



## 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, the RecFind 6 Enterprise Suite and the Web/Twain SDK Module.

'**Goods**' = any third party **Goods** 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 **K1Corp**. All rights and privileges are to remain the property of **K1Corp**.

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** 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**. 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, 2020, 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 authorized 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**

The **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 email, phone, fax, and internet. Note that the warranty applies only to the initial **Software** product, (e.g., RecFind 6, GEM, Button, etc.), not to additional user licenses or upgrades for said **Software** product.

Except for the warranties expressed in this License and the conditions and warranties implied by the Competition and Consumer Act 2010 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**.

**Preferred Payment Method:** Direct Deposit, Wire Transfer or EFT. Credit cards and checks/cheques not accepted.

### **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

'**K1Corp Services**' are any and all onsite or online **Services** supplied by either the Professional **Services** team or the Technical Support team, excluding 1-800 Product support.

### Payment

Payment for **K1Corp 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 ten (10) 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 along with any expenses incurred. Such incurred expenses include (but are not limited to) rescheduling and/or rebooking fees for air fares and other travel expenses, and administrative costs.

### 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 any quotation 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.

### **ASU 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 ASU Support agreement and are as described in paragraphs 2., 3., 4., 5., 6., and 7., below.

2. The ASU Support Service includes support via telephone, facsimile, email and internet 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. ASU 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.
5. The ASU 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 10), database packages (e.g. SQL Server 2016), 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 or is under warranty.