

OPERATING CONDITIONS - PART II
PROVISIONS RELATING TO ALL CLIENTS

1. LENGTH OF THIS AGREEMENT

- 1.1 This Agreement will begin on the Start Date and, subject to condition 1.3, will continue for the Minimum Term and thereafter until terminated by either of us.
- 1.2 We may each terminate this Agreement by serving written notice to terminate on the other, but, subject to condition 1.3, we must give each other notice of at least the Notice Period and each of us may only terminate this Agreement at the end of a calendar month coinciding with or ending after the end of the Minimum Term.
- 1.3 We may also terminate this Agreement at any time after the occurrence of a Termination Event.

2. NOTIFICATION, INVOICE CLASSIFICATION, APPROVAL LIMITS AND NON-NOTIFIABLE INVOICES

- 2.1 You will Notify us through the relevant Website or by any other electronic means which we may specify from time to time of all your Invoices existing on or arising after the Start Date. If the Assignment of any Scottish Invoice in the Commercial Terms is invalid or unenforceable for any reason each Notification submitted by you to us will be treated as including the following statement: “We hereby assign to you the Invoices referred to in the Notification, together with their Related Rights. Terms defined in the Receivables Financing Agreement made between us bear the same meaning in this statement.”
- 2.2 We will classify all Notified Invoices as either Approved or Disapproved. Any Invoice which is not Disapproved will be Approved.
- 2.3 We may Disapprove any Notified Invoice:
 - 2.3.1 which, when added to all other unpaid Invoices owing by a particular Customer, exceeds any Approval Limit; or
 - 2.3.2 which is not paid by the end of the Funding Period or which on the Start Date has not been paid within that time period; or
 - 2.3.3 which is disputed by a Customer; or
 - 2.3.4 in relation to which you breach any warranty or undertaking given to us; or
 - 2.3.5 which are within such further categories which we tell you are to be treated as Disapproved.

We may Disapprove an Invoice at any time, even if it was previously Approved and approve an Invoice at any time that was previously Disapproved.

- 2.4 We will tell you of any Approval Limits set by us.

Non-Notifiable Invoices

- 2.5 Until we give you notice to the contrary, you must not Notify us of the following Invoices:
 - 2.5.1 Invoices due from a director or shareholder or employee of yours;
 - 2.5.2 Invoices due from any other person whose relationship to you falls within the meaning of “affiliate” as defined by s.1152 of the Companies Act 2006;

- 2.5.3 Invoices due from the sale of any of your capital assets;
- 2.5.4 Invoices which are not due in respect of your trade, occupation or profession;
- 2.5.5 Invoices where the Customer does not have an established place of business;
- 2.5.6 Invoices arising under a hire purchase, leasing or consumer credit sale agreement;
- 2.5.7 Invoices due in respect of Goods delivered on sale or return or on approval;
- 2.5.8 Invoices arising under any Contract of Sale involving progress payments or RIBA or JCT or similar terms where payment is required prior to completion or performance of the Contract of Sale;
- 2.5.9 Invoices arising under any Contract of Sale with a Ministry, Department or Agency of the Crown or Scottish Ministers;
- 2.5.10 Invoices arising under any Contract of Sale with a Customer who supplies goods or services to you and which may therefore be subject to rights of set-off, contra accounting, compensation, defence or cross-claim;
- 2.5.11 those additional Invoices referred to in the Agreement as Additional Non-Notifiable Invoices,

(each a “**Non-Notifiable Invoice**”).

- 2.6 We may at any time require you to Notify us of Non-Notifiable Invoices, although we may Disapprove them. If we do this and you have an Invoice Discounting Facility you then must direct the Customers in respect of these Invoices to make payment directly into the Trust Account and if you receive payment you must immediately upon receipt pay it into the Trust Account and condition 1.2 of the Operating Conditions - Part III will apply.
- 2.7 We will only charge the Service Fee in respect of Non-Notifiable Invoices after we have given you notice under condition 2.6 of these Operating Conditions - Part II.

3. **PAYING FOR INVOICES**

- 3.1 The Purchase Price of each Invoice and its Related Rights is the amount of any Remittance (including any tax) received by us in or towards its payment less:
 - 3.1.1 any prompt payment or other discount, deduction, rebate or set-off allowed to the Customer; and
 - 3.1.2 our Fees and Charges.
- 3.2 We will pay you the Purchase Price by allowing you to draw from the Current Account up to the amount of your Availability:
 - 3.2.1 Advances in respect of Approved Invoices in the manner calculated in condition 4 of these Operating Conditions - Part II;
 - 3.2.2 the balance (after deduction of any Advance) of any Remittance received by us in or towards discharge of an Approved Invoice; and
 - 3.2.3 in respect of Disapproved Invoices, the amount of any Remittance received by us in or towards payment, when received by us

3.3 Unless we agree otherwise, we will make Advances and pay the Purchase Price by bank transfer to the Payee Bank in Sterling and all transactions between us will be accounted for in Sterling.

4. CURRENT AND OTHER ACCOUNTS

4.1 We will operate an account in your name called the Current Account. Any balance on this account represents the Purchase Price of Invoices less any Advances, our Fees and Charges and any other sums referred to in condition 4.3 of these Operating Conditions - Part II.

4.2 We will credit to the Current Account:

4.2.1 on the relevant Collection Date, the amount of any Remittances received by us in or towards payment for Invoices;

4.2.2 any Allowance and any rebate of our Fees and Charges allowed by us; and

4.2.3 all payments received in or towards the Repurchase Price of Invoices.

We may credit to the Current Account any other payments which we receive for your account.

4.3 We will debit to the Current Account:

4.3.1 Advances and any other payments made to you or to your order;

4.3.2 all Fees and Charges (including any value added tax);

4.3.3 if applicable, the amount of our actual liability under any Contingent Instrument or Counter Indemnity issued by us pursuant to any Contingent Liability Facility;

4.3.4 any refund to a Customer of a credit balance on its account with you; and

4.3.5 any other sums actually, contingently or prospectively payable by you to us whether under this Agreement or any other facility made available by us to you.

4.4 We will also maintain a sales ledger control account. We will debit the Notified Value of all Invoices to this account. We will credit to the sales ledger control account:

4.4.1 the amount of all payments received in or towards payment of Invoices;

4.4.2 the value of any credit notes issued or any discounts provided to a Customer;

4.4.3 all payments received in or towards the Repurchase Price of an Invoice;

4.4.4 any other adjustments we reasonably consider necessary.

4.5 In order to calculate Availability, we will disregard all Disapproved Invoices on the sales ledger control account, apply the Advance Rate to that reduced figure and then deduct:

4.5.1 any Debit Balance;

4.5.2 any Reserves;

4.5.3 any accrued Fees and Charges; and

4.5.4 any liability of ours pursuant to a Contingent Liability Facility.

4.6 The Debit Balance must not exceed the Review Limit. If we are providing another Facility or any other facility either to you and/or other companies in your group, the aggregate

Debit Balances across all your and their Current Account, loan or other accounts maintained by us shall not exceed any aggregate Review Limit specified in the Commercial Terms.

- 4.7 If you exceed your Availability or any Approval Limit or any Review Limit whether as a result of us designating an Approved Invoice as Disapproved, exercising our rights under conditions 4.8, 4.9 or 10.2 of these Operating Conditions - Part II or for any other reason, then, in the first instance, you must immediately bring your accounts back within such limits by Notifying further Approved Invoices and/or the receipt by us of Remittances. If you fail to do so, then you must pay the excess amount to us on our demand.
- 4.8 We may at any time, by written notice to you, with immediate effect vary:
- 4.8.1 the Advance Rate in respect of all outstanding Approved Invoices and/or Invoices Notified to us after the date of such notice; and/or
 - 4.8.2 any Review Limit or Approval Limits; and/or
 - 4.8.3 the proportion of your Export Invoices in respect of which we will make Advances.
- 4.9 We may also from time to time apply a Reserve. We will determine the amount of any Reserve and will inform you of it from time to time.
- 4.10 In addition to the Current Account and the sales ledger control account, we may maintain such other accounts as we consider necessary for the operation of this Agreement.
- 4.11 We may pay a Customer any credit balance on that Customer's account.
- 5. COLLECTION OF INVOICES**
- 5.1 If you are a Client whose Facility is disclosed or whose agency to collect Invoices has been terminated, subject to the rights of any third party credit insurer this condition 5 will apply to you.
- 5.2 We may take whatever action we think is suitable to obtain payment of Invoices from your Customers. We may demand, exercise, obtain or otherwise deal with the Related Rights in whatever way we think is suitable (or refrain from so doing). We may settle, compromise or adjust any claim brought by or against us, upon such terms as we see fit. We may bring, carry on, defend or compromise any legal proceedings or form of alternative dispute resolution in any part of the world and in your or our name. We may engage collection agents, solicitors, barristers, advocates or such other professionals as we feel necessary for this purpose.
- 5.3 We do not have to bring or defend any proceedings, by or against us, even if you ask us to do so.
- 5.4 Subject to the terms of any third party credit insurance of an Invoice, we may allow a Customer a longer period to pay or agree to accept less than the Notified Value of an Invoice and this will not affect your Obligations to us.
- 5.5 You will:
- 5.5.1 at your expense, help us to collect Invoices, by, for example, assisting us to review your records and other evidence, providing witness statements and procuring witnesses' attendance at court; and
 - 5.5.2 be bound by any act, decision or omission of ours in the exercise of our rights including any reduction in, or extinction of, the Purchase Price.
- 5.6 We may sell any returned Goods on such terms as we consider appropriate and we will treat the proceeds of sale as if they were payment of or towards the relevant Invoice.

5.7 We will not pay you compensation (other than where you have Debtor Protection) or damages and we will not have broken this Agreement if your Customer does not pay an Invoice.

6. OUR FEES AND CHARGES

6.1 The Discount Charge, which is deductible from the Purchase Price, will, for administrative convenience, be applied daily to any Debit Balance and be debited every Working Day (or on such other basis as we may agree with you).

6.2 In return for our services you will, subject to any Minimum Fee arrangements, pay us the Service Fee. This fee will be calculated as the percentage stated in the Commercial Terms of the Notified Value of each Invoice Notified to us on the Start Date and thereafter throughout the Term of this Agreement. The Service Fee will be debited to the Current Account when Invoices are Notified to us. The Service Fee will not be reduced if the Net Value of an Invoice is less than its Notified Value or the Invoice is credited or not paid.

6.3 Any Allowance (if applicable) will be calculated daily on any credit balance on the Current Account and will be credited every Working Day (or on such other basis as we may agree) to the Current Account.

6.4 For the purposes of calculating the Discount Charge, any Allowance or any Under Utilisation Fee, any payment of or towards an Invoice shall be credited to the Current Account on its Collection Date.

6.5 If you serve notice to terminate this Agreement before the end of the Minimum Term or give us less notice than the Notice Period, we may accept such notice, although we do not have to do so. If we do accept your notice or following a Termination Event we may, in addition to all other Fees and Charges to which we are entitled under this Agreement, charge you a termination fee calculated on the basis that for each month or part of a month that the Agreement is terminated before the end of the Minimum Term and/or the Notice Period you will pay us the higher of:

6.5.1 the total of the monthly average of: (i) the Service Fee and any Refactoring Charge; (ii) the net Discount Charge; and in the case of Invoice Discounting Clients (iii) any Trust Account charges and Facility Fee (and VAT thereon) which accrued during the 12 calendar months before we accepted your notice to terminate (or, if this Agreement has not operated for 12 months, the monthly average in the calendar months for which it has operated); or

6.5.2 the balance of any Minimum Fee for the unexpired portion of the Minimum Term or Notice Period plus the monthly average of the net Discount Charge (and, in the case of Invoice Discounting Clients, all Trust Account charges) and any Facility Fee (and VAT thereon) which accrued during the 12 calendar months before we accepted your notice to terminate (or, if this Agreement has not operated for 12 months, the monthly average in the calendar months for which it has operated).

6.6

6.6.1 Following a Termination Event we shall be entitled to consider the Minimum Term as 12 months, unless the Minimum Term specified in the Agreement is greater than 0 months when the Minimum Term in the Agreement shall apply, and a termination fee calculated as detailed in condition 6.5 may be charged.

6.6.2 Following a Termination Event we shall be entitled to consider the Notice Period as 6 months, unless the Notice Period in the Agreement is greater than 1 month when the Notice Period in the Agreement shall apply, and a termination fee calculated as detailed in condition 6.5 may be charged.

- 6.7 If we purchase an Invoice expressed in a currency other than Sterling then you will be responsible for all bank charges and commissions for collections and currency conversion and transfer charges specified in our Schedule of Fees and Charges.
- 6.8 Value Added Tax, where applicable, shall be added to all our Fees and Charges.
- 6.9 We will make all payments to you or to your order through BACS. If we agree to make a payment to you other than by BACS, we will charge you the transfer charge specified in our tariff of charges.

7. EXPENSES, SET OFF AND INDEMNITY

- 7.1 You will indemnify us (and in the case of condition 7.1.6 of these Operating Conditions - Part II, any bank operating the Trust Account or other account nominated by us) for all losses, actions, proceedings, costs, claims, demands, awards, fines, orders, expenses and liabilities (including legal fees) incurred by us (or such bank) (and any additional administrative time incurred by us charged at such rate as we shall reasonably determine) directly or indirectly as a result of:
- 7.1.1 preserving or enforcing our rights under this Agreement and any security given for it;
 - 7.1.2 exercising any of our rights under condition 5 of these Operating Conditions - Part II (Collection of Invoices) or dealing with disputes relating to an Invoice;
 - 7.1.3 obtaining or enforcing a release of Invoices and Related Rights or waiver of rights, from any person with a Security Interest;
 - 7.1.4 the occurrence of a Termination Event;
 - 7.1.5 accepting and/or acting upon information or instructions purporting to come from you even if that information or those instructions subsequently prove to have been incorrect or unauthorised by you (except to the extent that our officers have been negligent or fraudulent);
 - 7.1.6 collecting and/or crediting to any Trust Account (or any other account nominated by us) any cheque or other negotiable instrument payable to you or endorsed in your favour;
 - 7.1.7 any claim by a Customer against us; or
 - 7.1.8 you breaching the DPA.
- 7.2 We may (but are not obliged) at any time without notice to you to:
- 7.2.1 set-off against our liability to you any Obligation you owe to us; and/or
 - 7.2.2 combine or consolidate all or any of your accounts with us;
- in either case whether arising under this Agreement or any other facility provided by us. In order to effect such set-off or combination of accounts, we may convert currencies at the Bank's spot rate of exchange prevailing at the time of set-off or combination. Your liability to us includes any amounts owing by you for goods, work or services provided to you by another of our clients. We may make a reasonable estimate of any amounts contingently or prospectively due from you to us which cannot be calculated on the date we exercise set-off. You may not exercise any right of set-off or counterclaim against monies due from you to us.
- 7.3 You will be responsible for any stamp duty or other tax payable on any document transferring title (whether to you or us) to Invoices, Related Rights or Goods.

- 7.4 We may at any time, at your request or at our discretion, convert any payment received by us in or towards settlement of Invoices and/or any of our obligations to you or your Obligations to us which are owed in a currency other than Sterling into Sterling at the Bank's prevailing spot rate of exchange. Where the currency of the Current Account is different to that in which a Customer pays an Invoice and/or that in which the Purchase Price is paid and as a result there is an exchange rate loss or gain when the Invoice is paid, we shall debit any loss and credit any gain to the Current Account.
- 7.5 You must pay us all amounts due from you to us under the Agreement in the currency in which they are due, in full, without set-off or counterclaim and free and clear of all deductions and withholdings (other than those required by law).
- 7.6 If any deduction or withholding is required by law, you must:
- 7.6.1 increase the amount payable so that, after making the minimum deduction or withholding required, we will receive and be entitled to retain a net sum at least equal to the sum which we would have received had that deduction or withholding not been made; and
 - 7.6.2 within 30 days of that payment, forward to us confirmation from the relevant tax authority evidencing receipt by the relevant tax authority of that deduction or withholding.

8. WARRANTIES

- 8.1 On the date of this Agreement and each time you Notify Invoices to us, you warrant that:
- 8.1.1 except as disclosed to us in writing before the Start Date, there are no Security Interests affecting your Invoices and you have not sold your Invoices to any other person;
 - 8.1.2 you have told us about every material fact or matter which you know, or ought to have known, might influence us in deciding whether to enter into this Agreement or to classify an Invoice as Approved or Disapproved or to accept person as a guarantor or in determining any Review Limit or Approval Limit;
 - 8.1.3 all reports, accounts, and other information supplied to us are accurate and complete;
 - 8.1.4 prior to the Start Date you did not have any employees and/or workers who spent all or the majority of their time performing those tasks which we will perform under this Agreement;
 - 8.1.5 you are not engaging nor have you engaged in any transaction that evades or avoids, or has the purpose of evading or avoiding, or breaches or attempts to breach, directly or indirectly, any Sanctions applicable to you.
- 8.2 The warranty in condition 8.1.2 of these Operating Conditions - Part II includes any past Insolvency of your directors or shareholders or of any company in which they have been interested or any disqualification at any time of any of your directors or any shadow directors (as defined by the Insolvency Act 1986) from acting as a director.
- 8.3 In relation to each Invoice Notified to us, you warrant, both on the date of Notification and on each Working Day until that Invoice is paid, that:
- 8.3.1 the Contract of Sale giving rise to the Invoice:
 - 8.3.1.1 is valid and enforceable against the Customer;
 - 8.3.1.2 is governed by English law or Scottish Law or another law approved by us in writing;

- 8.3.1.3 provides for the Customer to submit to the jurisdiction of the English or Scottish Courts or an Approved Country;
- 8.3.1.4 does not include any prohibition against Assignment of the Invoice or the Contract of Sale;
- 8.3.1.5 provides for payment in Sterling or an Approved Currency;
- 8.3.1.6 provides for payment on or before the end of the Funding Period;
- 8.3.1.7 does not provide for cash on delivery, sale or return or for payment in advance or by stage payments;
- 8.3.1.8 arises from your normal trading activities disclosed to us before the Start Date;
- 8.3.2 the Invoice relates to an actual sale and you have delivered the Goods or carried out the works or services to which the Invoice relates according to the Contract of Sale;
- 8.3.3 you have sent to your Customers all Invoices Notified to us and, in the case of Clients whose Facility is disclosed, those invoices and all reminders and statements include notices of assignment or assignation in our preferred form;
- 8.3.4 the details of the Invoice Notified to us are correct and complete and the Invoice has not been Notified to us before;
- 8.3.5 the Notified Value of each Invoice is the amount due in respect of it and any prompt payment or bulk order discount does not exceed that agreed by us;
- 8.3.6 no right of set-off, compensation or counterclaim exists which will reduce or extinguish the Notified Value of an Invoice or affect our ability to collect the Invoice in full;
- 8.3.7 so far as you are aware, the Customer is credit worthy and is not Insolvent;
- 8.3.8 the Customer is not an Associated Business;
- 8.3.9 to the extent referred to in the Invoice, the Contract of Sale has been performed and the Invoice has become due;
- 8.3.10 there is no Security Interest, trust, tracing or other third party claim which may adversely affect our title to an Invoice, its Related Rights or Goods;
- 8.3.11 the Customer has an established place of business in England and Wales, Scotland or, if you Notify us of Export Invoices, an Approved Country;
- 8.3.12 is not a Non-Notifiable Invoice;
- 8.3.13 if the Invoice is an Export Invoice, you additionally warrant that:
 - 8.3.13.1 the Customer is not a Sanctioned Entity and has all licences and permits necessary to import and pay for the Goods and/or services in the Approved Country; and
 - 8.3.13.2 the export of the goods or services and payment by the Customer is not unlawful under any applicable law.

9. UNDERTAKINGS

9.1 You agree with us that you will:

- 9.1.1 tell us immediately:
 - 9.1.1.1 about any dispute (whether justifiable or not) between you and a Customer and any claim or attempt by a Customer to pay less than the Notified Value of an Invoice and give us copies of any correspondence;
 - 9.1.1.2 anything which may affect a Customer's credit worthiness;
 - 9.1.1.3 if any person claims or tries to claim title to Goods;
 - 9.1.1.4 if whoever controls or manages your company or business changes;
 - 9.1.1.5 if you breach any of your warranties to us;
 - 9.1.1.6 about any Associated Business and if they start or stop trading;
 - 9.1.1.7 about any returned Goods;
 - 9.1.1.8 if you purchase goods or services from or owe any money to any Customer or there are any contracts or other arrangements between you and your Customer, which could reduce the Notified Value of an Invoice;
- 9.1.2 if we ask:
 - 9.1.2.1 give us any information about your Customers that we require;
 - 9.1.2.2 send us proofs of delivery or other evidence that you have delivered Goods or performed your services according to the Contract of Sale;
 - 9.1.2.3 tell us about your bank accounts and if you open any bank account and, if we request, send us copies of any bank statements;
 - 9.1.2.4 at your own expense, formally assign to us in the way we require specific Invoices and their Related Rights including the benefit of any credit insurance policy;
 - 9.1.2.5 keep any returned Goods separate from other Goods and deliver them to us or deal with them as we direct;
 - 9.1.2.6 provide us with such information regarding your business as we require and enter into discussions with us to review the terms of, and operation of, your Agreement;
- 9.1.3 try to resolve promptly any Customer's disputes and claims;
- 9.1.4 not vary any payment terms or settlement discount in respect of any Invoice nor waive, vary, rescind or terminate any Contract of Sale;
- 9.1.5 promptly perform any continuing obligations under any Contract of Sale, such as repairing or maintaining Goods, providing drawings, documents or information, or performing any other services or obligations;
- 9.1.6 promptly raise and send to a Customer any credit note that is validly due and then Notify it to us. However, we may at any time require you either:
 - 9.1.6.1 to send credit notes to us for approval and we may send or refuse to send them to your Customers; or

- 9.1.6.2 to stop issuing credit notes without our specific agreement;
- 9.1.7 promptly Notify us of any other matters (such as early payment or bulk purchase discounts) which may cause the Notified Value of Invoices to be reduced or extinguished and not, without our specific agreement, grant any prompt payment or bulk purchase discount;
- 9.1.8 keep to any procedure we set in relation to the day to day administration of this Agreement and send us any documents we ask for;
- 9.1.9 allow our employees or agents to enter your premises (or any location where Goods or records are stored) at any reasonable time in order to:
 - 9.1.9.1 audit and verify your sales ledger and to ensure that you are adhering to the procedures we require (in respect of which we may charge a fee);
 - 9.1.9.2 remove (or at your expense) copy or check the terms of Contracts of Sale, your purchase ledgers, your accounting records (including the status of your preferential creditors), correspondence, orders and any other documents or computer files we require;
 - 9.1.9.3 review those Related Rights capable of review, inspect Goods, or complete a Contract of Sale or collateral contract;
- 9.1.10 maintain accurate accounting books and records and have them audited, (except is so far as you are exempted from the requirement to have your accounts audited), at least once every year and as soon as the accounts have been signed off or at the latest within four months of the end of your financial year send us a copy of your audited accounts, together with any statement from your auditors;
- 9.1.11 give us notice immediately if, for any reason, you fail to pay VAT, PAYE or any corporate tax when due;
- 9.1.12 promptly send us any other financial or other information we may request relating to your business or affairs;
- 9.1.13 give our bankers such instructions or indemnities as they may require to collect non-transferable instruments made payable to you; and
- 9.1.14 provide us with such security as we may from time to time reasonably require to secure your Obligations to us.
- 9.2 You will not, except where we have agreed in writing, create any Security Interest over your Invoices or rights under this Agreement nor factor nor discount your Invoices other than to us.

10. TERMINATION EVENTS

- 10.1 Each of the following is a Termination Event:
 - 10.1.1 you breach any warranty, undertaking or other obligation given or undertaken by you in this Agreement unless such breach is capable of being remedied and not remedied within 5 (five) Business Days of the earlier of us giving notice to you or you becoming aware of such breach;
 - 10.1.2 you fail to pay any sum due from you to us under this Agreement unless the failure to pay is caused by administrative or technical error and payment is made within 3 (three) Business Days of its due date;

- 10.1.3 you become Insolvent, or any step is taken which could result in you becoming Insolvent or, where you are a natural person, you die or become of unsound mind or become a patient for the purpose of any statute relating to mental health;
 - 10.1.4 you fail to pay any sum due under any other financing facility made available by us or any other person to you within any applicable grace period specified in such document or otherwise breach the terms of any such facility and such breach, if capable of remedy, is not remedied within 10 (ten) Business Days of its occurrence;
 - 10.1.5 without our prior written consent, you sell or dispose of the whole or a substantial part of your undertaking, property or assets or cease to carry on the business conducted by you on the date of this Agreement;
 - 10.1.6 without our prior written consent, there is a material change in composition of your board of directors or partners or senior management or any change of 10 per cent or more in the immediate or ultimate ownership of your shares or in your constitution or composition;
 - 10.1.7 we in our absolute discretion consider there is a deterioration in your financial condition or in your creditworthiness or in your operating performance or your management and control or in your general day to day administration and organisation or in your sales ledger administration or credit control procedures;
 - 10.1.8 any person, who has waived or released its rights to your Invoices or their Related Rights, withdraws or attempts to withdraw, such waiver or release or otherwise asserts any interest in your Invoices or Related Rights;
 - 10.1.9 this Agreement or any guarantee, indemnity or Security Interest granted as security for your Obligations to us ceases to be legally valid, binding or enforceable or it is or becomes unlawful for you or any other person to perform your or their obligations under this Agreement or such guarantee, indemnity or security or any such person dies or becomes Insolvent or you or any such persons gives or attempts to give notice terminating, amending or withdrawing such guarantee, indemnity or security and, as a consequence of which, we, in our absolute discretion, determine that we cease to hold adequate Security, guarantees or indemnities in respect of your Obligations to us.
- 10.2 Upon or at any time after a Termination Event has occurred (whether or not we actually terminate this Agreement) or following the expiry of any notice to terminate this Agreement, we may by written notice to you (and as well as exercising any of our other rights under this Agreement or any other facility we have made available to you) do all or any of the following (either at the same time or at separate times):
- 10.2.1 if the Facility has not been disclosed to your Customers, we may disclose the Facility to your Customers and simultaneously or at a later date cancel your agency to collect Invoices;
 - 10.2.2 reduce the Advance Rate to zero or such other percentage as we may decide;
 - 10.2.3 classify all or any Invoices as Disapproved;
 - 10.2.4 apply a Reserve in such amount as we may decide;
 - 10.2.5 combine your Current Accounts (if you have more than one) and any loan or other accounts maintained by us;
 - 10.2.6 refuse requests for Advances from the Current Account;
 - 10.2.7 demand immediate payment of:

- 10.2.7.1 any Debit Balance on your Current Account (or combined Current Accounts);
- 10.2.7.2 any Fees and Charges or other monies or liabilities which you owe us actually, contingently or prospectively. If we cannot calculate the precise amount owing to us on the date of demand we may include a reasonable estimate in our demand;
- 10.2.8 require you to repurchase any or all outstanding Invoices in accordance with condition 11 below;
- 10.2.9 debit to your Current Account, in addition to any other fees to which we may be entitled, a collect-out fee as specified in our published fee tariff for our costs in respect of the additional services and administration which will be provided by us following a Termination Event together with an amount in respect of any out of pocket expenses which we suffer or incur in respect thereof;
- 10.2.10 terminate this Agreement and charge you the fees for early termination (if applicable) referred to in condition 6.5 above;
- 10.2.11 at your cost, appoint accountants or any other professional to investigate your business, assets or affairs, to ascertain your financial position or, in the case of Invoice Discounting Clients, review your sales ledger administration and/or credit control procedures;
- 10.2.12 if you are an Invoice Discounting Client, request you to start Notifying Non-Notifiable Invoices to us and/or convert you to a Factoring Client;
- 10.2.13 if you have Debtor Protection, terminate it;
- 10.2.14 terminate any access to E-Bonded or any other Lloyds Banking Group provided systems.
- 10.3 Termination of this Agreement will not affect any of your or our respective rights and obligations which arose under it prior to such termination and, in particular, our rights in respect of Invoices assigned to us and our power of attorney will survive such termination. You will continue to Notify Invoices to us during any period of notice to terminate this Agreement and after the occurrence of a Termination Event until, in either case, repayment of all Debit Balances. Such rights and obligations shall only cease when all monies due from you to us and from us to you have been paid in full.

11. REPURCHASE

- 11.1 We may at any time require you to repurchase an Invoice as a consequence of which we will reassign all or any Invoices and their Related Rights to you upon payment by you to us of the Repurchase Price in respect of that Invoice.
- 11.2 Upon payment of the Repurchase Price by you for an Invoice, our rights in that Invoice and its Related Rights will transfer to you. We will, if requested by you, at your expense, execute a formal re-assignment or retrocession to you of any Invoices repurchased and give notice of such repurchase to your Customers. As trustee of the trust created under the Agreement of Scottish Invoices and where any such Invoice is held in that trust, you will first transfer it to us as beneficiary of the trust to enable us to give you any re-assignment or retrocession that you need.

12. COMMUNICATIONS BETWEEN US

- 12.1 Unless we agree otherwise, you will Notify us of all Invoices, credit and debit notes, daily cash collections (if you are an Invoice Discounting Client) and of any other information we

may require electronically through the Website or by any other electronic means which we may specify from time to time and in such format as we may require.

- 12.2 We will provide regular statements to you relating to your accounts with us electronically through the Website, unless we agree otherwise. It is your responsibility to access this information and other communications from us by accessing the Website on a regular basis. Unless you give notice to us within 30 days of us posting your statement to the Website that any item is incorrect, then, that statement will be binding upon you, unless we have made an obvious error.
- 12.3 All information we provide to each other through the Website or by any other electronic means which we may specify from time to time (unless corrupted as a result of technical failure) has the same status as if it had been in writing or other printed form and signed by the provider and neither of us will challenge the validity of such information solely because it was prepared, sent or received only in electronic form. We may require you to provide hard copies of any information provided by you electronically.
- 12.4 In any proceedings or claim, you will accept and be bound by a certificate signed by us as to the balance on any accounts and the amounts due and owing by either of us to the other, unless we have made an obvious error and you consent to the registration of this Agreement and any such certificate for preservation and execution in Scotland.
- 12.5 We may accept and rely upon any signature, communication or information ostensibly sent by you even though you may not actually have given or sent it or the sender or provider had no authority to send or provide it. This applies whether the communication is written, oral or through the Website, or by any other electronic means which we may specify from time to time.

13. VARIATIONS

- 13.1 We may change any term of the Agreement at any time by giving you 30 days' notice (or such longer notice period as required by law or regulation) of that change in writing. If you do not wish to accept the change, you may terminate the Facility in accordance with condition 1.2 above and pay all amounts you owe under the Facility by sending a notice to us no later than 60 days after we gave you notice of the change.
- 13.2 We may vary the Fees and Charges or introduce a Fee and Charge at any time. If we wish to do this we will give you 30 days' written notice (or such longer notice period as required by law or regulation) of the proposed change(s) to the Fees and Charges which will come into effect at the end of the notice period. We may unilaterally, without giving you notice, vary the Advance Rate, Approval Limit, Review Limit, proportion of your Export Invoices in respect of which we will make Advances or any Reserve in accordance with this Agreement. If we agree to provide you with an additional Facility, then, we will both agree the Commercial Terms which are to apply and we will provide these to you in hard copy form. Any letter or other agreement adopting such additional Commercial Terms and/or Operating Conditions which is signed on behalf of each of us shall be deemed to supplement the Commercial Terms and/or Operating Conditions from the date such letter or other agreement is received by us or such other date we stipulate.

14. COMMUNICATIONS WITH PROFESSIONALS AND OTHERS

- 14.1 We may:
- 14.1.1 provide your bank, the Bank or any company in the Group or your auditors, accountants and other professional advisers with such information as they may require in relation to your business and affairs and the terms, operation and account balances under this Agreement;

- 14.1.2 obtain from your bank, auditors, accountants and other professional advisers such information as we may require;
- 14.1.3 obtain from your Customers their consent to taking of references from their bankers.
- 14.2 You have (or will) authorise the persons referred to above to give us such information.
- 14.3 We may disclose such information about you and any other person as we see fit to any potential assignee, transferee, sub-participant or delegate of our rights or obligations under this Agreement.
- 15. **DATA PROTECTION**
- 15.1 You agree that any and all information you supply to us or that we may otherwise acquire relating to any individual associated with or engaged by your business and/or a Customer's business (including but not limited to a sole trader, director, shareholder, partner, member, employee, guarantor and/or indemnifier) may be used by us for the purposes of:
 - 15.1.1 deciding whether to enter into the Agreement with you;
 - 15.1.2 performance of the Agreement and/or any other ancillary or related agreement; and/or
 - 15.1.3 exercising our right and/or obligations under the Agreement and/or any other ancillary or related agreements;and may be disclosed to and/or used by the Bank and any company in the Group and/or any credit reference agencies and fraud prevention and/or prosecution agencies.
- 15.2 If false or inaccurate information is provided and fraud is identified, details will be passed to fraud prevention agencies.
- 15.3 Law enforcement agencies may access and use the information recorded with fraud prevention agencies.
- 15.4 We and other organisations may also access and use the information recorded with fraud protection agencies to prevent fraud and money laundering, for example, when:
 - 15.4.1 checking details on applications for credit and credit related or other facilities;
 - 15.4.2 managing credit and credit related accounts or facilities;
 - 15.4.3 recovering debt;
 - 15.4.4 checking details on proposals and claims for all types of insurance; and
 - 15.4.5 checking details of job applicants and employees.
- 15.5 Please contact us if you want to receive details of the relevant fraud protection agencies.
- 15.6 We and other organisations may access and use from other countries the information recorded by fraud protection agencies.
- 15.7 Where you provide Personal Data to us about any individual who is not a party to the Agreement, you warrant and undertake that the individuals concerned have explicitly agreed to the use and disclosure of such Personal Data (which may include Sensitive Personal Data) in accordance with the terms of this condition 15 of the Operating Conditions - Part II.

- 15.8 You warrant that you are registered under the DPA as a data controller and that your registration covers the processing of Personal Data in accordance with this Agreement.
- 15.9 You warrant that you shall process any Personal Data of which we are a data controller (as defined under the DPA) in accordance with any and all data protection legislation in force from time to time. In processing such Personal Data, you shall act only upon instructions given to you by us, unless otherwise required by law and/or by the data subject where appropriate.
- 15.10 You warrant to take appropriate technical and organisational security measures in order to safeguard the Personal Data being processed in accordance with this Agreement, from accidental loss or destruction and from any unlawful forms of processing. You shall give us notice immediately of any breaches of security in relation to such Personal Data immediately upon becoming aware of such breaches. We shall be entitled to carry out and/or engage a third party to carry out on our behalf, an audit of your premises to check your compliance with this condition 15 of the Operating Conditions - Part II.
- 15.11 We shall be entitled to transfer any Personal Data processed in accordance with this Agreement outside the EEA. You warrant and undertake that you have obtained any necessary consents from relevant individuals for such transfer.
- 15.12 We will comply with our obligations as a data processor under the seventh principle set out in Schedule 1 to the DPA and accordingly we:
- 15.12.1 confirm that we have appropriate technical and organisational measures in place against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data held or processed by us and that we have taken reasonable measures to ensure the reliability of any staff who have access to Personal Data processed in connection with the Facility;
 - 15.12.2 will act only on your instructions in relation to the processing of any Personal Data in connection with the Facility; and
 - 15.12.3 will allow you access to our premises on reasonable notice to inspect our procedure described above.

16. PARTNERSHIPS AND SOLE TRADERS

- 16.1 Where you are a partnership, the provisions of this condition 16 of the Operating Conditions - Part II apply.
- 16.2 The undertakings and warranties contained in the Agreement are given by each partner and your Obligations to us are joint and several.
- 16.3 We may:
- 16.3.1 release or reach a compromise with any partner without affecting our rights against the other partners or the partnership;
 - 16.3.2 treat a notice or demand by us to any partner as a notice or demand given to the other partners or to the partnership (but we need not treat a notice or demand in such manner);
 - 16.3.3 treat a notice or demand by any partner to us, as a notice or demand given by the firm or all the partners (but we need not treat a notice or demand in such manner);
 - 16.3.4 treat this Agreement as binding upon any executor, administrator or personal representative of any of you and upon any committee, receiver, trustee or other persons acting on behalf of any of you; and

- 16.3.5 require you to include wording on each Notification so that it takes effect as an offer by you to sell us the Invoices referred to in it.
- 16.4 You will give us notice in writing as soon as any partner leaves the partnership.
- 16.5 A retiring partner will have no obligations to us in respect of Invoices assigned to us after you have notified us of his retirement. However, he will remain liable to us for all matters occurring prior to such notification.
- 16.6 You warrant that the individuals signing this Agreement comprise all your partners. You will give us notice of the admission of a new partner to your partnership. You will procure that any new partner executes such documents we may require to ensure that he is bound by the terms of this Agreement and is placed under the same obligations as you. If you change your trading style, or adopt another style, or incorporate your business, you will give us notice of such fact, and if required by us, enter into such further agreement with us as may be necessary.
- 16.7 Notwithstanding any change in your partnership, we may account to you or exercise all our rights against you, including our right of set off as if there had been no such change.
- 16.8 If required by us, you will take all steps necessary to enable us to register this agreement in the Register of Assignments of Book Debts or such other relevant registry from time to time.
- 16.9 If you are a sole trader, you will seek our consent before entering into a partnership with another person or incorporating your business.

17. NOTICES

- 17.1 Any notice given by us to you to terminate this Agreement or vary the Commercial Terms shall be in writing and sent by post or by courier. Any other notice from us to you may be given by post, courier, facsimile or e-mail or, where provided for under the terms of this Agreement, through the Website. Any notice served by post shall be addressed to you at either your address stated in the Commercial Terms, your registered office or the address last known to us at which you carried on business.
- 17.2 Notices and other communications sent or given by us shall be treated as served:
 - 17.2.1 if delivered by courier: at the time of delivery;
 - 17.2.2 if posted: 48 hours after posting or upon receipt (whichever is earlier);
 - 17.2.3 if sent or given by telephone, facsimile or e-mail at the time of the conversation or transmission (unless the sender knows or ought reasonably to have been aware of a transmission failure).
- 17.3 Any notice given by you to us, including notice to terminate this Agreement, must be in writing and sent by special delivery post to us at our registered office or such other address as we advise to you in writing for this purpose and will take effect when it is received by us.

18. LIMITATION OF LIABILITY

- 18.1 We will have no Liability to you for any:
 - 18.1.1 expenses, loss of profits and/or damage to goodwill;
 - 18.1.2 pure economic and/or other similar losses;
 - 18.1.3 special damages;

- 18.1.4 aggravated, punitive and/or exemplary damages;
 - 18.1.5 loss of communications;
 - 18.1.6 loss of and loss of use of and/or corruption of data;
 - 18.1.7 loss of and loss of use of software;
 - 18.1.8 security breach by any third party in relation to any communications network of us or you, including but not limited to interception of any emails;
 - 18.1.9 business interruption, loss of business, loss of contracts, loss of opportunity and/or production; and/or
 - 18.1.10 consequential losses and/or indirect losses;
- 18.2 We will have no liability to you for:
- 18.2.1 any interception by any third party of any communication between us whether by email, via the Website and/or otherwise;
 - 18.2.2 any accidental misdirection of any communication between us whether by email, via the Website or otherwise;
 - 18.2.3 any inadvertent breach by us and/or anyone acting on our behalf of any confidentiality obligation owed by us to you and/or any obligation owed by us to you under the DPA;
 - 18.2.4 any error and/or delay by us and/or anyone acting on our behalf in transmitting funds to you, reconciling cash, cheques, BACS or other remittances for Invoices or allocating them to your Current Account or any other accounts maintained by us;
 - 18.2.5 any delay in processing a claim or refusal of any claim under any Debtor Protection provided by us;
 - 18.2.6 our agreeing to accept settlement of Invoices by credit card; and/or
 - 18.2.7 any inadvertent act and/or omission by us in the operation of this Agreement or any security provided for it.
- 18.3 Each of the limitations and/or exclusions in this Agreement shall be deemed to be repeated and apply as a separate provision for each of:
- 18.3.1 Liability in contract (including fundamental breach);
 - 18.3.2 Liability in tort or delict (including negligence);
 - 18.3.3 Liability for breach of statutory duty; and
 - 18.3.4 Liability for breach of common law and/or under any other legal basis.
- 18.4 Nothing in this Agreement excludes or limits our Liability for death or personal injury due to our negligence or any Liability which is due to our fraud or any other liability which we are not permitted to exclude or limit as a matter of law.
- 18.5 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy of our services are excluded to the fullest extent permitted by law.
19. **GENERAL**

- 19.1 We may assign, transfer, securitise or otherwise dispose of any of our obligations, rights or remedies under this Agreement in any manner we see fit to any other person or sub-contract or delegate any of our obligations or duties under this Agreement to any other person. You will promptly execute any documents that we may reasonably require to give effect to any such assignment, assignment, transfer, securitisation or other disposal. You may not assign, transfer or otherwise dispose of any of your rights or obligations nor delegate any of your duties under this Agreement to any other person.
- 19.2 We may disclose any information concerning you or this Agreement that we are required to disclose either by law or regulation, in connection with this Agreement, or otherwise in connection with any assignment, transfer, securitisation or other disposal of any rights and/or obligations under the Agreement.
- 19.3 No delay or omission by us in exercising any of our rights or remedies shall impair or operate as a waiver of them. No waiver by us of any breach of your obligations to us shall constitute a waiver of any other breach. No single, partial or defective exercise by us of any right shall preclude our further exercise of our rights. Our rights are cumulative and not exclusive of any rights provided at law or in equity.
- 19.4 The terms of this Agreement are agreed by us and by you to be reasonable. However, if any provision is valid only if some other provision or a part of it is deleted then such other part or provision shall be treated as deleted.
- 19.5 Except where specifically provided, this Agreement may only be enforced by the parties to it and the parties may rescind or vary it without the consent of any other person.
- 19.6 This Agreement may be entered into in any number of counterparts, each of which when executed and delivered may be treated as an original.
- 19.7 It is your and our intention that a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement as they apply to it.
- 19.8 Any Security given by you to us (whether given before the date of this Agreement or at any time in the future), and whether or not specified in this Agreement shall, unless otherwise agreed by us, be Security not only for this Agreement but also for all other moneys and liabilities, whether certain or contingent, at any time due, owing, or incurred by you to us.

20. GOVERNING LAW AND JURISDICTION

- 20.1 This Agreement and any non-contractual obligations connected with it shall be governed by and construed in accordance with English Law. You accept the jurisdiction of the English Courts to hear and determine any proceedings arising out of this Agreement. However, you agree that we may bring proceedings in the Courts of any other jurisdiction.

21. INTERPRETATION

- 21.1 In this Agreement:
- 21.1.1 unless the context otherwise provides, the singular includes the plural and vice versa;
 - 21.1.2 a reference to any gender includes any other gender;
 - 21.1.3 the headings are for convenience only and shall be ignored in its interpretation;
 - 21.1.4 references to a “clause” or “condition” are to a clause of the Commercial Terms or a condition of the Operating Conditions and, unless otherwise specified, any reference to a condition, is to a condition in Part II of the Operating Conditions - Provisions relating to all Clients;

- 21.1.5 references to a “Part” are to a part of the Operating Conditions;
 - 21.1.6 if there is any conflict or inconsistency between the conditions contained in this Part II and those contained in Parts III, IV, V, VI, or X the conditions in Part III, IV, V, VI, or X shall prevail;
 - 21.1.7 references to the “Agreement” are to the deed entered into by both of us and the Operating Conditions incorporated therein as varied, replaced or supplemented from time to time;
 - 21.1.8 any reference to a “person” is to any individual, firm, company, limited liability partnership, corporation or partnership, unincorporated body, government, government agency or public authority;
 - 21.1.9 the meaning of general words either introduced or followed by the words “other” or “including” is not to be limited by reference to any preceding word indicating a particular class of acts, matters or things;
 - 21.1.10 unless the context otherwise requires, where in or in relation to any place outside England and Wales, the meaning of a word or expression used in this Agreement is to be considered and such word or expression has no counterpart in that place, it is to have the meaning of its closest equivalent in that place;
 - 21.1.11 any reference to an Act of Parliament or any subordinate or other legislation shall be construed as a reference to that legislation as subsequently amended or re-enacted and shall include all subordinate legislation deriving authority from any Act;
 - 21.1.12 any term or phrase defined in the Companies Act 2006 (whether capitalised or not) bears the same meaning in this Agreement;
 - 21.1.13 any reference to “we” or “us” includes our transferees and assignees; and
 - 21.1.14 any reference to “you” means you in whatever name or style you carry on business.
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