



# KVH Professional Services Standard Terms & Conditions

**BY ORDERING ENGINEERING, INSTALLATION, CO-LOCATION, OR ANY OTHER SERVICES ("SERVICES") FROM KVH INDUSTRIES, INC. AND ANY OF ITS SUBSIDIARIES, WITH CORPORATE OFFICES AT 50 ENTERPRISE CENTER, MIDDLETOWN, RI 02842-5279 USA ("KVH"), YOU AGREE TO THESE STANDARD TERMS AND CONDITIONS.** Any different, conflicting or additional terms in any purchase order, order acknowledgment, sales agreement, sales contract or other writing from you or in any other writing from KVH shall be void unless expressly agreed in writing and signed by an officer of KVH stating plainly that you and KVH intend it to serve as a substitution, modification or supplement to these Standard Terms and Conditions. These Standard Terms and Conditions shall comprise the exclusive terms, conditions and agreements of the parties respecting any Services to be performed by KVH. The invalidity of the whole or in part of any provisions hereof shall not affect the validity of any other provision.

**ORDERS:** You agree to forward all duly executed and authorized purchase orders for all Services to KVH. No order shall be processed without a purchase order and no order shall be final or binding until accepted and acknowledged in writing by KVH to you. Purchase orders are not cancellable. All scheduled dates are not guaranteed and are subject to rescheduling by KVH at KVH's discretion.

**CUSTOMER EQUIPMENT:** Unless otherwise provided in any accepted order, you shall be responsible for providing any additional equipment (such provided equipment, the "Customer Equipment") necessary for or reasonably requested by KVH to perform the Services. All such Customer Equipment shall be delivered to the location specified by KVH, at your expense. KVH takes no responsibility for the repair or maintenance of any such Customer Equipment, except as may be expressly provided in any order. At the conclusion of the Services, the Customer Equipment may be returned to you, at your written request and expense. You agree to reimburse KVH for any reasonable expenses incurred by it to arrange for the return of any such Customer Equipment. You agree to defend, indemnify and hold harmless KVH, its affiliates and their respective officers, directors, employees, customers, agents and representatives from and against any and all claims, losses, injuries, penalties, damages, fines, liabilities, demands, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) arising out of or relating to the Customer Equipment and KVH's use thereof, except to the extent arising directly as a result of KVH's gross negligence or willful misconduct.

**SITE PREPARATION:** If KVH will perform Services on any Customer site or vessel ("Customer Site"), you shall be responsible for ensuring that the Customer Site is in a good, fit and safe state for lawful performance of the Services and that performance of the Services at the Customer Site shall not cause KVH or its agents any loss, damage or injury. You agree to defend, indemnify and hold harmless KVH, its affiliates and their respective officers, directors, employees, customers, agents and representatives from and against any and all claims, losses, injuries, penalties, damages, fines, liabilities, demands, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) arising out of or relating to the Customer Site and KVH's performance of Services at the Customer Site, except to the extent arising directly as a result of KVH's gross negligence or willful misconduct.

**SERVICES:** KVH shall devote such resources that it deems necessary, in its reasonable discretion, to complete the Services in the manner provided in the applicable purchase order, including the number and identity of KVH employees, contractors, or agents for the purposes of completing the Services.

**AVAILABILITY:** Services, including KVH technicians shall not be made available in locations or conditions that KVH deems unsafe or where KVH does not have authorization or resources to provide its Services or technicians. Services are available in ports designated by KVH, the locations of which are subject to change at KVH's sole discretion.

**INVOICING:** Unless agreed otherwise in the applicable order, pricing shall be based on KVH's standard pricing for services, which shall be updated from time to time in KVH's discretion. If the Services are provided on-site, meaning at a location specified by you other than a KVH facility, you shall promptly reimburse KVH for all travel expenses reasonably incurred with respect to such Services, including but not limited to transportation and lodging and other costs related to employees, agents and to the extent applicable, equipment needed or otherwise used to render the Services. KVH will provide you with an invoice for each month in which Services are rendered detailing such Services rendered and reimbursable expenses.

**TAXES AND GOVERNMENTAL CHARGES:** Prices do not include any taxes or other governmental charges, including, without limitation, value-added, sales, use or privileges taxes, or excise or similar taxes. At KVH's discretion, any such taxes and charges may be added to the price for any Services or may be billed separately. You agree, in any event, to pay all such taxes and charges, on or before their due dates. In the event KVH is required at any time to pay any such tax or charge, you agree to reimburse KVH promptly on demand. If any governmental agency requires you to withhold any portion of the gross payment due to KVH, then such payment shall be increased by the amount of such withholding.

**TERMS OF PAYMENT:** Unless otherwise stated in KVH's invoice or agreed to in writing by the parties, terms of payment for all Services and reimbursements will be net thirty (30) days from date of invoice. All payments for Services and reimbursements are non-refundable. The terms of payment are also subject to review of your credit by KVH. KVH shall have the right, at any time and from time to time, to require a prepaid cash balance equal to any unfulfilled order(s) or a guaranteed irrevocable letter of credit or other assurance of payment satisfactory to KVH as a condition to acceptance of any order or performance of any Services. All payments by you to KVH shall be in U.S. Dollars fully net, without set-off, deduction for payment processing or counterclaim and, unless otherwise agreed to by KVH, shall be by check to be drawn on your corporate account at a national bank, by electronic funds transfer pursuant to KVH's instructions, or by KVH's draw upon a bank letter of credit satisfactory in form and substance to KVH. The requirement of a letter of credit is standard for Services to be performed outside the U.S.

**LATE CHARGES:** If you fail to pay any payment due to KVH promptly and when due, KVH may require you to pay, in addition to the payment, interest thereon at a rate equal to the lesser of 1-1/2% per month and the maximum rate of interest allowable under applicable law, from the original due date until full payment has been made by you or on your behalf.

**LIMITED WARRANTY:** KVH warrants that all Services provided under the Agreement shall be performed professionally, in a workmanlike manner and by employees with appropriate skills and expertise. If you are dissatisfied at any point with the performance of any KVH employee(s), you shall promptly (and in any event within thirty (30) days following the completion of the Service in question) notify KVH in writing. Upon receipt of such notice, KVH shall meet with you to discuss the problem and, if applicable, will arrange for the performance to be raised to the warranted level, and for identifiable defects caused by prior substandard performance to be cured. This Section sets forth the sole and exclusive remedy if you believe the Services are inadequate or defective.

**NO IMPLIED WARRANTIES:** THE WARRANTIES GIVEN IN THESE TERMS ARE THE ONLY WARRANTIES GIVEN BY KVH WITH RESPECT TO THE SERVICES AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. YOUR EXCLUSIVE REMEDIES, AND KVH'S SOLE LIABILITY, FOR ANY DEFICIENCY OR DELAY IN THE SERVICES SHALL BE THOSE EXPRESSED HEREIN.



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**LIMITATION OF LIABILITY:** UNDER NO CIRCUMSTANCES SHALL KVH'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR KVH'S PERFORMANCE OR ASSERTED FAILURE TO PERFORM HEREUNDER, IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, INCLUDING LIABILITY FOR THE ACTION OR FAILURE TO ACT OF KVH'S EMPLOYEES OR AGENTS, EXCEED THE PURCHASE PRICE OF THE SERVICES TO WHICH SUCH LIABILITY RELATES. IN NO EVENT SHALL KVH BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, PROFITS, BUSINESS OR GOODWILL, WHETHER OR NOT KVH HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. This limitation of liability represents an allocation of risks between KVH and you, which allocation is reflected in the price of the Services.

**INDEPENDENT CONTRACTOR:** The relationship of KVH and you shall be that of independent contractor and under no circumstances shall either party be, or be deemed to be, a partner, agent of or joint venturer with the other party and no employee, contractor or agent of either party is intended to be, or shall be deemed to be, an employee or agent of the other party. Neither party shall have any authority to make any representation, warranty, agreement or other undertaking on behalf of the other party, nor to bind the other party in any manner whatsoever, and neither party shall claim to have such authority or otherwise purport to act on behalf of the other party, without the prior written consent of such other party.

**INTELLECTUAL PROPERTY:** You acknowledge KVH's absolute worldwide property, ownership and goodwill in any and all intellectual property, patent registrations and patent applications developed or held by or on behalf of KVH relating to the Services.

**DERIVATIVE WORK PRODUCT:** You acknowledge and agree that, except to the extent provided to you as a deliverable or with respect to Customer Equipment, all materials, reports, computer programs (source and object code), documentation, and inventions developed by KVH in performance of the Services (the "**Derivative Work Product**") is and shall be proprietary of KVH. Unless otherwise mutually agreed in a purchase order, all rights, title and interests in and to the Derivative Work Product, including any and all intellectual property rights therein, shall vest in KVH. In the event that ownership does not vest in KVH as a matter of law, you hereby irrevocably assign to KVH all rights, title and interests in and to the Derivative Work Product, including any and all intellectual property rights therein. Upon KVH's request, you agree to execute and deliver such instruments of transfer and other documents to effect, complete and confirm such assignment.

**EMPLOYMENT OF PERSONNEL:** You acknowledge that KVH has trained its technical staff at considerable expense. Until the two (2) year anniversary of the payment of the last invoice submitted by KVH to you for Services, you shall not, directly or indirectly, employ, attempt to employ, recruit or otherwise solicit, induce or influence to leave his or her employment with KVH any person employed by KVH within the previous one-year period. You acknowledge that a breach of this covenant, will cause irreparable damage to KVH and that KVH's remedy at law will be inadequate. Therefore, in addition to any remedy otherwise available to KVH, you agree that KVH shall be entitled to an injunction restraining you from any such violation and you may be specifically compelled to perform your obligations under this provision.

**COMPLIANCE WITH LAWS:** You agree to comply with all applicable laws and licensing requirements in connection with your use of the Services. You also agree to comply with the United States Foreign Corrupt Practices Act, and shall indemnify KVH for any failure to comply or violation of such Act by

you. You shall, at your sole cost and expense, obtain and maintain in effect all permits, licenses and other consents necessary to permit KVH to perform the Services hereunder.

**NON-EXCLUSIVE:** Nothing contained within this agreement shall be construed to prohibit KVH from providing like products or services to third parties, pursuant to agreement or otherwise, within any territory or in any other manner.

**FORCE MAJEURE:** KVH shall not be liable for failure to perform any duty or obligation under this Agreement where such failure has been caused by an act of God, natural disaster, acts of the government of the United States or of any State or governmental agency or official thereof, acts of terrorists, court order, third party non performance, or other cause, or any other events or circumstance beyond the reasonable control of KVH to perform.

**GOVERNING LAW:** You and KVH agree that the terms of the provision and payment for all Services performed hereunder as set forth herein shall be construed and interpreted pursuant to, and governed by, the substantive laws of the State of Rhode Island, USA, without regard to its conflicts of law principles and without regards to the United Nations Convention on Contracts for the International Sale of Goods. Except as otherwise provided in these terms and conditions, disputes between you and KVH pertaining to any Services performed hereunder shall be settled by binding and final arbitration in Rhode Island, USA, pursuant to the Commercial Rules of Arbitration of the American Arbitration Association ("**AAA**") before a single arbitrator appointed by the AAA.