



1. HARDWARE SUPPORT PRODUCT TERMS

1.1 These Product Terms form part of the Agreement and set out the additional terms on which K3 supplies Hardware and/or provides Hardware Support.

1.2 Definitions.

End of Life: hardware which has reached “end of life” in accordance with the manufacturer’s end of life policy.

Extended Hours: (if applicable) the hours outside of the Standard Hours during which K3 is to provide Hardware Support Services in respect of Extended Hours Incidents as set out on the Order Form and/or in the Support Handbook, and as may be updated from time to time by K3 and notified to the Customer.

Extended Hours Incidents: means the type of incidents covered by the Hardware Support Services occurring during Extended Hours as set out on the Order Form and/or in the Support Handbook, and as may be updated from time to time by K3 and notified to the Customer.

Hardware Support Services: means the hardware support services in respect of the Supported Hardware as described in more detail in these Product Terms.

SLA: means the service level guidelines set out on the Order Form and/or in the Support Handbook, and as may be updated from time to time by K3 and notified to the Customer.

Standard Hours: means the standard support hours in respect of the Hardware Support Services as set out on the Order Form and/or in the Support Handbook, as may be updated from time to time by K3 and notified to the Customer.

Support Handbook: the support handbook issued from time to time by K3 relating to the Hardware Support Services, which includes contact details and any applicable SLAs.

Support Hours: means the Standard Hours and/or the Extended Hours as applicable.

Supported Hardware: means the hardware identified as such on the Order Form.

1.3 Hardware Supply and Hardware Support Services

(a) If stated on the Order Form, then (subject to payment of the Fees and the other terms of the Agreement) K3 shall:

(i) supply the Hardware; and/or
(ii) provide the Customer with the Hardware Support Services for the Supported Hardware at the agreed location(s) during the Term.

(b) The provisions of paragraph 2 of these Product Terms only apply where K3 is supplying Hardware to the Customer.

(c) The provisions of paragraph 3 of these Product Terms only apply where K3 is supplying Hardware Support Services to the Customer.

2. HARDWARE SUPPLY

2.1 Supply and Delivery of Hardware

(a) Subject to the terms of the Agreement, K3 shall deliver Hardware to the location set out in the Order Form or such other location the parties agree in writing (**Delivery Location**). Delivery of Hardware shall be completed on its arrival at the Delivery Location.

(b) The Customer acknowledges that it is solely responsible for preparing and maintaining the Delivery Location (and any other location at which the Hardware will be located) as a proper and safe environment in which any Hardware is to operate.

(c) If K3 fails to deliver the Hardware, the Customer shall have no liability to pay for it and K3’s sole liability for not delivering shall, subject always to Condition 13 of the General Terms and Conditions, be limited to the costs incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the Fees for the undelivered Hardware under the Agreement.

(d) K3 shall be entitled to make partial deliveries or deliveries by instalments. Failure to deliver any one or more instalment shall not of itself constitute a breach of the Agreement.

(e) If the Customer fails to accept or take delivery of Hardware K3 shall store it until delivery takes place and charge Customer for all related

costs and expenses (including insurance). If Customer fails to take delivery within 10 Business Days from the date the Hardware was first ready for delivery, the Customer remains liable to pay for the Hardware and K3 may resell or otherwise dispose of part or all of the Hardware (in which case the Customer’s liability to pay for it shall be reduced by the amount received by K3 for the Hardware).

2.2 The price of Hardware is exclusive of all costs and charges of packaging, insurance, transport and installation, which shall be quoted and charged in addition.

2.3 Title and risk

(a) The risk in the Hardware shall pass to the Customer on delivery. Title to the Hardware shall not pass to the Customer until K3 receives payment in full (in cash or cleared funds) for the relevant Hardware.

(b) Until title to the Hardware has passed to the Customer, the Customer shall store the Hardware for K3 separately in a fiduciary capacity, shall not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware and shall maintain the Hardware in satisfactory condition and keep it fully insured.

(c) If before title to the Hardware passes to the Customer the Customer suffers an Insolvency Event then, without limiting any other right or remedy K3 may have, K3 may at any time: (i) require the Customer to deliver up all Hardware in its possession; and (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Hardware is stored in order to recover it.

(d) K3 will refund the cost of, or at its discretion replace or repair free of charge any Hardware proved to K3’s reasonable satisfaction to have been lost or damaged in transit prior to delivery provided that within 3 days after receipt of the Hardware in the case of damage, or within 10 days of receipt of invoice in the case of loss, the Customer notifies K3 in writing of the occurrence of the damage or loss, and its nature and extent.

(e) K3 shall use reasonable endeavours to ensure that the Customer shall have the benefit of any manufacturer warranties attaching to Hardware and the Customer’s remedies for any defect or fault shall be as set out in such warranties. K3 reserves the right to amend the specification of Hardware if required by Applicable Law. K3 warrants that Hardware will be supplied free from any third party encumbrances.

3. HARDWARE SUPPORT SERVICES FOR SUPPORTED HARDWARE

3.1 **Corrective Maintenance.** If during the Support Hours the Customer notifies K3 (in accordance with the Support Handbook) that the Supported Hardware is malfunctioning or failing (and, in respect of Extended Hours, such malfunction or failing constitutes an Extended Hours Incident) K3 shall during the Support Hours use reasonable endeavours to support the Customer to correct the malfunction or failure (“**Corrective Maintenance**”) by:

(i) providing remote support; and / or
(ii) one or more site visits (if K3 deems it reasonably necessary).

3.2 Corrective Maintenance may include (i) making adjustments to the Supported Hardware, including as to settings, (ii) repairing or replacing parts of the Supported Hardware, (iii) moving the Supported Hardware to fix remotely, and/or (iv) temporary fixes until a longer-term solution can be achieved.

3.3 During the Support Hours K3 may, subject to prior agreement as to the frequency and timings of visits, conduct site visits to test the functions of the Supported Hardware and make such adjustments as K3 shall deem reasonably necessary to keep the Supported Hardware in working order. Such preventative maintenance may be carried out at the same time as Corrective Maintenance.

3.4 **Replacements and Spare Parts.** In performing the Hardware Support Services, K3 shall use reasonable endeavours to source spare parts required to correct Hardware malfunctions and failures. K3 may charge the Customer for spare parts not provided free under manufacturer’s warranty. Any component of the Supported Hardware may be replaced on a temporary or permanent basis by a component of substantially equivalent functionality. All replacement components provided by K3 on a permanent basis shall become part of the Supported Hardware and the property of the Customer. Provisions in the Agreement relating to the supply of Hardware shall apply to any such components. All components removed from the Supported Hardware shall no longer constitute part of the Supported Hardware and will be the property of K3.

3.5 Where K3 provides the Customer with reserve equipment, the Customer shall store such equipment in the same in conditions as

Supported Hardware and make this equipment available to K3 for periodic maintenance, as with all other Supported Hardware.

3.6 SLA

- (a) Details of K3's target SLA for responses and fixes (which includes workarounds) in respect of the Hardware Support Services shall be provided to the Customer. Any SLAs are targets only and do not constitute a guaranteed service level. Whilst K3 shall use reasonable endeavours to meet the targets, failure to do so shall not, of itself, constitute a breach of the Agreement or a default on the part of K3. No service credits shall be payable for failure to meet these SLAs.
 - (b) Calls have a response target and a fix/workaround target. Unless stated otherwise in the Support Handbook, for the purpose of calculating response or resolution times, the clock shall stop for the purpose of SLAs to the extent K3 refers the issue on to a third party supplier or licensor (rather than K3), until a resolution is received from that third party. The fix time frame starts from the end of response time frame. A fix occurs when K3 contacts the Customer whether or not the person reporting the call is aware that a fix or workaround has been delivered.
 - (c) SLAs may require the qualification of support incidents into different priority categories, dependent upon the seriousness of the issues and/or consequences. Such categorisation shall be the responsibility of K3 and K3 shall take into consideration the facts provided to it by the Customer in respect of the relevant incident and will act reasonably in assigning a priority to incidents.
 - (d) K3 shall use reasonable endeavours to provide the Hardware Support Services in respect of End of Life Supported Hardware but the SLAs shall not apply.
- 3.7 The Customer acknowledges and agrees that (i) no software or hardware or related infrastructure is perfect or error free, and that despite its commercially reasonable efforts, K3 may be unable to provide answers to or resolve some or all requests for Support, and any answers or resolutions may not be within the above timescales targeted; (ii) efficient use and operation of Products may be dependent on (a) the Customer installing applicable upgrades and enhancements and provisioning sufficient end user training; and (b) the volume of data being processed on or using the Products.

4. EXCLUDED CAUSES

- 4.1 In addition to any Excluded Causes under the General Terms and Conditions, K3 shall not be liable for any delay or failure to perform the Agreement (including the Hardware Support Services) to the extent caused or contributed to by, and the Hardware Support Services do not include any service or requirement to the extent that such service or requirement is, or arises as a result of:
- (a) any issue with Supported Hardware other than fair wear and tear of Supported Hardware;
 - (b) external surfaces of the Supported Hardware not being kept clean and in good condition;
 - (c) firmware updates;
 - (d) consumable items, accessories or cables and electrical equipment external to the Supported Hardware;
 - (e) Solid State Drives (SSD) unless expressly agreed on the Order Form;
 - (f) configuration, networking services, training and consultancy services;
 - (g) (i) defect in design or (ii) faulty materials or workmanship in manufacture of Supported Hardware;
 - (h) any attempt (successful or not) by any person other than K3 to modify, change, move, reposition, adjust, support, repair or maintain any part of the Supported Hardware or merge it (in whole or in part) with any other software/equipment or additions or variations to the software/equipment;
 - (i) any failure of the Customer to promptly exercise its rights, and/or as requested by K3 assist K3 to exercise or assign to K3 the rights under any third-party warranty concerning a Product;
 - (j) if K3 cannot replicate the problem as reported using reasonable efforts;
- 4.2 If K3 (in its sole discretion) provides Hardware Support Services in respect of any of the above issues, it shall be entitled to charge at its standard rates in respect of such applicable services.
- 4.3 **Excessive Use:** K3 may charge the Customer at its standard rates for services provided if the Customer's use of the Hardware Support Services is, in K3's reasonable opinion, excessive or unreasonable. In determining whether use is excessive or unreasonable, K3 may have regard to comparative usage by other customers of K3.