankruptcy or liquidation either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets.

4.8 In the event of termination for default committed by the Client, all payments required under this Support Contract shall become due and immediately payable.

4.9 With the exception of payment, any and all obligations of the Parties which either expressly or by their nature continue beyond the termination, cancellation or expiration of this Support Contract shall survive termination under this Clause 4 on a pro-rata basis.

### 5. Cloud Services

5.1 Cloud Service Support Contracts, including any website hosting and domain agreements, will run for the term outlined in the Support Contract and will be automatically renewed, with the exception of the price, on the same terms and conditions as set out in this Agreement on an annual rolling basis unless a 30 day written notice to terminate is given by either party within 30 days prior to the expiry of the original term. Any such price increase shall be notified by the Company to the Client in accordance with these terms and conditions

5.2 Where we are required to apply web content filtering, we will use our best endeavours to maintain the integrity of these filters but cannot guarantee the same.

5.3 Where we are required to provide cloud based backup services, we cannot be held responsible for the integrity of the data. The responsibility for successful backups rests with the Client.

### 6. Support

6.1 The Company will make all reasonable efforts to attend site within an acceptable period of time but time will not be of the essence in the performance of these obligations.

### 7. Risk and Retention of Title:

7.1 Risk of damage to or loss of the Products shall pass to the Client at the time when they are delivered to the Client or otherwise used for the provision of the Services.

7.2 Notwithstanding the passing of risk in the Products under this clause 7, or any other provision of these Terms and Conditions, legal and beneficial title in the Products shall not pass to the Client until the Company has received in cleared funds payment in full of all Fees due.

7.3 Until payment has been made to the Company in accordance with these Terms and Conditions and title in the Products has passed to the Client, the Client shall be in possession of the Products as bailee for the Company and the Client shall, wherever possible (i.e. where they have not already been fitted to the Property), store such Products separately from any other property or materials belonging to the Client or a third party.

## 8. Fees

8.1 The Client agrees to pay the Fees as laid out in the quotation or Support Contract in accordance with the terms of Payment herein.

8.2 In addition, the Company shall charge to the Client his reasonable travelling time and travel expenses, any incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Services.

8.3 The Client will pay the Company for any additional services provided by the Company that are not specified in the Agreement. These additional services shall be charged in accordance with the Company's then current, applicable hourly rate in effect at the time of the performance or such other rate as may be agreed. Any charge for additional services will be supplemental to the amounts that may be due for expenses.

8.4 In the event that the price of Products or services increases during the period between the Client's acceptance of the quotation and the commencement of the Services, the Company shall inform the Client of such increase and of any difference in the final Fee.

8.5 All sums payable by either Party pursuant to the Agreement are exclusive of any value added or other tax (except corporation tax) or other taxes on profit, for which that Party shall be additionally liable.

## 9. Payment

9.1 All payments required to be made by the Client shall be made in pounds sterling without any set-off, withholding or deduction except such amount (if any) of tax as the Client is required to deduct or withhold by law.

9.2 Payment is due in respect of the relevant fees, as detailed in the quotation or Support Contract, for all days or hours worked (or scheduled to work, but deferred or cancelled by the Client giving less than 5 working days written notice). The Company will not accept payment being withheld in the unlikely event that the Client is dissatisfied with the Services due to a matter of personal taste.

9.3 The Company's normal working hours are 9am to 5pm Monday to Friday, excluding bank holidays. Any overtime must be authorised by the Client in writing before the services are carried out and will be charged pro rata at the fees listed in our quotation for additional hours worked Monday to Friday. Hours worked on a Saturday shall be charged at the fees as listed in our quotation plus an additional 50%. Hours worked on a Sunday shall be charged at the fees as listed in our quotation plus an additional 100%. The cost of delays attributable to the Client including, but without limitation, failing to carry out agreed actions or not providing necessary information or services, or failing to give proper notice to terminate or cancel as detailed herein will be charged at our standard fee rates applicable at the time.

9.4 Interest shall be paid on all overdue accounts from the date payment was due (as set out above) until actually made at 8% above the Bank of England Base Rate from time to time during the period in which interest is payable and any costs we have occurred in recovering any monies owed

## Client's Obligations:

10.1 The Client agrees to:

10.1.1 ensure that site environment conditions are continuously maintained in accordance with the manufacturers' specifications. These conditions include the constant provision of a clean electricity supply within the specified limits;

10.1.2 ensure operators and other staff concerned with the operation of the products are properly trained, operate the products within the standards as laid down by the manufacturer, and comply with the Company's advice in connection with the use and operation of the products;

10.1.3 comply at all times with the manufacturers' specifications, including where replacement consumables are required;

10.1.4 ensure that the Company has access to the site at the times agreed between the Company and the Client in order to provide the Services;

10.1.5 give the Company such information, advice and assistance relating to the services as they may reasonably require within sufficient time to enable them to perform the services in accordance with the quotation and/or support contract;

10.1.6 ensure data is backed up regularly and sufficient security is in place for any System provided by the Company, and to virus-check all data and material supplied to the Company;

10.1.7 keep secure from third parties any passwords issued to the Client by the Company in connection with the Services;

10.1.8 nominate a suitably qualified individual to act as the Client's representative to liaise with the Company regarding the Services;

10.1.9 obtain and maintain all necessary licences, permissions and consents in connection with the Services; and

10.1.10 where the Client has a Support Contract, report faults promptly to the Company, in any event within 48 hours of discovering the fault.

10.2 If the Client fails to meet any of the provisions of clause 10.1 above, the Company shall, without limiting its other rights or remedies:

10.2.1 have the right to suspend performance of the Services until the Client remedies the default;

10.2.2 not be held liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Company's failure or delay in performing any of its obligations as a result; and

10.2.3 be entitled to claim for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Client's default.

## 11. Company's Responsibilities

11.1 The Company will use reasonable care and skill pertaining to their profession to perform the Services.

11.2 The Company shall use all reasonable endeavours to complete its obligations under the Agreement, but time will not be of the essence in the performance of these obligations.

## 12. Notice and/or Lead In Period

12.1 Unless otherwise agreed in writing between the parties at the time of acceptance, the Company requires a minimum of 14 days' formal notice to commence the Services. However, this may be delayed if a pre-assessment is to be carried out or if works are necessary to bring the site up to standard for the Services required.

## 13. Delay & Abortive visits

The Company's price is based on being able to complete their services in the agreed number of hours or visits over the period as detailed in the Agreement. If they are prevented from continuous working through to completion, they reserve the right to recover any costs incurred by way of delay or abortive visits.

In the event of a delay, the Company shall then require, from the Client, a further written notice or lead in period in accordance with clause 12 above.

## 14. Variation and Amendments

14.1 If the Client wishes to vary the services to be provided, they must notify the Company as soon as possible. The Company shall endeavour to make any required changes and any additional costs thereby incurred shall be invoiced to the Client.

- 14.2 If, due to circumstances beyond the Company's control, it has to make any change in the arrangements relating to the provision of the Services, it shall notify the Client immediately. The Company shall endeavour to keep such changes to a minimum and shall seek to offer the Client arrangements as close to the original as is reasonably possible in the circumstances.
- 14.3 Any agreed variation or amendment will be carried out in accordance with these terms and conditions and any price increase necessitated as a result of an agreed variation or amendment shall be payable in accordance with the terms for payment herein.
- 15. Rescheduling and Cancellation**
- 15.1 Should the Client cancel the Agreement with the Company prior to commencement of the Installation or Support Contract, or reschedule or cancel any agreed date on which the Installation or Support Services are to be provided, the Company shall be immediately entitled to payment for:
- 15.1.1 100% of our fees if the rescheduling or cancellation takes place less than 48 hours prior to the agreed installation or support date
- 15.1.2 75% of our fees if the rescheduling or cancellation takes place between 48 hours and 5 days of the installation or support date
- 15.1.3 50% of our fees if the rescheduling or cancellation takes place between 6 and 10 days of the installation or support date
- 15.1.4 25% of our fees if the rescheduling or cancellation takes place between 11 and 14 days of the installation or support date
- 15.2 Support hours can only be rescheduled by the Client within the contract timeframe outlined in the Support Contract. Support hours cannot be carried over beyond this timeframe. Should any Support hours remain outstanding upon expiry of the Support Contract for reasons outside our control, such Support hours will be invoiced and shall become due for payment in accordance with clause 4.
- 15.3 If, due to unforeseen circumstances, we have to reschedule or cancel an installation or support date, we will contact you as soon as possible to minimise disruption and will book another date as soon as reasonably possible.
- 16. Confidentiality**
- 16.1 For the purposes of this clause 16, Confidential Information shall include all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature. Both the Company and the Client shall undertake that, except as provided by sub-Clause 16.2 or as authorised in writing by the other Party, it shall at all times during the continuance of the Agreement and for 2 years after its termination:
- 16.1.1 keep confidential all Confidential Information;
- 16.1.2 not disclose any Confidential Information to any other party;
- 16.1.3 not use any Confidential Information for any purpose other than as contemplated by the Agreement;
- 16.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
- 16.1.5 ensure that (as applicable) none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 16.1.1 to 16.1.4.
- 16.2 Subject to sub-Clause 16.3, either Party may disclose any Confidential Information to:
- 16.2.1 any of their sub-contractors or suppliers;
- 16.2.2 any governmental or other authority or regulatory body; or
- 16.2.3 any of their employees or officers or those of any party described in sub-Clauses 16.2.1 or 16.2.2;
- 16.3 Disclosure under sub-Clause 16.2 may be made only to the extent that is necessary for the purposes contemplated by the Agreement, or as required by law. In each case the disclosing Party must first inform the recipient that the Confidential Information is confidential. Unless the recipient is a body described in sub-Clause 16.2.2 or is an authorised employee or officer of such a body, the disclosing Party must obtain and submit to the other Party a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.
- 16.4 Either Party may use any Confidential Information for any purpose, or disclose it to any other party, where that Confidential Information is or becomes public knowledge through no fault of that Party.
- 16.5 When using or disclosing Confidential Information under sub-Clause 16.4, the disclosing Party must ensure that it does not disclose any part of that Confidential Information which is not public knowledge.
- 16.6 The provisions of this Clause 16 shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.
- 17. No employment**
- Nothing in this Agreement shall render or be deemed to render the Company an employee or agent of the Client or the Client an employee or agent of the Company.
- 18. Assignment and Sub-Contracting**
- 18.1 The Client shall not be entitled to assign the benefits under the Agreement.
- 18.2 The Company may sub-contract the performance of any of its obligations under the Agreement without the prior written consent of the other Party. Where the Company subcontracts the performance of any of its obligations under the Agreement to any person with the prior consent of the Client, the Company shall be responsible for every act or omission of the sub-Company as if it were an act or omission of the Company itself.
- 19. Documentation:** The Company includes for any documentation to be submitted in their normal standard format only. If additional copies or specific requirements are needed, they reserve the right to apply additional charges. The Company shall retain title to the documentation and no documentation shall be handed over until all payments as detailed above have been paid in full.
- 20. Insurance:** The Company includes for Public Liability, Employers Liability and Professional Indemnity Insurance.
- 21. Literature and Representations:** Any marketing literature of the Company's is presented in good faith as a guide to represent the services offered and does not form a part of the Agreement.
- No employees or agents of the Company are authorised to make any representation concerning their services unless confirmed by the Company in writing. In entering into the Agreement, the Client acknowledges that it does not rely on and waives any claim for breach of any such representations, which are not so confirmed.
- 22. Liability and Indemnity**
- 22.1 Except in respect of death or personal injury caused by the Company's negligence, the Company will not be liable by any representation, implied warranty, condition or other term, or any duty at common law or under the express terms contained herein, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the Company's servants or agents or otherwise) in connection with the performance of its obligations under the Agreement.
- 22.2 All warranties or conditions whether express or implied by law are hereby expressly excluded.
- 22.3 The Company shall not be liable to the Client or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of the Company's obligations if the delay or failure was due to any cause beyond the Company's reasonable control. Further, the Client shall indemnify the Company against all damages, costs, claims and expenses suffered by the Company arising from any cause beyond the Company's reasonable control, caused by the Client or his agents or employees, including but not limited to:
- 22.3.1 loss or damage to any equipment (including that of third parties);
- 22.3.2 misuse, incorrect use of or damage to any products, equipment or system provided by the Company from whatever cause (other than any act or omission of the Company), including failure or fluctuation of electrical power;
- 22.3.3 failure to maintain the necessary environmental conditions for use of the products, equipment or system;
- 22.3.4 modification, relocation, servicing or installation of the products, equipment or system by any person other than the Company or a person acting under the Company's instruction.
- 22.4 Any property including both hardware and software supplied to the Company by or on behalf of the Client shall be held and worked upon by the Company at the Client's risk. The Company shall not be liable for any loss or damage to any such property.
- 22.5 In the event of a breach by the Company of their express obligations under these Terms and Conditions, the remedies of the Client will be limited to damages, which in any event, shall not exceed the fees and expenses paid by the Client for the Services.
- 23. Warranty**
- 23.1 Where products or equipment have been supplied, the guarantee is limited to the extent of the guarantee provided to the Company by the manufacturer's guarantee or warranty.
- 23.2 This guarantee does not cover products provided by the Client in accordance with clause 3.6.
- 23.3 The Company makes no warranty that operation of any products, equipment or cloud based services will be uninterrupted or error-free, nor that the products or equipment will be compatible with and/or work in conjunction with any other software or hardware used by the Client unless such other software or hardware has been specified for compatibility in writing.
- 24. Intellectual Property**
- 24.1 Subject to a written agreement to the contrary, the Company reserves all intellectual property rights which may subsist in the provision of the Services. The Company reserves the right to take such actions as may be appropriate to restrain or prevent infringement of such intellectual property rights.
- 24.2 In the case of software provision, unless otherwise agreed in writing by the parties and on receipt in cleared funds of all sums due from the Client, the Company agrees to grant a perpetual, non-transferable, non-sub-licensable object code license to the Client in respect of use of the Software. The Client acknowledges that it obtains no ownership of any intellectual property rights in respect of any Software produced by any third party and that, in respect of any third party intellectual property rights, the Client's use of any such intellectual property rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Client.
- 24.3 The Client shall immediately bring to the attention of the Company any infringement or suspected infringement of any of the intellectual property rights licensed hereunder of which it is aware and shall at the request and expense of the Company take such action or assist the Company in taking such action as the Company may deem appropriate to protect the intellectual property rights.
- 24.4 The Client warrants that any document or instruction furnished or given by them shall not cause the Company to infringe any letter patent, registered design or trade mark in the execution of these services and shall indemnify them against all loss, damages, costs and expenses awarded against or incurred by them in settlement of any claim for infringement of any patent, copyright, design, licence, trademark or any intellectual property rights which results from our use of the Client's information.
- 25. Restrictive Covenants:** Neither the Company nor the Client will, during the term of the Agreement and for a period of 2 years from the expiry of this Agreement, without the other's prior written consent, appoint in any way or cause to be employed, engaged or appointed an employee, agent, director, consultant or independent Company of the other. Whilst the above restrictions are considered by the parties to be reasonable in all the circumstances, it is agreed that if, taken together they are adjudged to go beyond what is reasonable in all the circumstances for the Company's protection but would be judged reasonable if part or parts of the wording of them were deleted or its period reduced or an area defined, they shall apply with such words deleted or with such modifications as may be necessary to make it valid and effective.
- 26. Force Majeure:** Neither the Client nor the Company shall be liable for any failure or delay in performing their obligations under the Agreement where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Company failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 27. Waiver**
- 27.1 No waiver by the Company of any breach of the Agreement by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of the Agreement shall be effective only if given in writing and signed by the waiving Party and then only in the instance and for the purpose for which the waiver is given.
- 27.2 No failure or delay on the part of any party in exercising any right, power or privilege under the Agreement shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude, any other or further exercise of any other right, power or privilege.
- 28. Severance:** The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and the Agreement, as appropriate). The remainder of these Terms and Conditions shall be valid and enforceable.
- 29. Data Protection:** Both parties agree to comply with all applicable data protection legislation, including but not limited to the Data Protection Act 1998 and any subsequent amendments thereto.
- 30. Third Party Rights:** No part of the Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.
- 31. Notices**
- 31.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice. Notices shall be deemed to have been duly given: when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or on the tenth business day following mailing, if mailed by airmail, postage prepaid. In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.
- 31.2 Service of any document for the purposes of any legal proceedings concerning or arising out of the Agreement shall be effected by either Party by causing such document to be delivered to the other Party at its registered or principal office, or to such other address as may be notified to one Party by the other Party in writing from time to time.
- 32. Law and Jurisdiction**
- 32.1 These Terms and Conditions and the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 32.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.