STANDARD TERMS & CONDITIONS- Software and Services

Definitions

'K1Corp' = Knowledgeone Corporation Pty Ltd
'Purchaser' = the person or entity (e.g., company, corporation or government body or agency) entering into an agreement with K1Corp to purchase Software, Goods or Services
'Customer' = A person or Entity that has purchased and is using K1Corp Software, Goods or Services
'Software' = Any K1Corp computer software product; the Intellectual Property of K1Corp. Including but not limited to RecFind 6, RecFind 6 GEM, RecFind 6 RecCapture, RecFind 6 High Speed Scanning Module (HSSM), RecFind 6 DocScan, RecFind 6 RecScan, RecFind 6 Mini-API, RecFind 6 SharePoint Integration Module, RecFind 6 Software Development Kit (SDK), RecFind 6 Button and the RecFind 6 Enterprise Suite.
'Goods' = any third part good such as barcode readers or barcode labels offered for sale by K1Corp
'Services' = Any service offered by K1Corp and including but not limited to Onsite Support, Onsite Training, Online Training, Conversion Consultancy, Pre-implementation Consultancy, Post-implementation Consultancy, Business Process Consultancy, Software Development Service, Software Configuration Service, etc.

General

The following terms and conditions of sale shall apply to, and form part of any contract for the supply of Goods and Services by Knowledgeone Corporation ABN 73 002 879 254 ("K1Corp") to another party ("the Purchaser"). These Terms of Sale shall replace any previous Terms of Sale.

Offer and Acceptance

Any proposal from K1Corp is valid for 30 days only. All proposals are Commercial in Confidence and remain the sole intellectual property of Knowledgeone Corporation. All rights and privileges are to remain the property of Knowledgeone Corporation.
Any quotation given by K1Corp is not an offer to sell. An order placed by the Purchaser pursuant to a quotation is not binding on K1Corp unless and until accepted by K1Corp.

Cancellation of Orders

Once lodged with K1Corp, an order may not be cancelled or delivery delayed without K1Corp's prior agreement in writing and then only on the terms incorporated in such agreement. In all cases the Purchaser shall reimburse K1Corp for all costs associated with the work undertaken in relation to the contract and also pay K1Corp an amount equivalent to the profits which K1Corp would have achieved had the contract been completed. K1Corp's calculation of such amount shall be binding on the Purchaser.

Delivery
K1Corp shall not be liable for any loss or damage (including consequential loss or damage) arising from delay in delivery or failure to deliver due to circumstances beyond its reasonable control. The Purchaser shall accept and pay for the Goods or Services notwithstanding late delivery. Deliveries to third parties may be arranged at the request of the Purchaser subject to acceptance by K1Corp. Deliveries to third parties pursuant to this sub-clause shall be deemed to be delivery to the Purchaser.

Freight, Handling and Shipping Charges
The Purchaser is responsible for all freight, handling and shipping charges. All such charges will be added to the Purchaser's invoice by K1Corp.

Software License Agreement
This Software is the proprietary property of K1Corp, and is protected by intellectual property laws. You may not transfer the license or the Software without the express written permission of K1Corp and, if transfer is permitted, no copies of the documentation or the Software will be retained by the transferor.

The Software is not public domain software. K1Corp is the owner of the copyright and all other intellectual and property rights in respect of the Software. The Software is supplied to the Purchaser on the following terms and conditions, and you should not proceed with the installation if you do not accept these terms and conditions. By selecting the "I Accept" option and using the software, you will be accepting the following terms and conditions of the License Agreement.

License – Single Production Copy at any time and Single Server at any time
All of our software Licenses are "Licenses to use in perpetuity" unless advised to the contrary. You are allowed to install the Software on one (1) production server and one (1) test server only regardless of the version (i.e., 1.0, 1.0A, 2.0B, etc) of the Software. The Software is identified as one or more of the following products; RecFind 6, RecFind 6 Button, RecFind 6 GEM, RecFind 6 RecCapture, RecFind 6 High Speed Scanning Module, RecFind 6 DocScan, RecFind 6 RecScan, RecFind 6 SharePoint Integration Module, RecFind 6 Software Development Kit (SDK), RecFind 6 Enterprise Version, RecFind 6 Mini-API, RecFind-Corporate, RecQuery, RecFind-Lite, RecFind-Button, RecQuery-TC, High Speed Scanning Module for RecFind, RecQuery-TC API, GEM for RecFind, RecCapture for RecFind, Knowledgeone^{K1}, Tacit^{K1}, Button^{K1}, High Speed Scanning Module for Knowledgeone, GEM^{K1}, RecCapture^{K1} and Mini-API^{K1}. That is, you may only have one production copy of the Software installed at any time and only on a single server. You may not install 'old' versions simultaneously with new versions; that is a breach of this license agreement. You may install a single test version of the Software on a single server in addition to the single production version. You may not run production work on the test system.

Copyright
Copyright Knowledgeone Corporation, 2012, all rights reserved. Apart from fair dealings for the purposes of private study, research, criticism or review, as permitted under the Copyright Act, no part of these materials may be reproduced by any process without written permission. Enquiries should be directed to K1Corp.

The Purchaser shall take all reasonable steps to protect K1Corp's copyright and the Purchaser will indemnify K1Corp against any loss suffered by K1Corp in consequence of any breach of this covenant by the Purchaser or any servant, agent, employee, contractor, sub-contractor or Sub-Licensee of the Purchaser.

The provisions of this agreement relating to the K1Corp's copyright shall survive the termination of this agreement and the Purchaser shall, after termination, continue to observe those provisions. The Purchaser shall not do anything to hold out that it is the owner of such copyright.

The License is personal in nature and any purported transfer or assignment of it (by operation of law or otherwise), not specifically authorised by K1Corp, will be absolutely void. The licence may not be the subject of any mortgage, lien, charge, encumbrance, levy, attachment or executions and K1Corp will at all times retain the exercise of management and control over the license.

Copyright Indemnification
The Licensor shall indemnify, defend and hold the Licensee harmless from any claims, demands, liabilities or expenses, including reasonable legal fees, directly resulting from any infringement or violation of any copyright with respect to the Software, as so awarded against the Licensee by a court of competent jurisdiction, and provided the Licensee is not in breach of this agreement. Following a decision by a court of competent jurisdiction that the Software infringes any third party's copyright, the Licensor shall, in its sole discretion; procure for the Licensee the right to continue to use and sell the Software at no additional expense to the Licensee; or provide the Licensee with a non-infringing version of the Software with substantially similar functionality; or notify the Licensee that the Software is being withdrawn from the market and immediately terminate this Agreement.

Backup Copy
The Purchaser may make copies of said Software and Documentation (Manuals, Release Notes, etc.) for back-up purposes only. Notwithstanding the backup copy, the Purchaser may not have more than one (1) production copy of the Software and one (1) test copy of the Software in use at any time.

Disaster Recovery and Business Continuity Processing
When requested by the Licensee in writing, the Licensor will agree to provide an additional operational license of the Software for the purposes of the Licensee in maintaining an additional standby copy of the Software as an operational Disaster Recovery Site (hereby called a DRS). The Licensee warrants that only a single live production version of the Software will be in operation at any point in time and that the DRS shall only be used to run production work when the main production license has failed and is unavailable for production. The DRS copy of the Software will be provided free of charge under the condition that the Licensee agrees to contract for an Automatic Software Upgrade (ASU) agreement for the DRS copy for the full term of its use by the Licensee.

Warranty
This "software" is delivered with a three (3) month warranty effective from the date of purchase. Under the terms of this warranty you have access to K1Corp's fault answering and correction service via mail, phone, fax, Internet, email and K1Corp Mobile Apps. Note that the warranty applies only to the initial Software product, (e.g., RecFind 6, GEM, Button, etc.), not to additional user licenses for said Software product.

Except for the warranties expressed in this License and the conditions and warranties implied by the Trade Practices Act 1974 and equivalent State legislation, K1Corp makes no other warranties whether express or implied as to any matter whatsoever. All warranties, terms and conditions which are implied by any law are to the fullest extent possible hereby expressly

excluded. In the event that K1Corp may be liable for any breach of any warranty its liability shall, to the extent legally permissible, be limited to one or both of the following as determined by K1Corp in its absolute discretion:

(i) the correction of any faults in the Goods; or
(ii) the replacement of the Goods.

Liability
In no event shall the liability of K1Corp exceed the sum actually paid by the Purchaser for the Goods during the current twelve-month period of this Agreement. K1Corp shall in no event be liable for the following loss or damage howsoever caused and even where the possibility of such loss has been disclosed or could reasonably have been foreseen:

(a) economic loss; and
(b) special, indirect or consequential loss.

Jurisdiction

a) For customers located in North or South America:

This agreement and all relations between the parties hereto, shall be governed by the law of the State of California and the parties hereto agree to submit to the jurisdiction of the Courts of the State of California, and that the venue for the hearing of any dispute between the parties hereto shall be a Court of competent jurisdiction in San Diego, California, The United States of America.

b) For customers located in geographic locations other than North and South America:

This agreement and all relations between the parties hereto, shall be governed by the law of the State of New South Wales and the parties hereto agree to submit to the jurisdiction of the Courts of the State of New South Wales, and that the venue for the hearing of any dispute between the parties hereto shall be a Court of competent jurisdiction in Sydney, New South Wales, Australia.

Payment
The Purchaser agrees to comply with the normal trading terms of K1Corp (which are net cash 14 days and this period is defined as 14 days from the date of delivery) or as otherwise stipulated in writing by K1Corp.
EXCEPTIONS: K1 Corp Services: Payment is required prior to commencement of Services.
It is agreed that on the event that the Purchaser does not make payments in accordance with this clause, the credit facilities may be refused, changed or withdrawn and all monies owed by the Purchaser will become immediately payable. Without in any way limiting K1Corp's right to require payment in full on the due date, K1Corp may charge interest on overdue accounts as follows: 45 days - 5%, 60 days - 10%, 90 days - 15%. K1Corp may from time to time place or adjust limits on the amount of credit to be extended to the Purchaser.

Payment by Credit Cards will attract the following surcharges (we pass on the same rates as are imposed on us by the credit card companies):

North America (USA & Canada) – Visa / MasterCard 5%, AMEX or Diners not accepted.

Australasia – Visa / MasterCard 2%, AMEX 2.5%, Diners not accepted.

Preferred Payment Method: Direct Deposit, EFT or cheques/check.

Retention of Title
The rights to use the software, and ownership of other Goods supplied does not pass to the Purchaser until the invoice is paid in full to K1Corp.

Default
In consideration of the granting of such credit facilities the Purchaser agrees that should collection and/or legal action be taken by K1Corp for the recovery of any monies due and payable by the Purchaser to K1Corp, the Purchaser hereby agrees to be responsible for, and to reimburse K1Corp for all costs and legal expenses, including commissions, which may be incurred or becoming payable in any collection and/or legal action taken for recovery of monies due and owing. In this regard costs include legal costs on solicitor client basis.

Fitness for Purpose
The Purchaser agrees that it does not rely on the skill or judgment of K1Corp staff in relation to the suitability of any Goods or Services for a particular purpose unless it has indicated that purpose in writing to K1Corp and K1Corp has acknowledged in writing that the Goods will be fit for that purpose.

Returns
Goods purchased from other suppliers on the Customers' behalf and Software supplied directly by K1Corp may not be returned without K1Corp's prior agreement in writing and then only on terms incorporated in such agreement.

Goods/Services/Sales Tax
Unless otherwise stated, quoted prices do not include any applicable Federal, State or Local Goods, Services or Sales taxes. Any applicable taxes will be added to the invoice value.

Purchaser's Responsibility
The Purchaser undertakes to notify K1Corp promptly in the event of any change in the trading address and/or ownership of the Purchaser and/or in the conversion of a sole trader/partnership entity into an incorporated company. The Purchaser will indemnify K1Corp against any loss incurred by it due to any change of ownership of the Purchaser unless written advice of such change is received by K1Corp prior to the commencement of tooling and/or production and/or delivery of the Goods.

Disputes
In the event of any dispute between the parties arising out of supply of goods or services by K1Corp to the Purchaser, either party may give written notice of the existence of such dispute to the other whereupon both parties shall attempt to resolve the dispute.

a) For customers located in North and South America:

Failing resolution of the dispute, either party may refer the matter to arbitration or to a court of competent jurisdiction in the city of San Diego, California. The applicable law shall be that of the State of California, The United States of America.

b) For Customers located in geographical locations other than North and South America:

Failing resolution of the dispute, either party may refer the matter to arbitration or to a court of competent jurisdiction in the city of Sydney, New South Wales. The applicable law shall be that of the State of New South Wales, Australia.

K1Corp Services - Terms and Conditions

'K1 Corp Services' are any and all onsite or online Services supplied by either the Professional Services team or the Technical Support team, excluding 1-800 Software and Product support.

Payment
Payment for K1 Corp Services must be paid prior to commencement of the service. Scheduling of such Services will not take place until payment has been received, (unless otherwise agreed upon in writing).

Rescheduling of Services
K1Corp must be made aware of all Customer initiated rescheduling five or more working days prior to the previously agreed commencement of the Service or a transfer fee of 15% of the Services fee will be charged.

Termination for Convenience
Client cancellation/termination "for convenience" of scheduled Training or Consulting work less than fifteen (15) calendar days before scheduled K1Corp staff travel is subject to a cancellation charge equal to 50% of the Services fee and for any expenses incurred. Such incurred expenses include (but are not limited to) shipping and return of materials, non-refundable portions of air fares and other travel expenses, and administrative costs. Full charges will be made for any Services actually performed.
EXCEPTIONS: Termination/Cancellation charges will NOT be made where cancellation results from circumstances beyond the client's control – such as fire, flood, terrorism, Acts of God, etc. or where prior notification/arrangements have been made.
K1Corp reserves the right to cancel for convenience without liability at least two weeks prior to scheduled training or other on-site Services. K1Corp also shall not be liable for any 'failure to perform charges' where such failure results from circumstances beyond our control – such as fire, flood, terrorism, Acts of God, etc. or where prior notification/arrangements have been made.

Refunds
No refunds will be given for cancellations of training courses or consultancies. A credit will be maintained to be used for any K1 Corp Service.

Copyright
Reproduction, whether in whole or in part, of any K1Corp training Course or Consultancy Module material is subject to the provisions of K1Corp's copyright and is forbidden in the absence of K1Corp's written consent. The Customer agrees not to provide or otherwise make available the Educational or Consultancy materials to a third party.

Client Responsibility – Onsite Training

- For onsite training, the client is responsible for an adequate training venue. The training room should have a PC for each student.
- The software must be installed and tested prior to the K1Corp Trainer/Consultants arrival
- A list of attendees must be supplied to Knowledgeone Corporation prior to the course
- All attendees must fill out the Pre course evaluation form and enrolment form supplied by your account manager or via the website.
- If receiving a customised course, a customised course requirement list must be filled out. If a customised training manual is requested, a copy of the data must be sent to K1 at least one week prior to the course

Performance Issues – Onsite Training

K1 Corp reserves the right to eject from the classroom any individuals who:

- Is or appears to be under the influence of alcohol or drugs;
- Is engaged in disruptive behavior;
- Is engaged in any behavior which poses a safety or health hazard to other participants;
- Is sleeping in the classroom; and
- Makes unnecessary mobile phone use (excluding of taking emergency calls), texting, or game playing

Where the client has a management/technical representative in the classroom, any request to remove individuals shall be made through that representative.

No audio, video or photographic recording of the training will be permitted.

Modifications

K1 Corp are quoting to supply and implement a modification (a Stored Procedure, Trigger, Scheduled Task, Report, etc) in order to introduce the functionality specified in the quotation provided.

Any supplied modifications are provided with a three month warranty as to 'Fit For Purpose'; that is, during the warranty period we will make any corrections necessary to ensure that the modification works as per the original specification. Note however that this quote does not include ongoing support or maintenance of the modifications and that the modification is not included as a maintained 'product' under your Automatic Software Upgrade (ASU) agreement with Knowledgeone Corporation.

Any future change implemented by the customer and/or its agents or any future upgrade to RecFind 6 may result in these modifications not functioning as originally designed. In the event that a modification no longer functions as originally designed, the modification may need to be updated or re-implemented. Should you require Knowledgeone Corporation to complete this work, you will need to obtain a new quotation for the work involved.

Back Ups

The customer shall be responsible for taking backup copies of its data and files and for verifying the functionality of the backup copies. Neither party shall be liable for loss of, damage to, or alteration of data or data files of the other party due to any cause and the resulting damages and expenses incurred, such as expenses incurred in the re-creation of data files.

Assumptions

The man days and tasks detailed within this quote are based on our understanding of the work required before we have had the opportunity to do any detailed investigations of the actual data and processes involved. As such, they are our best estimates and are based on our experience in similar situations. You should be aware that there is always a possibility that once our staff have begun looking in detail at your data and processes that they may uncover conditions or requirements that require additional effort on our part. If this occurs we agree to advise you in writing of the additional requirements as soon as we are aware of them. You will then need to make a decision as to whether or not to proceed with the additional work.

1-800-Incident-Support and Warranty Service

1. All K1Corp products are delivered with a 3-month warranty from the initial purchase. This warranty period commences with the date of receipt of the software product. The Services provided during the warranty period are identical to those provided under the 1-800-Incident Support agreement and are as described in paragraphs 2., 3., 4., 5., 6., and 7., below.

2. The 1-800-Support-Service includes support via telephone, facsimile, mail and e-mail where available. K1Corp's objective is to provide the required support at the time of contact or as soon as practicable thereafter. Passive telephone support (i.e., the operator or voice mail system will record your details and you will be responded to the next working day) is available in all other hours.

3. Incident Support does not include training or application support (i.e., instruction on how to use the product). Requests for training and application support will be referred to the appropriate K1Corp Professional Services department and are chargeable Services.

4. When requesting support, customers are required to supply:
   - Customer Number (Refer to Invoice)
   - Customer Name
   - Customer Address
   - Contact Name
   - Contact Phone Number/Email
   - A concise description of the problem, plus all appropriate supporting documentation including screen dumps, error message text, sample reports etc.; and PIN Number (from the Support Confirmation/Renewal letter).

5. The 1-800-Incident-Support-Service does not include onsite support. If onsite support is requested by a customer it will be charged for at the then prevailing standard rates.

6. K1Corp's responsibilities are limited to the ongoing support of its application software products. K1Corp accepts no responsibility for the installation and successful operation of operating systems (e.g., Windows 7), database packages (e.g. SQL Server 2008), networking operating systems or components (e.g. the LAN, WAN, ODBC, TCP/IP, etc) or computer or networking hardware and firmware. It is the customer's responsibility to ensure that all operating systems, networks and hardware and firmware are installed correctly and operating efficiently. Nor does K1Corp profess to have detailed knowledge or expertise in operating systems, database systems, networking components, hardware and firmware other than the basic settings required for the operation of its application software products. In the situation where the customer requests advice or opinion on the successful operation of operating systems, database systems, networking components, hardware or firmware K1Corp may provide such advice at its discretion but accepts no responsibility whatsoever for the correctness or otherwise of such advice and the customer should at all times rely only on the advice of its own experts in these areas.

7. Support calls will not be accepted under any circumstances, unless the caller has a current Automatic Software Update (ASU) agreement, has active "incidents" or is under warranty.