

STANDARD TERMS AND CONDITIONS OF BUSINESS

1A GENERAL

This document covers a number of alternative goods and services to be provided by the Supplier and different Parts apply according to the goods and services the Customer has ordered as specified in the Appendix. The Parts are as follows:

Part A applies to the supply of Supplier Software.

Part B applies to the supply of Third Party Software.

Part C applies to the maintenance of both Supplier Software and Third Party Software.

Part D applies to the supply of Training and/or Consultancy Services.

Part E applies in all cases.

1B INTERPRETATION

1.1 In the whole of this Agreement unless the context otherwise requires:

"the Terms" means the terms and conditions contained in the whole or any part of this Agreement

"the Supplier Software" means the systems and computer programs supplied by the Company save for the Third Party Software

"Equipment" means items of computer hardware specified in the Appendix

"User Specification" means the technical specification from time to time published by the Supplier in respect of the facilities and functions of the Supplier Software in addition to the Documentation

"Third Party Software" means the systems and computer programs of persons other than the Company specified in the Appendix

"the Delivery Date" means the date of delivery specified in the Appendix

"Contract Price" means the Licence Fee for the initial period of 12 months of the software licence granted by the Supplier under clause 2 together with the price of any Equipment supplied.

"the Licence Fee" means the fee specified in the Appendix and payable under Clause 27

"Normal Working Hours" means the hours 9.00 am to 5.30 pm on Monday to Friday inclusive, excluding public holidays

"Software" means either the Supplier Software or Third Party Software or both as the context requires

"Documentation" means the operating manuals, user instructions, guides and other materials for aiding the use and application of the Supplier Software

1.2 The headings in this Agreement are for reference only and shall not affect its interpretation or construction.

PART A - LICENCE AND AGREEMENT FOR SUPPLY OF SUPPLIER SOFTWARE

2. LICENCE

2.1 The Supplier grants to the Customer a non-exclusive licence to use the Supplier Software (and where appropriate the Documentation) for the processing of its own data.

2.2 The licence shall commence on delivery of the Supplier Software and shall continue for an initial period of 12 months and thereafter until terminated in accordance with Clause 9 or Clause 24.

3. DELIVERY AND INSTALLATION

3.1 The Company shall use all reasonable endeavours to deliver the Supplier Software and Documentation and to install the same at the Customer's premises on the Delivery Date or so soon thereafter as is possible.

3.2 Time shall not be of the essence with regard to delivery.

4. RISK

4.1 Risk in the Supplier Software and Documentation shall pass to the Customer on delivery. If subsequently any part of the Supplier Software or Documentation are (in whole or part) destroyed damaged or lost the Supplier will on request replace the same subject to the Customer paying the cost of such replacement.

5. PROPRIETARY RIGHTS, INTELLECTUAL PROPERTY RIGHTS, INDEMNITY AND CONFIDENTIALITY

5.1 The Supplier Software and Documentation contained confidential and proprietary information of the Supplier and all copyright trade marks and all other intellectual property rights in the Supplier Software and the Documentation are the exclusive property of the Supplier. No title to or rights of ownership, copyright or other intellectual property in the Supplier Software or Documentation is transferred to the Customer.

5.2 The Customer will not, except as provided in this Agreement, copy the whole or any part of the Supplier Software or Documentation.

5.3 The Customer will permit the Supplier to audit the use of the Supplier Software and Documentation by the Customer at all reasonable times and for that purpose the Supplier shall be entitled to enter upon any of the Customer's premises.

5.4 The Supplier will indemnify the Customer against any claim that the normal operation possession or use of the Supplier Software or Documentation by the Customer infringes the intellectual property rights of any third party provided that the Customer notifies the Supplier immediately of any such claim, gives the Supplier sole conduct of the defence to any claim, does not prejudice the Supplier's defence and gives to the Supplier such assistance as it shall reasonably require in respect of the conduct of such defence.

5.5 The Supplier shall have the right to replace or change all or any part of the Supplier Software or Documentation in order to avoid any such infringement or, at its option, to refund the Licence Fee whereupon the licence hereby granted shall be deemed to have terminated and the Customer shall not have any claims against the Supplier in respect of such termination.

5.6 The Customer and the Supplier undertake to each other to treat as confidential all information concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or in entering into this Agreement except in so far as such information is already in its possession prior to such discussions, is in the public domain or becomes so at a future date (other than as a result of a breach of this Clause) and each of the parties undertakes not to divulge any confidential information to any person other than its own employees and then only to those employees who need to know such information, and in the case of the Customer its auditors, H M Inspector of Taxes, H M Customs & Excise and any other persons or bodies having a right, duty or obligation to know the business of the Customer.

5.7 The Customer shall at its own expense to the exclusion of any liability or responsibility on the part of the Supplier register and keep registered all data and other information and matters as are required to be registered for the time being under the Data Protection Act 1984 in connection with this licence and will notify the Customer in writing of the registration under the Data Protection Act 1984 of all data information and other materials supplied for whatever purpose to the Supplier hereunder and the Customer shall register under the Data Protection Act 1984 the fact of such supply and of any disclosure to the Supplier and shall indemnify the Supplier against every claim (including but without limit the cost of defending any such claim) made by any person arising under or in connection with such Act or any registration thereunder.

5.8 Each of the parties undertakes to the other to take all such steps as shall be necessary to ensure compliance with the provisions of this Clause by its employees agents and sub-contractors.

6. COPYING

6.1 The Customer shall be entitled to make one back-up copy of each item of the Supplier Software and any copy shall in all respects be subject to these Terms and be deemed to form part of the Supplier Software.

6.2 The Customer shall not be entitled to copy in whole or in part the Documentation.

7 WARRANTIES ETC

7.1 Subject to the exceptions set out in Clause 7.3 below and the limitations upon its liability in Clause 20 below the Supplier warrants that:

7.1.1 Its title to and property in the Supplier Software and Documentation is free and unencumbered and that it has the right power and authority to enter into this agreement

7.1.2 The Supplier Software will provide the facilities and functions set out in the User Specification when properly used.

7.2 The Customer will give notice to the Supplier as soon as it is reasonably able upon becoming aware of a breach of warranty.

7.3 Subject to Clause 7.4 below the Supplier shall remedy any breach of the warranties set out in Clause 7.1.2 above by the provision of technical support free of charge.

7.4 The Supplier shall have no liability to remedy a breach of warranty where such breach arises as a result of any of the circumstances described in Clause 15.1 below.

7.5 Without prejudice to the foregoing the Supplier does not warrant that the use of the Supplier Software will meet the Customer's data processing requirements or that the operation of the Supplier Software (including where in machine readable form the Documentation) will be uninterrupted or error free.

7.6 The warranties shall apply to the latest release only for the time being of the Supplier Software and if the Customer fails to obtain the latest release thereof the Supplier shall not be liable under the warranties.

8. CUSTOMERS WARRANTY

8.1 The Customer warrants that it has not relied on any oral representations made by the Supplier or upon any descriptions illustrations or specifications contained in any catalogues and publicity material produced by the Supplier which are only intended to convey a general idea of the products and services mentioned therein.

8.2 The Customer accepts that the Supplier Software was not designed or produced to its individual requirements and that it was responsible for its selection.

9. TERMINATION

9.1 The licence granted under Clause 2 hereof may be terminated:

9.1.1 By the Customer at any time after the expiry of the initial period in Clause 2.2 by giving no less than 12 months prior written notice to the Supplier

9.1.2 By the Supplier pursuant to Clause 24 of this Agreement if:

(a) The Customer commits any continuing or material breach of any of the provisions of this Agreement and in case of such a breach which is capable of remedy fails to remedy the same within seven days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied

(b) The Customer permanently discontinues the use of the Supplier Software

9.1.3 Forthwith upon the termination of the licence the Customer shall return to the Supplier the Supplier Software and Documentation including any modifications made by the Supplier and all copies of the whole or any part thereof or, if requested by the Supplier, shall destroy the same and certify in writing to the Supplier that they have been destroyed.

PART B - AGREEMENT FOR SUPPLY OF THIRD PARTY SOFTWARE

10. DELIVERY AND INSTALLATION

10.1 The Supplier will use all reasonable endeavours to deliver the Third Party Software and to install the same at the Customer's premises on the Delivery Date or so soon thereafter as is possible that it is expressly accepted by the Customer that its order is placed subject to availability.

10.2 Time shall not be of the essence with regard to delivery.

11. RISK

11.1 Risk in the Third Party Software shall pass to the Customer on delivery.

12. TERMS OF SUPPLY

12.1 The Third Party Software is supplied on the terms and conditions of the supplier in question. The Customer hereby acknowledges having read and agreed such terms and conditions.

12.2 The provisions of such terms and conditions and licence (if any) are outside the control of the Supplier and the obligations of the Supplier under the contract of supply hereby formed consist only of the obligations contained in Parts B and E of this Agreement.

12.3 In particular but without prejudice to the generality of the foregoing the Supplier makes no representation as to ownership of the Third Party Software. It is the responsibility of the Customer to make its own enquiries as to ownership and obtain such licence as the Customer deems necessary.

12.4 The Customer warrants that it has not relied on any oral representations made by the Supplier or upon any descriptions illustrations or specifications contained in any catalogues and publicity material produced by the Supplier which are only intended to convey a general idea of the products and services mentioned therein.

12.5 The Customer accepts that the Third Party Software was not designed or produced to its individual requirements and that it was responsible for its selection.

PART C - MAINTENANCE AND TECHNICAL SUPPORT AGREEMENT

13. SERVICES TO BE PROVIDED

13.1 During the continuance of this Agreement the Supplier shall provide the Customer with a repair maintenance and advisory service for the Software.

13.2.1 In particular, subject to the provisions of this Agreement, the Supplier shall repair any defect in or malfunction of the Software which is reported to it by the Customer from time to time and give advice over the telephone on any such defect or malfunction as requested by the Customer.

13.2.2 The Supplier shall provide updates of the Supplier Software.

13.3 The Supplier's obligations under this Agreement shall be carried out by one of the Supplier's representatives at such times during Normal Working Hours.

13.4 The Supplier shall have no obligation to provide any service to the Customer outside Normal Working Hours.

13.5 All reports or defects or malfunction of the Software must be made by telephone in the first instance and if requested by the Supplier confirmed in writing.

13.6 The Company will use reasonable endeavours to respond to all reports and requests under this Agreement as soon as possible.

13.7 The Supplier shall ensure that its representatives comply with all safety and security regulations in force at the Customers premises which are brought to the attention of such representatives.

14. PRICE

In relation to the services to be provided in accordance with Clause 13 the Customer shall pay the Supplier's fees calculated in accordance with the rates specified in the Appendix, such rates to be subject to review on the first anniversary date of this Agreement and on each anniversary date thereafter during the life of this Agreement.

15. SERVICES NOT INCLUDED

15.1 The Supplier's obligations shall not apply to:

- (1) any defect or malfunction which in the reasonable opinion of the Supplier has arisen as a result of:
 - (a) electrical work external to the Software
 - (b) any error or omission relating to the operation of the Software
 - (c) any modification adjustment or repair made by a third party without the written consent of the Supplier subsequent to the execution of this Agreement
 - (d) the subjecting of the Software by the Customer to unusual physical or electrical stress, neglect or misuse or any failure or fluctuation of electrical power, air conditioning, humidity or other environmental controls or
 - (e) any other cause (except fair wear and tear) which is not due to the neglect or default of the Supplier
 - (f) any fault in the Equipment or use of the Software on hardware or the Equipment
- (ii) any design defect in the Third Party Software or defect or malfunction which is due to faulty or workmanship in manufacturing of the Third Party Software or
- (iii) any fault or defect which requires access to the source code of the Third Party Software in order to facilitate the maintenance services.

15.2 If on investigation the Supplier reasonably determines that any defect in, or malfunction of the Software is the result of any of the matters referred to in Clause 15.1 the Customer shall be liable for all the costs incurred by the Supplier investigating the same and in determining its cause.

15.3 If any part of the Software can no longer be maintained in good working order or the whole thereof is damaged beyond economic repair otherwise than through the Supplier's fault (as to whether either or which event has occurred the Supplier's decision shall be final and binding on the Customer) the Supplier reserves the right to terminate this Agreement forthwith by giving notice to the Customer in respect of the whole or any part of the Software which can no longer be maintained in which case the Supplier's services which have been paid in advance by the Customer, shall be refunded.

16. CUSTOMER'S OBLIGATIONS

16.1 After the execution of this Agreement the Customer shall not allow any person other than the Supplier's representatives to adjust, maintain, repair, replace or remove any part of the Software.

16.2 The Customer shall ensure that the Supplier's representatives have full and free access to the Software and to any records of issues kept by the Customer to enable the Supplier to perform its duties.

16.3 The Customer shall provide the Supplier with such information concerning the Software, its application, use, location and environment as the Supplier may reasonably request to enable it to carry out its duties.

16.4 The Customer shall take all such steps as may be necessary to ensure the safety of all the Supplier's representatives who visit the premises of the Customer.

17. DISCLAIMER - THIRD PARTY SOFTWARE

17.1 It is expressly accepted by the Customer that the Supplier has no legal title to the Third Party Software or any of it and in particular does not have access to the source codes of the Third Party Software and is therefore unable to rectify any difficulties for which access to the source codes is required.

18. DURATION AND TERMINATION

18.1 This Agreement shall come into force on the date of execution and shall continue until terminated by either party giving to the other at any time, not less than three months prior notice in writing of termination.

18.2 The Supplier shall also be entitled to terminate this Agreement in accordance with Clause 24.

PART D - TRAINING AND CONSULTANCY

19. SERVICES TO BE PROVIDED

19.1 The Supplier shall provide Training and/or Consultancy Services as specified on the Appendix on the dates specified or to be agreed with the Customer.

19.2 One day's Training shall comprise five hours of training by one member of the Supplier's staff within normal working hours.

19.3 One day's Consultancy shall comprise off 5 hours based on site with normal working hours to cover the customer's requirements.

PART E - MISCELLANEOUS PROVISIONS APPLYING TO ALL CONTRACTS

20. LIABILITY

20.1 **IMPORTANT:** Because the potential losses which the Customer might suffer as a result of any breach of Contract by the Supplier are more readily ascertainable by the Customer and because such losses could be wholly disproportionate to the contract price and so that the Supplier can keep the contract price as low as reasonably possible the parties agree that the Supplier limits its liability in accordance with the following provisions.

20.2 The Supplier shall not be liable to the Customer for any damage or loss to the Customer directly or indirectly arising out of or in connection with any provision of any goods or services pursuant to this Agreement except in so far as the same was caused by its negligence.

20.3 Without prejudice to Clause 21.2 the Supplier shall not in any event be liable for consequential or indirect loss or damage (including but without limitation loss of profit) however caused.

20.4 Without prejudice to the other provisions of this Clause in no event shall the liability of the Supplier to the Customer exceed the amount of the Contract Price specified in the Appendix.

20.5 The Customer agrees that it is the Customer's obligation to arrange such insurance as it wishes to cover any losses which it may suffer directly or indirectly arising out of or in connection with the provision of any goods or services pursuant to this Agreement.

21. ASSIGNMENT

21.1 The Customer shall not be entitled to assign this Agreement nor any of its rights or obligations hereunder nor sublicense the use (in whole or in part) of the Supplier Software or Documentation without the prior consent of the Supplier.

22. WAIVER

22.1 The Waiver by either part of a breach or default of any of the provisions of this Agreement by the other shall not be construed as a Waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a Waiver of any breach or default by the other party.

22.2 This Agreement constitutes the entire Agreement between the parties hereto relating to the licence and the technical support services to be granted or provided hereunder and the Customer acknowledges that the Supplier has no liability for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of this Agreement except as expressly incorporated or referred to herein.

23. FORCE MAJEURE

23.1 If the Supplier is affected by force majeure it shall promptly notify the Customer of the nature and extent of the relevant circumstances.

23.2 Notwithstanding any other provisions of this Agreement the Supplier shall not be deemed to be in breach of this Agreement or otherwise be liable for any delay in performance or the non-performance of obligations under this Agreement to the extent that delay or non-performance is due to any force majeure of which it has notified the Customer and the time of performance of that obligation shall be extended accordingly.

23.3 Non-exhaustive examples of such force majeure including hostilities, war, acts of God, threats of war, sabotage, riots, strikes, lockouts, other industrial disputes, adverse weather conditions, breakdown or accidents to equipment and machinery.

24. SUPPLIER'S RIGHT TO TERMINATE

24.1 The Supplier shall be entitled forthwith to terminate this Agreement by written notice to the Customer if:

- (a) the Customer commits any continuing or material breach of any of the provisions of this Agreement and in case of such a breach which is capable of remedy fails to remedy the same within seven days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.
- (b) an incumbrancer takes possession or a receiver is appointed over any of the property or assets of the Customer
- (c) the Customer makes any voluntary arrangements with its creditors or becomes subject to an administration order
- (d) the Customer goes into liquidation or
- (e) the Customer ceases or threatens to cease to carry on business
- (f) any sum payable under this Agreement is not paid on its due date.

24.2 Any waiver by the Supplier of a breach of any

provisions of this Agreement shall not be considered as a waiver of any subsequent breach of the same provisions.

24.3 The right to terminate this Agreement given by this Clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or of any other breach.

24.4 Upon the termination of this Agreement for any reason subject as otherwise provided in this Agreement and to any rights or obligations which have accrued prior to termination neither party shall have any further obligation to the other under this Agreement.

25. NOTICES

25.1 Any notice under this Agreement shall be in writing and sent by post or fax or delivered by hand to the principal place of business of the recipient (or such other address as the recipient may previously have notified for the purpose). Such notice shall be deemed to have been given if sent by post, on the third working day following posting, and if sent by fax or delivered by hand, on the day of despatch or delivery. In proving service by post it shall be sufficient to show that a duly addressed notice was despatched by first class prepaid post.

26. PRICE PAYMENT AND INTEREST

26.1 The price for the Services being provided by the Supplier is as specified in the Appendix.

26.2 A non-refundable deposit of 50% of the Contract Price shall be payable by the Customer at the time of signing this Agreement. The balance of the Contract Price shall be paid on delivery.

26.3 All charges and other sums payable by the Customer under this Agreement are exclusive of any applicable VAT which shall be additionally paid by the Customer together with the charge or other payment in question.

26.4 The Customer shall pay all monies due under this Agreement forthwith upon presentation of the invoice.

26.5 If the Customer fails to pay on the due date any amount payable to the Supplier under this Agreement then without prejudice to the Supplier's other rights and remedies that amount shall bear interest from the due date until payment (both before and after any judgement) at 5% per annum above Lloyds Bank Plc base rate from time to time in force.

27. SEVERABILITY

27.1 The invalidity or inapplicability of any individual provisions or any part of any individual provision hereof shall not affect the validity or applicability of the remainder.

28. COSTS

28.1 The Customer shall repay to the Supplier forthwith on demand all expenses costs or charges incurred as a result of or in any way connected with any breach of this Agreement by the Customer including legal costs on an indemnity basis whether such are incurred prior to or after the issue of proceedings.

29. LAW

29.1 This agreement shall be construed in accordance with and governed by the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.

