

## Piks Limited – Terms and Conditions

These Conditions govern your relationship with Piks Limited ("the Company"). These Conditions apply only to business Customers who are not consumers.

All Orders for Services accepted by the Company will be subject to the following Conditions which will form part of and will govern the Contract. No variation of these Conditions will be accepted unless they are agreed in writing and signed by an authorised person of the Company. The Company will not accept the inclusion of any alternative terms by a Customer which conflict with, alter or add to these Conditions.

### THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO CLAUSES 5, 6 AND 8 OF THESE CONDITIONS:

If the Customer does not have its own insurance in place for the Equipment then these Conditions do not apply and the Customer should contact the Company directly on **020 8877 9669** before placing any Order for Services.

#### 1. Definitions

In these Conditions, the following definitions apply:

| Definition                 | Meaning   |
|----------------------------|---|
| <b>Business Day</b>        | a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.   |
| <b>Charges</b>             | the charges payable by the Customer for the supply of the Services in accordance with clause 7  |
| <b>Commencement Date</b>   | has the meaning set out in clause 2.2   |
| <b>Company</b>             | Piks Limited registered in England and Wales with company number 02711631   |
| <b>Conditions</b>          | these terms and conditions as amended from time to time in accordance with clause 10.5  |
| <b>Contract</b>            | the contract between the Company and the Customer for the supply of Services in accordance with these Conditions  |
| <b>Customer</b>            | a legal entity who purchases Services from the Company other than for private use   |
| <b>Equipment</b>           | professional broadcasting equipment owned by the Customer and in need of servicing or repair  |
| <b>Force Majeure Event</b> | an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors |
| <b>Order</b>               | the Customer's order for Services as set out in the Customer's written acceptance of the Company's quotation  |
| <b>Services</b>            | the services supplied by the Company to the Customer as set out in the Company's quotation  |

#### 2. Basis of Contract

- 2.1. The Order constitutes an offer by the Customer to purchase Services from the Company in accordance with these Conditions.
- 2.2. The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**). For the purposes of this clause 2.2 the Company may issue written acceptance by e-mail.
- 2.3. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5. Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

#### 3. Supply of Services

- 3.1. The Company shall supply the Services to the Customer in accordance with the quotation in all material respects.
- 3.2. The Company shall use all reasonable endeavours to meet any performance dates specified in the quotation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

#### **4. Service Warranty**

- 4.1. The Company warrants to the Customer that the Services will be provided using reasonable care and skill.
- 4.2. Any Equipment that has been repaired by the Company is warranted for parts and labour costs for a period of 3 months from the date of the original repair, provided the Customer submits documented evidence that the original fault has not been remedied and the Equipment has not been altered or tampered with by persons other than the Company and subject always to the following exceptions:
- (1) where the item of Equipment in question is a rotating video head for analogue video formats or audio DAT formats, the Company will replace this free of charge where a claim is made within the first 50 hours of operation. During the subsequent period of 450 hours, the Company reserves the right within the 1 year product warranty period to make a pro-rata charge for a replacement head at a cost of N/500 of the current selling price of the head (where N is the number of hours of operation of the head);
  - (2) where the item of Equipment in question is a rotating video head for digital formats, the Company will replace this free of charge where a claim is made within the first 200 hours of operation. During the subsequent period of 1800 hours, the Company reserves the right within the 1 year product warranty, to make a pro-rata charge for a replacement head at a cost of N/2000 of the current selling price of the head (where N is the number of hours of operation of the head); and
  - (3) where the part in question is a new CCD Block, the warranty period is for 6 months. For a repaired or exchanged CDD Block, the warranty period is for 90 days.
- 4.3. In accordance with clause 4.2, if a fault does still persist following the Company's Services, the Company will try and repair the Equipment again for no additional charge. In offering this warranty the Customer agrees that it will be responsible for the costs of having to send the Equipment back to the Company for the Services to be carried out.

#### **5. Risk and Customer's Insurance**

- 5.1. The risk in any Equipment remains with the Customer and the Company does not accept any liability for the Customer's Equipment whilst it is in the Company's possession or in transit to and from the Customer's premises.
- 5.2. The Customer must therefore have in place its own insurance or put in place its own insurance for the Equipment whilst it is in the Company's possession and before placing an Order with the Company.
- 5.3. The Customer's insurance policy must provide cover for all loss or damage whatsoever to the Equipment including, but not limited to, the full replacement value of the Equipment and the full cost of repairing any damage to it.

#### **6. Customer's Obligations**

- 6.1. The Customer shall:
- (1) ensure that it has the required insurance in place in accordance with clause 5 above before placing any Order;
  - (2) ensure that the terms of the Order and any information it provides to the Company are complete and accurate; and
  - (3) co-operate with the Company in all matters relating to the Services.

#### **7. Charges and Payment**

- 7.1. The Company shall invoice the Customer on completion of the Services.
- 7.2. The Customer shall pay each invoice submitted by the Company:
- (1) within 30 days of the date of the invoice; and
  - (2) in full and in cleared funds to a bank account nominated in writing by the Company or in any other manner as the Company directs, and time for payment shall be of the essence of the Contract.
- 7.3. All amounts payable by the Customer under the Contract are exclusive of value added tax.
- 7.4. The Company reserves its right to vary its Charges for the Services if after commencing work for the Customer further faults or problems with the Equipment come to light, which the Company was not aware of when the Customer placed the Order for the Services. Any increase in the Company's Charges will be discussed with the Customer and agreed prior to those Charges being incurred.
- 7.5. Without limiting any other right or remedy of the Company, if the Customer fails to make any payment due to the Company under the Contract by the due date for payment (Due Date), the Company shall have the right to charge interest on the overdue amount at the rate of 8% per annum above the then current base lending rate of the Bank of England accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount.
- 7.6. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 7.7. If the Customer fails to make any payment to the Company by the Due Date the Company reserves its right to retain the Customer's Equipment until the invoice and any interest due has been paid in full.

## 8. **Limitation of the Company's Liability**

8.1. Nothing in these Conditions shall limit or exclude the Company's liability for:

- (1) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
- (2) fraud or fraudulent misrepresentation.

8.2. Subject to clause 8.1:

- (1) the Company shall not be liable to the Customer whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract; and
- (2) the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the level of its insurance cover which is £3 million.

8.3. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

## 9. **Customer Data on Equipment**

The Company has no liability to the Customer or any third party for any loss, damage or corruption to any data, information or footage (together "**Data**") stored on any Equipment passed to the Company. In the event that Data, the destruction of which would lead to the Customer suffering loss, the Company recommends that the Customer makes suitable copies of all such Data before the Equipment is passed to the Company, and/or obtains adequate insurance to protect themselves from such loss.

## 10. **General**

10.1. *Force majeure:*

- (1) The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event
- (2) If the Force Majeure Event prevents the Company from providing any of the Services for more than 2 weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

10.2. *Notices:*

- (1) Any notice required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by pre-paid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.
- (2) Any notice shall be deemed to have been duly received if delivered personally, when left at the address referred to above, or sent by pre-paid first-class post or recorded delivery, at 9:00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- (3) This clause shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause 'writing' shall not include e-mails and for the avoidance of doubt notice given under this Contract (except clause 2.2) shall not be validly served if sent by e-mail.

10.3. *Severance:*

- (1) If a court or any other competent authority finds that any provision of the Contract (or any part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (2) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

10.4. *Third parties:*

A person, firm or company who is not a party to the Contract shall not have any rights under or in connection with it.

10.5. *Variation:*

Any variation to the Contract shall only be binding when agreed in writing and signed by the Company.

10.6. *Governing Law:*

This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

10.7. *Complaints:*

If the Customer has any complaints with the Services provided by the Company, please contact us by post or hand delivery addressed to Mark Calvert at Piks Limited, Unit 13 Earlsfield Business Centre, 9 Lydden Road, London SW18 4LT or by fax on 020 8877 0394 or by e-mail to [info@piks.co.uk](mailto:info@piks.co.uk).