

# KATALYST OFFICE MANAGEMENT TERMS AND CONDITIONS OF BUSINESS



## 1. Definitions

1.1 In these Conditions, unless the context requires otherwise:

- (a) **Client** means the person who engages KOM to provide the Services or Work Requests;
- (b) **Conditions** means these terms and conditions of sale and any special terms and conditions set out in writing by KOM in its Proposal;
- (c) **KOM** means Katalyst Office Management Limited and includes its subsidiaries, related companies, employee and contractors;
- (d) **Licensed Software** means the cloud based software provided by KOM as part of its Services, which includes but may not be limited to Xero, WorkflowMax, Box etc;
- (e) **Monthly Fee** means the monthly fee payable by the Client for the Services set out in the Proposal including GST;
- (f) **Proposal** means the proposal document prepared by KOM and agreed by the Client outlining the scope of Services to be provided by KOM on a monthly basis;
- (g) **Services** means the monthly Services which KOM supplies to the Client as set out in its Proposal;
- (h) **Work Request** means a request to carry out work which does not fall within the scope of work set out in a Proposal.

## 2. Conditions Applicable

- 2.1 These Conditions shall apply to all Proposals and Work Requests, to the exclusion of all other terms and conditions, including any terms and conditions which the Client may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All Proposals and Work Requests shall be deemed to be an offer by the Client to engage KOM pursuant to these Conditions.
- 2.3 The commencement of work by KOM pursuant to a Proposal or Work Request shall be conclusive evidence of the Client's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by KOM.

## 3. Services and Work Requests

- 3.1 The Services which KOM agrees to provide are set out in the Proposal.
- 3.2 In addition to the Services which KOM agrees to provide as part of a Proposal the Client may also request KOM to carry out Work Requests. The Client shall use its best endeavours to ensure that any Work Requests are sufficiently detailed and specific to allow KOM to complete such Work Requests to the satisfaction of the Client.
- 3.3 Additional charges will be levied for Work Requests on a time and material basis in accordance with KOM's published price list.
- 3.4 The Client shall appoint a representative ("Client Representative") to act as the principal point of contact

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between the parties who shall be responsible for ensuring adequate and timely instructions or assistance as provided to KOM.

Principal Contact: \_\_\_\_\_

(a) Other representatives authorised to give us instructions, which may, incur billing:

(i) \_\_\_\_\_

(ii) \_\_\_\_\_

(b) Other representatives authorised to give us instructions, but not to incur billing:

(i) \_\_\_\_\_

(ii) \_\_\_\_\_

3.5 KOM may complete tasks at various stages of providing the Services and it shall be the Client Representative's responsibility to carefully check such tasks have been completed to the satisfaction of the Client and notify KOM if not.

3.6 Any Work Requests shall not be valid unless set out in writing by the Client Representative.

3.7 In the event that the Client gives KOM instructions in relation to carrying out the Services which are incorrect or have to be corrected at a later date by KOM, such corrections will be treated as a Work Request and charged separately to the Monthly Fee.

## 4. Nature of Advice

4.1 KOM does not provide accounting or financial advice and anything said by KOM shall not be relied upon as constituting financial or accounting advice.

4.2 The Client is wholly responsible for the information contained in the financial statements which KOM compiles based upon the information provided to it which has not been subject to an audit or review engagement. Neither KOM nor any of its employees or contractors accept liability for the reliability, accuracy or completeness of the compiled information, nor does KOM accept any liability of any kind (whether direct, indirect or consequential) and including liability for negligence, to any person for losses incurred as a result of placing reliance on the compiled information.

## 5. Licensed software

5.1 KOM is a reseller or provider of the Licensed Software and the Client acknowledges that KOM has no control over the integrity or stability of that Licensed Software and the use of the Licensed Software by the Client is at its sole risk. KOM excludes all liability whatsoever (including direct, indirect or consequential loss) arising from (without limitation):

(a) Any failure or downtime suffered by the Licensed Software;

(b) Any loss of data stored within the Licensed Software;

(c) Any harm which the Licensed Software may cause to the Client's IT infrastructure.

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## 6. Confidentiality

- 6.1 Incidental to this agreement both parties may each be exposed to confidential information belonging to the other party. The parties both agree that we will keep such information confidential and shall only use that information for the purposes of complying with our respective obligations under this agreement.
- 6.2 The Client gives permission for KOM to discuss the Client's confidential financial information with the Client's accountant solely for the purposes of performing the Services or Work Requests. KOM shall not be liable for any accounting charges incurred by the Client arising from KOM's discussions with the Client's accountant.

## 7. Price and payment

- 7.1 The Monthly Fee for Services shall be as stated in the Proposal. KOM may adjust the Monthly Fee upon giving one month's notice in writing to the Client.
- 7.2 From time to time KOM may provide an estimate for Work Requests. Where an estimate is provided it shall be regarded as an estimate only based upon the number of hours KOM anticipates the job will take based on the instructions given by the Client. KOM reserves the right to charge the Client a sum in excess of the estimate where the job takes longer than estimated.
- 7.3 Payment of the Monthly Fee shall be due on the first day of each month in advance.
- 7.4 Payment for Work Requests shall be made within 14 days of KOM's invoice.
- 7.5 Time for payment shall be of the essence.
- 7.6 The Price must be paid by direct payment to KOM's bank account.
- 7.7 Unless an invoice contains a manifest error, all invoices are deemed accepted by the Client 5 days after delivery to the Client.
- 7.8 The Client may not withhold payment of any invoice or other amount by reason of any right of set off or counterclaim which the Client may have, or allege to have, or for any reason whatever.

## 8. Time for performance

- 8.1 Except where clause 8.2 applies, whilst KOM will use its reasonable endeavours to ensure completion of any Services by the dates stated in the Proposal, having regard to the availability of personnel, supplies, facilities and commitments to other clients, any dates quoted for the commencement or completion of a Service are estimates only and time shall not be of the essence.
- 8.2 Where KOM is responsible for the late filing of any GST return with the IRD which incurs a late filing fee, KOM agrees to pay such fee to the IRD on behalf of the Client. Otherwise KOM shall not be liable to the Client for the late completion of any Service or Work Request or any interest or fees charged to the Client by the IRD.
- 8.3 KOM may sub contract any part of the supply of Services.

## 9. Termination

- 9.1 Either party may terminate this agreement by giving one month's notice.

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9.2 Where the Client breaches these Conditions and such breach is capable of remedy, KOM may terminate all agreements with the Client where the Client has been given reasonable notice of the breach and it has not been remedied within the time stipulated. Where the breach is incapable of remedy KOM may terminate the agreement immediately by giving written notice.

9.3 Where:

- (a) the Client fails to make payment of the Monthly Fee or any amount outstanding to KOM; or
- (b) commits any other breach of these Conditions;
- (c) any distress or execution shall be levied upon any of the Client's property;
- (d) the Client offers to make any arrangement with its creditors;
- (e) any bankruptcy petition is presented against the Client;
- (f) the Client is unable to pay its debts as they fall due;
- (g) if being a Limited Company any resolution or petition to wind up the Client (other than for the purposes of amalgamation or reconstruction without insolvency) is passed or presented;
- (h) a receiver, administrator, administrative receiver, or manager is appointed over the whole or any part of the Client's business or assets;
- (i) the Client shall suffer any similar proceedings under foreign law;

then all sums outstanding in respect of any Services or Work Requests shall become payable immediately.

9.4 In addition, KOM may, in its absolute discretion, and without prejudice to any other rights it may have:

- (a) Suspend access to the Licensed Software; and/or
- (b) Suspend all future supply of Services or Work Requests to the Client; and/or
- (c) Terminate all Services or Work Requests without liability on its part; and/or
- (d) Charge interest at the rate of 2.5% per month on all sums outstanding;
- (e) Collect any sums owing, in which case the Client shall be liable for any collection costs incurred on a solicitor/ own client basis.

9.5 If this agreement is terminated (for whatever reason) KOM agrees to cooperate with the Client regarding the transfer of any subscription in the Licensed Software to a new account holder. If the Client terminates its subscription to Xero, any financial data stored in the Xero software will be held for 7 years but Xero may charge the Client to access it.

### **10. Prohibition against employing staff**

10.1 The Client agrees that during this agreement and for a period of 6 months after the Client ceases to be a Client of KOM, the Client shall not employ, seek to employ, or seek to directly engage the services of any employee or former employee of KOM with whom the Client had dealings whilst it was a client of KOM.

### **11. Warranties**

11.1 It is agreed that the Services or Work Requests are acquired for a business purpose and that the Consumer

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Guarantees Act 1993 does not apply.

- 11.2 Defective Services or Work Requests, or Services which do not comply with the Proposal may, at KOM's discretion, be rectified at KOM's cost.
- 11.3 Any right which the Client may have to reject non-confirming or defective Services will only be effective if:
  - (a) The Client notifies KOM in writing within 48 hours following completion of a defective task or Work Request.
  - (b) The Client is not in default in relation to any amount owing.
- 11.4 KOM accepts no liability for any claim by the Client, or any other person including, without limitation, any claim relating to or arising from any representation, warranties, conditions or agreements made by any agent or representative which are not expressly confirmed by KOM in writing, or any services forming part of the supply of the Services which have been performed by any third party, and the Client agrees to indemnify KOM against any such claim.
- 11.5 Nothing in these terms is intended to have the affect of contracting out of the provisions of the Consumer Guarantees Act 1993, except to the extent permitted by that Act and these terms are to be modified to the extent necessary to give effect to that intention.

### **12. Exclusion of Liability**

- 12.1 KOM shall be under no liability whatever to the Client for any indirect or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by KOM of these Conditions.
- 12.2 In the event of any breach of these Conditions by KOM, the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of KOM exceed the Price.
- 12.3 The Client shall indemnify KOM for all loss or damage arising by reason of the negligence of the Client, its employees or contractors, or any breach by the Client of these Conditions.

### **13. Force majeure**

- 13.1 Neither party shall be liable for any default due to any act of God or civil disturbance, malicious damage, strike, lock-out, industrial action, fire, flood, drought, extreme weather conditions compliant with any law or governmental order, rule, regulation, direction or any other circumstance beyond the reasonable control of either party.
- 13.2 Each party shall give notice forthwith to the other upon becoming aware of a force majeure event, the notice to specify details of the circumstances giving rise to the force majeure event.

### **14. Notices**

- 14.1 Any notice under, or in connection with these Conditions, shall be in writing and shall be served by post or by hand on a party, sent by guaranteed delivery or email at or to the trading address of the party last known.
- 14.2 In the absence of evidence of earlier receipt, any notice shall be deemed to be duly served;
  - (a) If delivered personally when left at the address;

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- (b) If by guaranteed delivery three days after posting; and
- (c) If sent by email, when received.

**15. Privacy**

- 15.1 KOM may request and collect personal information about the Client to evaluate whether to agree to provide Services for the Client. The failure to provide the information requested by KOM may result in a Proposal being declined or a Proposal subsequently being terminated by KOM.
- 15.2 The Client has rights of access to personal information so collected, subject to the provisions of the Privacy Act 1993.
- 15.3 The Client agrees that its personal information may be used by KOM to advise the Client of KOM’s other services.
- 15.4 The Client authorises the disclosure of personal information held by any other party to KOM regarding any previous agreements entered into by the Client and/or any information in relation to the financial position of the Client.
- 15.5 The Client agrees that KOM may release to other parties information regarding any Proposal or Work Request in order to enforce these Conditions.

**16. Dispute resolution**

- 16.1 If any dispute or difference shall arise between the parties as to the meaning of these Conditions, or any matter or thing arising out of or connected with these Conditions, then the parties shall attempt to settle that difference by negotiation.
- 16.2 Where negotiation is unsuccessful then the dispute shall be referred to mediation with the mediator being agreed by the parties or in the absence of agreement being appointed by AMINZ. The costs of mediation shall be borne equally by the parties.

**17. Law of Contract**

- 17.1 This contract shall be governed by the laws of New Zealand and the parties irrevocably accept the jurisdiction of the New Zealand Courts.

**18. Acceptance**

- 18.1 The signatures below indicate acceptance of this Terms and Conditions of Business.

For Katalyst Office Management Ltd

\_\_\_\_\_  
Glennis Stuckey (Director)

\_\_\_\_\_  
Date

For \_\_\_\_\_ (Company)

Signed \_\_\_\_\_

Name \_\_\_\_\_ (Director)

\_\_\_\_\_  
Date