

KONICA MINOLTA BUSINESS SOLUTIONS (UK) LIMITED
STANDARD TERMS AND CONDITIONS APPLICABLE TO THE SALES ORDER AND MAINTENANCE FORM
November 2018, version 1

1. DEFINITIONS

“Agreement”: these terms and conditions, the, signed Sales Order and Maintenance Form, Schedules and any Special Conditions as may be agreed in writing by the Parties.

“Assignee”: a Person either providing (i) third party funding in respect of the Products or the Services under a separate lease agreement; or (ii) the Services as the Service Provider’s authorised sub-contractor, as the context provides.

“Basic Training”: basic training given by the Service Provider to up to two (2) users per Equipment.

“Billing Period”: either monthly or quarterly in arrears.

“Charges”: the price for the Equipment (whether for cash or under a separate lease arrangement), and charges for the Services as set out in the Sales Order and Maintenance Form. Such term shall extend to include Copy Charges, cost per copy or cost per image (and any additional charges for additional services as may be agreed by the Service Provider from time to time).

“Confidential Information”: non-public information whether oral or written of a confidential nature and obtained by the disclosing party and shall include reference to any data within the meaning of Data Protection Law.

“Consumables”: supplies consumed in the Products e.g. Toner, toner cartridges, ink and developer.

“Copy Charges”: A4 copy or print recorded on the Equipment meter as detailed in the Sales Order and Maintenance Form. Other sizes are charged pro-rata to size and the A4 charges is the minimum charge per page.

“Customer”: the Person named in the Sales Order and Maintenance Form who shall be liable to the Service Provider in respect of the sales, purchases, and maintenance relating to the Products and Services.

“Data Protection Law”: the General Data Protection Regulation, Data Protection Act 2018 or any later replacement or re-enactment.

“Equipment”: multifunctional printer and/or photocopier equipment (such term to include references to ‘hardware’ or ‘devices’) stated in the Sales Order and Maintenance Form.

“Force Majeure”: an unforeseeable event beyond the reasonable control of the Parties, including, but not limited to, acts of God, war, terrorism, riot, fire, earthquake, explosion, flood, strike, lockout, injunction or telecommunications, electrical or source of supply failure, or the unavailability of Services, personnel, Products or materials and not attributable to the acts or omission of the Party relying on the Force Majeure.

“Good Industry Practice”: the exercise of that degree of skill, care, prudence, efficiency, as would be expected within the Service Provider’s industry or business sector.

“Images”: for office products, single sided A4 print counts as one, and single sided A3 print counts as two; and for production print/graphic art devices, single sided SRA3 print counts as one.

“Initial Term”: the initial period stated in the Sales Order and Maintenance Form.

“Intellectual Property Right”: any pre-owned and existing rights in any registered or unregistered patent, design right, copyright, database right, topography right, trade mark, service mark, logo, any application to register these rights, trade secret, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world.

“Maintenance”: the carrying out of repairs, replacement of parts, or adjustment to the Equipment, to rectify a fault during Working Hours (remotely or by an on-Site visit, as determined by the Service Provider).

“OEM”: original equipment manufacturer;

“Party”, “Parties”: either the Customer or Service Provider or both collectively.

“Person”: a third party individual, firm, corporation, business trust, partnership, or other entity and shall include any successor of such entity.

“Personal Data”: personal data (as defined by Data Protection Law) either voluntarily supplied by the Customer to the Service Provider for the purpose of providing the Products or which is collected and held by the Service Provider on behalf of the Customer in the course of providing the Products and Services.

“Products”: the Equipment, ancillaries, Software, Solutions or other products provided by the Service Provider.

“Services”: installation and/or configuration of the Products, Maintenance and Support.

“Service Charges”: the charges payable for the Maintenance.

“Service Levels”: the level of service to be met by the Service Provider.

“Service Termination Sum”: the service charges payable by the Customer on termination of the Services, calculated using the average monthly copy volume of the Equipment measured during the period from the Start Date to the date of termination multiplied by the number of months remaining to the end of the Initial Term.

“Site”: the location(s) and initial point of installation of the Equipment stated in the Sales Order and Maintenance Form or as specified by the Customer.

“Software”: the programs in object code form and either identified by title and reference number or supplied as embedded software.

“Solution”: the solution(s) as may be requested by the Customer.

“Special Conditions”: any written and agreed changes to these terms and conditions or Schedules.

“Support”: Maintenance and advice whether given by telephone, e-mail, via the Service Provider’s website, remotely or by on-Site visit, as determined by the Service Provider, during Working Hours in relation to a fault to a Product (following receipt of a request from the Customer to diagnose and/or rectify such fault) and any sales support.

“Toner”: toner solely produced and supplied by the Service Provider in the following colours: yellow, black, cyan and magenta.

"Training": any training other than or in addition to the Basic Training.

"Uptime" : the number of Working Hours during the period during which the Equipment is functioning correctly, expressed as a percentage of the total number of available Working Hours, excluding any hours that the Equipment is unavailable due to planned preventative maintenance, customer network failure, failure to load consumables, or resulting from any Customer act or omission.

"WEE": Waste Electrical and Electronic Equipment with reference to the European Community Directive (2002/96/EC).

"Working Days": Monday to Friday, 0900 to 1730, excluding UK bank and public holidays.

2. SITE

2.1 The Customer shall, at its own cost, prepare the Site(s) and give the Service Provider access to enable the Service Provider to carry out a pre-site survey inspection, deliver and install the Products and provide the Services.

2.2 Notwithstanding the completion and agreement to any site survey, the Service Provider shall have no liability to the Customer in any or all respects in the preparation and/or suitability of the Customer's Site or environment in accommodating the Products.

3. TERM

3.1 This Agreement shall come into force on the date of signature by the Service Provider and continue until the expiry of the Initial Term or termination in accordance with the terms of Clause 15.

3.2 Additional maintenance charges may apply either: (i) after five (5) years where Equipment is supplied as new at the date of installation or (ii) after three (3) years in respect of refurbished Equipment. The Service Provider shall give the Customer written notice should any such charge be applicable.

4. CHARGES & PAYMENT

4.1 The Charges shall include:

- (i) Basic Training per Equipment;
- (ii) Consumable parts;
- (iii) Spare parts;
- (iv) Modification parts;
- (v) Labour during Working Hours for standalone Equipment and its ancillary items (excluding external interface aspects); and
- (vi) If agreed in advance, Toner up to the manufacturers' recommended usage.

4.2 Unless otherwise agreed in writing, the Charges will not include:

- (i) Services to non-Konica Minolta Equipment or Equipment not provided by the Service Provider (unless agreed in writing);
- (ii) Toner ordered or used contrary to Clause 4.7;
- (iii) Staples;
- (iv) Output materials;
- (v) Relocation of the Equipment;

- (vi) Service made necessary by the continued use of the Equipment outside any agreed or stated specification;
- (vii) The provision of any software or other solutions;
- (viii) Service required outside Working Days or outside the UK.

4.3 The Service Provider may apply additional charges for the following:

- (i) Additional training;
- (ii) Service required to correct damage due to Customer's misuse, negligence, water damage, fire or flood damage;
- (iii) Excessive toner ordering and/or excessive usage (e.g. greater than 40% coverage when Toner is included in the page cost);
- (iv) All consumables not separately paid for in full by the Customer and unused at the expiry of the Agreement which are not returned to the Service Provider within twenty (20) Working Days' from the expiry of the Agreement;
- (v) A single charge of £75.00 +VAT where direct debit is not selected as the preferred mode of payment;
- (vi) Services provided outside Working Hours and/or outside the UK.

4.4 The Charges are fixed for the first twelve (12) months of the Initial Term. Thereafter, the Charges will be reviewed on an annual basis and increased at 9% per annum.

4.5 All invoices are payable thirty (30) days from the date of invoice without any deduction, reduction, set-off, claim or counterclaim for damages or any other reason. This is an essential term of the Agreement.

4.6 Image volumes:

- (i) The Equipment may contain an automated diagnostic facility, which will provide the Service Provider with information about the use of the Products, including Image volumes and faults.
- (ii) If the Equipment does not have a diagnostic facility, or if this is not used to measure Image volume, the Customer will provide meter readings at every Billing Period, whether or not requested.
- (iii) Where readings described under 4.6(ii) are not provided, an estimate of the Image volumes will be made by the Service Provider based on the number of Image volumes made in previous Billing Periods and the Customer will pay such estimation until they request a reconciliation of the Charges.

4.7 Toner:

- (i) Where Toner is included in the Service Charges, it remains the property of the Service Provider until it is used and/or paid for in full, and it must only be used in the Equipment provided by the Service Provider.
- (ii) If Toner is ordered and/or used in excess of the number required to produce the anticipated number of Images made during the Billing Period in respect of any Equipment, the Customer will be required to pay an additional charge to cover the costs of such excessive order/usage.

- (iii) The additional charges referred to in Clause 4.7(ii) will be calculated by reference to the average annual Toner consumption data for the relevant Equipment. The Customer agrees to pay such additional charge on demand.
- (iv) Upon expiration or earlier termination of the Agreement, the Customer must return any unused Toner (and Consumables) to the Service Provider. In default of doing so, the Customer allows the Service Provider access to the Site for the purpose of removing any such Toner (and Consumable) supplies.

4.8 If the Customer wishes to dispute the Service Charges, it must provide written notice to the Service Provider within fifteen (15) days of the date of the invoice outlining the nature of its dispute.

4.9 The Customer must pay any undisputed Charges within a disputed invoice within the payment terms whilst the Parties resolve the disputed balance.

4.10 Without prejudice to any other rights it may have, the Service Provider reserves the right to charge:

- (i) interest on any overdue undisputed Charges at a minimum of 3% per annum above the bank lending rate of the Bank of England from the due date until payment in full; and
- (ii) costs incurred to make the Customer comply with the payment terms.

5. MAINTENANCE AND SUPPORT

5.1 Maintenance does not include the correction of any fault due to:

- (i) the Customer's failure to maintain an industry acceptable environment for the Products at the Site; or
- (ii) the Customer's neglect or omission to operate the Products within design specification or contrary to the manufacturer's or licensor's instruction manuals; or
- (iii) the alteration or modification of the Products by any party other than the Service Provider; or
- (iv) the relocation of Products on Site or to another location by any party other than the Service Provider or is authorised agent; or
- (v) the use of defective or inappropriate Consumables supplied by any party other than the Service Provider; or
- (vi) the failure of, or changes to, or connection and disconnection from any external device (e.g. USB device) or system; or
- (vii) failure or damage caused by, act of violence, fires, floods, explosions, power surge, or adverse environmental or other natural conditions; or
- (viii) where the Service Provider reasonably considers that the Equipment cannot be economically repaired because it is
 - (a) past its duty lifecycle and/or
 - (b) is beyond seven (7) years old from new; and/or
 - (c) parts are no longer available from the manufacturer, and/or

- (d) the Equipment is of excessive wear or deterioration; or
- (ix) damage or performance hindered by the use of third party toner and toner cartridges not produced and supplied by the Service Provider.

5.2 If the Equipment is not performing to the manufacturer's specification or the Service Provider's instructions in regards to non-OEM equipment), the Service Provider will, subject to availability, upon the Customer's request replace the Equipment with an identical model or where this is not possible, one with similar features and capabilities, provided that the Equipment was supplied as new and by and only maintained by the Service Provider.

5.3 The undertaking under Clause 5.2 will only apply to the extent that the fault has not arisen for any of the reasons stated in Clause 5.1 and the Customer is not in default of payment of any Charges.

5.4 If so requested, the Service Provider may provide the Customer with additional services for an additional charge, for but not limited to, services to:

- (i) correct any faults as described in Clause 5.1,
- (ii) Maintenance or Support required outside Working Hours;
- (iii) supply or renewal of Consumables not included in the Charges
- (iv) training;
- (v) relocate Products on or from the Site or to a Site outside the UK;
- (vi) connection and configuration of the Products to a computer network or other system;
- (vii) supply of upgrades, software patches or service packs, unless supplied free of charge by the manufacturer; or
- (viii) any requirement to carry out an annual or other test on the Products to satisfy the Customer's own statutory compliance (but not caused by the Service Provider's failure to repair).

6. INSURANCE, RISK and TITLE

6.1 Liability for loss or damage to Products shall pass to the Customer upon delivery at the Customer's nominated Site.

6.2 For cash sales, title to the Products and the rights in the use of the Software shall pass to the Customer on receipt of full payment by the Service Provider.

6.3 The Customer shall not sell or dispose of any Equipment or other associated items until payment in full of all Charges have been received and until such time, the Customer shall hold and store the Equipment as agent for the Service Provider in a manner which clearly distinguishes the Equipment from any other equipment or other supplier.

6.4 All Consumables and Toner shall remain the property of the Service Provider until used and/or paid for in full.

6.5 The Service Provider shall be entitled to recover the Equipment:

- (i) if the price for the Equipment remains unpaid after the invoice due date;
- (ii) the Customer is the subject to the threat of insolvency or issued insolvency proceedings; or
- (iii) the Customer has any diligence carried out against it or its assets.

6.6 This Clause shall not apply where the Equipment is being leased in which case terms of the lease agreement in respect of such arrangement shall apply as regards insurance, risk and title.

7. SOFTWARE

7.1 The Customer shall use any Software in accordance with all software licences required by the licensors including licences (if any) for software included within the Equipment.

7.2 In the event of any conflict between the terms of the licensor's licence agreement terms and this Agreement, the licensor's terms shall prevail only in relation to the use of the Software.

7.3 The Service Provider reserves the right to substitute the Equipment or Software or part thereof with equipment or software, which will operate in accordance with or in excess of the Solution.

8. SERVICE PROVIDER'S WARRANTY

8.1 The Equipment may be new or remanufactured and supplied with the warranties applicable to new Equipment.

8.2 Whilst the Service Provider can help the Customer to select Products and Services based on the requirements specified by the Customer, the Customer's assessment and selection of the Solution remains the Customer's sole responsibility.

8.3 The Service Provider warrants that:

- (i) the Equipment will perform to the manufacturer's specification;
- (ii) if an item of Equipment fails to perform to the manufacturer's specification and not attributable to the Customer's use of the Equipment or falling within the provisions of Clause 5.1 and/or used in default of the manufacturer's instructions or Service Provider's training or guidance, the Customer may request a replacement Equipment in accordance with clause 5.2; and
- (iii) the Services and any additional services (where applicable) shall be performed in accordance with the approved standard of the manufacturer, Good Industry Practice, and the Service Provider's own established procedures and practices.

8.4 The warranties given within this Agreement are the Service Provider's only warranties concerning the Services and made expressly in lieu of all other warranties, representations or conditions, express or implied, by statute, common law, or otherwise arising under contract or tort.

9. THE CUSTOMER'S OBLIGATIONS

The Customer will following delivery:

- (i) grant the Service Provider access to the Site to provide the Services;
- (ii) within ten (10) days from delivery inform the Service Provider of any defects in the Equipment;
- (iii) provide all assistance and other information necessary for the Service Provider to diagnose and/or remedy any fault;
- (iv) provide all meter readings as required and directed by the Service Provider under the terms of this Agreement;
- (v) maintain current backups of all data and adequate virus protection systems for its business;
- (vi) appoint a principal operator and one back-up operator for the Equipment; and
- (vii) carry out any recommended daily maintenance of the Equipment.

10. LIABILITY

10.1 Neither Party shall exclude or limit liability for:

- (i) Fraud;
- (ii) Death or personal injury resulting from the Parties' or their employees' negligence; or
- (iii) Any matter which cannot be excluded by or limited in law.

10.2 Except as set out in clause 10.1, the Parties' liability arising out of any one or series of events; whether in contract, tort (including but not limited to negligence) or otherwise, to the other Party shall in respect of:

- (i) any and all loss of or damage to tangible property not exceed one million pounds sterling (£1,000,000), and
- (ii) any other loss or damage be limited to whichever is the lower of:
 - (a) the Charges paid and/or invoiced and payable in the previous six (6) months, or
 - (b) one hundred thousand pounds (£100,000).

10.3 Except as set out in Clause 10.1, neither Party shall be liable to the other whether in contract, tort (including but not limited to negligence) or otherwise for any: (i) loss of profits; or (ii) loss of revenue; or (iii) loss of or depletion to goodwill; or (iv) loss of use of or damage to data or software; or (v) infection of or damage or interference caused to any computer operating systems or programmes (or part thereof) not caused by the Service Providers agents; or (vi) loss or damage suffered by a Party as a result of an action brought against the other Party by a third party.

10.4 The Service Provider shall not be responsible for any failure or delay in performing its obligations to the extent that such failures or delays are caused by any:

- (i) Inaccuracies or omissions in (a) specifications; or (b) information supplied or not supplied by the Customer; or
- (ii) Acts or omissions of the Customer or a third party (other than the Service Provider's agents); or
- (iii) Delays in or failure by the Customer to perform any of its obligations under the Agreement.

10.5 The Service Provider has calculated the Charges on the basis of the exclusions and limitations of liability

contained in this Agreement. The Customer expressly agrees these exclusions and limitations are reasonable and are a true reflection of the Charges which would be higher without these provisions.

11. INTELLECTUAL PROPERTY

11.1 The Service Provider's pre-existing proprietary Intellectual Property Rights shall always remain with the Service Provider and the Customer is not granted any rights in any Intellectual Property embodied in the Products, Services and additional services developed by the Service Provider on behalf of the Customer, including but not limited to:

- (i) All patent, copyright; trade mark and other Intellectual Property Rights therein; and
- (ii) All methodologies, processes, techniques, ideas, concepts, trade secrets and knowhow embodied in the Products, Services and additional services.

11.2 Except to the extent that such operations cannot be prevented or restricted by law, the Customer is not permitted to modify, reverse engineer or decompile the Products in anyway whatsoever.

12. FORCE MAJEURE

12.1 Either Party may terminate this Agreement upon thirty (30) days' prior written notice, if the Services cannot be resumed within a period of sixty (60) days after a Force Majeure event occurs and such event is not attributable to the acts or omission of the Party wishing to rely on the Force Majeure.

12.2 Upon termination for a Force Majeure event the Customer will pay any arrears and Charges due and owing up to the date of termination.

12.3 Where termination is for reason of a Force Majeure event due to the Customer's act or omission, the Customer will pay the amounts set out in Clause 15.3.

13. DATA PROTECTION & CONFIDENTIALITY

13.1 Neither Party shall, without the prior written consent of the other Party, use, publish, or disclose to any other person, nor cause or permit any of its employees, agents or sub-contractors to use, publish or disclose any Confidential Information which it has received from the other, otherwise than for the performance of its duties under this Agreement; other than Confidential Information which:

- (i) becomes generally available in the public domain other than by its unauthorised disclosure by the receiving party; and/or
- (ii) has or may come into the possession of one Party otherwise than in breach of a duty of confidence to the other Party; and/or
- (iii) is already in the possession of a Party with the right to disclose; and/or
- (iv) is required to be disclosed by law, expressly including the obligations of Public Bodies under the Freedom of Information Act.

13.2 The Customer will ensure that any Personal Data provided to the Service Provider has been obtained fairly and lawfully and that it has obtained all necessary

consents and otherwise complied with the DPA to enable it to pass such Personal Data to the Service Provider and for the Service Provider to process such Personal Data in accordance with this Agreement.

13.3 For the purposes of any processing under this Agreement, the Customer agrees it is the 'Controller' and the Service Provider is the 'Processor' as such terms are defined under the Data Protection Law, and each shall comply with their respective obligations as imposed by Data Protection Law and in accordance with the terms of this Agreement and any other notice that may be agreed between the Parties from time to time.

13.4 The Customer shall indemnify the Service Provider against all losses, costs, expenses (including but not limited to legal cost and disbursements), damages, liabilities, demands, claims, action or proceedings which the Service Provider sustains or incurs as a result of any breach by the Customer to Data Protection Law or the provisions of this Clause 13.

14. ASSIGNMENT AND SUBCONTRACTING

Neither Party shall assign, transfer and/or sub-contract any benefit or obligation under this Agreement without the other Party's prior written consent, save that the Service Provider will be permitted to assign the provision of the funding and maintenance to an Assignee.

15. TERMINATION

15.1 The Service Provider may terminate this Agreement with immediate effect on written notice if:

- (i) the Customer fails to make payment of any Charges within the Services Provider's payment terms; and/or
- (ii) the Customer fails to remedy any breach within thirty (30) days of written notice given by the Service Provider to the Customer; and/or
- (iii) the Customer or its guarantor (if any) is unable to pay its debts as they fall due, or becomes bankrupt, or begins negotiations with its creditors, or goes into liquidation or administration, or has a receiver or administrative receiver appointed over all or any of its assets, or is dissolved; and/or
- (iv) a bailiff or other officer attaches, cedes, or impounds any of the Customer's goods pursuant to a Court Order or in Scotland an attachment is levied or attempted against any of its assets; and/or
- (v) the landlord of the Site where the Products are kept threatens to take any steps of distraint over the Products or in Scotland to exercise its right of hypothec over them or any of them; and/or
- (vi) becomes aware that any information supplied by the Customer pursuant to this Agreement is found to be false in a material respect.

15.2 Either Party may terminate this Agreement with immediate effect on written notice if:

- (i) the other Party ceases to carry on business or a material part of its activities; and/or
- (ii) there shall be any material change (e.g. fifty percent (50%+) in the shareholding control of a Party; and/or
- (iii) the other Party is subject to a petition for insolvency and/or an administration order or similar order.

15.3 In the event of termination for the Customer's default and/or breach, the Customer will immediately pay to the Service Provider any arrears, plus a sum equal to either: (a) the total of twelve (12) calendar months' Service Charges; or (b) the Service Termination Sum, whichever is the higher.

16. WEE

16.1 The removal of Products no longer required by the Customer may be arranged by the Service Provider at the Customer's request subject to the Customer providing a declaration of ownership and the transfer of ownership to the Service Provider.

16.2 Should the Equipment be judged by the Service Provider to have reached end of its life, the Equipment will be disposed of within the requirements of the WEE where this applies.

17. GENERAL PROVISIONS

17.1 This Agreement contains the entire agreement between the Parties in respect of the supply of Products and Services to the exclusion of any other document (for example, statement of requirements and any statement of works), or the Customer's purchase order or terms.

17.2 No other agreements, representations or warranties, whether oral or written, shall be deemed to bind the Parties with respect to this Agreement.

17.3 This Agreement may only be varied in writing as agreed and executed by senior authorised officers of each Party.

17.4 A Person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999.

17.5 If any clause or part of a clause is found to be unenforceable then that clause or part may be severed and will not affect the enforceability of any other provisions of this Agreement.

17.6 The waiver of a breach or default by either Party shall not be construed as a waiver of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either party to exercise or avail itself of any right; power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.

17.7 Any notice shall be in writing and served upon the recipient at its address set out in the Sales Order and Maintenance Form by registered post or receipted email.

17.8 Save as otherwise expressly provided all Charges and additional charges are expressed exclusive of value added tax ("VAT") and any VAT arising in respect of any supply shall be paid to the Service Provider by the Customer in addition to the Charges.

17.9 Where this Agreement is executed by e-signature or electronically scanned signature of each Party, it shall be

accepted and binding on the Parties as if such copy was an original signed version.

17.10 This Agreement shall be governed by and construed under English law and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.