



**Terms and Conditions of Sale**

## 1. Definition and Interpretation

“Business Day”	Monday to Friday (inclusive) excluding public or bank holidays in England and/or Wales
“Buyer”	the person who buys or agrees to buy the Goods and /or Services from the Company in accordance with <b>Condition 2</b>
“Renter”	the person who rents or agrees to rent the Goods and / or Services from the Company in accordance with <b>Condition 5</b>
“Company”	Keytracker Ltd, whose main trading and registered office is at Unit 3 Station Road, Rowley Regis, West Midlands B65 0JY
“Contract”	the contract between the Company and the Buyer for the sale and purchase of the Goods and/or supply of the Services and/or the rental of equipment formed in accordance with these Terms of Business.
“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures”	Shall each have the meanings given to them in the Data Protection Legislation.
“Data Protection Legislation”	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).
“Goods”	the Goods which the Buyer agrees to buy or rent from the Company under a Contract
“Insolvent”	the Buyer is Insolvent where it: gives notice under section 84 Insolvency Act 1986 of/or proposes or passes a resolution for, its winding up or in the case of a limited liability partnership proposes or determines that it will be wound up; or has a winding-up order or a notice of striking off made in respect of it; or has an administration order made in respect of it; or has a notice of appointment of an administrator filed in respect of it; or proposes, makes or is subject to a voluntary arrangement with its creditors, an application for protection from its creditors or a scheme of arrangement or similar; or has a receiver or provisional liquidator appointed over any of its assets; or ceases to trade or appears in the reasonable opinion of the Company to be likely to cease to trade; or has any distraint, execution or other similar process levied or enforced against any of its property; or is the subject of anything similar to any of the matters mentioned in this definition in any jurisdiction.
“Intellectual Property Rights”	means all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in Know-How, registered trademarks, registered designs, models, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions; and
“Know-How”	means formulae, methods, plans, inventions, discoveries, improvements, processes, performance methodologies, techniques, specifications, technical information, tests, results, reports, component lists, manuals and instructions.
“Permitted Recipients”	the Buyer, Company, the employees of each party and any third parties engaged to perform obligations in connection with the Contract.

“Price”	the price for the Goods, excluding VAT and any carriage, packaging and insurance costs. The prices for the Goods and/or Services set out in the Company’s acknowledgement of order or, if not issued or stated therein, then the prices set out in the Company’s price list in force on the date on which the relevant order is issued by the Buyer.
“Services”	any Services which the Company provides to the Buyer under a Contract including but not limited to installation, set up, software, software hosting services and training.
“Terms and Conditions”	the standard Terms and Conditions of sale as set out in this document and any special Terms and Conditions agreed and acknowledged in writing by the Buyer and the Company.
“UK Data Protection Legislation”	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
“Website”	Any website owned or operated by Keytracker Ltd including but not limited to the following: <a href="http://www.keytracker.com">www.keytracker.com</a> <a href="http://www.keytracker.co.uk">www.keytracker.co.uk</a>

## **2. Formation and Incorporation**

Subject to any variation under **Condition 2** the Contract will be upon the Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Buyer purports to apply under any purchase order, acknowledgement of order or similar document, whether or not such document is referred to in the Contract.

Each order or acceptance of a proposal and/or quotation for Goods and/or Services will be deemed to be an offer by the Buyer to purchase Goods and/or Services upon the Terms and Conditions. The Contract is formed when the order is accepted by the Company, by way of a written acknowledgement of order. No contract will come into existence until a written acknowledgement of the order is issued by the Company. The Company will acknowledge each order and provide an estimated build date to the Buyer within 5 Business Days of receipt of the order.

Any quotation is valid for a period of thirty days only from its date, provided the Company has not previously withdrawn it. The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate. In particular, manufacture of cabinets and lockers will not commence until all card reader and/or equipment samples have been received by the Company.

Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of the Buyer’s acceptance of the Terms and Conditions.

Subject to **Condition 6 T**, the Buyer may not cancel the Contract unless agreed by the Company in writing. No variation to the Terms and Conditions will be effective unless it is in writing and signed by a Director of Keytracker Ltd.

### **2A. Additional terms for online / Website transactions**

The provisions below apply where a person (the applicable person) seeks to purchase Goods, Services and or rental equipment from the Company’s Website. The other Conditions of these Terms and Condition shall apply to any resulting Contract save where their content is inconsistent with the provisions of this Condition 2A.

The Company’s website provides guidance on the steps that need to be taken to place an order. After an order has been placed the Company will send an e-mail to the applicable person acknowledging that the Company has received the order. However this does not mean that the order has been accepted. The Company will confirm its acceptance of the order by sending an e-mail to the applicable person that confirms that the order has been accepted (“**Order Confirmation**”). The Contract will only be formed when the Company send out the Order Confirmation. Acceptance of any order is at the Company’s complete discretion.

If the Company is unable to supply or rent to the Buyer any applicable Goods or Services for which an order has been placed, (for example because it is not in stock or no longer available or because of an error in the price on the Company’s website as referred to in below) then the Company will inform the applicable person of this by

e-mail and the Company will not process the order. If the applicable person has already paid in advance, the Company will refund that amount including any delivery costs charged as soon as reasonably possible.

It is always possible that, despite our reasonable efforts that some of the products on our site may be incorrectly priced. If we discover an error in the price of the products you have ordered we will contact you to inform you of this error and we will give you the option of continuing to purchase the product at the correct price or cancelling your order. We will not process your order until we have your instructions. If we are unable to contact you using the contact details you provided during the order process, we will treat the order as cancelled and notify you in writing.

### **3. Goods and Services**

The quantity and description of the Goods and/or Services will be as set out in the Company's acknowledgement of order.

The Buyer may only purchase Goods and/or Services for its own use, and not for resale, unless otherwise agreed in writing by a Director of the Company.

All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures or websites are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services represented by or described in them. They will not form part of the Contract and this is not a sale by sample.

The Company may make any changes to the specification, design, materials or finishes of the Goods and/or provision of the Services which: (a) are required to conform with any applicable safety or other statutory or regulatory requirements/applicable laws relating to the Goods or Services; or (b) do not materially affect their quality or performance.

The Buyer shall treat all drawings, procedures, instructions, documents and other information of any kind whatsoever supplied by the Company to the Buyer as strictly confidential except to the extent that any such information is available in the public domain and shall not without prior written consent from Keytracker Ltd disclose or part with possession of any documentation/information/extracts or copy of the aforementioned in connection with the Goods to which they relate. Ordered goods that cannot be delivered may be stored at £10/per day per item or pallet

### **4. Price**

Unless otherwise agreed in writing the Prices include the Company's standard packaging, provided that delivery is to an address within the United Kingdom. Prices do not include the off-loading of goods, which shall be the responsibility and risk of the Buyer. For deliveries outside the United Kingdom, Prices and delivery terms will be agreed with the Buyer per shipment in accordance with Incoterms 2015 or as otherwise may be agreed between the parties.

Any sum payable under the Contract is exclusive of value added tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time. Unless otherwise agreed pursuant to a written variation, each invoice will be payable by the Buyer on or before 30 days from the date of invoice.

Where the Buyer has purchased Services which include annual software subscriptions or hosting services for a fixed term in excess of one year, the Company reserves the right to increase the price payable for such subscriptions or hosting costs upon annual renewal, by 10% in each calendar year.

### **5. Rental of Keytracker Systems**

Condition 5 shall apply where the Company rents equipment to the Renter. The other Conditions of these Terms and Condition shall also apply to such rental save where their content is inconsistent with the rental (as oppose to sale) of equipment.

Equipment rental shall only available for businesses located and registered in the UK. The Rental shall either be for a fixed term or may continue indefinitely, however there is a minimum invoice value which equates to four months for mechanical systems and eighteen months for electronic systems.

All systems supplied by the Company on rental are made available with a full warranty for the duration of the rental.

The Company will supply the Renter with a written order confirmation detailing the system to be supplied on rental and the rental charges (excluding VAT which will shall be payable in addition), The Renter must complete and return the order confirmation to the Company before the systems are produced for despatch or installation.

The Renter is liable for the rental charges levied by the Company. The Renter will be invoiced automatically on the first of each calendar month unless the Company and the Renter enter into a written agreement to accommodate an alternative payment date.

Payment of all rental invoices must be via bank Standing Order mandate and the Renter must instruct their bank to action payment to cover the monthly rental invoice, and should the rental be cancelled the Renter is also responsible for the cancellation of the Standing Order Mandate.

The Company and the Renter may enter into an alternative payment method in accordance with **Condition 7**, by mutual written agreement.

The Goods that are the subject of the rental will remain the property of the Company at all times and the Renter must provide adequate insurance for the Goods during the rental, against any loss or damage to the rental systems whilst in the care of the Renter.

The Renter shall during the term of the rental: (a) ensure that the rented equipment is kept and operated in a suitable environment used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the Company; (b) take such steps (including compliance with all safety and usage instructions provided by the Company) as may be necessary to ensure, so far as is reasonably practicable, that the rented equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work; and (c) not damage or allow the rented equipment to be damaged (fair wear and tear only excepted).

The Renter can make a request to purchase the rental system at any time and thereafter the Company will provide a written quotation to the Renter in relation to the purchase Price of the same. For the avoidance of doubt the purchase Price will not include any deductions for rental payments made to prior to any subsequent purchase date.

Cancellation of the rental by the Renter must be in writing with not less than 1 months written notice being given to the Company.

Upon cancellation:

- (a) (*Mechanical Keytracker systems*): the Renter is responsible for the return of all Goods supplied at the time of the original Order confirmation from the Company of Mechanical Keytracker systems excluding only anti-tamper seals.
- (b) (*Electronic Keytracker systems*): the Renter must provide the Company with access to remove all Goods supplied at the time of the original Order Confirmation from the Company of Electronic Keytracker systems and the Renter is responsible for the cost of this Service.

The Renter is liable for the Rental invoices until the Goods are back in possession of the Company or the agreed purchase price quoted by the Company has been paid in full subject to **Condition 7**. The Renter is responsible for the full replacement cost at that time of any Goods damaged or missing from the original Order Confirmation on cancellation and return of any rental system.

Upon termination of the rental Contract, however caused: (a) the Company's consent to the Renter's possession of the rented equipment shall terminate and the Company may, by its authorised representatives, without notice and at the renter's expense, retake possession of the rented equipment and for this purpose may enter any premises at which the rented equipment is located; and (b) without prejudice to any other rights or remedies of the Renter, the Renter shall pay to the Company on demand (a) all rental payments and other sums due but unpaid at the date of such demand together with (b) any interest accrued an any costs and expenses incurred by the Company in recovering the rented equipment and/or in collecting any sums due under the Contract.

#### **6. Cancellation and Amendment to order**

Orders placed by the Buyer with the Company will be deemed binding and accepted in line with these Terms and Conditions. Any resulting Contract may not be cancelled or amended by the Customer without the prior

written consent of the Company. In particular any cancellation will be at the Company's sole discretion and the Company reserves the right to charge in respect of any subsequent amendment or cancellation to that order will incur a minimum administrative / re-stocking charge to the Buyer of 20% of the order value for an amendment and 30% of the order value for cancellation. Any non-stock, bespoke orders will incur a mandatory 100% charge to the Buyer from the Company.

#### **7. Payment**

The Buyer will pay the Prices to the Company in accordance with this **Condition 7**. Goods / Services supplied to the Buyer by the Company where the Buyer has either no account for credit or is requiring delivery and/or the invoice address is outside the UK will be required to be paid in full before delivery.

Unless notified otherwise by the Company in writing, the Company will invoice the Buyer for the Price of Goods (and any packaging, insurance, carriage and delivery costs payable by the Buyer in addition to the price of the Goods pursuant to **Condition 4**, following installation dispatch or collection of the Goods from the Company's premises.

The Company will be entitled to invoice the Buyer for the Price of Services 30 days prior to performance of the Services, or in line with any mutually signed and agreed variation of this standard clause. Each invoice will be payable by the Buyer on or before 30 days from date of invoice, unless the contract is mutually agreed and signed as a variation of this clause.

All payments will be made in pounds sterling in cleared funds and unless agreed otherwise by the Company in writing by BACS (Bank Automated Clearing System) transfer to the following bank account or such other bank account as the Company may nominate from time to time:

BANK: Lloyds Bank ACCOUNT NUMBER: 00327448 SORT CODE: 30-00-06

The Company will be entitled to appropriate any payment by the Buyer to any invoice issued by the Company. All payments to be made by the Buyer to the Company under the Contract will be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.

If any sum payable under the Contract is not paid on or before the due date for payment the Company will be entitled to charge the Buyer interest on that sum under the Late Payment of Commercial Debts (Interest) Act 1998. from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis *at 0.2% per day*.

If the Buyer fails to make any payment due to the Company under the Contract on or before the due date the Company will be entitled to:

- (i) withhold further deliveries of Goods;
- (ii) suspend provision of the Services; and
- (iii) (cancel any or all orders accepted under **Condition 2** which have not yet been delivered or performed.

The Company shall be entitled at any time and notwithstanding its acceptance of any order to cancel the Agreement for Sale or to postpone any delivery until payment has been received in the event that the Company has reasonable doubts about the Buyer's ability or willingness to pay on the due date. The Company reserves the right at any time at its discretion and notwithstanding its acceptance of any order to demand security for payment before continuing with an order or delivering Goods or any instalment.

Keytracker Ltd reserves the right to remove goods from the Buyer if the Buyer defaults on payment.

#### **8. Data Protection**

Any Goods or Services are provided on the basis that the Buyer and the Company will comply with all applicable requirements of the Data Protection Legislation and unless otherwise varied between the Buyer and the Company in writing, the terms of this Condition 8 shall apply to the processing of any Personal Data between the parties.

The Buyer acknowledges that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Company is the Processor.

Without prejudice to the generality of the foregoing, the Buyer will ensure that it:

- (a) has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to the Company and/or lawful collection of the Personal Data by the Company on behalf of the Buyer, for the duration and purposes of the Contract;
- (b) gives full information to any Data Subject whose Personal Data may be processed under the Contract of the nature such processing (including giving notice that, on the termination of the Contract, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees; and
- (c) has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, personal data.

Without prejudice to the generality of the foregoing, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under this agreement:

- (a) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected;
- (b) assist the Buyer, at the Buyer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (c) assist the Buyer (where requested by the Buyer and at the Buyer's cost) in connection with any regulatory or law enforcement authority audit, investigation or enforcement action in respect of the Buyer's Personal Data;
- (d) notify the Buyer without undue delay on becoming aware of a Personal Data Breach; and
- (e) at the written direction of the Buyer and at the Buyer's cost, delete or return Personal Data and copies thereof to the Buyer on termination of the Contract unless required by law to store the Personal Data.

The Buyer consents to the Company appointing third-party processors of Personal Data under the Contract, for the purpose of providing any Services.

The Buyer shall indemnify the Company against all liabilities, claims, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company or for which it may become liable as a result of or in connection with any failure of the Buyer, its employees, agents, consultants, subcontractors or sub-processors to comply with Data Protection Legislation.

The Company's liability to the Buyer in connection with all claims, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Buyer or for which it may become liable as a result of or in connection with any failure of the Company, its employees, agents, consultants, subcontractors or sub-processors to comply with Data Protection Legislation, shall be limited to those amounts set out in Condition 13.

The Company shall in no circumstances be liable to the Buyer in respect of any all claims, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered by the Buyer, which are a result of the Buyer's acts or omissions, including (but not limited to) a failure by the Buyer, its employees, agents, consultants, subcontractors or sub-processors, to follow any directions that have been issued by the Company, in respect of the use of the Goods or Services and any data entry requirements in respect of the same.

#### **8. Instalments**

The Company may deliver the Goods by separate instalments and/or perform any Services in stages.

#### **9. Waiver**

No waiver of any of the Company's rights under the Contract shall be effective unless in writing and signed by a Director of Keytracker Ltd. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of the Company right in relation to different circumstances or the re-occurrence of the similar circumstances.

#### **10. Delivery**

Delivery of the Goods will be made in accordance with the delivery arrangements set out in the Company's acknowledgement of order.

The Services will be performed at the place notified to the Company by the Buyer or at such other place or through such other means as are necessary for the performance of those Services.

Unless notified otherwise by the Company in writing, delivery of the Goods and/or performance of the Services will be made between 7.30am and 5.30pm on any Business Day in the United Kingdom and on any day of the week outside the United Kingdom.

The Company will use reasonable endeavours to deliver/performance each of the Buyer's orders for the Goods and/or Services within the time set out in the Company's acknowledgement of order or, if no time is stated, then within a reasonable time, but the time of delivery/performance will not be of the essence.

Any delay in delivery/performance will not entitle the Buyer to cancel the order unless and until the Buyer has given 45 days' written notice to the Company requiring the delivery/performance to be made, the order is for standard (not bespoke) Goods and the Company has not fulfilled the delivery/performance within that period. If the Buyer cancels the order in accordance with this **Condition 10** then the Buyer will be under no liability to make any further payments under **Condition 7** in respect of that order or part of the order which has been cancelled.

Unless otherwise agreed between the parties, the Buyer will provide at its expense, at the point where delivery is to take place, adequate and appropriate equipment and manual labour for off-loading the Goods.

If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered and/or Services to be performed on time (except solely on account of the Company's default), the Goods and/or Services will be deemed to have been delivered or performed on the due date and (without prejudice to its other rights) the Company may:

- (a) Store or arrange for storage of the Goods until actual delivery or sale in accordance with;
- (b) charge the Buyer for all related costs and expenses (including storage and insurance); and/or
- (c) following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract or account to the Buyer for any excess achieved over the price under the Contract, in both cases having taken into account any charges related to the sale including but not limited to the cost to the Company of any Services provided to the Buyer but not paid for by the Buyer.

The Buyer must test all Goods within 7 working days of delivery and notify the Company immediately of any problems.

#### **11. Passing of Risk and Retention of Title**

Risk of damage / loss of the Goods will pass to the Buyer on delivery or deemed delivery of the Goods in accordance with **Condition 10**.

Legal and beneficial ownership of the Goods will not pass to the Buyer until the Company has received in full the purchase price in cleared funds. Until ownership of the Goods has passed to the Buyer, the Buyer will:

- (a) Store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- (b) Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) Maintain the Goods in satisfactory condition; and



- (d) keep the Goods insured for their full price against all risks to the reasonable satisfaction of the Company, and whenever requested by the Company produce a copy of the policy of insurance to the Company and procure that any insurance proceeds received in respect of lost or damaged Goods are paid to the Company, to the extent required to satisfy the indebtedness of the Buyer to the Company.

The Buyer may use and (if permitted under a separate agreement between the Company and the Buyer) resell the Goods in the ordinary course of its business before ownership has passed to it,

The Buyer's right to possession use and (if permitted under a separate agreement between the Company and the Buyer) resale of the Goods will terminate immediately:

- (a) If the Buyer becomes Insolvent;
- (b) on the Company giving the Buyer written notice that it has any reasonable concerns regarding the financial standing of the Buyer;
- (c) if the Buyer fails to pay any sum due to the Company under the Contract;
- (d) if the Buyer is in breach of any of its obligations under the Contract;
- (e) if the Buyer encumbers or in any way charges any of the Goods; or
- (f) if the Contract terminates for any reason.

The Company will be entitled to recover payment for the Goods (including by way of court action) notwithstanding that ownership of any of the Goods has not passed from the Company.

The Buyer grants the Company, its agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession and use has been terminated, to recover them.

Where the Company is unable to determine whether any goods are the Goods in respect of which the Buyer's right to possession and use has been terminated, the Company will be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

If the Buyer's right to possession and use of the Goods terminates in accordance with **Condition 11** the Company will be entitled to issue the Buyer with a credit note for all or any part of the price of the Goods together with value added tax thereon. The Company's rights contained in this **Condition 11** will survive termination of the Contract however arising.

## **12. Warranty**

The Company will, free of charge, within a period of 12 months from the date of despatch of Goods or performance of Services (as the case may be and excluding the provision of any software as a service or associated hosting of that software) (the "**Warranty Period**") which are proved to the reasonable satisfaction of the Company to be damaged or defective due to defects in material or workmanship (in relation to Goods) or due to defects in workmanship (in relation to Services excluding the provision of any software as a service or associated hosting of that software), repair, or at its option replace, such Goods or re-perform such Services (the "**Warranty**").

The Company shall be under no liability whatsoever under the Warranty to repair, replace or make good any loss damage or defect which results from wear and tear.

This obligation under the Warranty will not apply where:

- (a) The Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;
- (b) Goods have been improperly installed or connected (other than by the Company);
- (c) any maintenance requirements or instructions relating to the Goods or Services have not been complied with;
- (d) any instructions as to storage of the Goods have not been complied with in all respects;
- (e) the Buyer has failed to notify the Company of any defect or suspected defect within 3 Business Days of the delivery or performance where the defect should be apparent on reasonable inspection, or in any event no later than 2 months from the date of delivery or the Buyer has failed to return the Goods to the Company within 10 days of the notification referred.

The Company will invoice all replacement Goods and the subsequently credit this invoice on the return of the faulty Goods to the Company within 10 Business Days. The replacement Goods will qualify for a new Warranty and 12 month Warranty Period from receipt.

### **13. Limitation of Liability**

- 13.1 Nothing in these Terms and Conditions shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation;
  - (c) any other matter where liability cannot be excluded or limited by law.
- 13.2 Subject to **Condition 13.1** the Company shall under no circumstances whatever be liable to the Buyer under or in connection with a Contract and whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any one or more of the following:
- (a) any loss of profit, loss of business, loss of anticipated savings and loss of goodwill (whether in each case direct or indirect loss); and
  - (b) any indirect or consequential loss arising.
- 13.3 Subject to **Condition 13.1 and Condition 13.2** the Company's total liability to the Buyer in respect of all other losses arising under or in connection with a Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid or payable of, in respect of the Goods and/or Services to which any claim relates.
- 13.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract. This Condition 13 shall survive termination of the Contract. Nothing in these Terms and Conditions affects the common law duty of each party to mitigate its own loss.
- 13.5 If the Company's performance of any of its obligations under any Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("Buyer Default"):
- (a) the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services or delivery of the Goods until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Company's performance of any of its obligations;
  - (b) the Company shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 13.6; and
  - (c) the Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer Default.

### **14. Health and Safety**

Once goods are received it is the responsibility of the Buyer to ensure all Risk Assessments are in place, competent person(s) permitted to take charge and where necessary the correct PPE requirements according to the Health & Safety regulations. Any information/literature supplied is adhered to and supplied in good faith.

### **15. Force Majeure**

A party, provided that it has complied with the provisions of this clause shall not be in breach of this agreement, nor liable for any failure or delay in performance of its obligations under this agreement arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("**Force Majeure Event**"), including, but not limited to, any of the following:

- (a) acts of God, including, but not limited to, fire, flood, lightning, earthquake, storm or other natural disaster;
- (b) act or threat of war, insurrection, riot, civil commotion or terrorism;
- (c) any law or government order, rule, regulation or direction, or any action taken by a government or public authority, including but not limited to imposing an embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licence or consent;
- (d) fire, explosion (other than in each case one caused by a breach of contract by, or assistance of, the party seeking to rely on this clause or companies in the same group as such party) or accidental damage;

- (e) loss at sea; extreme adverse weather conditions; collapse of building structures, failure of plant, machinery, computers or vehicles; non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (f) interruption or failure of utility service, including but not limited to electric power, gas or water.

A party that is subject to a Force Majeure Event shall not be in breach of this agreement provided that:

- (a) it promptly notifies the other parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
- (b) it has used reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

If the Force Majeure Event continues for a continuous period of more than six months, either party may terminate this agreement by giving 14 days' written notice to the other party. On the expiry of this notice period, this agreement will terminate.

#### **16. Intellectual Property**

No right or licence is granted to the Buyer in respect of the Intellectual Property Rights of the Company, except the right to use, the Goods or use the Services in the Buyer's ordinary course of business. The Buyer will not without the Company's prior written consent allow any trade marks of the Company or other words or marks applied to the Goods to be obliterated, obscured or omitted nor add any additional marks or words.

#### **17. Notice**

Any formal to be given under or in connection with the Contract will be in writing, in the English language and sent by either recorded delivery Notices from the Company will be addressed to the Buyer at the address detailed in the Contract. In the case of any notice or other communication to be given to the Company, this must be addressed to Company Secretary, Keytracker Ltd, Unit 3 Station Road, Rowley Regis, West Midlands, B65 0JY, and England. Any changes of address for the Buyer must be notified to the Company with written confirmation of amendments. Receipt of notice from either party will be deemed served in the case of recorded delivery 48 hours from despatch. **Condition 17** will not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply. Day to day correspondence may be sent by email.

#### **18. Governing Law and Jurisdiction**

The Contract and any non-contractual obligations arising out of or in connection with it will be governed by English law. Each party agrees that the courts of England have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract including in relation to any non-contractual obligations.

#### **19. Termination and Consequences**

Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if: (a) the Buyer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 5 Business days after receipt of notice in writing to do so; or (b) the Buyer becomes insolvent.

The expiry or termination (howsoever arising) of a Contract shall be without prejudice to the rights and duties of each party accrued prior to such expiry or termination.

The terms and conditions of each Contract which expressly or impliedly have effect following expiry or termination (howsoever arising) of the applicable Contract shall continue in full force and effect notwithstanding such expiry or termination.

#### **20. Severance**

If any provision or part-provision of a Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

