

KTSL Standard Terms & Conditions for The Supply of BMC Subscription Services

1. Definitions

In this document the following words shall have the following meanings:

- 1.1 BMC OFFERINGS mean subscriptions services by the Supplier through the Solution Provider for use by the End User
- 1.2 CONTRACT between the Solution Provider and the End User for the supply of BMC Offerings in accordance with these Terms and Conditions
- 1.3 END USER means any individual, partnership, limited company, charity or organisation engaging in BMC software solutions through the Solution Provider
- 1.4 FEES shall mean all charges and expenses that will be invoiced by Solution Provider for the software provided to the End User
- 1.5 PROPOSAL means a quotation or other similar document describing the BMC Offerings to be provided to the End User
- 1.6 SOLUTION PROVIDER ORDER FORM means the order document between the Supplier and Solution Provider for the provision of BMC Offerings to the End User
- 1.7 SOLUTION PROVIDER means KTSL Limited, 23 Leaffield Industrial Estate, Corsham, Wiltshire, SN13 9RS (company number 3926836)
- 1.8 SUPPLIER means BMC Software Distribution B.V, Vision Plaza West 2nd Flr, Boeingavenue 220, 1119 PN Schiphol-Rijk, The Netherlands)

2. General

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of BMC Offerings by the Solution Provider to the End User and shall prevail over any other documentation or communication by the End User.
- 2.2 Any variation to these Terms and Conditions shall not be effective unless agreed in writing by the Solution Provider.
- 2.3 Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Solution Provider may be entitled in relation to the BMC Offerings, by virtue of any statute law or regulation.
- 2.4 Nothing in these Terms and Conditions shall affect the End User's statutory rights.
- 2.5 Acceptance of these Terms and Conditions constitutes acceptance by the Customer to enter into a Mutual Non-Disclosure Agreement with the Supplier <https://www.ktsl.com/ktsl-non-disclosure-agreement/>

3. The Scope

- 3.1 Any Proposal shall remain valid for a period of 30 (thirty) days unless otherwise stated.
- 3.2 The BMC Offerings ordered are as set out in the Solution Providers Proposal
- 3.3 BMC Offerings of Subscription Services are governed by the Supplier's Cloud Services Master agreement provided at <https://www.bmc.com/content/dam/bmc/corporate/csma.pdf>
- 3.4 The End User shall be deemed to have accepted the Proposal by placing an order with the Solution Provider within the period specified in Clause 3.1 at which point and on such date a Contract shall come into existence
(Commencement Date)
- 3.5 By accepting the Solution Providers Proposal, you agree to be bound by these terms and those of the Supplier's Cloud Master Services Agreement
- 3.6 The End User further acknowledges their obligation to sign and return any additional agreements or paperwork necessary to execute the supply of BMC Offerings in full.
- 3.7 For clarity, the Cloud Services Master Agreement is solely between the Supplier and the End User. Solution Provider is not a party to this.

4. Fees & Payment of Fees

- 4.1 The Fees are as specified in the Proposal.
- 4.2 The Fees are quoted exclusive of VAT.
- 4.3 Payment of the Fees shall be made in the manner specified in the Proposal.
- 4.4 Time shall be of the essence in respect of payment obligations.
- 4.5 Payment terms are strictly 30 days from the date of the invoice unless agreed beforehand.
- 4.6 If the End User fails to make any payment within 30 days of it becoming due, the Solution Provider shall be entitled to charge interest at the rate of 5% above the Bank of England's base rate per month on the outstanding amount but at 5% a year for any period when that base rate is below 0%.

5. Liability

- 5.1 Nothing in these Terms and Conditions shall exclude or restrict either party's liability for:
 - 5.1.1 bribery or fraud ;
 - 5.1.2 death or personal injury resulting from negligence of a Party or it's employees or associates (if applicable)
- 5.2 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Proposal of these Terms and Conditions.
- 5.3 Subject to clause 5.1, the Solution Provider shall not be liable to the End User for any:
 - 5.3.1 indirect, special, or consequential loss
 - 5.3.2 loss of profits;
 - 5.3.3 loss of revenue;
 - 5.3.4 loss of anticipated savings;
 - 5.3.5 loss of business opportunities; or
 - 5.3.6 loss of or damage to goodwill (in each case whether directly or indirectly)
- 5.4 Each party agrees to use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with the Contract.

6. Force Majeure

- 6.1 Neither party shall be in breach of the contract nor liable for any delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances, or causes beyond its reasonable control.

7. Waiver

- 7.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

8. Severance

- 8.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract is deleted under this Clause 7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

9. Third party rights

- 9.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

10. Governing law

- 10.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

11. Jurisdiction

- 11.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation

