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# **Conditions of Sale and Terms of Business**

VAT Registered No: GB 894 400415  
Registered in RPR Antwerp: 0456366588

# CONDITIONS OF SALE AND TERMS OF BUSINESS

## Definitions

- (a) The Seller means AGFA N.V (registered in RPR Antwerp under number 0456366588) and any of its duly authorised representatives or agents;
- (b) The Buyer means the person(s), firm or company whose order for the Goods and/or Services is accepted by the Seller and/or the Service Provider respectively;
- (c) Service Provider means AGFA N.V (registered in RPR Antwerp under number 0456366588);
- (d) Goods means any goods which the Seller supplies to the Buyer (including any of them or any part of them) under a Contract;
- (e) Services means the Services as set out in paragraph 2.1 of the Services Schedule;
- (f) Conditions means the standard terms and conditions of sale and the standard terms and conditions for the provision of maintenance services set out in this document and the Services Schedule hereto and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller and/or the Service Provider;
- (g) Contract means any contract for the sale and purchase of the Goods and/or supply of the Services formed in accordance with condition 1;
- (h) The Services Agreement means the document signed by both the Service Provider and the Buyer incorporating any special terms (including price) agreed between the parties in respect of the Services;
- (i) The Services Schedule means the maintenance and support services schedule attached;
- (j) Any reference in the Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time;
- (k) The headings in these Conditions are for convenience only and shall not affect their interpretation;
- (l) For the purpose of these Conditions, Payment shall mean the receipt of cleared funds by the Seller and/or the Service Provider (as appropriate).

## 1. Formation

- 1.1 Subject to any variation under condition 1.7, the Contract shall be upon these Conditions to the exclusion of all other terms and conditions and all previous oral or written representations, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.
- 1.2 The descriptions, technical specifications and illustrations contained in the Seller's catalogues, quotations, drawings, descriptive matter and advertisements are approximate only, are subject to change without notice, and are intended merely to give a general idea of the Goods described therein and do not form part of the Contract and this is not a sale by sample.
- 1.3 Each order or acceptance of a quotation for Goods or Services will be deemed to be an offer by the Buyer to purchase Goods or Services upon these Conditions. The Contract is formed when the order is accepted by the Seller and/or the Service Provider. In relation to the provision of Services, no contract will come into existence until the Services Agreement has been completed. All orders for Services must be in the form of the Services Agreement.
- 1.4 In relation to the provision of Goods, any quotation is valid for a period of 30 days only from its date, provided the Seller has not previously withdrawn it.

- 1.5 The Buyer must ensure that the terms of its order and any applicable specifications are complete and accurate. In relation to the provision of Goods, the Buyer warrants that the designs and specifications (if any) supplied by it to the Seller will not involve the infringement of any patent, registered design or other industrial property right.
- 1.6 Acceptance of delivery of the Goods or commencement of performance of the Services will be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 1.7 Save as set out in the Contract, these Conditions may only be varied or amended in writing and signed by a director of the Seller and/or the Service Provider (whichever is appropriate).

## 2. Intellectual Property

- 2.1 For the purposes of this condition 2, Intellectual Property Rights means "all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions." Software means "all object code form of any software provided for use with the Goods".
- 2.2 No right or licence is granted to the Buyer in respect of the Intellectual Property Rights of the Seller, except the right to use or re-sell the Goods in the Buyer's ordinary course of business.
- 2.3 The Buyer will not without the Seller's prior written consent allow any trademarks of the Seller or other words or marks applied to the Goods to be obliterated, obscured or omitted nor add any additional marks or words.
- 2.4 In the event that the Goods are used for any purpose other than the purposes for which Goods of the specification in question are normally used, the Seller shall have no responsibility for any infringement of any Intellectual Property Rights which arise as a result of the use of the Goods for the particular purpose.

## 3. Price

- 3.1 Save where prices have been quoted in writing pursuant to condition 1.4, the Contract price for the Goods will be the price set out in the Seller's published price list current at the date of delivery and is quoted exclusive of VAT which will be added to the sum in question. The Buyer shall bear the cost of special transport arrangements requested by him.
- 3.2 In relation to the provision of Goods, the price lists do not constitute an offer to sell. Orders for Goods not available at the time of order will be dispatched immediately when stocks are available unless prior cancellation in writing is given by the Buyer.
- 3.3 The Contract price for the Services shall be the Support Charges (as defined in the Services Schedule).

## 4. Goods Supplied for Resale

Goods supplied by the Seller must remain in their original packaging and none of the identification markings are to be erased, covered or defaced unless specific permission is given in writing by the Seller.

## 5. Acceptance of Delivery

- 5.1 The Buyer shall accept delivery of the Goods within a period of 14 days of being notified by the Seller that the same is/are available for delivery.
- 5.2 If Goods forming any portion of an order is/are not taken by the Buyer in accordance with the terms of delivery specified in the Contract the sale thereof may be postponed or cancelled at the Seller's option without tender or notice to the Buyer. Such postponement or cancellation shall not affect any remaining portion of the order.

5.3 If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered or Services to be performed on time (except solely on account of the Seller and/or the Service Provider's default), the Goods or Services will be deemed to have been delivered or performed on the due date and in relation to the provision of the Goods and without prejudice to the Seller's other rights the Seller may:

5.3.1 store or arrange for storage of the Goods until actual delivery has occurred in accordance with the terms of the Contract and charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance); and/or

5.3.2 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances ("the Resale Price") and charge the Buyer for any shortfall below the Contract price or account to the Buyer for any excess achieved over the Contract price, in both cases having taken into account any charges related to the resale (which shall include, for the avoidance of doubt, those charges mentioned at condition 5.3.1). Any amount due to be paid to the Buyer in accordance with this condition (5.3.2) shall only become payable on receipt of cleared funds by the Seller of the Resale Price. For the avoidance of doubt, this condition (5.3.2) does not entitle the Buyer to receive an amount in excess of the Contract price.

5.4 The Buyer must inform the Seller as soon as reasonably practicable but no later than 10 days from the date of delivery in the event that the Goods delivered do not correspond to the delivery note.

## 6. Passing of Risk

The risk in the Goods will pass to the Buyer on delivery at its premises if the Goods are to be delivered by the Seller. The risk in the Goods will pass to the Buyer when the Goods leave the Seller's premises if the Buyer arranges to collect the Goods from such premises.

## 7. Delay in Delivery of the Goods or Provision of the Services

Delay in delivery or, in the case of a Contract for delivery by instalments, delay in the delivery of an instalment, or delay in provision of the Services shall not give rise to any liability upon the Seller and the Service Provider whether or not any time or date is given in respect of delivery or performance. Time of delivery or performance is not of the essence of the Contract and is not to be made so without the consent in writing from the Seller or the Service Provider (whichever is appropriate). In the event of inability for any reason to supply the total demand of the Goods ordered, the Seller may allocate the available supply among all purchasers or users (including the Seller and its affiliates) or make partial shipments, on such basis as it may deem fair or practical without liability for any failure or performance which may result there from.

## 8. Payment

8.1 Payment of invoices relating to Goods sold on credit is due to be made within 30 (thirty) days from the date of the invoice and the Seller may invoice the Buyer for the Goods on or at any time after delivery or deemed delivery pursuant to condition 5. Payment of invoices relating to Services is to be made in accordance with the provisions of the Services Schedule.

8.2 The Seller and/or the Service Provider reserves the right to withdraw credit facilities if condition 8.1 is not fulfilled by the Buyer. In such circumstances the Seller and/or the Service Provider may, at its sole discretion, demand payment of all invoices whether due or not.

8.3 In relation to the provision of Goods, all accounts are payable to the Seller to the office designated on the Seller's invoice. In relation to the provision of Services, all accounts are payable to the Service Provider (unless stated to the contrary in the Services Agreement).

8.4 Credit terms may not be varied unless specifically agreed in writing by the Seller and/or the Service Provider (as appropriate). Time of payment of any monies due to the Seller and/or the Service Provider under the Contract shall be of the essence.

8.5 All sums payable to the Seller and/or the Service Provider under the Contract will become due immediately upon termination of that Contract.

8.6 The Seller and/or the Service Provider shall have the right to demand immediate payment of all sums payable to the Seller and/or the Service Provider under the Contract in the event of a suspension of deliveries of the Goods or a suspension in the performance of the Services pursuant to condition 9.2.

8.7 All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Buyer is required by law to make any such deduction or withholding.

## 9. Interest on Overdue Accounts

9.1 The Seller and/or the Service Provider reserve the right to charge interest on overdue accounts at a rate of 8% per annum over and above ING N.V. London Branch base rate from time to time, without prejudice to the Seller and/or the Service Provider's other rights under the Contract. This interest will be calculated on a daily basis from the day the invoice becomes due until payment is made in full, both before and after judgment.

9.2 Without prejudice to their rights under condition 24, the Seller and/or the Service Provider will be entitled to suspend deliveries of the Goods or performance of the Services until any outstanding amounts have been received by the Seller and/or the Service Provider from the Buyer.

## 10. Retention of Title

10.1 Ownership of the Goods will not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:

10.1.1 the Goods; and

10.1.2 all other sums which are or which become due to the Seller from the Buyer on any account.

10.2 Until ownership of the Goods has passed to the Buyer, the Buyer must:

10.2.1 hold the Goods on a fiduciary basis as the Seller's bailee;

10.2.2 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;

10.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

10.2.4 maintain the Goods in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller, and will whenever requested by the Seller produce a copy of the policy of insurance.

10.3 While any monies are owed by the Buyer to the Seller under the Contract the Buyer shall not:

10.3.1 pledge, charge or assign to third parties the Goods or documents of title thereto or allow any lien to arise thereon;

- 10.3.2 process or mix the Goods with any other Goods or material; or
  - 10.3.3 except as permitted by this condition, deal with or dispose of the Goods or documents of title or any interest therein.
- 10.4 If before the Buyer shall have paid to the Seller all sums due to the Seller the Buyer shall commit any breach of any conditions under any contract between the Seller and the Buyer or have a receiver or administrative receiver appointed or shall have a petition presented or pass a resolution for winding up or have a petition presented for the appointment of an administrator or a court shall make an order to that effect or the Buyer shall be adjudged insolvent or bankrupt or be unable to pay his debts as they fall due or shall make any composition or arrangement with his creditors or if any payment to the Seller is overdue the Seller may recover and resell the Goods and the Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter upon any land or building upon which the Goods is/are situated for that purpose.
- 10.5 The Buyer has the right to sell on its own account any Goods the property in which is vested in the Seller by virtue of this condition and to pass good title to the Goods to his buyer being a bona fide purchaser for value without notice of the Seller's rights. The Seller reserves the right to terminate the Buyer's power of sale by notice to the Buyer if the Buyer is in default for longer than 7 days in the payment of any sums due to the Seller for whatever reason.
- 10.6 Returnable product carriers or containers delivered but not sold hereunder are the property of the Seller and at the Seller's option the Buyer will either return them undamaged freight collect to the destination designated by the Seller or make them available at the Buyer's premises for collection by or on behalf of the Seller, in either case within the period specified by the Seller. Any deposit made by the Buyer on such product carriers or containers shall be forfeited in the event of failure to return them undamaged within the specified period. Where no deposit is required, the Buyer agrees to reimburse the Seller for the value, as shown on the face of the invoice, of any such product carriers or containers damaged or not returned within the specified period. The Seller's count and rejection of damaged product carriers or containers shall be accepted as final.

## 11. Warranty, Exclusion of Liability and Indemnity

### Warranty (Goods)

- 11.1 The Seller will, free of charge, for the period set out in the Contract ("the Warranty Period") repair, or at its option replace those Goods which are proved to the reasonable satisfaction of the Seller to be damaged or defective due to defects in material or workmanship. This obligation will not apply where:
- 11.1.1 the Goods have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;
  - 11.1.2 the Goods have been improperly installed or connected;
  - 11.1.3 any maintenance requirements relating to the Goods have not been complied with;
  - 11.1.4 any instructions as to storage of the Goods have not been complied with in all respects; or
  - 11.1.5 the Buyer has failed to notify the Seller of any defect or suspected defect within 10 days of delivery where the defect should be apparent on reasonable inspection, or within 10 days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than the expiration of the Warranty Period.

For the avoidance of doubt, the Warranty Period commences on the original date of delivery of the Goods.

- 11.2 The Seller will refund to the Buyer the cost of carriage on the return of any such defective or damaged Goods, and will deliver any repaired or replacement Goods to the Buyer at the Seller's own expense.
- 11.3 Any defective Goods which have been replaced will belong to the Seller. Any substituted Goods provided by way of repair or replacement will be liable to repair or replacement under the terms specified in condition 11.1 for the unexpired portion of the Warranty Period from the original date of delivery of the replacement Goods.

### Warranty (Services)

- 11.4 The Service Provider warrants and represents that it shall perform the Services with all reasonable care and skill.
- 11.5 In the event of any breach of the warranty set out at condition 11.4, the Service Provider's obligation and the Buyer's exclusive remedy for any non-conformance shall be for the Service Provider to be given the opportunity to re-perform or rectify the non-conforming Services at its cost as soon as reasonably practicable, subject to the Buyer notifying the Service Provider of such non-conformance in writing within 10 days of discovery of the non-conformance.

### Exclusion of Liability

- 11.6 The Seller and the Service Provider do not exclude their liability (if any) to the Buyer:
- 11.6.1 for breach of the Seller's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
  - 11.6.2 for personal injury or death resulting from the Seller and/or the Service Provider's negligence;
  - 11.6.3 under section 2(3) Consumer Protection Act 1987;
  - 11.6.4 for any matter which it would be illegal for the Seller and/or the Service Provider to exclude or to attempt to exclude its liability; or
  - 11.6.5 for fraud.
- 11.7 Except as provided in conditions 11.1 to 11.6, the Seller and/or the Service Provider (as appropriate) will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct loss howsoever caused arising out of or in connection with:
- 11.7.1 any of the Goods, or the manufacture or sale or supply, or failure or delay in supply, of the Goods by the Seller or on the part of the Seller's employees, agents or sub-contractors;
  - 11.7.2 any of the Services, or failure or delay in supply, of the Services by the Service Provider or on the part of the Service Provider's employees, agents or sub-contractors;
  - 11.7.3 any breach by the Seller and/or the Service Provider of any of the express or implied terms of the Contract;
  - 11.7.4 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods;
  - 11.7.5 any statement made or not made, or advice given or not given, by or on behalf of the Seller and/or the Service Provider

- 11.8 For the avoidance of doubt, the Seller and the Service Provider accept no responsibility in any circumstances for any indirect or consequential loss or damage (both of which terms include, without limitation, pure economic loss, loss of profits, depletion of goodwill and like loss) however caused.

- 11.9 Except as set out in conditions 11.1 to 11.6, the Seller and the Service Provider hereby exclude to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.
- 11.10 Each of the Seller and Service Provider's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in conditions 11.6 to 11.8 in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed each and every reference to either "the Seller" or "the Service Provider" wherever they appear in those conditions save each reference in condition 11.7.1 and 11.7.2.

## **Indemnity**

- 11.11 The Buyer agrees to indemnify, keep indemnified and hold harmless the Seller and the Service Provider from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect and consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgements which the Seller and the Service Provider incur or suffer as a consequence of a direct or indirect breach or negligent performance or failure in performance by the Buyer of the terms of the Contract.

## **12. Cancellation of Deliveries or Performance**

If the Buyer cancels his order for Goods and/or Services, the Seller and/or the Service Provider shall be entitled to recover from him any loss sustained thereby.

## **13. Software**

- 13.1 The Software supplied for the use of the Buyer remains the property of the Seller and the Buyer acquires no title to it whatsoever other than the right to use it in accordance with the Contract.
- 13.2 The Buyer may use the Software only by the number of persons specified by the Seller in the Contract and on the Goods specified by the Seller and on which it is first installed except that in the event of a malfunction in the Goods causing the Software to become inoperable on it, the Software may be used on other equipment specified by the Seller on a temporary basis during the period of such malfunction.
- 13.3 The Buyer may copy the Software only for use in accordance with condition 13.2 above.
- 13.4 The Buyer must not make the Software available to anyone other than his own employees or agents directly concerned with the Buyer's use of the Software, whether by sub-licence or otherwise, without the Seller's prior written consent.

## **14. Installation of Goods**

- 14.1 Unless otherwise agreed, the Seller shall install the Goods at the place specified provided that the Buyer shall at his own expense:
- 14.1.1 provide access to, clear and prepare the site and provide adequate electricity and other services, and such other facilities as will enable the Seller to carry out the work expeditiously and without interruption;
- 14.1.2 provide connections for electrical and other services to the Goods and labour for the installation thereof; and
- 14.1.3 provide such assistance, labour, lifting tackle and appliances as may be required in connection with the installation of the Goods.

- 14.2 The Buyer will indemnify the Seller against all claims and costs arising from or in connection with the use of such assistance, labour, lifting tackle and appliances provided by the Buyer.

## **15. Demonstration of Goods**

- 15.1 If the Seller undertakes the demonstration of the Goods, the Seller will supply a skilled operator to assist and advise the Buyer's skilled operator in the working of the Goods for such period as the Seller shall in its absolute discretion determine. Any further assistance or advice required by the Buyer will be provided at an additional cost. During this period any such Goods is/are to be considered as under the control of the Buyer, and the Buyer shall supply all necessary materials.
- 15.2 Upon request, the Seller shall endeavour to furnish such technical advice or assistance (including, without limitation, the demonstration of the Goods mentioned at condition 15.1) as it has available, at the Buyer's cost it being expressly understood that all such technical advice or assistance is given without liability and the Seller assumes no obligation or liability for any results derived from the advice or assistance given.

## **16. Confidentiality**

- 16.1 For the purposes of this condition 16, "Confidential Information" means "all information in respect of the business of the Seller and/or the Service Provider including, but not limited to, know-how or other matters connected with the Goods or Services, and information concerning the Seller and/or the Service Provider's relationships with actual or potential clients, customers or suppliers and the needs and requirements of the Seller and/or the Service Provider and of such persons and any other information which, if disclosed, will be liable to cause harm to the Seller and/or the Service Provider".
- 16.2 The Buyer will keep confidential any and all Confidential Information that it may acquire.
- 16.3 The Buyer will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Buyer will ensure that its officers and employees comply with the provisions of this condition.
- 16.4 The obligations on the Buyer set out in conditions 16.2 and 16.3 will not apply to any information which:
- 16.4.1 is publicly available or becomes publicly available through no act or omission of the Buyer; or
- 16.4.2 the Buyer is required to disclose by order of a court of competent jurisdiction.

## **17. Data Protection**

- 17.1 Both the Seller and the Service Provider have notified under the Data Protection Act 1998 ("the Act"). The following provisions of this clause 17 apply to any Personal Data (as defined in the Act) the Buyer (the Data Controller, as defined in the Act) provides to either the Seller and/or the Service Provider (both Data Processors, as defined in the Act) in relation to the provision of the Goods and/or Services:
- 17.1.1 the Buyer authorises the Seller and/or the Service Provider to process any Personal Data, including but not limited to any names and addresses, to the extent necessary to enable the Seller and the Service Provider to supply the Goods and/or perform the Services, and the Seller and the Service Provider will only process Personal Data in the provision of the Goods and/or Services on instructions from the Buyer; and

- 17.1.2 the Buyer warrants it is in compliance with the Act in relation to any Personal Data provided in accordance with condition 17.1.1, including but not limited to compliance in respect of fair and lawful processing of, and accuracy of, Personal Data.
- 17.2 Any Personal Data collected and processed by the Seller and/or the Service Provider may be transferred and/or communicated to third parties pursuant to, or in contemplation of, a transfer and/or assignment of the Contract or transfer and/or assignment of any rights and/or receivables resulting from such Contract (in the framework of a securitization or any other financing transaction).
- 17.3 The Buyer agrees to indemnify, keep indemnified and hold harmless the Seller and/or the Service Provider from and against all costs, expenses, liabilities, losses, damages, claims, demands, proceedings or legal costs and judgments which the Seller and/or the Service Provider incur or suffer as a direct or indirect consequence of breach by the Buyer of the warranties at clause 17.1 above.
- 17.4 The Seller and the Service Provider will take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

## **18. Force Majeure**

- 18.1 If the performance of the Contract shall be delayed by any circumstances or conditions beyond the control of the Seller and/or the Service Provider, for example, (but without prejudice to the generality of the foregoing) war, industrial disputes, strikes, lockouts, riots, malicious damage, fire, storm, acts of God, accidents, non-availability or shortage of materials or labour, any statute, rule bye-law, order or requisition made or issued by any government department, local or other duly constituted authority, then the Seller and/or the Service Provider (as appropriate) shall have the right to suspend further performance of the Contract until such time as the cause of delay shall no longer be present.
- 18.2 If performance of the Contract by the Seller or the Service Provider shall be prevented by any such circumstances or condition beyond the control of either the Seller or the Service Provider (whichever is appropriate), then the Seller or the Service Provider shall have the right to be discharged from further performance of and liability under the Contract. If the Seller or the Service Provider exercises such right, the Buyer shall thereupon either pay to the Seller the value of the Goods delivered under the Contract or pay to the Service Provider the value of the Services performed under the Contract following which payment both parties shall be released from their contractual liability for the remainder of the Contract.

## **19. Notices**

Any notice required to be served pursuant to this Contract shall be in writing and served by first class post or by hand or by facsimile on the Seller or the Service Provider at their last known address, or on the Buyer at the Buyer's last known address. Any notice sent by post shall be deemed to have been served 48 hours after posting and any notice sent by facsimile shall be deemed to have been served at the time of despatch.

## **20. Legality and Severance**

The invalidity, illegality or unenforceability of the whole or part of a condition does not affect or impair the continuation in force of the remainder of these Conditions.

## **21. Assignment**

The Seller and the Service Provider may at any time assign all or any part of its rights and/or obligations under this Contract. The Buyer shall not assign all or any part of his rights or obligations under this Contract.

## **22. Waiver**

The failure by the Seller or the Service Provider to exercise, or delay in exercising a right or remedy provided by the Contract does not constitute a waiver of the right or remedy. No single or partial exercise of any such right or remedy prevents any further or other exercise thereof or the exercise of any other right or remedy.

## **23. Termination**

- 23.1 The Seller and/or the Service Provider may by written notice terminate the Contract immediately if the Buyer is in material breach of the contract or if the Buyer shall have a receiver or administrative receiver appointed or shall have a petition presented or pass a resolution for winding up or have a petition presented for the appointment of an administrator or a court shall make an order to that effect or the Buyer shall be adjudged insolvent or bankrupt or be unable to pay his debts as they fall due or shall make any composition or arrangement with his creditors. On termination of the Contract in accordance with the provisions of this condition 23.1, all monies due from the Buyer to the Seller and/or the Service Provider for any Goods delivered or Services performed at whatever time will become due for payment immediately.
- 23.2 Failure to pay any sums is a material breach of the terms of the Contract which is not capable of remedy.

## **24. Third Parties**

The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Right of Third Parties) Act, 1999 by any person not a party to it.

## **25. Disputes**

Any dispute or differences which shall at any time arise between the Seller and/or the Service Provider and the Buyer (in respect of the Goods and/or the Services) will, together with all relevant information in relation to the dispute, be referred to the National Service Manager of the Seller and/or the Service Provider (as appropriate) and the Group Purchasing Manager of the Buyer (or such other individual as may be nominated by the Buyer) as soon as reasonably practicable after the dispute has arisen with a view to those parties reaching an early agreement in relation to the dispute. Where no agreement is reached pursuant to this condition 25 within 21 days of the relevant parties being referred the dispute in accordance with this condition 25, then either party may commence proceedings in accordance with condition 26.

## **26. Governing Law and Jurisdiction**

The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract will be governed by English law. The English Courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract. The parties agree to submit to that jurisdiction.

# Maintenance and Support Services Schedule

## 1. Definitions

1.1 "Service Point" means the place at which the Services are to be performed details of which are more particularly set out in the Services Agreement;

"Support Charges" means the price agreed to be payable for the Services further details of which are set out on the Services Agreement;

"Support Day" means Monday to Friday (inclusive) excluding bank and public holidays;

"Support Hours" means between 9am and 5pm on each Support Day unless stated to the contrary in the Services Agreement.

1.2 The words and phrases defined in the Conditions shall have the same meanings in this Services Schedule.

1.3 In the event that any provision of these Conditions is inconsistent with any provision of the Services Agreement, the terms of the Services Agreement will apply.

## 2. The Services

2.1 In consideration of payment of the Support Charges, the Service Provider or its duly authorised sub-contractor shall provide to the Buyer the Services during the Support Hours in accordance with the provisions of this Schedule. The Services include:

2.1.1 inspection, adjustment and repair of the items more particularly set out in the Services Agreement ("the Equipment") the purpose of which is to keep the Equipment in good working condition (taking into account the age of the Equipment and the condition in which such Equipment was acquired by the Buyer);

2.1.2 any other services on the Equipment which the Service Provider may determine necessary based on the needs or use of the Equipment;

2.1.3 replacing or repair of any components forming part of the Equipment which the Service Provider may determine necessary. Replacement parts will be of serviceable quality and may be new or used. All warranties in respect of such replacement parts are excluded as far as permitted by law. Parts for which replacements have been supplied become the property of the Service Provider;

2.1.4 the provision of all necessary documentation to the Buyer in respect of the services mentioned at paragraphs 2.1.1 to 2.1.3 above, which shall, for the avoidance of doubt, remain the property of the Service Provider; and

2.1.5 performing the odd modifications to the Equipment at the Service Provider's sole option.

2.2 The Services shall be carried out on the Equipment:

2.2.1 with the frequency set out in the Services Agreement unless otherwise agreed in writing by both parties; and

2.2.2 at any other times during the Support Hours, provided that such support is requested by the Buyer and payment is made in accordance with the terms of the Services Agreement.

2.3 The Service Provider agrees to provide the Services for an initial period of one year ("the Term") and thereafter until terminated by either party giving to the other not less than 3 months' written notice of its intention to terminate, such notice not to expire before the end of the

Term or any anniversary thereof. The Term shall commence on the date set out in the Services Agreement ("the Commencement Date").

2.4 The Support Charges payable by the Buyer shall be reviewed by the Service Provider on each anniversary of the Commencement Date during which the Services continue.

2.5 Notwithstanding condition 2.3, the Services Agreement shall expire on the fifth anniversary of the Commencement Date.

2.6 The Service Provider shall be under no obligation to provide the Services to the extent that such Services are required for:

2.6.1 problems arising as a result of the Buyer's negligence or default or because of accident, neglect, misuse (including without limitation unusual physical or electrical stress) or the failure of power supplies, external electrics, air conditioning, anti-virus software, use of incorrect consumables, and any other causes (other than ordinary use) not due to the negligence or default of the Service Provider;

2.6.2 Equipment which has been maintained, modified, altered, adapted, developed, repaired or howsoever changed (including, without limitation, attempts to maintain, modify, alter, adapt, develop, repair or otherwise change the Equipment) by or on behalf of the Buyer by parties other than those that are authorised to carry out such changes;

2.6.3 problems arising from any changes unauthorised by the Service Provider that have been made to any software supporting the Equipment (including, without limitation, adding additional third party peripherals, adding RAM, modifying applicator software or upgrading third party software to non-supported versions); and

2.6.4 problems arising from the removal of or reinstallation of the Equipment at the Buyer's premises by parties other than those authorised to carry out such removal/installation.

## 3. Support Charges and Payment

3.1 The Service Provider shall invoice the Buyer for the Support Charges in accordance with the terms of the Services Agreement. The Buyer shall pay such invoices within 30 days of the date of the invoice.

3.2 Notwithstanding any other provision herein, where the Service Provider elects (i) to provide Services to the Buyer that it is not obliged to provide pursuant to paragraph 2.6; or (ii) to provide Services outside the Support Hours, the Service Provider shall charge for that support at its then current time and materials rates. The Buyer shall pay those charges to the Service Provider within 30 days of the date of the invoice.

3.3 If the Buyer is using consumable supplies which do not meet the Equipment supplier's standard technical specifications and the Service Provider can prove that such use has increased the cost of providing the Services or part thereof, then the Buyer shall pay to the Service Provider such additional costs thereby incurred. The Service Provider will provide to the Buyer advice in the selection process of consumables. Where the Buyer approaches the Service Provider for advice prior to purchasing any consumable supplies for use with the Equipment, the Service Provider will advise of any known problems that may arise from using such consumables and whether or not the use of such consumables is likely to result in any additional charges being incurred pursuant to this paragraph 3.3.

3.4 For the avoidance of doubt, the Support Charges do not include:

3.4.1 the provision of such consumable supplies (which include, without limitation) furnishings and/or replacement of expendable operation supplies such as printer print heads, keycaps, repair of external blades, replacement of Cathode Ray

Tubes and read-write heads for tape/disk drives, filters and cutter blades; and

3.4.2 the provision of such replacement spare parts that are deemed necessary by the Seller to ensure the Equipment remains in good working order unless stated to the contrary in the Services Agreement.

3.5 If the Buyer has installed and/or attached to the Equipment any software and/or item which the Service Provider can prove has increased the cost of providing the Services or part thereof, then the Buyer shall pay to the Service Provider such additional costs thereby incurred. Where the Buyer approaches the Service Provider for advice prior to installing and/or attaching the software and/or item the Service Provider will advise of any known problems and whether or not the installation and/or attachment (as appropriate) is likely to result in any additional charges being incurred pursuant to this paragraph 3.5.

3.6 If the Buyer requests an unscheduled Service (in accordance with paragraph 2.2.2) in whole or in part in relation to a piece of Equipment and, in the reasonable opinion of the Service Provider, having inspected the Equipment, the Equipment is not in need of servicing or that servicing is excluded pursuant to paragraph 2.6 the Service Provider shall be entitled to charge the Buyer for that support at its then current time and materials rates and the Buyer shall pay such charges within 30 days of the date of the invoice.

3.7 All Support Charges and other sums payable are stated exclusive of VAT which shall be paid by the Buyer at the rate and in the manner prescribed by law from time to time.

#### 4. The Customer's Obligations

4.1 The Customer shall at the Customer's expense:

4.1.1 maintain the Equipment in accordance with the installation specification supplied with the Equipment and will permit only authorised people who have been trained and approved by the Service Provider to maintain, adjust, repair, replace or remove any components of the Equipment;

4.1.2 ensure that the operator properly carries out the duties and operates the Equipment in accordance with the operators manual (and only such instructions and recommendations as stated therein);

4.1.3 ensure that at least one employee is trained by the Service Provider to operate the Equipment and that all other employees operating the Equipment are adequately trained;

4.1.4 make available adequate working space and facilities required to carry out the Service at no charge to the Service Provider;

4.1.5 provide the Service Provider with free and full access to the Equipment and any records maintained by the Buyer in respect of the Equipment;

4.1.6 ensure the safety of any representative of the Service Provider whilst on the Buyer's premises;

4.1.7 ensure that virus protection software is installed on the Equipment where available and that this software is maintained to the latest levels as available in the marketplace. The Service Provider will provide assistance and advice in enabling the Buyer to choose the correct anti-virus software.

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### Please complete below

Company Name

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Authorised Signature

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Position within Company

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Print Name

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Date

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Company Stamp: