



KONICA MINOLTA

Standard Terms and Conditions

PART A: GENERAL

1. Part A of these Standard Terms apply to each Order.

DEFINITIONS

2. In these terms and conditions:

Agreement means the agreement formed by KMBSA accepting the relevant Order and consists of:

- (a) the relevant Order;
- (b) these Standard Terms and Conditions; and
- (c) any document or agreement that the parties agree in writing is to be a transaction document for the purposes of these Standard Terms;

Consumables means toner, developer, staples, waste toner containers, facsimile drums, imaging units but in all cases excludes paper;

Copy and Copies includes prints and images both black and white and colour;

Credit Account Application means an application for a 30 day commercial trading account with KMBSA referred to in the relevant Order.

Customer means the customer specified in the relevant Order;

Customer's System includes the Customer's entire computer and information technology, data imaging and printing network and infrastructure including hardware, software, firmware, communications platforms, cabling and any parts or components of any of the foregoing;

Equipment means the equipment, accessories, Interface, software and any Spare Parts or Consumables specified in the relevant Order;

Interface means any installation or device provided to the Customer by KMBSA for the purposes of establishing an interface between the Equipment and the Customer's System to enable the Equipment to function properly in conjunction with the Customer's System or to allow data to be transferred between devices included in the Customer's System (whether or not supplied by KMBSA) and includes all hardware, software, firmware, servers, controllers, input devices, output devices, parts, components forming part of that installation or device, this includes software provided to reside on the Customer's network to monitor print devices but excludes Third Party Supplies;

KMBSA means Konica Minolta Business Solutions Australia Pty Ltd (ABN 50 001 065 096);

KMBSA Property means all property in which KMBSA has an interest under the terms of this Agreement or a Security Interest for the purposes of the PPS Law;

PPSA means the Personal Property Securities Act 2009 (Cth);

Order means the Product and Services Schedule signed by the Customer and accepted by KMBSA;

PPS Law means the PPSA, the regulations made under that Act as amended from time to time and amendments made to any other legislation as a consequence of the Personal Property Securities Act 2009 (Cth) without limitation;

Product Installation Form means the KMBSA document entitled "Product Installation Form" under which KMBSA collects information regarding the Customer's System before supplying any Interface;

Security Interest has the meaning given to that term in section 12 of the PPSA;

Service means in respect of a Service Product:

- (a) such cleaning, lubrication, parts replacement, adjustment or other services as may be required (as determined by KMBSA) to ensure the proper and efficient operation of the Equipment, as is specified in the description of the Service Product in the relevant Order;
- (b) the provision of such Consumables as are specified in the Service Product (but no other Consumables); and
- (c) the adjustment, repair and maintenance of the Interface to ensure its proper operation with the Equipment and the Customer's System;

Service Fees means the service fees specified in the relevant Order as amended by KMBSA from time to time in accordance with this Agreement;

Service Products means the service product(s) (if any) which the Customer has selected in the relevant Order;

Spare Parts means such spare parts as may be required, as determined by KMBSA, to ensure the proper and efficient operation of the Konica Minolta product;

Standard Terms means these standard terms and conditions;

Third Party Supplies means any equipment, hardware, software or other items supplied to the Customer by any third party and any equipment, hardware or software or other items supplied to the Customer by KMBSA which was manufactured by a third party or acquired from a third party by KMBSA;

Total Amount Payable in respect of any Equipment means the total amount payable to KMBSA by the Customer under or in connection with this Agreement, as specified in the relevant Order; and

Transaction means any transaction contemplated by or in connection with this Agreement.

ENTIRE AGREEMENT

3. Unless otherwise agreed between the parties in writing:
 - (a) this Agreement is the entire agreement between the parties in relation to its subject matter; and

- (b) other than terms or guarantees that apply under a mandatory law, there are no collateral representations, warranties, agreements or undertakings of any nature whatsoever. The parties acknowledge that if they enter into other agreements in respect of the Equipment, those agreements shall operate concurrently with this Agreement.
4. This Agreement cannot be cancelled or altered except by written agreement between the parties executed by an authorised officer of KMBSA and an authorised representative of the Customer.

ASSIGNMENT AND GOVERNING LAW

5. The Customer may not assign this Agreement or any of its rights or obligations thereunder without the prior written consent of KMBSA. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New South Wales, and the Customer and KMBSA submit to the exclusive jurisdiction of the courts of that State.

PAYMENT AND INTEREST

6. Each party must strictly comply with its obligations under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and all associated statutes and regulations. Without limiting the foregoing, the Customer must pay to KMBSA all GST payable in respect of any taxable supplies made to the Customer by KMBSA and promptly following the Customer's request KMBSA must provide the Customer with a valid tax invoice in respect of any such taxable supplies.
7. The Customer must pay any additional costs or liabilities of KMBSA in relation to this Agreement including any resulting from new or varied taxes, duties, levies or legislation.
8. Where any sum payable to KMBSA by the Customer is more than fourteen (14) days in arrears, KMBSA may at its discretion charge interest on that sum at the rate of 5% per annum above the indicator lending rate for business overdrafts specified by Westpac Banking Corporation on the date when the relevant amount becomes overdue, and such amount of interest shall be a separate debt which shall immediately be due and payable by the Customer on demand by KMBSA.
9. Subject to clause 28, all sums payable to KMBSA under this Agreement must be made in full not later than 30 days from the date of invoice or on such terms as KMBSA may otherwise notify in writing. The Customer agrees and acknowledges that payments will be applied by KMBSA as follows:
 - (a) Firstly, in payment of any and all collection costs and legal costs in accordance with Clauses 23 and 44
 - (b) Secondly, in payment of any interest incurred in accordance with Clause 8 and
 - (c) Thirdly, in payment of outstanding invoices.
10. Where the Customer enters into this Agreement or submits a Credit Account Application as trustee of a trust ("Trust") under any trust deed, deed of settlement or other instrument ("Trust Deed"), the Customer agrees and warrants that:
 - (a) this Agreement binds the Customer both personally and in its capacity as trustee of the Trust whether disclosed or not;
 - (b) it is the only trustee of the Trust and no action has been taken or is proposed to remove it as trustee of the Trust;
 - (c) it has power under the Trust Deed and under its constitution to enter into and execute this Agreement and to perform the obligations imposed under this Agreement as trustee;
 - (d) all necessary resolutions have been passed as required by the Trust Deed and by its constitution in order to make this Agreement fully binding on it;
 - (e) it enters into this Agreement and submits any Credit Account Application for a proper purpose of the Trust;
 - (f) it is not, and has never been, in default under the Trust Deed;
 - (g) it has the right to be indemnified fully out of the property of that trust before the trust's beneficiaries for all liabilities incurred by the Customer under this Agreement and the assets of that trust are sufficient to satisfy that right of indemnity;
 - (h) there is not now, and it will not do anything by virtue of which there will be in the future, any restriction or limitation on its right to be indemnified out of the assets of the Trust;
 - (i) it will not retire as trustee of the trust or appoint any new or additional trustee without advising the supplier in writing and
 - (j) there is no material fact or circumstance relating to the assets, matters or affairs of the Trust that might, if disclosed, be expected to affect the decision of KMBSA, acting reasonably, to enter into this Agreement.

MISCELLANEOUS

11. The provisions of this Agreement and the rights and liabilities conferred under it are distinct and severable and any invalidity shall not affect another term, condition, liability or right. A party may only waive its rights under this Agreement by a clear statement in writing and any failure by a party to exercise a right or insist on strict performance of any obligation under this Agreement shall not constitute a waiver.

12. KMBSA shall have the right to terminate this Agreement on written notice to the Customer if the Customer breaches this Agreement or commits or has taken against it an act of bankruptcy, winding up, official management, administration, receivership or liquidation or there occurs a transfer of ownership or control of the Customer.
13. The Customer covenants that it is fully aware that the Equipment may hold information, including data that the Customer may consider private or confidential, on its hard drive that can be electronically accessed at a later stage. The Customer accepts that it is solely the Customer's responsibility to cleanse the device of this information before it is removed from the Customer's premises and KMBSA has no liability for any Customer data loss or corruption. The Customer can contact KMBSA or an authorised dealer to electronically cleanse the device for a fee.

14. PERSONAL PROPERTY SECURITIES LEGISLATION

- (a) Until payment is received in full, title in the purchased or KMBSA provided KMBSA Property shall not pass to the Customer and the Customer must hold the purchased KMBSA Property as bailee for KMBSA.
- (b) Until payment is received in full, the Customer authorises KMBSA and its authorised employees or agents to enter the Company's premises without notice and take possession of the relevant KMBSA Property.
- (c) Unless defined in clause 2, terms used in this clause 14 have the meaning given to them in the PPSA.
- (d) To the extent permitted under the PPS Law, the parties agree to the provisions in this clause 14.
- (e) If, in KMBSA's opinion:
 - a. either:
 - i. this Agreement contains; or
 - ii. any of the Transactions create, a Security Interest for the purposes of the PPS Law; or
 - b. the PPS Law does or could affect KMBSA's rights or obligations under or in connection with this Agreement or any of the Transactions, KMBSA may do any of the things contemplated in clause 14(g).
- (f) If clause 14(f) applies, the Customer agrees that KMBSA may, at its discretion, do any one or more of the following:
 - a. register, or give any notification in connection with, any relevant Security Interest;
 - b. exercise rights in connection with the Security Interest; or
 - c. give notice to the Customer requiring it to provide all requisite information, and do anything at the Customer's expense (including amending this Agreement, executing any new document or agreement, obtaining consents and supplying information) that KMBSA requires to:
 - i. ensure that any Security Interest is enforceable, perfected and otherwise effective;
 - ii. register, or give any notification in connection with, any Security Interest in order to confer the priority KMBSA requires;
 - iii. exercise rights in connection with the Security Interest; or
 - iv. ensure that its rights and obligations are not adversely affected, or that its position is improved.
- (g) The Customer must comply with any notice received pursuant to clause 14(g) within the time stipulated in the notice.
- (h) The Customer gives KMBSA a power of attorney to complete and execute any and all documentation to give effect to clause 14(g).
- (i) If:
 - a. clause 14(f) applies; and
 - b. KMBSA determines (after doing all things reasonably practicable under clause 14(g)) that its rights or obligations under or in connection with this Agreement or any other document in connection with the Transactions have been or will be materially adversely affected, KMBSA may give notice to the Customer cancelling all or any of these Standard Terms and any part of this Agreement or any other document in connection with the Transactions and requiring:
 - c. full repayment of all outstanding monies; and
 - d. the return of all KMBSA Property within the control of the Customer, within 30 days after the date of notification.

The Customer's PPSA representations, warranties and acknowledgments

- (j) The Customer represents and warrants for the purposes of section 115 of the PPSA that the KMBSA Property is commercial property.
- (k) The Customer acknowledges that where the KMBSA Property, over which a Security Interest attaches, gives rise to Proceeds then the Security Interest continues in the KMBSA Property and attaches to the Proceeds.
- (l) The Customer acknowledges that KMBSA has entered into this arrangement in reliance on the representations, warranties and acknowledgments in this clause.

The Customer undertaking

- (m) If the Customer holds any Security Interest and failure to perfect any such Security Interest would materially adversely affect its business, the Customer must establish and maintain suitable PPS Law procedures to ensure that it effectively:
 - a. perfects and registers all such Security Interests;
 - b. takes all steps under the PPS Law to continuously perfect all such Security Interests;

- c. obtains the highest ranking priority possible for all such Security Interests (such as perfecting a Purchase Money Security Interest or perfecting a Security Interest by Control); and
 - d. takes all necessary action to reduce the risk that a third party acquires an interest free of the Security Interest (such as by including the Serial Number in a Financing Statement for Personal Property that may or must be described by a Serial Number).
- (n) Everything the Customer is required to do to comply with this clause 14 is at the Customer's expense.

General

- (o) The Customer agrees to pay or reimburse the costs of KMBSA in connection with anything the Customer is required to do under this clause 14.
- (p) The Customer irrevocably and unconditionally waives its right to receive from KMBSA any notice under the PPS Law (including notice of a Verification Statement) unless required by the PPS Law and if the notice cannot be excluded.
- (q) The Customer must notify KMBSA immediately of any change in its name, address, and any other information provided to KMBSA to enable KMBSA to register a financing change statement under the PPS Law if required.
- (r) The parties agree that the subject matter referred to in section 275(1) of the PPS Law is confidential and each party must not disclose any such information to a third party.

Contracting out

- (s) The following provisions of the PPS Law do not apply and, for the purposes of section 115 are "contracted out" of these Standard Terms, namely sections:
 - a. 95 (notice of removal of accession);
 - b. 96 (person with an interest may retain the accession);
 - c. 121(4) (enforcement of liquid assets – notice to grantor);
 - d. 125 (obligations to dispose of to retain collateral);
 - e. 130 (notice of disposal);
 - f. 132(3)(d) (contents of statement of account after disposal);
 - g. 132(4) (statement of account if no disposal);
 - h. 135 (notice of retention);
 - i. 142 (redemption of collateral); and
 - j. 143 (re-instatement of security agreement);
- (t) The parties agree that KMBSA has the power to retain, deal with or dispose of any property seized by it in the manner specified in sections 123, 125, 126, 128, 129 and 134(1) and in any other manner it deems fit.

PART B: PRODUCT PURCHASE

15. APPLICATION OF THE AGREEMENT

- (a) Part B of these Standard Terms shall apply between the parties in their entirety in circumstances where the Customer purchases the Equipment outright from KMBSA without financing arrangements.
- (b) Where the Customer has selected any finance options specified in the relevant Order, the Customer acknowledges that KMBSA will sell the Equipment to the relevant finance company, not to the Customer. In these circumstances, the provisions of this Part B relating to sale and purchase of the Equipment shall not apply, but Part A and the balance of this Part B (including clauses 17 (delivery), 18 (trade-ins), 19 (intellectual property), 20 (customer undertakings), 23 (liability and indemnity), 25, 26 and 27 (warranties and exclusions)) shall apply.
- (c) The Customer acknowledges and accepts that where it has selected any of the finance options in the relevant Order, KMBSA takes no responsibility for and cannot guarantee the availability from or granting of finance by the relevant finance company. To the extent permitted by law, KMBSA shall not be responsible or liable for any acts or omissions of the relevant finance company or breaches of any duties or contractual obligations by the relevant finance company.

16. TITLE AND RISK

No title in the Equipment shall pass to the Customer until the Total Amount Payable has been received by KMBSA in full. Until receipt of such payment KMBSA may enter the premises on which the Equipment is kept and retake possession of the Equipment at any time without notice. In the case of payment by cheque, title shall not pass to the Customer until the same is honoured and in the case of payment by electronic funds transfer, no title shall pass to the Customer until clear funds have accrued to KMBSA's nominated account. Risk in the Equipment shall pass to the Customer immediately on delivery. Where the Equipment consists of or includes software, title in that software does not pass to the Customer but KMBSA grants the Customer a perpetual, non-exclusive, royalty free, non transferable licence to use that software in connection with the remainder of the Equipment.

17. DELIVERY AND INSTALLATION

- (a) KMBSA must deliver the Equipment to the delivery address specified in the relevant Order.
- (b) All quoted delivery and installation dates are estimates only and KMBSA has no obligation to meet such dates. In the event that any delay in delivery or installation is caused by circumstances beyond KMBSA's reasonable control, KMBSA may suspend or delay delivery or installation without consequence and without relieving the Customer of its obligations.

- (c) If the Customer wishes to use its own carrier in respect of any Equipment, KMBSA must effect delivery ex-works, the Customer must bear and must indemnify KMBSA against any costs, losses or liabilities arising from the transportation of such Equipment and delivery shall occur upon the equipment being made available to the Customer's carrier.
- (d) If specified in the relevant Order, KMBSA must install the Equipment at the Customer's specified location in accordance with KMBSA's installation policies and procedures as amended from time to time.
- (e) KMBSA must provide to the Customer's personnel at the time of installation initial training in the operation of the Equipment referred to in the relevant Order or such other training as KMBSA may consider appropriate (if any). Any requests for additional training are subject to KMBSA's acceptance and shall be subject to KMBSA's then current rates for training as amended from time to time.
- (f) The Customer is responsible for installing parts of the Interface onto its own network, namely the device monitoring software that KMBSA utilises. This can be done with on-line assistance from KMBSA for no charge or on-site for a fee.

18. TRADE-IN

- (a) The Customer must indemnify KMBSA against all claims, costs, liabilities, damages and outgoings which KMBSA may suffer or incur as a result of any item acquired or to be acquired by KMBSA under this Agreement as a trade-in not being the sole property of the Customer free of all liens, charges, encumbrances and third party interests except as disclosed in the relevant Order.
- (b) The Customer irrevocably directs KMBSA to pay moneys due in respect of any trade-in as set out in the relevant Order. KMBSA shall have no obligation to provide any Equipment until it has full right and title to any trade-in.

19. INTELLECTUAL PROPERTY

The Customer must not do, or omit to do, anything which results in damage to the intellectual property of KMBSA including removing or altering any trademarks on the Equipment, making copies of any software or failing to keep confidential information of KMBSA confidential. The Customer may not use any intellectual property belonging to KMBSA or its related bodies corporate in any way whatsoever unless expressly authorised by KMBSA in writing.

20. CUSTOMER UNDERTAKINGS

The Customer must at any time do all things necessary to give effect to this Agreement including providing KMBSA or its nominated agents with access to the Customer's premises, the Customer's System and the Equipment and any assistance reasonably requested by KMBSA.

INTERFACE

- 21. Where the Customer has been requested to complete a Product Installation Form, the Customer acknowledges that KMBSA has relied or will rely on the completed Product Installation Form in developing and supplying the Interface. The Customer is fully responsible for the completeness and accuracy of the Product Installation Form and warrants and represents to KMBSA that KMBSA may rely on the details set out in the Product Installation Form.
- 22. The Customer acknowledges that parts of the Interface may reside on the Customer's system and may collect data relating to print volumes of print devices on that system.

LIABILITY AND INDEMNITY

- 23. To the extent permitted by law and without limiting any express warranties given by KMBSA in relation to the Equipment, KMBSA shall not be liable for and the Customer must indemnify and hold KMBSA harmless against all claims, loss or damage of any kind whatsoever, including any damage to any person or property, any indirect or consequential loss or damage, loss of profit or loss of opportunity, loss or corruption of data, directly or indirectly occasioned by or arising from:
 - (a) the use or operation or possession of the Equipment by the Customer, its employees, agents and contractors;
 - (b) any breach of this Agreement by the Customer; or
 - (c) any wrongful, wilful or negligent act or omission of the Customer or any of its officers, employees, agents or contractors.
 This indemnity shall extend to any costs and expenses incurred by KMBSA in connection with all such claims, loss or damage (including costs and disbursements incurred in pursuing any debt recovery action and legal fees on an indemnity basis) and shall continue in force notwithstanding the termination of this Agreement.
- 24. Subject to the preceding provision, KMBSA's liability in respect of all claims, loss or damage arising from or in connection with this Agreement or the supply of any Equipment under this Agreement shall in any event be limited to the amount paid to KMBSA by the Customer in respect of the particular piece of Equipment which gave rise to the claim, loss or damage, including in the event of KMBSA's negligence. Under no circumstances whatsoever including KMBSA's negligence shall KMBSA be liable in respect of any indirect or consequential loss or damage or for any loss of profit or loss of opportunity or loss or corruption of data. Nothing in this clause limits KMBSA's liability in respect of breach of a term or guarantee that applies under a mandatory law.

WARRANTIES AND EXCLUSIONS

- 25. Provisions of the Competition and Consumer Act 2010 ("CCA") as amended and other laws in force from time to time in Australia may imply warranties or conditions or impose obligations and guarantees on KMBSA in relation to its goods and services. If any such provisions apply, to the extent permitted by law, KMBSA's liability shall be limited at KMBSA's option to the resupply, repair or replacement of the Equipment, equivalent equipment or services or the cost of such resupply, repair or replacement. Subject to such provisions, to the extent permitted by law, all representations, conditions and warranties of any nature are expressly excluded. Nothing in this clause excludes, restricts or modifies the Customer's rights under a mandatory term or guarantee and the parties acknowledge that the CCA does not permit limitations of liability in respect of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.
- 26. KMBSA must use reasonable endeavours to ensure the continued availability and supply of spare parts and consumables necessary to ensure the proper functioning of the Equipment. However, KMBSA warrants that Spare Parts and Consumables required to ensure the proper functioning of the Equipment will be reasonably available for a reasonable period after the Equipment is supplied.
- 27. Any express manufacturer warranties given by KMBSA shall be void if the Customer:
 - (a) uses or operates the Equipment in any manner except strictly in accordance with any operation instructions provided with the Equipment or by KMBSA (including misusing the Equipment and using or operating the Equipment negligently); or
 - (b) uses any consumables or throughput materials other than those provided or approved by KMBSA. Nothing in this clause excludes, restricts or modifies the Customer's rights under a term or guarantee that applies under a mandatory law.

PAYMENT AND INTEREST

- 28. The Total Amount Payable shall be payable in full on delivery.

PART C: SERVICE

PROVISION OF SERVICE AND SERVICE PRODUCTS

- 29. Part C of these Standard Terms apply where the relevant Order includes Services to be performed by KMBSA.
- 30. KMBSA must supply the relevant Services as specified in the description of the Service Products indicated in the relevant Order.
- 31. KMBSA may provide to the Customer's personnel training services as KMBSA may consider appropriate. All requests for additional training services shall be subject to KMBSA's acceptance and shall be provided at KMBSA's current training rates and fees as amended from time to time.
- 32. KMBSA must provide the relevant Services during normal business hours in metropolitan areas of each capital city in Australia (except as indicated in the relevant Order). For service provided outside of business hours or other in these metropolitan areas, an additional charge for labour and travel is payable at KMBSA's then current rates (as amended from time to time).

INTERFACE SERVICE

- 33. Where the Customer has been requested to complete a Product Installation Form, the Customer:
 - (a) acknowledges that KMBSA has relied or will rely on the completed Product Installation Form in developing and supplying the Interface and providing Service for the Interface; and
 - (b) warrants that all details provided in the Product Installation Form are complete, accurate and correct.

EXCLUSIONS

- 34. Unless indicated in the relevant Order or otherwise agreed between the parties in writing, KMBSA shall not be obliged to:
 - (a) relocate the Equipment or the Interface;
 - (b) supply or deliver any Consumables;
 - (c) supply any paper;
 - (d) provide additional or replacement copies of documentation;
 - (e) support any Third Party Supplies or accept any responsibility in respect of Third Party Supplies;
 - (f) supply new or enhanced software;
 - (g) rectify any lost or corrupted data;
 - (h) rectify faults, damages, defects or failures caused by Customer operator or Customer programming errors, acts of nature, power supplies, attachments, accessories, impact with objects or liquids or unauthorised repairs, service or maintenance;
 - (i) install parts of the Interface at the Customer's place of business, namely the device monitoring software that KMBSA utilises;
 - (j) develop systems or provide application development support;
 - (k) correct any defects in the Customer's System; or
 - (l) accept any responsibility or liability whatsoever for any problems, issues, errors, loss or damage arising from or in connection with any changes whatsoever to the Customer's System (whether or not consciously occasioned by the Customer) which render the Customer's System different in any respect whatsoever to what is reflected in the Order and/or the Product Installation Form. The Customer also acknowledges and accepts that it may not always be possible and KMBSA cannot guarantee to rectify or identify workarounds associated with the compatibility, interconnectivity or operation of the Equipment and the Interface with the Customer's System.

35. If KMBSA agrees to do anything specified in the preceding provision or perform any Services in respect of anything specified in the preceding provision, KMBSA shall charge the Customer at KMBSA's then current rates and charges and the Customer must pay such rates and charges.
36. Except as specified in the Service Products, any Consumables which KMBSA supplies to the Customer will be supplied at KMBSA's recommended retail price current at the time of supply.

SERVICE FEES AND PAYMENT

37. The Customer must pay to KMBSA the Service Fees in consideration of the Services supplied to the Customer by KMBSA. Payment of each KMBSA invoice in respect of the relevant Services must be made within 30 days of the date of that tax invoice. The Customer must pay for the delivery of consumables at KMBSA's then current fee.
38. The Customer acknowledges and accepts that:
- (a) where a Customer has elected to have the Service Fees charged on a cost-per-copy basis, the Service Fees:
 - (i) are based on the number of A4 and A3 copies made;
 - (ii) are calculated as follows:
 - for black and white copies: the black and white cost per copy specified in the relevant Order multiplied by the number of black and white copies made in the relevant period; plus
 - for colour copies: the colour cost per copy specified in the relevant Order multiplied by the number of colour copies made in the relevant period;
 - (b) where a Customer has elected to have the Service Fees charged on an annual charge basis, the Service Fees are calculated on the basis that the Customer's total annual usage will not exceed 10,000 copies. If a Customer's usage exceeds this amount, a further charge may apply.
 - (c) if the Service Product includes the provision of toner, the Service Fees assume a 6% coverage per page for black and white copies and 6% coverage per page for each of the four available toner colours (being a maximum of 24% per page) for colour copies. If KMBSA determines that actual usage has varied from these levels, KMBSA may adjust the Service Fee accordingly.
39. KMBSA may increase the Service Fees from time to time to reflect increases in its cost of supplying the relevant Services and such increases will take effect immediately upon written notification to the Customer.
40. The Customer accepts that if it elects not to install KMBSA's device monitoring software on its network, it will be charged a per device administration fee each month. This administration fee may increase from time to time to reflect increases in the cost of acquiring relevant data and such increases will take effect immediately upon written notification to the Customer.

OBLIGATIONS OF THE CUSTOMER

41. The Customer must provide KMBSA with such:
- (a) access to the Customer's premises, the Equipment and the Interface as KMBSA may require to perform KMBSA's obligations under this Agreement; and
 - (b) assistance as KMBSA may reasonably request from time to time in performing KMBSA's obligations under this Agreement.
42. Where the Service Fees are for copies billed in arrears and where not collected automatically by the Interface, the Customer must provide the current meter reading as and when required by KMBSA. If the meter reading is not provided by the Customer as and when required by KMBSA, KMBSA will calculate a reading based on an average daily volume, using service records and/or previous meter reading information, for the purpose of invoicing and the Customer must pay any invoice based on such calculation.
43. The Customer is responsible for and liable for any additional charges arising from:
- (a) damage to the Equipment or the Interface from negligence, misuse, unauthorised alteration, environmental factors, including electrical storms, or other than normal use;
 - (b) damage to the Equipment or the Interface from the use of consumables or throughput materials other than those provided by or approved by KMBSA;
 - (c) denial of reasonable access to the Equipment or the Interface for KMBSA service personnel to provide routine and preventative maintenance; and
 - (d) additional efforts which KMBSA in its absolute discretion may decide to provide to assist the Customer in resolving problems not covered by this Agreement.

If KMBSA provides Spare Parts or performs Services as a result of or in connection with any of the foregoing items (a) to (d), even though it is not obliged to do so, the Customer shall be charged at KMBSA's then current rates and the Customer must pay those charges, provided that nothing in this clause excludes, restricts or modifies the Customer's rights under a term or guarantee that applies under a mandatory law.

LIABILITY AND INDEMNITY

44. To the extent permitted by law and without limiting any express warranties given by KMBSA, KMBSA shall not be liable for and the Customer must indemnify and hold KMBSA harmless against all claims, loss or damage of any kind whatsoever, including to any person or property, any indirect or consequential loss or damage, loss of profit or loss of opportunity, loss or corruption of data directly or indirectly occasioned by or arising from or in connection with any of the following:

- (a) the use or operation or possession of the Equipment or the Interface;
- (b) any breach by the Customer of any warranty given in respect of the Product Installation Form;
- (c) any change by the Customer of any aspect or element of the Customer's System;
- (d) any loss or corruption of data or information residing in the Customer's System;
- (e) any business interruptions;
- (f) any corruption, crashing or destruction of the Customer's System;
- (g) any information obtained from the Equipment's hard drive by a third party after it has been removed from the Customer's premises;
- (h) any breach of this Agreement by the Customer; or
- (i) any wrongful, wilful or negligent act or omission of the Customer or any of its officers, employees, agents or contractors.

This indemnity shall extend to any costs and expenses incurred by KMBSA and shall continue in force notwithstanding the termination of this Agreement. This indemnity includes costs and disbursements incurred by KMBSA in pursuing any recovery action, or any other claim or remedy, against the Customer, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Customer irrespective of whether pursuit of the recovery action, claim or remedy is successful.

45. Subject to the preceding provision, KMBSA's liability in respect of any claim, loss or damage arising from or in connection with this Agreement or the supply of any Services (including the supply of Spare Parts or Consumables in the course of supplying those Services) under this Agreement shall in any event be limited to the amount paid to KMBSA by the Customer in respect of the particular Service which gave rise to the claim, loss or damage, including in the event of KMBSA's negligence. Under no circumstances whatsoever including KMBSA's negligence shall KMBSA be liable in respect of any indirect or consequential loss or damage or for any loss of profit or loss of opportunity. Nothing in this clause limits KMBSA's liability in respect of breach of a term or guarantee that applies under a mandatory law.

WARRANTIES AND EXCLUSIONS

46. Provisions of the Competition and Consumer Act 2010 ("CCA") as amended and other laws in force from time to time in Australia may imply warranties or conditions or impose obligations and guarantees on KMBSA and its goods and services. If any such provisions apply, to the extent permitted by law KMBSA's liability shall be limited at KMBSA's option to the resupply, repair or replacement of the relevant Service, Spare Parts or Consumables, equivalent equipment or services or the cost of such resupply, repair or replacement. Subject to such provisions, to the extent permitted by law, all representations, conditions and warranties of any nature are expressly excluded. Nothing in this clause excludes, restricts or modifies the Customer's rights under a mandatory term or guarantee and the parties acknowledge that the CCA does not permit limitations of liability in respect of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.
47. KMBSA warrants that Spare Parts and Consumables required to ensure the proper functioning of the Equipment will be reasonably available for a reasonable period after the Equipment is supplied.
48. Any express manufacturer warranties given by KMBSA shall be void if the Customer:
- (a) uses or operates the Equipment or the Interface in any manner except strictly in accordance with any operation instructions provided with the Equipment or the Interface or by KMBSA (including misusing the Equipment or the Interface and using or operating the Equipment or the Interface negligently); or
 - (b) uses any consumables or throughput materials other than those provided or approved by KMBSA.
- Nothing in this clause excludes, restricts or modifies the Customer's rights under a term or guarantee that applies under a mandatory law.

PART D: CREDIT ACCOUNT APPLICATION

49. Part D of these Standard Terms apply where the Customer has submitted a Credit Account Application.
50. The Customer:
- (a) warrants that all details provided to KMBSA in or accompanying the Credit Account Application are complete, true and accurate and not misleading or deceptive;
 - (b) acknowledges that KMBSA may in its absolute discretion accept or reject the Credit Account Application and is not obliged to furnish reasons for its decision;
 - (c) acknowledges and agrees that KMBSA may terminate its provision of credit to the Customer at any time without notice for any reason;
 - (d) warrants that any Equipment purchased from KMBSA will only be used for commercial purposes and not for any domestic or household purposes; and
 - (e) warrants that the Credit Account Application is not an application for consumer credit.