

Terms of Sale Goods and Software

Published on 1st June 2023

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 9 (LIMITATION OF LIABILITY).

1. INTERPRETATION

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.4.

Contract: the contract between Kubus and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from Kubus.

Delivery Location: has the meaning given in clause 4.1.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

Goods: the goods (or any part of them) set out in the Order.

Kubus: Kubus Group Limited (registered in England and Wales with company number 04197529).

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of Kubus's quotation, or proposal or overleaf, as the case may be.

Software: the software and their related licences (or any part of them) set out in the Order

Specification: the manufacturer's specification for the Goods, including any related plans and drawings, that is referred to in Kubus's quotation.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

- (d) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax but includes email unless expressly stated.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods and receive a licence of the Software in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall be deemed to be accepted unless Kubus issues a written rejection of the Order within 1 Business Day or receipt of the Order. Upon deemed acceptance the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples or advertising produced by Kubus and any descriptions or illustrations contained in Kubus's website are produced for the sole purpose of giving an approximate idea of the Goods and Software referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods and Software licences given by Kubus shall not constitute an offer. A quotation shall only be valid for the period of time stated within it.

3. GOODS

- 3.1 The Goods are described in the Specification.
- 3.2 Kubus reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, or where the Specification is amended by the manufacturer and Kubus shall notify the Customer in any such event.

4. DELIVERY AND ACCEPTANCE

- 4.1 Kubus shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Kubus notifies the Customer that the Goods are ready.
- 4.2 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Kubus shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Kubus with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.4 If Kubus fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Kubus shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Kubus with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Customer fails to accept delivery of the Goods within three Business Days of Kubus notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Kubus's failure to comply with its obligations under the Contract in respect of the Goods or where an alternative delivery schedule has been agreed by Kubus:
- (a) delivery of the Goods shall be deemed to have been completed at .00 am] on the third Business Day after the day on which Kubus notified the Customer that the Goods were ready; and
 - (b) Kubus shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including re-delivery costs and insurance).
- 4.6 Except where an alternative delivery schedule has been agreed by Kubus, if ten Business Days after the day on which Kubus notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, Kubus may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 4.7 Kubus may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.8 The Customer shall be deemed to have accepted the Goods and the Software when the Customer has had 48 hours to inspect it after delivery (which in the case of Goods is delivered in accordance with clause 4.2 or clause 4.5(a) as applicable and the Software shall be deemed delivered in accordance with clause 5.6) and has not notified Kubus in writing of any defects. Where deemed acceptance occurs, Kubus shall be entitled to sign a certificate of acceptance on the Customer's behalf.
- 5. SOFTWARE**
- 5.1 Unless otherwise expressly set forth in a valid written agreement between Kubus and the Customer, the Customer's use of the Software shall be governed by the relevant end user licence agreement specified by the licensor of the software.
- 5.2 If the Customer is provided with any software licence in respect of the Software, the Customer shall sign and return it to Kubus within seven days of installation of the software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.
- 5.3 Any installation of the Software by Kubus shall be set out in a scope of works and to which separate terms and conditions shall apply.
- 5.4 The Customer acknowledges that Kubus is not the licensor of the Software and as such Kubus has no responsibility in respect of the quality of the Software.
- 5.5 In relation to the Software:

- (a) the Customer acknowledges that it is buying only the media on which the software is recorded and the accompanying user manuals;
- (b) nothing contained in these conditions shall be construed as an assignment of any intellectual property rights in the Software or user manuals; and
- (c) the Customer shall be subject to the rights and restrictions imposed by the owner of the intellectual property rights in the Software and user manuals, and shall comply with all licence contracts, terms of use and registration requirements relating to them.

5.6 Software licenses that are included in the sale of the Goods will be deemed delivered upon the delivery of the Goods. Software licenses that are sold separately from hardware or do not require the use of hardware will be deemed delivered upon the earlier of:

- (a) Kubus (or the licensor) making the Software available for download and/or access by the Customer; or
- (b) Kubus (or the licensor) providing the activation keys for such Software.

6. QUALITY

6.1 The Customer acknowledges that Kubus is not the manufacturer of the Goods and as such Kubus' only responsibility in respect of the quality of the Goods is to use its best endeavours to transfer the benefit of the manufacturer's standard warranty in respect of the goods to the Customer and to provide such reasonable assistance as the Customer may require in the event that there is a defect in the Goods.

6.2 Kubus shall not be liable for the Goods' failure to comply with the manufacturer's warranty.

6.3 Except as provided in this clause 6, Kubus shall have no liability to the Customer in respect of the Goods' failure to comply with the manufacturer's warranty.

6.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.5 These Conditions shall apply to any repaired or replacement Goods supplied by Kubus. In such cases, we offer the returns facilities described in full in our [Returns Policy and Process](#).

7. TITLE AND RISK

7.1 The risk in the Goods shall pass to the Customer on completion of delivery.

7.2 Title to the Goods shall not pass to the Customer until Kubus receives payment in full (in cash or cleared funds) for the Goods in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) Whilst the Goods are stored and not used, store the Goods so that they remain readily identifiable as Kubus's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify Kubus immediately if it becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d); and
- (e) give Kubus such information as Kubus may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.

7.4 Subject to Clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Kubus receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as Kubus' agent; and
- (b) title to the Goods shall pass from Kubus to the Customer immediately before the time at which resale by the Customer occurs.

7.5 At any time before title to the Goods passes to the Customer, Kubus may by notice in writing terminate the Customer's right to resell the Goods under clause 7.4 or use them in the ordinary course of its business and require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. PRICE AND PAYMENT

8.1 The price of the Goods and the Software licences shall be the price set out in Kubus's quotation or (in the absence of a quotation, the Order).

8.2 Kubus may, by giving notice to the Customer at any time up to 20 Business Days before delivery, increase the price of the Goods and/or Software Licences to reflect any increase in the cost of the Goods and/or Software Licences that is due to:

- (a) any factor beyond Kubus's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give Kubus adequate or accurate information or instructions.

8.3 The price of the Goods and Software licences:

- (a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to Kubus at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

- 8.4 Kubus may invoice the Customer for the Goods and/or the Software licences on or at any time after the completion of delivery.
- 8.5 The Customer shall pay each invoice submitted by Kubus:
- (a) Upon receipt or in accordance with any credit terms agreed by Kubus and confirmed in writing to the Customer; and
 - (b) in full and in cleared funds to a bank account nominated in writing by Kubus, and time for payment shall be of the essence of the Contract.
- 8.6 If the Customer fails to make a payment due to Kubus under the Contract by the due date, then, without limiting Kubus's remedies under clause 10, the Customer shall pay interest and compensation on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment as set out in the Late Payment of Commercial Debts (Interest) Act 1988.
- 8.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9. LIMITATION OF LIABILITY**
- 9.1 The limits and exclusions in this clause reflect the insurance cover Kubus holds and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 9.2 The restrictions on liability in this clause 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) defective products under the Consumer Protection Act 1987.
- 9.4 Subject to clause 9.3, Kubus's total liability to the Customer shall not exceed 100% of all sums paid or payable by the Customer to Kubus under the Contract.
- 9.5 Subject to clause 9.3, the following types of loss are wholly excluded:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;

- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

9.6 This clause 9 shall survive termination of the Contract.

10. TERMINATION

10.1 Without limiting its other rights or remedies, Kubus may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

10.2 Without limiting its other rights or remedies, Kubus may suspend provision of the Goods and/or the licence of the Software under the Contract or any other contract between the Customer and Kubus if the Customer becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d), or Kubus reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10.3 Without limiting its other rights or remedies, Kubus may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

10.4 On termination of the Contract for any reason the Customer shall immediately pay to Kubus all of Kubus's outstanding unpaid invoices and interest and, in respect of Goods supplied and Software licensed but for which no invoice has been submitted, Kubus shall submit an invoice, which shall be payable by the Customer immediately on receipt.

10.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. EXPORT TERMS AND COMPLIANCE WITH POLICIES

- 11.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 11 shall (subject to any contrary terms agreed in writing between the Customer and Kubus) override any other provision of these conditions.
- 11.2 Unless otherwise agreed in writing by Kubus, the Customer shall be responsible for complying with any legislation governing:
- (a) the importation of the Goods and/or Software into the country of destination; and
 - (b) the export and re-export of the Goods and/or Software,
- and shall be responsible for the payment of any duties on it where the applicable Incoterm so requires it.
- 11.3 Unless otherwise agreed in writing between the Customer and Kubus, Goods supplied for export from the United Kingdom shall be delivered at place (DAP Incoterms 2020) to the Delivery Location and the Supplier shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 11.4 The Customer acknowledges that in accordance with DAP Incoterms 2020, unless otherwise agreed in writing by Kubus, the Customer will be responsible to pay any import duties and taxes and any additional charges for customers clearance, which Kubus has no control over. Customs policies vary widely from country to country, so the Customer is advised to contact its local customs office for further information. The Customer acknowledges that cross-border deliveries are subject to opening and inspection by customs authorities.

12. FORCE MAJEURE

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.

13. GENERAL

13.1 Assignment and other dealings.

- (a) Kubus may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Kubus.

13.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2(b).
- (b) Each party may disclose the other party's confidential information:

- (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

13.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

13.4 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.5 Waiver.

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

13.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 13.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.7 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the address set out in the Order (if any) (or an address substituted in writing by the party to be served):
- (b) Any notice shall be deemed to have been received:

- (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 13.8 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 13.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 13.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.