

## SCOTS NON-RECOURSE GENERAL CONDITIONS

### I PAYMENTS TO YOU

- 1.1 We will pay You the Price of each Debt as described in this Agreement. We will do this by making payments accessible in Your Available Funds provided Your Available Funds, the Funding Limit and any High Involvement are not exceeded. If any of them are You will pay the excess to Us when We demand it. We will pay You as follows:-
- (A) a Prepayment for all Unpaid Approved Debts, on the Working Day after We receive Your Debt Schedule for such Debts;
  - (B) the amount or balance of the Price of Debts (after taking away any Prepayment made to You for them), on the Working Day after We Collect them.
- 1.2 We will make payments for Protected Debts as described in Condition 3.
- 1.3 Unless We agree otherwise in Writing We will only pay the Price for each Debt in sterling. If a Debt is not payable in sterling:-
- (A) You will indemnify Us on demand for Our exchange rate losses (if any);
  - (B) We may provisionally work out the Price of that Debt using the exchange rate for this described in Condition 1.4;
  - (C) when converting any Collection for that Debt into sterling We will work out the Price using the exchange rate for this described in Condition 1.4. This means that this Price may alter from that worked out under Condition 1.3(B).
- 1.4 The exchange rate for use under Condition 1.3(B) is the rate Our bankers want to buy the relevant currency when We credit the relevant Debt to the relevant Records. The exchange rate for use in Condition 1.3(C) is the rate Our bankers want to buy the relevant currency when We debit the Collection to the relevant Records.

### 2 TELLING US ABOUT DEBTS AND CREDIT NOTES

- 2.1 Unless We require otherwise You must only Tell Us about Debts which are not Excluded Debts. You must do this only once and will do it:-
- (A) on the Start Date, for Debts then existing;
  - (B) within 2 days of invoicing the Debt (or, if later, immediately after You become its owner), for Debts not existing on the Start Date.
- 2.2 When Telling Us about a Debt You will automatically make the Promises to Us set out in Condition 6.2. If You cannot do this for a particular Debt You must Tell Us about it separately, mark the relevant Debt Schedule "NOT PROMISED" and set out on it the Promises You cannot make.
- 2.3 Telling Us about a Debt creates a specific assignment of it to Us which enables Us (other than in relation to a Scottish Debt), if We choose, to get a legal assignment of it. This does not affect the general transfer to Us of ownership of all of Your Debts under section B (Transfer of Debts) of the Agreement Particulars.
- 2.4 (Other than in respect of Scottish Debts, to which section B. 5 of the Agreement Particulars shall apply) Whenever You send Us a Debt Schedule (using whatever method), You will be treated as giving the following notice to Us:-
- "Pursuant to the terms of the Invoice Finance Agreement between You and Us (including the Conditions currently in effect) We hereby assign to You the Debts evidenced by the invoices detailed in this Debt Schedule and confirm that We have complied with all Our Promises in the Invoice Finance Agreement between us for You to buy Our Debts. The Transaction (if any) under which each Debt arises and Our obligations relating to such Debt have been fully carried out."*
- 2.5 With each Debt Schedule You will send Us a copy of the invoices for the Debts it Tells Us about and such other documents evidencing those Debts We require. Such documents may include proof that You have completely carried out any Transaction and all of Your obligations relating to the Debts. This applies unless the Special Conditions say otherwise, We tell You in Writing that it does not apply or You send Us a Debt Schedule using the Electronic Facility (when We must receive the required invoices and documents within 2 days of the Debt Schedule being sent).
- 2.6 You must issue all credit notes as soon as the relevant credit is due, Tell Us about them on a Credit Note Schedule within 2 days of this and give Us a copy of each credit note.

### 3 CREDIT LIMITS AND CUSTOMER DEFAULT PROTECTION SERVICE

#### Setting Limits

3.1 We may:-

- (A) select such *Debts* as We choose (if any) to be *Protected Debts*;
- (B) set (and alter) a *Credit Limit*, a *Covered Limit* or both for a *Customer*.

Unless We explicitly give one such limit will be zero. You must truthfully and accurately tell Us everything You know or should know might influence Us in setting or continuing a *Credit Limit* or *Covered Limit*. We will choose the method to tell You We have acted under this Condition 3.1 and need not give You any reason for any decision We make under it.

3.2 You can ask Us (verbally or in *Writing*) to set, or alter, a *Credit Limit* or a *Covered Limit*. If You do You must give Us all information We ask for and the *Credit Limit* or *Covered Limit* You want.

#### Exceeding and Altering Limits

3.3 *Credit Limits* and *Covered Limits* only cover *Debts* created after they are set. If at any time *Unpaid Debts* created after this exceed:-

- (A) that *Customer's Credit Limit*, the excess amount will be *Disapproved Debts*;
- (B) that *Customer's Covered Limit*, the excess amount will not be *Protected Debts* but will be *Disapproved Debts* unless We indicate otherwise.

3.4 *Debts* fall within or outside *Credit Limits* and *Covered Limits* based upon invoice date (earliest before latest). If We reduce or cancel a *Covered Limit* this will only affect *Debts* about which You Tell Us afterwards. This Condition does not affect any other term of this Agreement.

#### Protected Debts

3.5 If a *Customer* tries to pay a *Protected Debt* by a method (including a cheque) requiring presentation for payment and payment is refused on first presentation that *Customer's Covered Limit* will automatically become as it was when We received the *Debt Schedule* on which that *Protected Debt* was included. If such attempted payment covered more than one *Protected Debt* the *Covered Limit* will automatically reduce to the lowest limit for that *Customer* when We received any *Debt Schedule* on which any such *Protected Debt* was included.

3.6 The *Price* of a *Protected Debt* will be the sum of:-

- (A) any *Collection* relating to it and any amount You hold (or should be holding) relating to it under Condition 6.1 (J) which You have not delivered to Us; **PLUS**
- (B) its *Protected Part*;

**LESS** Our *Discount*, other *Fees* and any other amounts due to Us in relation to it.

3.7 If a *Protected Debt* is not *Collected* in full because of a *Protected Event*, We will pay the *Protected Part* of such *Protected Debt* by debiting it to the relevant *Records*:-

- (A) at once after We become aware of it, if the *Protected Event* is a *Non-Payment Protected Event* and We are satisfied, acting reasonably, that taking further steps to try to *Collect* the relevant *Protected Debt* would not be justified, including where doing so would not be economic);
- (B) where the *Protected Event* is an *Insolvency Protected Event*, when We receive confirmation by letter addressed to Us from the receiver, administrative receiver, administrator, liquidator, trustee in bankruptcy or person with the duty to administer the *Customer's* affairs that they will not dispute the *Debt's* validity.

You must have paid all *Customer Protection Service Fees* You owe when a *Protected Event* happens. If You have not, We may not pay under this Condition 3.7. If We treat a *Debt* as a *Protected Debt* but later discover that We should not have done this, We may treat it as not being a *Protected Debt*. You must comply with all the requirements of this Agreement which apply to *Protected Debts* (whether or not they expressly refer to such *Debts*). This is a condition of Us entering into this Agreement and buying the *Debts* and being responsible for any *Protected Debts* as described in this Agreement.

- 3.8 We may increase the *Customer Protection Service Fees* in *Writing* at any time on or after any *Annual Review Date*.
- 3.9 You must notify *Us* in *Writing* of any claim You think You have against *Us* relating to the *Customer Default Protection Service* (and provide *Us* with such details as *We* may request of that claim) no later than 4 months after the *Non-Payment Protected Event* or *Insolvency Protected Event* which You claim created it. *We* will have no further liability under the *Customer Default Protection Service* 9 months after the end of this *Agreement* unless You have issued proceedings against *Us* in relation to the liability You claim *We* have under it before the end of such 9 month period.

3.10 The *Customer Default Protection Service* will end:-

- (A) on expiry of a *Customer Default Protection Service Notice* *We* or You give to the other;
- (B) on the *Annual Review Date* which follows *Us* giving You at least 10 *Working Days* notice in *Writing* ending on that date and which is given in the month before (but not including) that date; and
- (C) when this *Agreement* ends.

If the *Customer Default Protection Service* ends all *Covered Limits* will automatically become zero. Ending the *Customer Default Protection Service* under this Condition 3.10 will not affect *Our* or *Your* rights and obligations relating to any *Protected Debts* which are *Unpaid* when it ends.

3.11 For each *Customer* with a *Covered Limit* which is greater than zero You will tell *Us* in *Writing* as soon as possible (but not later than 2 *Working Days* after) of any:-

- (A) change in the information You gave *Us* when You asked *Us* to set or alter the *Covered Limit* for that *Customer*;
- (B) adverse change in their financial position (including the taking or threat of proceedings for or other steps towards *Insolvency* and reason to think that they may not pay the *Debt*);
- (C) *Protected Event* happening;
- (D) change in any payment or settlement discount offered to or agreed with that *Customer*; and
- (E) disputes raised by the *Customer* (whether or not valid).

This Condition 3.11 does not affect any other term of this *Agreement*.

3.12 A *Debt* may stop being a *Protected Debt* other than because the *Customer Default Protection Service* is ended under Condition 3.10. If this happens no *Debts* of the relevant *Customer* (then *Unpaid* to *Us* or created afterwards) will be *Protected Debts*.

3.13 We are not a credit reference agency. *Us* setting a *Credit Limit* or a *Covered Limit* is no indication of a *Customer's* ability to pay. You will tell no one, including *Your Customers*, anything about any *Credit Limit* or *Covered Limit* (including if it exists).

### **Approved, Protected and Bad Debts**

3.14 An *Approved Debt* will automatically become a *Disapproved Debt*:-

- (A) when its *Approval Period* ends;
- (B) on the *Insolvency* or threat of proceedings for or other steps towards *Insolvency* of the *Customer*;
- (C) if You break any *Promise* relating to that *Debt*; or
- (D) when this *Agreement* ends.

We may at any time treat all or any part of an *Approved Debt* as a *Disapproved Debt*. If an *Approved Debt* becomes a *Disapproved Debt* You must at once *Repay* it in the currency of the *Current Account* relating to it. If *We* require it You will also then pay any other amounts You owe *Us*.

3.15 At any time after a *Termination Event* happens *We* may reduce all or any *Covered Limits* to zero. All *Debts* of any *Customer* whose *Covered Limit* is reduced to zero (whether then *Unpaid* to *Us* or created afterwards) will not be *Protected Debts*. When this *Agreement* ends all *Covered Limits* will automatically become zero.

- 3.16 If at any time a *Customer's Unpaid Debts* exceed that *Customer's Credit Limit* but any report or account We give to You describes such excess as an *Approved Debt* the excess will only be an *Approved Debt* so far as it is within the relevant *Credit Limit* and does not break the *High Involvement*.
- 3.17 Where Conditions 3.14 or 3.15 apply We may reassign the relevant *Debt* to You unless Condition 3.18 applies. This will be begun by Us making the appropriate entries in the *Records* for its *Notified Value*. You will not own such *Debt* until We are paid in cleared funds for it and for all other *Debts* We are reassigning to You at such time.
- 3.18 We cannot reassign a *Debt* under Condition 3.17 if both (A) and (B) below are satisfied:-
- (A) it is a *Protected Debt* and its *Customer Protection Period* has not ended; and
- (B) no *Protected Event* has occurred in relation to the *Customer* who owes it.
- We can require You to pay Us or can reassign to You the *Unprotected Part* of such *Debt*. This will be begun by Us making the appropriate entries in the *Records* for the *Unprotected Part* of such *Debt*. You will not own the *Unprotected Part* of such *Debt* until We are paid in cleared funds for it and for all other *Unprotected Parts* We are reassigning to You at such time.
- 3.19 We need not try to recover from the *Customer* or anyone else before using *Our* rights under Conditions 3.17 or 3.18.
- 3.20 We may reassign to You any *Debt* to which We believe the *Scheme* applies. As consideration for this You will pay Us its VAT element which We believe is recoverable under the *Scheme* and any recovery (other than VAT) You receive relating to it (holding such recovery on trust for Us before doing so). You will use Your best endeavours to recover sums available to You in relation to such *Debt* (and agree that We may lodge a proof in Your name in the *Customer's Insolvency*).
- 3.21 The provision by Us of the *Customer Default Protection Service* is not intended to and does not create any contract of insurance between You and Us.
- 3.22 In relation to *Scottish Debts*:-
- (A) if We choose to do so or You ask Us to, We shall at Your cost reassign in writing to You any *Debt* or part of a *Debt* which is to be reassigned to You under this *Agreement* or bought back by You under this *Agreement*; and
- (B) We may require You as trustee of the trust created under section B. 2 of the *Agreement Particulars* to transfer such *Debt* to Us as beneficiary of that trust so that We can reassign it to You as provided in (A) above.

## 4 ACCOUNTING AND PAYMENTS TO YOU

### General

- 4.1 We will keep such *Records* and in such currencies as We think fit. The *Records* will include:-
- (A) **A Client Account:** showing what We owe You if all *Unpaid Debts* are *Collected* in full and to which We will debit all *Fees*. Amounts entered on this account will be treated as *Prepayments* to which *Our Discount* as applied to Your *Current Account* will apply. Such amounts may include amounts owed by You to Us whether or not under this *Agreement* including ones You owe which have been assigned to Us and amounts owed by You to any *Bibby Group Company* and We may set off all amounts so entered against sums We owe You. This applies whether at the relevant time such amounts are actually payable or payable potentially or conditionally and whether or not We guarantee payment of any amount owed by You to any *Bibby Group Company*. If unknown We may estimate and enter any such amount. By signing this *Agreement* You request and authorise Us to give any such guarantee;
- (B) **A Current Account:** showing what You owe Us or We owe You. Its balance may suggest that You have paid charges You owe to Us but this is only a notional position. We will not regard *Fees* as paid unless this *Agreement* ends with all other amounts You owe under it having also been paid as well as such *Fees*. Any amount unpaid when the *Agreement* ends will be regarded as representing unpaid *Fees* save to the extent that it exceeds *Fees* incurred during the period of the *Agreement*. No interest is due on any amount We owe. If You owe more than the amount worked out by applying the *Prepayment Percentage* and *High Involvement* to the *Unpaid Approved Debts* at any time You will pay Us the difference on demand;
- (C) **A Sales Ledger Control Account:** showing when We receive *Collections* (but when calculating *Our Discount* receipt will be deemed 6 *Working Days* after this). It may include the *Price* We expect to pay for a *Debt* but this may need altering to reflect the final *Price* We must pay.
- 4.2 We may at any time combine all *Records* into a single account and require You to pay the net balance to Us on demand. If such combination produces an amount We owe You We may pay this to You or withhold it against amounts You owe

Us (and whether at the relevant time actually payable or payable potentially or conditionally). You will indemnify Us on demand for sums We pay under a guarantee We give a Bibby Group Company of sums You owe.

- 4.3 We reserve the right not to make any payments to You for any Debts while You are Insolvent or proceedings for or other steps towards Insolvency are threatened or pending against You.
- 4.4 You will be given such information regarding this Agreement and using such method as We agree with You. Unless You dispute any such information as inaccurate within 15 days of it being sent to You (or published on Our Electronic Facility) You cannot dispute it unless the error is obvious. A certificate of Our company secretary or one of Our directors of any account balance, any loss We suffer or amount You owe Us is conclusive unless containing an obvious or legal error.

## 5 NOTICE TO CUSTOMERS AND COLLECTION OF DEBTS

- 5.1 Unless We agree that You will be Our agent for collecting and enforcing payment of Debts We will collect and enforce as We choose. You will accept whatever decisions We make in doing this even if they reduce the Price of a Debt or result in a Debt being settled for less than its Notified Value.
- 5.2 If We require You to act as Our agent:-
- (A) We will indicate this (and Your duties) by stating in the Agreement Details that You will be Our Collection Agent or by giving You Our authority (by letter);
  - (B) this will be a personal appointment for that purpose only;
  - (C) You will at Your expense carry out Your duties promptly and efficiently;
  - (D) You will keep for Us such records of the Debts and give such information to Customers and to Us as We require; and
  - (E) You will pay into such bank account as We require (which, if We require it, will be written in trust for Us and in relation to which We, or Our nominees, shall be the only authorised signatories) all amounts received by You in relation to the payment of Debts assigned to or held in trust for Us under this Agreement without otherwise dealing with them and pending such payment will hold and deal with all such amounts as required by Condition 6.1(J).
- 5.3 We may at any time end Your agency verbally or in Writing. As a genuine estimate of Our extra work due to Your agency ending We may charge You a fee of 10% of the Notified Value of all Debts Unpaid when it ends and of all Debts You Tell Us about after this.
- 5.4 You will write to all Customers who pay You by BACS, CHAPS or any other form of electronic transfer using wording which We will provide to You, giving them Our bank account details and telling them to make payment of Debts to such account. If the Agreement Details say that notice to Customers is required You will ensure that every invoice, statement or other document We specify has such notice as We require that We own the Debts. We may tell Customers that We own the Debts when and using such method as We choose.
- 5.5 We may:-
- (A) allocate any Collection or Reduction as We choose;
  - (B) pay a Customer any credit balance due to them (which until this will be a potential liability You owe Us);
  - (C) take possession of and sell (on terms We choose) any Returned Goods, treating the net proceeds as a Collection relating to the relevant Debt; and
  - (D) (in Our or Your name) contact Customers to verify Debts and take, carry on or settle any action to recover or dispute relating to any Debt as We wish.
- 5.6 As a condition of Us entering into this Agreement and buying Your Debts, if We require it at any time You will exercise Your rights (if any) in relation to each Transaction between You and a Customer as We may specify.
- 5.7 You will fully assist Us in collecting Debts and any Returned Goods and in protecting Our rights.

## 6 YOUR PROMISES

### Undertakings

6.1 You agree that whilst this Agreement continues and after it ends until We have been paid all sums You owe to Us:-

- (A) unless We give Our prior written consent (by letter):-
  - (i) the payment terms agreed with any Customer will not be better than those described in Your Payment Terms and You will not vary any of them for any Debt after Telling Us about it;
  - (ii) You will not issue any credit notes of more than the Credit Note Limit (and will stop issuing any if We ask You verbally or in Writing);
  - (iii) English or Scots law will govern every Transaction and Debt;
- (B) each Debt can be transferred to Us, is due in sterling (unless We give written consent, by letter, to payment in an Approved Currency) and no other person has any Other Interest in it;
- (C) (except for the Protected Part of a Protected Debt in relation to which a Protected Event has happened) the Notified Value of each Debt will be fully paid when due and without retention, dispute, set-off, deduction or counterclaim;
- (D) You will Tell Us separately of each Export Debt and Debt payable in an Approved Currency and of each Debt all or part of which relates to interest or any amount payable under the Late Payment of Commercial Debts (Interest) Act 1998 (with a breakdown of such interest or amount);
- (E) You will tell Us at once of any:-
  - (i) information We ask in relation to a Customer, Debt or a Transaction and event described in paragraph (N) of the definition of Protected Debt;
  - (ii) Promise which You break and occurrence of any event described in Condition 15.2;
  - (iii) change of Control (actual or proposed and direct or indirect) of Your business or that of any Associate or Guarantor or in the identity of Your Associates;
  - (iv) proceedings or other steps for or towards Insolvency being begun or threatened against any Relevant Party;
  - (v) taking or threat of steps towards or actual enforcement of any Other Interest or any floating charge becoming fixed over any part of Your assets or undertaking;
  - (vi) change of address of, and material information about the creditworthiness of, a Customer (including such Customer acknowledging its Insolvency or that it has cash flow difficulties);
  - (vii) dispute You have with a Customer (with full details of such dispute);
  - (viii) Returned Goods which are in Your possession;
  - (ix) Protected Event happening in relation to a Protected Debt; and
  - (x) any Government or other public authority cancelling a Transaction relating to a Debt or imposing measures which prohibit the export or import of goods or services and which measures (directly or indirectly) prevent the payment of a Debt;
  - (xi) Notifiable Serious Event occurring in relation to a Customer (and where legally, contractually or commercially possible You will suspend delivering or hiring any goods or performing any services for that Customer);
  - (xii) counterclaims or rights of set-off or other rights You may have in relation to a Customer which may reduce the amount of a Debt or which relate to a Transaction;
  - (xiii) event (including any legislative or administrative measure) which may prevent, restrict or delay payment of any Debt;
- (F) You will not, unless We consent (by letter), allow to exist any Other Interest over Your present or future assets or factor, discount, declare in trust or otherwise dispose of any Debts (or allow any Associate to factor, discount, declare in trust or otherwise dispose of any present or future debts or other amounts owing to them);
- (G) You have and will comply with all terms of this Agreement and with all procedures We specify relating to its operation;

- (H) if We ask You will transfer to Us ownership (not Ours under the *Linked Rights*) of goods the subject of a *Debt* (and We will be deemed to have asked this on *Your Insolvency*);
- (I) You will comply with the *Data Protection Laws* and, in particular, You will ensure that any information relating to this *Agreement*, any *Relevant Party* and any *Debt* is processed by You and shared with Us in accordance with the *Data Protection Laws* such that We may lawfully use such information for the purposes We identify to You in the privacy notices We provide to You and communications between You and Us;
- (J) You will hold any payment You receive in any way relating to a *Debt* in trust for Us and:-
  - (i) notify Us in *Writing* at once of any such payment (or, if earlier, when You first become aware of the possibility of such payment being made) and deliver to Us at once after receipt the actual cash, cheque, instrument or other form of payment or pay it into such bank account as We require and will if necessary endorse such payment to Us before such delivery;
  - (ii) until it is so delivered keep it separate from Your other money and not, under any circumstances, deal with, negotiate it or pay it into any account including Your own bank account; and
  - (iii) We may notify anyone of such trust and by signing this *Agreement* We acknowledge receipt of intimation of the creation of the trust;
- (K) You will allow Our bankers to credit to Us amounts made payable to You (and give any indemnity or written confirmation We require relating to this);
- (L) You will take reasonable care and prudence in granting credit to, and in Your dealings with, each *Customer* ignoring in doing so whether or not any *Debt* will or may be covered by any credit insurance policy or is to be a *Protected Debt*;
- (M) You will take all reasonable steps to minimise Our *Disbursements* and loss caused by a *Debt* not being *Collected* in full by the date when payment is due, including, as a condition of Us entering into this *Agreement* and buying the *Debts*, to maximise amounts *Collected* or recovered in relation to each *Debt* or any *Linked Rights*;
- (N) You will keep proper books and records of account and ensure that they contain appropriate entries in them recording the sale to Us of the *Debts*; and
- (O) You will not create any further *Debts* with a *Customer* if We ask You not to do so or if that *Customer* owes any *Debt* which is *Unpaid* by the *On Stop Date* and will withdraw or reduce credit from a *Customer* in relation to which We have allocated a *Covered Limit* if We request this.

## Warranties

- 6.2 Except for *Debts You Tell Us* about separately under *Conditions 2.2* or *6.1(D)*, by *Telling Us* about a *Debt* You warrant that:-
- (A) the *Transaction* (if any) creating that *Debt* and the *Debt* itself are genuine, lawful, valid and binding, made on *Your Payment Terms* and:-
    - (i) the goods have been delivered to the *Customer* and the services have been completely carried out which are the subject of that *Transaction* or *Debt* or both and no other person has any *Other Interest* in such goods, services, *Transaction* or *Debt*;
    - (ii) the *Debt* is not an *Excluded Debt*;
    - (iii) the *Debt* relates to an established place of business which the *Customer* has in the *UK* or, if We have agreed to buy *Your Export Debts*, in an *Accepted Country*;
    - (iv) You have given Us complete and accurate details of the *Transaction* and the *Debt*;
    - (v) the *Customer* which owes the *Debt* is not *Insolvent*; and
    - (vi) the *Debt* is one to which this *Agreement* applies;
  - (B) You own the *Debt* and can lawfully transfer ownership of it to Us free of any *Other Interest* save Our own interest;

- (C) before this *Agreement* was made *You* told *Us* in *Writing* everything *You* knew or ought to have known might influence *Us* in deciding to enter it (on its terms or at all) or in accepting any person as *Guarantor* and that *You* will tell *Us* at once of anything which might change any such decision;
- (D) all *Accounts Information* and other financial information about *Your* business or that of an *Associate* or *Guarantor* given to *Us* before the *Start Date* or which *You* give to *Us* while this *Agreement* continues are, and will be, accurate and fairly represent the financial position of the person to which they relate;
- (E) if, as *We* may, *We* require *You* to get a credit insurance policy and to assign to *Us* the benefit of such policy:-
  - (i) *You* will sign and deliver to *Us* the documents necessary for such assignment;
  - (ii) the proposal *You* sent to the insurer upon the basis of which the policy was issued was complete and correct in every way;
  - (iii) *You* have disclosed to the insurer all information which *You* know or ought to know might influence the insurer in providing cover under the policy and will continue to do so while this *Agreement* continues;
  - (iv) *You* have fully complied with the policy, there have been no acts or omissions which might invalidate it and *You* will deliver the original policy to *Us* if *We* ask;
  - (v) the policy will cover all *Debts* owned by or held in trust by *You* for *Us* and *You* will promptly make and recover all claims relating to *Debts* which *You* have the right to make under the policy; and
  - (vi) *You* will send *Us* copies of all communications between *You* and the insurer at once after *You* receive or send them;

and while this *Agreement* continues *You* will comply with the above warranties as though repeated on each day, pay all premiums when due, deal with any sums *You* receive under any such policy as a payment under Condition 6.1(j) and tell *Us* at once if the policy becomes void or is cancelled or lapsed.

## 7 RECORDS AND INFORMATION

7.1 *You* will give to *Us*:-

- (A) *Debt Information* at once when *We* ask *You*;
- (B) such financial information about *You* at intervals and for such periods as *We* may ask; and
- (C) *Your Accounts Information* when available but not later than 4 months after (but not including) the last day of each of *Your* accounting periods which end while this *Agreement* continues. *Your Accounts Information* provided under this Condition must be:-
  - (i) (if *You* are a company or LLP which must or does file audited accounts) audited and contain a directors report;
  - (ii) (if *You* are a partnership or a sole trader (or are a company or LLP which need not and does not file audited accounts) certified as true and correct by a firm of chartered or certified accountants.

7.2 *We* may at any time enter any premises *You* use to get, copy, remove or audit (at *Your* cost) any of the information referred to in Condition 7.1 and to inspect goods and *Returned Goods*.

7.3 *We* may disclose to such persons as *We* think appropriate including *Your* financiers, auditors, accountants, *Guarantors*, *Credit Agencies*, insurers and other professional advisers and to any *Bibby Group Company* and its financiers (and they may disclose to *Us*) such information about *You* as *We* or they have. *You* confirm that *You* have given (or, where such persons' identity alters, will at once give) all necessary instructions to allow this. If *We* ask *You* will at once instruct *Your* auditors or accountants at *Your* expense to report to *Us* directly about *Your* financial position.

## 8 OUR CHARGES

8.1 *You* will pay *Us* the charges on the payment dates set out in the *Charging Details* and will indemnify *Us* on demand against:-

- (A) all *Disbursements*; and

- (B) any increase from time to time in the cost to *Us* of the funds *We* obtain to provide *Prepayments* to *You* under this *Agreement* including to the discount or interest rate or other costs, charges, fees and expenses relating to such funds (whether such *Prepayments* are in existence at the time of, or made after, such increase).
- 8.2 *Our Discount* will be calculated on the debit balance on *Your Current Account* at the end of each day and then debited to *Your Client Account*.
- 8.3 We may vary the *Factoring Fees*, the *Minimum Factoring Fees*, the *Annual Review Fee* and the *Non-Recourse Fee* (or any of them) by giving *You* 30 days notice in *Writing* at any time after *We* consider that either of *Our* risk in, or costs of, operating this *Agreement* have altered. If the *Factoring Fees* for a period are less than the *Minimum Factoring Fees* for that period set out in the *Charging Details* (or varied under this Condition) *You* will pay *Us* the shortfall on the payment date for this set out in the *Charging Details*. We may debit *Your Client Account* with the shortfall *We* believe will happen in any later period.
- 8.4 A *Debt* may not be payable in sterling but *We* may be paying the *Price* of it in sterling. If so any *Fee* which is a percentage of the *Notified Value* of the *Debt* will be applied to the *Price* of the *Debt* worked out under Condition 1.3(B).
- 8.5 If (i) this *Agreement* ends earlier than *You* could end it under Condition 10 or (ii) a *Termination Event* happens, then for the period from either such event until the time to which this *Agreement* should continue under Condition 10 *You* will, if *We* ask, pay *Us* (for lost *Factoring Fees*) the greater of:-
- (A) the *Minimum Factoring Fees* *You* would have had to pay (less the *Factoring Fees* already taken by *Us* for that period); and
- (B) the *Factoring Fees* *You* would have had to pay for that period if payable at an amount per *Month* (or part *Month*) equal to (i) if the *Agreement* has continued for at least 6 *Months*, the total *Factoring Fees* charged to *You* in the 6 *Months* immediately before this *Agreement* ended or the *Termination Event* happened divided by 6; or (ii) if this *Agreement* has not continued for at least 6 *Months*, the *Factoring Fees* equal to the total *Factoring Fees* charged to *You* under this *Agreement* divided by the number of full *Months* for which it has continued or did continue.
- 8.6 If *We* agree to alter this *Agreement* or to provide extra services, reports or facilities for which *You* ask *Us* *You* will pay *Us* such fees for this as *We* ask. This includes if *We* make any payment to *You* which is more than or made more quickly than is required under Condition 1.1.
- 8.7 *You* will pay all VAT due on amounts payable by *You* under this *Agreement*. No *Fees* will be refunded.

## 9 ELECTRONIC FACILITY

- 9.1 This Condition 9 applies only if the *Agreement Details* state that *You* want the *Electronic Facility* or *We* and *You* agree in *Writing* that it will apply.
- 9.2 While this *Agreement* continues *We* give *You* a non-exclusive personal licence to use the *Electronic Facility* on *Your* own computer equipment on terms *We* specify from time to time in relation to and while this *Agreement* continues. *We* may alter, suspend or withdraw the *Electronic Facility* without notice or liability.
- 9.3 We may charge *You* for working on or giving *You* new *Electronic Facility* versions/updates because *You* incorrectly use versions/updates.
- 9.4 All *Messages* *You* send must be correct and complete, identify the sender and recipient and have verifiable authenticity. *We* may rely on any *Message* *You* appear to have sent.
- 9.5 *We* and *You* agree to:-
- (A) tell the other at once if it believes there has been defect, fraud or security breach in or resulting from any *Message* or any breaking of Condition 9.5(C) and to co-operate in seeking a remedy as soon as possible;
- (B) use all reasonable endeavours to ensure its computer system is virus free, *Messages* are properly stored and can only be accessed and retrieved by authorised persons and to tell the other at once if it believes that such obligations have been or may be broken;
- (C) not tell anyone how the *Electronic Facility* works (including its security procedures), keep proper security systems for the *Electronic Facility* and accept all *Messages* as genuine and as if signed and physically delivered unless corrupted by a proven technical failure;
- (D) if a *Message* is believed not to be intended for the recipient they will delete it (but not the record of its receipt) and tell the sender (and the other of *You* or *Us*) at once; and

- (E) keep a record of all *Messages* in a form *We* require, hold this unchanged for 12 months after this *Agreement* ends and provide it to the other when asked. *Our* record of *Messages* will be conclusive except for any obvious errors in it.

9.6 You accept that:-

- (A) We can update information on the *Electronic Facility* at any time without liability to *You* and that whatever it shows *We* will only pay *You* as this *Agreement* describes;
- (B) We will not be liable for any delay by *Us* which is caused directly or indirectly by:-
  - (i) any failure or fault of equipment, software, telephone line or other communication system (whether *Ours* or others);
  - (ii) any error or discrepancy in any *Message* *We* receive; or
  - (iii) any unforeseen event including one in Condition 15.2.

9.7 You will indemnify *Us* on demand for all *Disbursements*, lost expected savings and damaged goodwill arising from *You* sending or *Us* receiving a *Message* or *Us* relying on incorrect information in a *Message* or not receiving a *Message* from *You*.

## 10 AGREEMENT PERIOD

10.1 Unless ended by *Us* because a *Termination Event* happens this *Agreement* will continue from (and including) the date it is made for the *Minimum Period* after which *We* or *You* can end it at any time by giving an *End Notice* to the other expiring on the last day of a *Month*.

10.2 If *We* agree in *Writing* that *You* can end this *Agreement* without it continuing as set out in Condition 10.1 *You* will pay *Us* such sum as *We* require in return for this.

## 11 ENDING AGREEMENT

### Termination Events

11.1 We may end this *Agreement* at once by giving *You* notice in *Writing* at any time after:-

- (A) *You* (or any *Associate*) threaten to, or do, break any agreement with *Us* or any *Bibby Group Company*;
- (B) *You* do not *Tell Us* of any *Debts* for 14 consecutive days;
- (C) *You* threaten to, or do, stop carrying on *Your* business or change the *Nature of Your Business*;
- (D) *You* do not pay when due any financial facility or any such facility is declared due before the date for payment stated in it or *You* repay without *Our* consent (by letter) any loan to *You* by an *Associate*;
- (E) the *Insolvency* or threat of *Insolvency*, death or any legal disability of any *Relevant Party* (except a *Customer*) or any *Guarantor* giving notice of termination of a *Guarantee*;
- (F) any change (direct or indirect) in *Your* ownership, *Control*, composition or constitution, directors, partners, members, financial position or operating performance which *We* think materially prejudices *Us*;
- (G) any of *Your* creditors applies for a court order against *Us*;
- (H) any waiver, consent, ranking, release, subordination or priority arrangement *We* obtain from anyone holding any *Other Interest* over *Your* assets ends or it is threatened that it will end;
- (I) *You* or any third party breaks or ends any *Promise*, representation, warranty or undertaking given to *Us* in relation to this *Agreement* or its continuance;
- (J) any of *Your* directors, partners or members is disqualified from being a director; or
- (K) *You*, any of *Your* shareholders, directors, shadow directors, members or partners or any *Guarantor* is charged with an offence involving dishonesty.

## Effect of Termination Event

- 11.2 On or after a *Termination Event* (whether or not *We* end this *Agreement*) and without limiting *Our* other rights *We* can do all or any of the following (with or without giving *You* notice in *Writing*):-
- (A) not make any further payments to *You* and require *You* to pay *Us* at once all amounts *You* owe *Us* (whether or not under this *Agreement*);
  - (B) require *You* to buy back any *Unpaid Debts* for a price equal to the aggregate amount payable by *You* under Condition 11.2(A) (*You* not becoming their owner until *You* have paid such amount to *Us* in cleared funds);
  - (C) increase *Our Discount* by 2% (to cover *Our* increased risk); or
  - (D) reserve for any liabilities *We* think *You* may owe *Us*.
- 11.3 If *You* become *Insolvent* or stop trading and *Our* charges under Condition 8.5 are then less than 10% of the *Notified Value* of all *Debts* then *Unpaid We* may charge *You* the difference as a genuine estimate of *Our* likely loss from extra work in collecting *Debts*.
- 11.4 After receiving an *End Notice* from *You* *We* will have the same rights as those in Condition 11.2(D). If this *Agreement* ends other than due to a *Termination Event* *You* must buy all *Unpaid Debts* then existing for the amount in Condition 11.2(B). This *Agreement* will apply to and *You* will not be the owner of such *Debts* until *We* are paid in cleared funds for them all.
- 11.5 *You* will indemnify *Us* against any claim by a *Customer* to repayment of any sum *We Collect* whether *We* are aware of such claim before or after this *Agreement* ends.
- 11.6 If this *Agreement* or any of the services *We* provide under it ends *Our* or *Your* rights or obligations which then exist (including *Our* right to recover *Our Discount* until *You* have fully carried out all *Your* obligations to *Us*) will not be affected.

## 12 UNLIMITED PARTNERSHIPS AND INDIVIDUALS

### Unlimited Partnership

- 12.1 Where *You* are an unlimited partnership as identified in the *Client Details*:-
- (A) *Your* obligations in this *Agreement* will be joint and several obligations of the partners as well as obligations of the partnership. “*You*” and “*Your*” will be read as referring to each partner and the partnership;
  - (B) *You* confirm that the *Client Details* list all of the partners details as at the *Start Date*. *You* will tell *Us* (by letter) at once of any proposed changes to the partners or partnership name and will make sure that on becoming a partner each new partner signs all documents that *We* require to bind him to this *Agreement*;
  - (C) Until they are satisfied, each partner will be responsible for *Your* liabilities under this *Agreement* (actual, conditional, present, future or otherwise). If *Your* partners change *We* may treat this *Agreement* as continuing as if there were no such change; and
  - (D) *We* may agree anything relating to this *Agreement* with any partner(s) without affecting *Our* rights against the others and treat a notice or demand by *Us* on *You* or on any partner and a notice by *You* to *Us* as given to (and by) each partner.

### Sole Trader

- 12.2 If *You* are a sole trader as identified in the *Client Details* *You* must not enter into a partnership without *Our* prior consent given by letter and *You* must then sign such documents as *We* may require.

### Sole Traders and Unlimited Partnerships

- 12.3 If *You* are a sole trader or an unlimited partnership:-
- (A) *You* will:-
    - (i) indemnify *Us* against any *Disbursements* *We* incur in registering this *Agreement*;
    - (ii) tell *Us* (by letter) at once if *You* move *Your Business Address* or change *Your Trading Style* and then sign such documents as *We* may require;

- (iii) tell Us (by letter) of any business in which You are interested and if We ask ensure that it sells its debts to a Bibby Group Company;
- (B) You confirm that Your Residential Address in the Client Details is correct and that You will tell Us (by letter) at once of any changes (including in any changed address about which You tell Us under this Condition); and
- (C) this Agreement binds Your executors, administrators, personal representatives and other persons acting for You.

## **Data Protection**

12.4 This Condition 12.4 contains an overview of Our Privacy Notice along with brief details of certain privacy rights of individuals in relation to their personal information and how We gather, use and share information about You. In this Condition 12.4 (and in Our Privacy Notice) references to how We gather, use and share information about You includes all information about You (whether or not personal information).

### **Our Role**

We are the data controller in relation to personal information which We collect about You. This means that We are responsible for deciding how We hold and use personal information about You. Personal information, means any information about an individual from which that person can be identified.

### **Type of Information**

The sort of information We will collect about You and how We collect it is set out in Our Privacy Notice. It is important that You read Our Privacy Notice, together with any other privacy notice We may provide on specific occasions when We are collecting or processing personal information about You, so that You are aware of how and why We are using such information.

### **Our Data Protection Officer**

We have a Data Protection Officer who can be contacted by email sent to [DPO.UK@bibbyfinancialservices.com](mailto:DPO.UK@bibbyfinancialservices.com) and by post sent to The Data Protection Officer, c/o Bibby Financial Services Limited, Pembroke House, Banbury Business Park, Aynho Road, Adderbury OX17 3NS.

### **Your Rights**

You have the right to a copy of the personal information which We hold about You (along with other rights including the right to ask Us to update incorrect or incomplete personal information and to erase it and the right to object to (or request that We restrict) the processing of it) – You can contact Our Data Protection Officer in order to enforce any of these rights.

You also have the right to complain to the Information Commissioner's Office if You are not happy about the way Your personal information is used.

### **Our need for Information and how We may use it**

We will use the personal information We obtain about You, whether from You or from other sources, as set out in Our Privacy Notice. This will include to assist with Our administration of this Agreement (including making payments and recovering monies in relation to it) and Our exercise of Our rights under it as well as to carry out activities such as service and product development, training, marketing, credit and financial assessment, market and product analysis, administering insurance claims, audit and preventing fraud and money laundering. In some cases We won't be able to provide products and services to You if We don't have all the information We need.

We will only use Your personal information where We have a lawful basis to do so.

### **Sharing and Transferring Information**

Details of how We may share Your personal information are set out in Our Privacy Notice.

### **How long We keep Your Information**

We'll keep Your information for as long as You have a relationship with Us. After that relationship has ended, We'll continue to keep that information to enable Us to comply with Our legal obligations (such as record keeping for tax purposes) and where We may need it for Our, or someone else's, legitimate interests (including tackling financial crime and if required in relation to active or potential legal proceedings).

## **Privacy Notice**

Our full Privacy Notice contains more details about Our use of Your personal information. A hard copy of Our Privacy Notice has been provided to You. You can view Our up to date full Privacy Notice via the following link [www.bibbyfs.co.uk/PN](http://www.bibbyfs.co.uk/PN) at any time.

## **13 TRANSFERS AND INFORMATION DISCLOSURE**

- 13.1 You cannot transfer, delegate, novate, create any *Other Interest* over or otherwise deal with Your rights or obligations under this *Agreement* unless We consent (by letter).
- 13.2 You consent to Us transferring, delegating, novating, creating any *Other Interest* over or otherwise dealing with Our rights and obligations under this *Agreement*. We may disclose this *Agreement* and any information relating to it to any person with whom We have done or propose doing any thing described in this Condition and any party involved in this. This will include Our financiers and any security trustee, agent or finance arranger involved in any financing which relates to this *Agreement*, Our business or that of any *Bibby Group Company*.

## **14 SERVICE OF NOTICES**

- 14.1 Any notice or demand on You by Us will be validly served if:-
- (A) personally delivered to You or any of Your officers, members or partners and taking effect when delivered;
  - (B) posted or sent by fax or e-mail to Your *Service Address* or such other UK address You tell Us about (by letter) for the purpose of this Condition; taking effect (if posted) no later than 10am on the next *Working Day* after being posted and (if faxed or sent by e-mail) when sent.
- 14.2 Notice by You to Us must be by letter sent to Us by recorded delivery post. It will be effective at the time it is recorded as received by Us at Our registered office.

## **15 MISCELLANEOUS**

- 15.1 We may alter the *Conditions* at any time by making such altered *Conditions* available on Our *Website* or, if We choose, posting a copy of them to You. Such altered *Conditions* will take effect on being made so available or being posted (as appropriate). You are obliged to check our *Website* regularly for any variations to the *Conditions* made available there.
- 15.2 We will not be liable for any loss or damage, including consequential or indirect loss, injury or damage or lost anticipated savings caused for whatever reason or if We do not carry out Our obligations under this *Agreement* due to an unforeseen event. This will include any situation outside Our or a *Customer's* reasonable control and any natural disaster, currency restrictions, exchange control, governmental or other legal or official requirements (including expropriation, confiscation, nationalisation or destruction of the whole or part of Our or a *Customer's* assets), act of God, war, terrorism, revolution, insurrection, rebellion, military or usurped power, strike, industrial action or failure of computer, postal, communications or banking services.
- 15.3 All payments due from You under this *Agreement* will be made when due without deduction, withholding or set off. If any deduction or withholding is required by law, You will increase Your payment to Us so that We receive the full amount due before such deduction or withholding.
- 15.4 Any failure or delay by Us at any time or times to require You to perform any provision of this *Agreement* will not affect Our right to enforce it at a later time.
- 15.5 If You owe Us any amount (whether actually, potentially or conditionally) in a currency other than that of the account to which it is to be debited or accounts held in different currencies are to be combined We may use the middle spot rate of exchange quoted by Our bankers in London at the time of debit or combination.
- 15.6 Only a party to this *Agreement* may enforce it and, to the extent it is governed by English law, the operation of the *Contracts (Rights of Third Parties) Act 1999* is excluded.
- 15.7 You agree that this *Agreement* is reasonable but that if any part is found to be invalid no other part will be affected.
- 15.8 This *Agreement* contains all the terms We have agreed with You to the exclusion of any agreement, representation or statement made by Us before it was made. You agree that You have not relied on any representation, understanding or

agreement (written or oral) not set out in this *Agreement*. Nothing in this *Agreement* excludes liability for fraud. If We have been introduced to You by a third party We have no responsibility for Your dealings with that third party even though We may pay a commission to them.

15.9 This *Agreement* may be signed by You and Us on any number of copies each in identical form but will not take effect until each of You and Us has executed at least one copy. Each copy signed by You or Us will be an original of this *Agreement* but all of the copies together will be deemed to be one Deed.

15.10 This *Agreement*, and any non-contractual obligations arising out of or in connection with it, will be governed and interpreted by Scots Law except as stated to the contrary below. You agree that You will only use the Scots courts for any claims relating to this *Agreement* or any such obligations. We may use the courts of another jurisdiction if We choose. In respect of Debts which are not *Scottish Debts*, Our relationship with You will be governed by and interpreted by English law so far as concerns the following issues:

- (A) anything relating to the acquisition, ownership and disposal of such Debts;
- (B) anything relating to the payment of or entitlement to the proceeds of such Debts;
- (C) Our relationship with Your Debtors;
- (D) any other provision of this *Agreement* which gives rise to any trust or equitable right in relation to such Debt.

## 16 DEFINITIONS

16.1 The words set out below will have the meanings set out after them:-

<b>“Accepted Country”</b>	All countries except any expressly excluded in or pursuant to the <i>Special Conditions</i> ;
<b>“Accounts Information”</b>	Balance sheet and profit and loss account;
<b>“Approval Period”</b>	The period stated in the <i>Agreement Details</i> after which We may require You to make a <i>Repayment</i> ;
<b>“Approved Currency”</b>	All currencies other than sterling specified in or pursuant to the <i>Special Conditions</i> ;
<b>“Approved Debt”</b>	A Debt You Tell Us about which is <i>Unpaid</i> , within the relevant <i>Customer’s Credit Limit</i> and which is not or has not become a <i>Disapproved Debt</i> ;
<b>“Associate”</b>	Your subsidiary or holding companies (as defined in s1159 of the Companies Act 2006 but such that for this purpose a company shall be regarded as a member of another company even if its shares in that other company are registered in the name of (a) its nominee, or (b) another person (or its nominee), by way of, or in connection with the taking of, security); associates (as defined in s184 of the Consumer Credit Act 1974); directors, partners, members, shareholders or employees <b>and</b> any company, LLP, partnership or business in which You or any of the above has a material interest (which, without limitation, includes a company, LLP, partnership or business in which You own, legally or beneficially, 20% or more of the shares or other ownership interests in such company, LLP, partnership or business and any company, LLP, partnership or business in relation to the management of which You have significant control or influence (directly or indirectly));
<b>“Available Funds”</b>	An amount worked out at the relevant time by Us deducting the debit balance on Your <i>Current Account</i> from the sum of Us applying the <i>Prepayment Percentage</i> to the amount achieved by taking the <i>Price</i> We expect to pay for <i>Approved Debts</i> and deducting from this any Debts which exceed the <i>High Involvement</i> ;
<b>“Banking Day”</b>	A day (other than a Saturday or a Sunday) on which banks are open for business in London;
<b>“Bibby Group Company”</b>	Bibby Financial Services Limited (registered number 3530461), any subsidiary company of it and any subsidiary of such subsidiary (subsidiary company being as defined in the definition of “Associate” above);

<b>“Collection”</b>	A payment (in whatever form) received by <i>Us</i> in cleared funds in or towards paying a <i>Debt</i> (including under any credit insurance policy obtained by <i>You</i> pursuant to Condition 6.2(E)); and <b>“Collected”</b> , <b>“Collecting”</b> and <b>“Collect”</b> will be read in light of this;
<b>“Control”</b>	The right to direct how the business of a company, LLP or partnership will be managed;
<b>“Covered Limit”</b>	The amount for which <i>We</i> tell <i>You</i> <i>We</i> are willing to accept the risk of <i>Unpaid Protected Debts</i> not being paid due to a <i>Protected Event</i> happening in relation to a named <i>Customer</i> ;
<b>“Credit Agency”</b>	Credit reference and fraud prevention agencies <i>We</i> use from time to time;
<b>“Credit Note Schedule”</b>	A document in a form <i>We</i> require on which <i>You</i> will Tell <i>Us</i> about credit notes and, where <i>We</i> allow, which may be sent to <i>Us</i> using the <i>Electronic Facility</i> ;
<b>“Credit Limit”</b>	The amount up to which <i>We</i> may regard <i>Debts</i> owing by a particular <i>Customer</i> as <i>Approved Debts</i> ;
<b>“Customer”</b>	Any person who owes a <i>Debt</i> ;
<b>“Data Protection Laws”</b>	Means (i) whilst the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”) is directly applicable in the UK, the GDPR and any national implementing laws in the UK including the Data Protection Act 2018 and (ii) any legislation which succeeds the GDPR or the Data Protection Act 2018;
<b>“Debt”</b>	Any type of debt, payment obligation or monetary claim (actual, conditional, present, future or otherwise and whether or not payment has been earned by performance) owed to <i>You</i> under a <i>Transaction</i> or otherwise together with (if any) VAT and all duties and charges which relate to this and together with the related <i>Linked Rights</i> ; and where the context allows a part of any of them;
<b>“Debt Information”</b>	<i>Your</i> records, in whatever form, evidencing the creation of, and dealings with, a <i>Debt</i> (including providing the goods or services, the contract and other documents relating to it and their performance) and any other documents <i>We</i> require;
<b>“Debt Schedule”</b>	A document in a form <i>We</i> require by which <i>You</i> will specifically assign each <i>Debt</i> to <i>Us</i> and, where <i>We</i> allow, which may be sent to <i>Us</i> using the <i>Electronic Facility</i> ;
<b>“Disapproved Debt”</b>	A <i>Debt</i> which is either not an <i>Approved Debt</i> or which is an <i>Excluded Debt</i> ;
<b>“Disbursements”</b>	<p>Losses, costs, claims, charges, stamp and other duties and expenses (including, on a full indemnity basis, bank charges, legal and professional and debt collection fees and in getting evidence and witness attendance at any proceedings, use of <i>Credit Agencies</i>, disbursements, third party costs and <i>Our</i> own administrative expenses and charges as contained in <i>Our</i> scale of charges (if any) published by <i>Us</i> from time to time on <i>Our Website</i> or which is available to <i>You</i> if <i>You</i> ask <i>Us</i> at any time) and any VAT or similar tax thereon <i>We</i> incur directly or indirectly:-</p> <ul style="list-style-type: none"> <li>(A) from resolving any dispute relating to a <i>Debt</i> or with a <i>Customer</i> or <i>Collecting</i> or trying to <i>Collect</i> any <i>Debt</i> and any <i>Customer</i> failing to pay a <i>Debt</i> at its full <i>Notified Value</i>;</li> <li>(B) in enforcing or trying to enforce or operating any term of this <i>Agreement</i>, any <i>Guarantee</i> or any <i>Other Interest</i> given to <i>Us</i> relating to this <i>Agreement</i> or protecting <i>Our</i> rights under or resulting from any breaking of any of them;</li> <li>(C) in getting any <i>Guarantee</i> or any <i>Other Interest</i> given to <i>Us</i> relating to this <i>Agreement</i>;</li> <li>(D) any charges for currency conversion or dishonoured payments <i>We</i> incur relating to this <i>Agreement</i>;</li> <li>(E) getting or enforcing (or trying to get or enforce), any waiver, consent, ranking, release, subordination or priority for this <i>Agreement</i> or any <i>Debts</i> from any <i>Other Interest</i> or loan or relating to any <i>Other Interest</i> given to <i>Us</i> by <i>You</i> or any <i>Guarantor</i>;</li> <li>(F) as a result of any transfer or alleged transfer to <i>Us</i> of employees or other personnel under the Transfer of Undertakings (Protection of Employment) Regulations 2006 which is caused directly or indirectly because of <i>Us</i> entering into this <i>Agreement</i> (and which shall include</li> </ul>

	<p>any liability for remuneration and benefits including all wages, bonuses, holiday pay, commissions, pension contributions, PAYE and national insurance contributions); and</p> <p>(G) such other charges as We tell You verbally or in <i>Writing</i> from time to time;</p>
<b>“Electronic Facility”</b>	The information link between <i>You</i> and <i>Us</i> available through <i>Our</i> computer system;
<b>“End Notice”</b>	A notice (of not less than the <i>End Notice Period</i> contained in the <i>Agreement Details</i> ) given by letter by <i>You</i> or <i>Us</i> to end this <i>Agreement</i> ;
<b>“Excluded Debts”</b>	<p><i>Debts You</i> need not <i>Tell Us</i> about until <i>We</i> require it and which at first will include all <i>Debts</i> not due under a <i>Transaction</i>, <i>Debts</i> due under a <i>Transaction</i> creating a <i>Debt</i> of a type stated as being an Excluded Debt in the <i>Special Conditions</i> and, unless <i>We</i> tell <i>You</i> otherwise, the following <i>Debts</i>:-</p> <p>(A) <i>Debts</i> owed by an <i>Associate</i>;</p> <p>(B) <i>Debts</i> in the hands of any third party, including a solicitor or debt collector, for collection;</p> <p>(C) <i>Debts</i> for stage or progress payments;</p> <p>(D) <i>Debts</i> arising under a <i>Transaction</i> under which goods are provided on approval, trial, consignment or sale or return or which contains terms entitling the <i>Customer</i> to return the goods;</p> <p>(E) <i>Debts</i> owed by a <i>Customer</i> which has not incurred the <i>Debt</i> for the purposes of its business;</p> <p>(F) <i>Debts</i> regulated by the Consumer Credit Act 1974;</p> <p>(G) <i>Debts</i> payable on a pro forma basis or by cash on delivery;</p> <p>(H) <i>Debts</i> arising from the sale of capital assets;</p> <p>(I) <i>Debts</i> arising from rental or leasing agreements;</p> <p>(J) <i>Debts</i> owed by a <i>Customer</i> who also supplies goods or services to <i>You</i>;</p> <p>(K) <i>Debts</i> so far as they comprise interest (whether owing under statute or otherwise);</p>
<b>“Export Debt”</b>	A <i>Debt</i> the invoice for which is addressed to a place outside Great Britain and Northern Ireland;
<b>“Fees”</b>	The charges for <i>Our</i> services under this <i>Agreement</i> ;
<b>“Guarantor”</b>	A person who at any time gives a guarantee or indemnity of any obligations <i>You</i> owe to <i>Us</i> or to any <i>Bibby Group Company</i> ; and <b>“Guarantee”</b> will be read in line with this;
<b>“High Involvement”</b>	The maximum percentage or amount of all <i>Unpaid Approved Debts</i> due from the same <i>Customer</i> against which <i>We</i> may make <i>Prepayments</i> and as stated in the <i>Agreement Details</i> (or which <i>We</i> tell <i>You</i> in <i>Writing</i> from time to time);
<b>“Insolvent”</b>	<p><b>In relation to a company, LLP or unlimited partnership:-</b></p> <p>(A) being deemed unable to pay its debts in accordance with section 123 of the Insolvency Act 1986;</p> <p>(B) being the subject of or passing or taking steps to pass a resolution, determination or petition to wind it up or being the subject of the presentation of a petition for its winding up by the court;</p> <p>(C) an incumbrancer taking possession or having a receiver, manager or administrative receiver, liquidator, provisional liquidator or any similar official or judicial factor appointed of all or any part of its undertaking, property, rights or revenues or it being dissolved (other than pursuant to a consolidation, amalgamation or merger with <i>Our</i> prior written consent);</p>

- (D) anyone taking steps to obtain a moratorium or making proposals for a voluntary arrangement with its creditors and/or the appointment of a nominee to act in relation to a proposed voluntary arrangement with its creditors;
- (E) proposing a compromise, arrangement or composition or making a general assignment with or for the benefit of its creditors or convening a meeting of creditors; or commencing negotiations with one or more of its creditors with a view to the general readjustment or rescheduling of all or part of its debts;
- (F) anyone taking any step towards the appointment of an administrator including issuing a notice of intention to appoint or notice of appointment of an administrator or an application for administration; or a moratorium under the Insolvency Act 2000 commencing;

**In relation to an individual, unlimited partnership or partner in any unlimited partnership:-**

- (A) being deemed unable to pay their debts in accordance with section 268 of the Insolvency Act 1986 or their apparent insolvency;
- (B) steps being taken to obtain an interim order or making proposals to their creditors for a voluntary arrangement, making an application to court for an interim order or the appointment of a person to act as nominee in relation to a proposal to their creditors for a voluntary arrangement under the Insolvency Act 1986;
- (C) making a general assignment, arrangement or composition with or for the benefit of their creditors or convening a meeting of creditors or commencing negotiations with one or more of their creditors with a view to the general readjustment or rescheduling of all or part of their debts;
- (D) anyone issuing a petition for a bankruptcy or sequestration order to be made against them which is not withdrawn or dismissed within 5 *Working Days* or a bankruptcy or sequestration order being made against them; or them giving a trust deed for their creditors;
- (E) having any receiver or receiver and manager appointed of all or any part of their property;

**In relation to any person:-**

service of a statutory demand; seizure, possession, attachment, distraint, execution, sequestration, diligence (whether in execution or on the dependance of any action), interdict, levying, exercising rights of lien or enforcing security rights against or getting an order restraining the disposal of all or any part of the person's income or assets or other legal process levied, enforced or sued on or against any of their assets which is not paid off, withdrawn or discharged within 5 *Working Days*; the entry or making of any judgment, decree, order or award for the payment of money to another party which remains unsatisfied for 5 *Working Days* after being entered or made; entering into a voluntary arrangement or appointing any nominee or supervisor under the Insolvency Acts 1986 or 2000 or any informal arrangement or composition in satisfaction of debts generally for the benefit of creditors; or their apparent insolvency or being deemed insolvent under the Insolvency Act 1986;

**and**

the taking of any steps for the commencement of any proceedings or actions in respect of any of the above matters;

**and**

any analogous procedure or step being taken in any jurisdiction;

**and**

**"Insolvency"** will be read in line with this;

**"LIBOR"**

On or after 11.00am on the first *Banking Day* of each *Month*:-

	<p>(A) the three month <i>Screen Rate</i>; or</p> <p>(B) (if no <i>Screen Rate</i> is available for the relevant currency on the first <i>Banking Day</i> of any <i>Month</i>) the arithmetic mean of the three month rates (rounded upwards to four decimal places) quoted by the <i>Reference Banks</i> to leading banks in the London interbank market;</p>
<b>“Linked Rights”</b>	<p>In relation to each <i>Debt</i> and all <i>Returned Goods</i> the benefit of:-</p> <p>(A) all <i>Your</i> rights (but not obligations) as an unpaid seller/creditor and under the relevant <i>Transaction</i> (if any), save <i>Your</i> ownership of the relevant goods;</p> <p>(B) all bonds, insurances, securities, guarantees and indemnities and any documents of title to the relevant goods, shipping documents, customs forms, airway bills or similar;</p> <p>(C) all <i>Debt Information</i> and the ownership of and all the rights to all <i>Returned Goods</i>;</p> <p>(D) interest and all cash, cheques, bills of exchange, instruments (negotiable or not) and other forms of payment;</p>
<b>“Message”</b>	Any data sent using the <i>Electronic Facility</i> ;
<b>“Month”</b>	A calendar month;
<b>“Notifiable Serious Event”</b>	<p>The <i>Customer</i> has:-</p> <ul style="list-style-type: none"> <li>• issued a financial instrument or payment instruction (including cheques, bills of exchange and direct debits) which has subsequently been dishonoured, not paid or returned;</li> <li>• asked to extend or reschedule the payment date of any <i>Debt</i> beyond the <i>On Stop Date</i>;</li> <li>• failed to accept and return a bill of exchange within (i) 25 days of the date of the relevant invoice, or (ii) where the relevant goods are to be despatched to a <i>Customer</i> or buyer who is outside of the <i>UK</i>, 50 days of the date of the relevant bill of lading;</li> <li>• had public notices issued in relation to its <i>Insolvency</i>;</li> <li>• failed to pay <i>Debts</i> which exceed 10% of a <i>Covered Limit</i> within 30 days of the <i>On Stop Date</i>;</li> </ul>
<b>“Notified Value”</b>	The amount of a <i>Debt</i> or credit note <i>You Tell Us</i> (before taking away any <i>Reductions</i> );
<b>“On Stop Date”</b>	The date upon which <i>You</i> would normally stop delivering goods or supplying services due to non-payment by a <i>Customer</i> (such date being as stated in the <i>Agreement Details</i> );
<b>“Other Interest”</b>	Any present or future mortgage, security, charge, assignment by way of security, pledge, lien, hypothecation, option, right of set-off, preferential interest, trust, title retention, tracing right or other security interest or similar arrangement of any type or any agreement, conditional or otherwise, to create or give any of the same;
<b>“Prepayment”</b>	Any amount <i>We</i> pay <i>You</i> on account of the <i>Price</i> of a <i>Debt</i> before <i>We Collect</i> it in full;
<b>“Price”</b>	<p>The <i>Collection We</i> receive in relation to a <i>Debt</i> less (in relation to such <i>Debt</i>):-</p> <p>(A) <i>Our Discount</i> and <i>Fees</i> and any <i>Reduction</i> due to or taken by the <i>Customer</i> after such receipt; and</p> <p>(B) all other amounts due to <i>Us</i> by <i>You</i>;</p> <p>save that the <i>Price</i> of a <i>Protected Debt</i> will be worked out and paid as described in Condition 3;</p>
<b>“Promises”</b>	The warranties and undertakings <i>You</i> give to <i>Us</i> and set out in Condition 6;
<b>“Protected Debt”</b>	An <i>Unpaid Debt</i> about which <i>You</i> have <i>Told Us</i> owing by a <i>Customer</i> to which <i>We</i> have given a <i>Covered Limit</i> and which <i>Debt</i> falls within such <i>Covered Limit</i> on the basis set out in Condition 3 and in relation to which:-

- (A) none of *Your Promises to Us* has been broken;
- (B) the period for payment is not greater than the *Maximum Payment Period*;
- (C) when *You Tell Us* about the *Debt* the *Customer* is not *Insolvent* and nor has any event occurred which is described in Condition 6.1(E)(x), Condition 6.1(E)(xiii) or in the second sentence of Condition 15.2;
- (D) the *Debt* is not to be paid under an irrevocable or confirmed letter of credit;
- (E) the supply or hire of goods or supply of services to the *Customer* can all be ended by *You* by giving less than 3 months notice;
- (F) the *Debt* is not due from any Government Department, Local Authority or statutory body or agency or any organisation controlled (directly or indirectly) by any such entity;
- (G) at the time the relevant *Protected Event* occurs the *Debt* is more than the *Minimum Protection Limit*;
- (H) there has been no material change in the information which *You* gave to *Us* at the time of *You* asking *Us* to set or alter the *Covered Limit* and *You* have not knowingly hidden any material fact which would have influenced *Our* decision to set or alter the *Covered Limit* for the *Customer*;
- (I) *You* have not asked *Us* not to claim payment of any *Debt* from the *Customer*;
- (J) *You* have not failed to comply with any condition *We* impose when setting the *Covered Limit*;
- (K) an invoice is raised and delivered by *You* to the *Customer* (or, where self-billing by the *Customer* has been permitted by *Us*, by the *Customer* to *You*) within 10 *Working Days* from the date on which the relevant goods are delivered to the *Customer* or the relevant services are completed;
- (L) the *Debt* is not payable before the delivery or hiring of the goods or provision of the services to which it relates have been completed;
- (M) *You* have not *Told Us* about such *Debt* separately pursuant to Condition 2.2;
- (N) non-payment is not caused by:-
  - (i) the effects of radiation, explosion or other hazard/contamination arising from nuclear sources (or other toxic, explosive or other hazardous properties from nuclear sources) or reaction or radioactive contamination or the use, handling or transportation of radioactive materials;
  - (ii) war, invasion, act of a foreign enemy or civil war;
  - (iii) any law which prohibits or prevents the carrying out of the *Transaction* (if any) or obligation under which the *Debt* arises or payment of the *Debt*; or
  - (iv) strikes, riots, social or political disorder, terrorism or political risks;
- (O) the *Customer* does not owe any *Debt* which is *Unpaid* more than 60 days after it should have been paid (or such other time period as *We* tell *You* verbally or in *Writing* before or within 5 *Working Days* of *You Telling Us* about such *Debt*);
- (P) the *Debt* does not arise under a *Transaction* where, except for legal reasons, by operation of the contract conditions or commercial practice, *You* cannot for a period of 3 *Months* or more end carrying out work or delivering goods for *Your Customer* or end the *Transaction*; and
- (Q) the *Debt* was not created after a *Notifiable Serious Event*;

	save that, unless expressly agreed by <i>Us</i> with <i>You</i> by letter, an <i>Excluded Debt</i> , an <i>Unpaid Debt</i> which exists on the <i>Start Date</i> and <i>Debts We</i> tell <i>You</i> verbally or in <i>Writing</i> from time to time will not fall within this definition cannot be <i>Protected Debts</i> ;
<b>“Protected Event”</b>	<p>Any event set out below, being:-</p> <p><b>A Non-Payment Protected Event</b> (in this Agreement a <b>“Non-Payment Protected Event”</b>)</p> <p>A <i>Customer</i> not paying a <i>Protected Debt</i> in full within the <i>Customer Protection Period</i> or such other period as <i>We</i> tell <i>You</i> in <i>Writing</i> or a <i>Customer’s</i> members pass a resolution to wind up the <i>Customer</i> not later than <b>9 Months</b> from the <i>On Stop Date</i>;</p> <p><b>B Insolvency Protected Event</b> (in this Agreement an <b>“Insolvency Protected Event”</b>)</p> <p>Any of the following events occurs not later than <b>9 Months</b> from the <i>On Stop Date</i>:-</p> <p>(i) in relation to a <i>Customer</i> which is a company, LLP or unlimited partnership, the <i>Customer</i>:-</p> <ul style="list-style-type: none"> <li>• has a winding up order made against it;</li> <li>• has an administrator appointed by the court, itself, its directors or by the holder of a qualifying floating charge (within the meaning of Paragraph 14 of Schedule B1 to the Insolvency Act 1986);</li> <li>• has a resolution passed by its members to wind it up;</li> <li>• has a receiver or an administrative receiver appointed over its property or a judicial factor appointed to it;</li> <li>• has a liquidator appointed under a creditors voluntary liquidation;</li> </ul> <p>(ii) in relation to a <i>Customer</i> which is a partnership, orders for the bankruptcy or sequestration of the <i>Customer</i> or of all partners of the <i>Customer</i> being made;</p> <p>(iii) in relation to a <i>Customer</i> who is an individual, the <i>Customer</i> has a bankruptcy or sequestration order made against them;</p> <p>(iv) in relation to any <i>Customer</i>, the <i>Customer</i> being unable to pay the <i>Customer’s</i> debts as they fall due and has made a binding arrangement with the <i>Customer’s</i> creditors; or</p> <p>the equivalent event or procedure to those set out in (i) to (iv) above relating to <i>Customers</i> which are companies, LLPs, partnerships or individuals or any other event which is referred to in this definition in any jurisdiction outside the <i>UK</i> or, where such word or expression has no counterpart in that jurisdiction, the meaning of its closest equivalent in that place;</p>
<b>“Protected Part”</b>	<p>The <i>Protected Percentage</i> of the sum of the amount of the <i>Protected Debt</i> <b>LESS</b>:-</p> <p>(A) its VAT element;</p> <p>(B) any <i>Reductions</i> which the <i>Customer</i> has taken or is owed in relation to it (net of any VAT included in such <i>Reductions</i>); and</p> <p>(C) any <i>Collection</i> relating to it and any amount <i>You</i> hold (or should be holding) relating to it under Condition 6.1(j) which <i>You</i> have not delivered to <i>Us</i> (net of any VAT included in such <i>Collection</i>);</p>
<b>“Records”</b>	The accounts maintained by <i>Us</i> to record the purchase of <i>Debts</i> , payment and receipt of monies, <i>Fees</i> payable by <i>You</i> and <i>Your</i> liability under and the operation of this Agreement which will include a <i>Sales Ledger Control Account</i> , <i>Current Account</i> and <i>Client Account</i> ;
<b>“Reduction”</b>	Any deduction, discount or set off claimed by a <i>Customer</i> or other alteration which reduces the <i>Notified Value</i> of a <i>Debt</i> ;
<b>“Reference Banks”</b>	Means, in relation to <i>LIBOR</i> the principal London offices of Barclays Bank plc, Lloyds TSB Bank plc and Royal Bank of Scotland plc or such other banks as <i>We</i> may tell <i>You</i> ;

<b>“Relevant Party”</b>	<i>You</i> , any of <i>Your</i> directors, shareholders, members or partners and any <i>Customer</i> , <i>Associate</i> or <i>Guarantor</i> ;
<b>“Repayment”</b>	Repayment of any <i>Prepayment</i> ; and <b>“Repay”</b> will be read in light of this;
<b>“Returned Goods”</b>	Any goods relating to a <i>Transaction</i> or <i>Debt</i> and which a <i>Customer</i> rejects or returns or indicates a wish to do so or which <i>You</i> or <i>We</i> recover from a <i>Customer</i> ;
<b>“Scheme”</b>	The HM Revenue & Customs scheme enabling reclaim of the VAT element of debts which become doubtful;
<b>“Scottish Debt”</b>	A <i>Debt</i> which is governed by Scots Law or where the invoice for the <i>Debt</i> is addressed to a <i>Debtor</i> whose address is in Scotland;
<b>“Screen Rate”</b>	Means in relation to <i>LIBOR</i> , the British Bankers' Association Interest Settlement Rate for the relevant currency and period displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, <i>We</i> may specify another page or service displaying the appropriate rate;
<b>“Special Conditions”</b>	The conditions contained in the section of this <i>Agreement</i> headed “Special Conditions”;
<b>“Tell”</b>	<i>You</i> telling <i>Us</i> in such form as <i>We</i> require, including within a <i>Message</i> or in a <i>Debt Schedule</i> (or both), that a <i>Debt</i> exists or in a <i>Credit Note Schedule</i> that a credit note has been issued; and <b>“Telling”</b> and <b>“Told”</b> will be read in light of this;
<b>“Termination Event”</b>	An event described in Condition 11.1;
<b>“Transaction”</b>	An agreement entered into by (or the benefit of which has been transferred to) <i>You</i> under which it is agreed to hire or sell goods or supply services to another person;
<b>“UK”</b>	Great Britain and Northern Ireland, the Channel Islands and the Isle of Man;
<b>“Unpaid”</b>	A <i>Debt</i> which has not been fully paid;
<b>“Unprotected Part”</b>	The <i>Notified Value</i> of a <i>Protected Debt</i> less its <i>Protected Part</i> ;
<b>“Website”</b>	<i>Our</i> website detailed in the Introduction to this <i>Agreement</i> on which the <i>Conditions</i> can be found and in which <i>Our</i> scale of charges can be found at <a href="http://www.bibbyfinancialservices.com/client-area/disbursement_tariff001.aspx">www.bibbyfinancialservices.com/client-area/disbursement_tariff001.aspx</a> (or such other website as <i>We</i> notify <i>You</i> of from time to time);
<b>“Working Day”</b>	Every day except Saturday, Sunday and other days on which <i>We</i> are not open for business;
<b>“Writing”</b>	Letter, fax, e-mail and (where such facility allows) by using the <i>Electronic Facility</i> .

16.2 Any reference in this *Agreement* to:-

- (A) a statutory provision includes any amendment, replacement or re-enactment, consolidation or extension of it;
- (B) a person includes an individual, company, LLP, unlimited partnership, organisation or trust (whether or not with a separate legal personality) and any other legal person;
- (C) the singular includes the plural and vice versa and any reference to any gender includes any other gender;
- (D) the transfer, assignment or reassignment of a *Debt* will be deemed to refer (as appropriate) to an assignment or reassignment where that *Debt* is a *Scottish Debt*
- (E) a *Debt* being created is to the date on which that *Debt* comes into existence or, if later, immediately after ownership of such *Debt* is transferred to *You* by a third party;
- (F) a “month” is to a period of time beginning at midnight on one day in a *Month* and ending at midnight on the day before the numerically corresponding day in the next *Month*. If the day on which the period would end is not a

*Working Day* it will end at midnight on the preceding *Working Day*. If the period starts on the last *Working Day* in a *Month* or there is no numerically corresponding date in the *Month* in which it ends that period will end at midnight on the last *Working Day* in that later *Month*;

(G) to an “anniversary”, where in a subsequent year there is no numerically corresponding date to the *Start Date*, is to the latest *Working Day* in the subsequent year which precedes the date on which the anniversary would otherwise occur; and

(H) *We, Us* and *Our* includes *Our* successors and assignees.

16.3 Terms in italics used in the Columns headed “**TERM**” in the *Client Details* and *Agreement Details* and in the Column headed “**CHARGE**” in the *Charging Details* will have the same meaning in this *Agreement* (save where defined elsewhere in it).

16.4 The meaning of general words introduced by the word “other” are not limited by any word before it or which indicates a particular class of acts, matters or things. The expression “including” means “including without limitation”.

16.5 Any right or choice *We* have in this *Agreement* may be exercised as *We* choose in *Our* absolute discretion.

16.6 *We* may do anything *You* should do under this *Agreement* instead of *You* and any monies *We* incur in doing so will be recoverable by *Us* from *You* under this *Agreement*.

16.7 Where in any place outside Scotland the meaning of a word or expression used in this *Agreement* is to be decided and such word or expression has no counterpart in that place, it will, unless the context otherwise requires, have the meaning of its closest equivalent in that place.