

TERMS AND CONDITIONS OF SALE

The following terms and conditions ("**Sale Terms**") shall apply to an agreement entered between KDDI Australia Pty. Ltd. ("**Seller**") and a buyer ("**Buyer**") concerning all transactions ("**Transactions**") for the sale and/or grant of license of any products (including software) or services ("**Products**") by the Seller to the Buyer ("**Agreement**"). Provided that where the Seller and the Buyer to any Transaction enter into a written Agreement in respect of the Products to be provided there under, employees of the Seller are not authorized to enter into oral collateral agreements or to give verbal guarantees going beyond the contents of that Agreement. The Seller hereby objects to any terms and conditions that may be contained in any form issued by the Buyer and hereby expressly rejects them in their entirety. By issuing a purchase order based on the Seller's Quotation, accepting delivery of, using and/or accessing the Products supplied under a Transaction, the Buyer is deemed to have accepted these Sale Terms.

1. QUOTATION AND PRICES

Prices for the Products shall be subject to change by the Seller without notice and orders for future delivery will be billed according to the price in effect at the time of delivery. Unless otherwise stated therein, the Seller's written quotations shall automatically expire after thirty (30) calendar days from the date of issue and shall be subject to termination by notice within that time period (unless otherwise specified).

2. PAYMENT

The Seller shall submit its itemized invoice to the Buyer according to the payment terms specified in the Seller's quotation or otherwise agreed in respect of the Transaction. The Buyer shall pay the amount under each invoice without any counter claims, offset or deductions, within thirty (30) days from the date of the invoice. The Buyer shall be liable to pay interest at the interest rate set from time to time under the laws and by the courts per month or part of a month on all invoiced sums which remain unpaid after their due date to the date of actual payment. There will be an additional 3% surcharge on all invoiced sums if an Amex credit card is used.

3. TAXES

Unless stated otherwise, Product prices shall be exclusive of all taxes, duties, levies, fees or other charges ("**Taxes**") imposed by any authority in relation to a Transaction (excepting any taxes on the Seller's gross or deemed income). Where applicable, such Taxes will be added to the invoice as a separate charge to be paid by the Buyer.

4. DELAYS

The Seller shall not be responsible or liable for any delay or failure to deliver which is not attributable to the Seller or within its reasonable control. Further, performance of orders and contracts, and delivery shipment of the Products are subject to and contingent upon delay directly or indirectly caused by, or in any other manner arising from fires, floods, accidents, riots, acts of God, war, government interference, embargoes, priorities, regulations, orders and restrictions, strikes, labor difficulties, shortage of labor, fuel, power, material or supplies, transportation delays, the Seller's production schedules, or any other causes (whether or not similar in nature to any of these herein before specified) beyond the Seller's control ("**Force Majeure Event**") and the Seller would not be liable for any loss or damage suffered by the Buyer arising therefrom. The Seller reserves the right, in the event that any of the above contingencies occurs, to cancel at its discretion the Buyer's order or the Transaction or any part thereof without any resulting liability.

5. TERM OF SERVICES

In respect of an Agreement (whether in the form of a written agreement, an order for Products, or in a form provided by the Seller under the heading "**Quotation**") which specifies the relevant minimum fixed contract term, the Agreement will remain in effect until the maturity of the relevant minimum fixed contract term.

The Agreement having reached the maturity of the relevant minimum fixed contract term will, from the following date, be automatically renewed for successive periods of one month each unless and until the Agreement has ended by either party giving to the other party at least 30 days' prior written notice. The renewed Agreement otherwise maintains the same terms and conditions as the Agreement to which these Sale terms apply, subject to making any variation required for the Agreement to be a monthly agreement.

6. TERMINATION

6.1. TERMINATION OF AGREEMENT BY THE BUYER

The Buyer cannot have the Agreement entered into between the Seller and the Buyer terminated or have any order or Transaction cancelled without the prior consent of the Seller, the consent of which, if given, shall be given on the express condition that the Buyer shall indemnify the Seller against all loss, damage, claims or actions arising out of such cancellation. The Buyer may request for a change or variation to any Products ordered from the Seller hereunder prior to their delivery date, provided that such change or variation shall become effective and/or binding only upon written acceptance of the Seller, and on the condition that the Buyer shall fully indemnify the Seller against all costs, loss, damage, claims or actions arising out of such change or variation.

6.2. SURRENDER OF NETWORK SERVICES AGREEMENT

- (a) With the Seller's consent, which may be withheld in the Seller's absolute discretion, the Buyer may surrender and end the Agreement for the provision of the Seller's network services to the Buyer ("**Network Services Agreement**").
- (b) The surrender of the Network Services Agreement shall be effective only by the Buyer submitting to the Seller a written request of surrender and a Deed of Surrender is executed by both parties, without which the Agreement shall remain in force.
- (c) The Seller consenting to the surrender of the Network Services Agreement and entering a Deed of Surrender shall not form any representation by the Seller of its acceptance or repudiation by the Buyer.
- (d) Upon entering a Deed of Surrender, the Buyer must pay the Seller within 28 days from the date of the Deed of Surrender or, if any, by the payment due date provided for in the Deed of Surrender, whichever is earlier:
 - (i) all unpaid service fees and any costs and expenses the Seller has incurred up to the date of the Deed of Surrender; and
 - (ii) the balance of the service fees and, if any, costs and expenses the Seller may incur for the remainder of the term of the Network Services Agreement.
- (e) The Buyer, when failing to make full and prompt payment in accordance with the Deed of Surrender, is liable to reimburse the Seller for all reasonable legal costs and disbursements incurred by the Seller in the recovery of such sums.

6.3 TERMINATION OF AGREEMENT BY THE NON-DEFAULTING PARTY

A party not in default under the Agreement or the Network Services Agreement ("**Complying Party**") to which these Sale Terms apply may terminate the Agreement or the Network Services Agreement by written notice to the other party ("**Breaching Party**"), without any right of the Breaching Party to claim compensation or to make any other claim against the Complying Party in respect thereof, if:

- (a) the Breaching Party breaches or defaults on its obligations under these Sales Terms, Agreement or Network Services Agreement and fails to remedy such breach or default within 10 Business Days from the date the Complying Party has served on the Breaching Party, its representative, employee, or agent a written notice to rectify the breach or default;
- (b) a receiver, receiver and manager or administrator is appointed over any of the property or assets of the Breaching Party;
- (c) a liquidator or provisional liquidator is appointed to the Breaching Party (other than for the purposes of amalgamation or reconstruction or corporate reorganization); or
- (d) the Breaching Party enters into any arrangement with its creditors or any class of creditors (other than for the purposes of amalgamation or reconstruction or corporate reorganization).

Termination under Clause 6.3 is without prejudice to any claim a party has against the other party arising out of or as a result of the termination of the Agreement or the Network Services Agreement (including any claim for loss of bargain) or in respect of any breach or default of the Agreement or the Network Services Agreement up to the date of termination.

7. DELIVERY AND RISK OF LOSS

All delivery dates are estimates only and the time of delivery shall not be of the essence of the contract. In no circumstances shall the Seller be liable to compensate the Buyer in damages or otherwise for non-delivery or late delivery of the Products or any loss suffered by the Buyer, whether or not the Seller

has been advised of the possibility of such losses unless it is proved that such loss is attributable to the Seller's fraud or serious and willful misconduct. Should the Seller be prevented from or hindered in the delivery of the Products or any part thereof due to a Force Majeure Event, the time of delivery shall be extended until the operation of the cause preventing or hindering delivery has ceased. The Seller shall be entitled to deliver the Products in one or more consignments unless otherwise expressly agreed. Risk of loss or damage in the Products shall pass to the Buyer when the Products are dispatched from the Seller's stated point of dispatch. The Seller retains title to all Products until full payment for the Products has been received by the Seller, subject to Clause 10.

8. CLAIMS

Claims for defective Products, shortages, delays or failures in shipment or delivery, or for any other cause, shall be deemed waived and released by the Buyer unless made in writing within five (5) days after the Buyer's receipt of the said Products. No claims will be considered for goods altered, defaced or upon which any additional operation has been performed and no claims will be allowed for labor, rework, transportation or other expense incurred by the Buyer, without prior written approval of the Seller. If the Products failed to meet the written specifications agreed to by the Seller, the Buyer shall not return them but shall notify the Seller within the said five (5)-day period, stating full particulars in support of the claims, and the Seller's sole liability will be to, at the Seller's option: (a) repair or replace the Products upon return of the defective or unsatisfactory material; or (b) refund the amount paid by the Buyer for the Products in question; or (c) otherwise resolve the matter fairly and promptly.

9. LIMITATION OF LIABILITY

Except for death or personal injury caused by the Seller's negligence, the Seller's aggregate liability for any and all claims arising out of or in connection with each Transaction for breach of contract, breach of warranty, breach of statutory duty or negligence (or other tort) is limited to direct damages suffered by the Buyer up to a maximum of the total price paid by the Buyer for the Products in that particular Transaction in respect of which the claim arose. Provided that under no circumstances shall the Seller be liable for loss of production, loss from business interruption, loss of data, loss of profits, loss of anticipated savings, loss of goodwill or any indirect, incidental, special or consequential damages, losses or expense, even if the Seller has been advised of the possibility of such damages. The Seller does not warrant or guarantee the technical advice given by it in connection with the installation or the use of the Products sold hereunder and no warranty or guarantee as to merchantability or fitness of the Products for any purpose is made unless the same is specifically set forth in writing and signed by the authorized representatives of both parties, but in such case such warranty or guarantee is limited as above provided.

10. WARRANTY

The warranty and remedies set out herein are exclusive and implied or otherwise, including warranties of merchantability and fitness for a particular purpose. The Seller does not assume or authorize any other person to assume for it any other liability in connection with its products.

11. MAINTENANCE SERVICE / MANUFACTURER'S SUPPORT

The Seller highly recommends to every buyer to purchase the seller's Maintenance Service. In this manner, the seller can provide Maintenance Service on the product. If the buyer only purchases Manufacturer's Support, the buyer will need to contact the manufacturer themselves to receive assistance.

12. REVOCATION OF CREDIT

The Seller reserves the rights at any time to revoke any credit extended to the Buyer because of the Buyer's failure to pay for any Products when due or for any other reason deemed good and sufficient by the Seller, and in such event all subsequent shipments shall be paid for on delivery.

13. GOVERNING LAW AND JURISDICTION

All Transactions and these Sale Terms shall be governed by the laws of New South Wales and the parties submit to the jurisdiction of the courts of New South Wales.

14. SECURITY

The Seller will keep the Buyer's information for up to six (6) months from the date of termination of agreement or completion of the project the subject of the said agreement. Such information will be deleted and/or disposed after the six (6) months period herein referred to.

15. PROVISION OF NETWORK SERVICES

The price quoted for the provision of the Seller's network service shall be subject to the Buyer providing the Seller safe and clear access to the building to which installation of the network service is required. In the event that, in the Seller's view, the Seller, its representative, employee, agent or subcontractor is not provided with safe and clear access to the building or additional cabling or any further work is required to complete the installation of the network service, the price of the Seller's network service may be subject to revaluation. During the installation process of the Seller's network service, the Seller shall as reasonably practicable keep the Buyer informed of the progress of the installation. Where the price for the installation of the Seller's network service is revalued and as a result of which the Buyer is likely to incur additional fees, the Buyer may opt to terminate the Agreement without incurring any penalty.