

## **FLEXIDRAFT GENERAL CONDITIONS**

### **1 PAYMENTS TO YOU**

- 1.1 We will pay You the *Price* of each *Debt* by making payments accessible in *Your Available Funds* provided *Your Available Funds*, *Funding Limit* and any *High Involvement* are not exceeded and that making such payments accessible will not cause the debit balance on *Your Current Account* to exceed the *Notified Value* of *Debts* about which You have *Told Us* which are *Unpaid* at the relevant time. If any of those limits are broken You will pay the excess to Us when We demand it. Subject to the other terms of this *Agreement* We will pay You as follows:-
- (A) a *Prepayment* on the *Working Day* after You *Tell Us* about a *Debt*;
  - (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 Unless We agree otherwise in *Writing* We will only pay the *Price* for each *Debt* in sterling.

### **2 TRANSFER OF DEBTS**

- 2.1 On the date of this *Agreement* You assign to Us with full title guarantee ownership of all *Debts*. *Debts* will transfer on the *Start Date* unless not then existing in which case they will transfer automatically when created without any further act on the part of either You or Us.
- 2.2 When We become the owner of a *Debt* its *Linked Rights* will also transfer to Us. If for any reason We do not become the owner of a *Debt* You will hold it on trust for Us and keep it apart from any other property.
- 2.3 You will sign all further documentation We ask to transfer ownership of any *Debt* to Us and will pay all duties and *Disbursements* relating to this. This *Agreement* applies to all types of *Debts* unless We agree otherwise in *Writing*.

### **3 TELLING US ABOUT DEBTS AND CREDIT NOTES**

- 3.1 Unless We require otherwise:-
- (A) You must *Tell Us* about *Debts*:-
    - (i) on the *Start Date*, for *Debts* then existing;
    - (ii) within 1 week of invoicing the *Debt* (or, if later, immediately after You become its owner), for *Debts* not existing on the *Start Date*; and
  - (B) at least once during each week whilst this *Agreement* continues You will *Tell Us* of all *Debts* which are then *Unpaid* (whether or not You have previously *Told Us* about such *Debts*).
- 3.2 *Telling Us* about a *Debt* creates a specific assignment of it to Us which enables Us, 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 Condition 2.1.
- 3.3 Whenever You send Us a *Sales Ledger Upload* (using whatever method), You will be treated as giving the following notice to Us:-

*"Pursuant to the terms of the 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 Sales Ledger Upload and confirm that We have complied with all Our Promises in the 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."*

- 3.4 In relation to each *Sales Ledger Upload* You will hold to Our order 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 or We tell You in *Writing* that it does not apply.
- 3.5 You must issue all credit notes as soon as the relevant credit is due, *Tell Us* about them in a *Sales Ledger Upload* within 1 week of this and hold a copy of each credit note to Our order.

#### 4 REPAYMENT

- 4.1 We may at any time require You to *Repay* all or any part of a *Prepayment*. If We do 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.
- 4.2 Where Condition 4.1 applies We may reassign the relevant *Debt* to You. This will be begun by Us making the appropriate entries in the *Records* for its *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. We need not try to recover from the *Customer* or anyone else before using Our rights under this Condition 4.2.

#### 5 ACCOUNTING AND PAYMENTS TO YOU

##### General

- 5.1 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 *Usage Charge* 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;
  - (C) **A Sales Ledger Control Account:** showing when We receive *Collections* (but when calculating Our *Usage Charge* 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.
- 5.2 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.
- 5.3 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.

## 6 NOTICE TO CUSTOMERS AND COLLECTION OF DEBTS

6.1 We appoint you as *Our* Collection Agent for procuring collection and enforcing payment of *Debts* on the following terms:-

- (A) this will be a personal appointment for that purpose only;
- (B) *You* will at *Your* expense carry out *Your* duties promptly and efficiently;
- (C) *You* will keep for *Us* such records of the *Debts* and give such information to *Customers* and to *Us* as *We* require; and
- (D) *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 7.1 (I).

Notwithstanding *Your* appointment as *Our* Collection Agent on the terms set out above *We* retain the right to make decisions about collecting and enforcing payment of *Debts*. *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 *Value*.

6.2 *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. *We* may tell *Customers* that *We* own the *Debts* when and using such method as *We* choose.

6.3 *We* may (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.

## 7 YOUR PROMISES

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

- (A) each *Transaction* (if any) creating a *Debt* and the *Debt* itself will be genuine, lawful, valid and binding and governed by English law;
- (B) *You* own each *Debt* and each *Debt* will be lawfully 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 or will have any *Other Interest* in it;
- (C) the payment terms agreed with any *Customer* will not be better than those described in *Your Payment Terms* and the *Value* of each *Debt* will be fully paid when due and without retention, dispute, set-off, deduction or counterclaim;
- (D) *You* will tell *Us* at once of any information *We* ask in relation to a *Customer*, *Debt* or a *Transaction*;
- (E) *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);
- (F) *You* have and will comply with all terms of this *Agreement* and with all procedures *We* specify relating to its operation;

- (G) 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*);
- (H) You will be properly registered under the *DPA* and will ensure that all information relating to this *Agreement* or a *Debt* is processed by You as required by the *DPA* and get all relevant consents for Us to receive and process information for the purposes set out in Condition 14.6;
- (I) You will hold any payment You receive in any way relating to a *Debt* in trust for Us and:-
  - (i) deliver to Us at once 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;
- (J) 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);
- (K) 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
- (L) 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.

## 8 RECORDS AND INFORMATION

- 8.1 You will give to Us *Debt Information* at once when We ask You. We may at any time enter any premises You use to get, copy, remove or audit (at Your cost) any *Debt Information* and to inspect goods and *Returned Goods*.
- 8.2 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.

## 9 OUR CHARGES

- 9.1 You will pay Us the charges on the payment dates set out in the *Charging Details* and will indemnify Us on demand against all *Disbursements*.
- 9.2 Our *Usage Charge* will be calculated on the debit balance on Your *Current Account* at the end of each day, will accrue on a daily basis and be debited to Your *Client Account* as specified in the *Charging Details*.
- 9.3 We may vary the *Usage Charge* and the *Annual Review Fee* (or either 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.
- 9.4 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 *Value* of the *Debt* will be applied to the *Price* of the *Debt*.

- 9.5 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.
- 9.6 You will pay all VAT due on amounts payable by You under this *Agreement*. No Fees will be refunded.

## 10 ELECTRONIC FACILITY

- 10.1 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.
- 10.2 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.
- 10.3 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 10.3(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.
- 10.4 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 17.2.
- 10.5 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.

## 11 AGREEMENT PERIOD

- 11.1 Unless ended by *Us* because a *Termination Event* happens this *Agreement* will continue from (and including) the date it is made until the expiry of an *End Notice* which *We* or *You* can give at any time to the other expiring on the last day of a *Month*.
- 11.2 If *We* agree in *Writing* that *You* can end this *Agreement* without it continuing as set out in Condition 11.1 *You* will pay *Us* £500. Such charge will not apply if *You* are offered and take up any alternative finance facilities with any *Bibby Group Company*.

## 12 ENDING AGREEMENT

### Termination Events

- 12.1 *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 1 week;
  - (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

- 12.2 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 12.2(A) (*You* not becoming their owner until *You* have paid such amount to *Us* in cleared funds).

- 12.3 If this *Agreement* ends other than due to a *Termination Event* You must buy all *Unpaid Debts* then existing for the amount in Condition 12.2(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.
- 12.4 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.
- 12.5 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 *Usage Charge* until You have fully carried out all Your obligations to Us) will not be affected.

### 13 AUTHORITY FOR US TO ACT FOR YOU

- 13.1 You irrevocably appoint Us and anyone to whom We transfer or novate this *Agreement* or any *Debt* Your attorneys as security for the carrying out of Your duties under this *Agreement*. This will cover completing, endorsing or negotiating any cheques and other instruments, instituting or defending proceedings and performing such other acts as may be felt necessary or beneficial to perfect title to or recover any *Debt*, *Linked Rights* or *Returned Goods* or securing performance of any of Your obligations under this *Agreement*, any *Transaction* or under any policy of credit insurance in which We have an interest. Such attorneys, both together and individually, may carry out acts in Your name and as Your act and deed.
- 13.2 We may appoint and remove a substitute attorney for any matter described in Condition 13.1. You will ratify any act carried out under this Condition 13.

### 14 UNLIMITED PARTNERSHIPS AND INDIVIDUALS

#### Unlimited Partnership

- 14.1 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

- 14.2 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.

#### Sole Traders and Unlimited Partnerships

- 14.3 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**

- 14.4 You agree to Us and any Bibby Group Company storing and processing in any way information about You to carry out certain activities. Such activities are administration, service and product development, training, marketing, credit and financial assessment, market and product analysis, preparing statistics, protecting interests, insurance claims, audit, preventing fraud and money laundering and operating this Agreement including making payments and recovering monies in relation to it. You accept that information may be passed by Us and any Bibby Group Company to persons based outside the European Economic Area where data protection laws may be less demanding than those in the UK.
- 14.5 We may search Your record kept by a Credit Agency including to check any application by You to Us. Others making searches will see details of Our searches and We and others may use searches to prevent fraud or money laundering or make credit decisions about You. If You give or are involved in Us being given inaccurate information and We suspect fraud, We may record this with a Credit Agency. Such information, and information referred to in Condition 14.6(A) below, may be shared with other organisations.
- 14.6 We may give information about You, this Agreement and any Debts and Customers to:-
- (A) a Credit Agency, for it and others searching its records to use to help make decisions about You, Your associated businesses or household's members;
  - (B) services providers (including Our or Your insurers for underwriting or claims purposes (who may pass it to persons they deal with and to users of their services and give Us information and personal data from their own sources)), to help them carry out their services;
  - (C) legal and tax advisers and persons in relation to any Small Firms Loan Guarantee Scheme application relating to You, to help provide their services;
  - (D) any actual or potential Guarantor, to assess their obligations to Us or so that We can enforce such obligations against them;
  - (E) bankers, financiers or other advisers acting for Us or You, so that they can carry out their services to Us or You;
  - (F) any person to whom We may wish to transfer the Debts or Our rights and obligations (or either) under this Agreement, or from who You may wish to obtain a facility, to make such transfer or facility possible;
  - (G) any Bibby Group Company, to assess Your financial position or consider offering other facilities to You; and



(H) any person We are allowed or required to do so by law.

14.7 If You do not wish Us or other Bibby Group Companies to contact You about services for market research or of possible interest to You please tell Our Data Protection Compliance Officer (details in Condition 14.9). We will not pass information about You to others for direct marketing.

14.8 We may monitor and/or record Your phone calls to Us for training or security purposes. Such recordings belong to Us.

14.9 If You want details of the Credit Agencies and other persons described in this Condition 14, please contact the Data Protection Compliance Officer, Bibby Group of Factors, Packington House, 3-4 Horse Fair, Banbury, Oxfordshire OX16 0AA, telephone 0800 919592 or such other address or telephone number as We tell You. You have a right to a copy of the information We hold about You if You write to such Officer. A fee will be payable.

## 15 TRANSFERS AND INFORMATION DISCLOSURE

15.1 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).

15.2 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.

## 16 SERVICE OF NOTICES

16.1 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.

16.2 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.

## 17 MISCELLANEOUS

17.1 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.

17.2 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, act of God, war, terrorism, revolution, strike, industrial action or failure of computer, postal, communications or banking services.

17.3 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.

- 17.4 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.
- 17.5 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.
- 17.6 Only a party to this Agreement may enforce it and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- 17.7 *You* agree that this Agreement is reasonable but that if any part is found to be invalid no other part will be affected.
- 17.8 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.
- 17.9 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.
- 17.10 This Agreement, and any non-contractual obligations arising out of or in connection with it, will be governed and interpreted by English Law. *You* agree that *You* will only use the English courts for any claims relating to this Agreement or any such obligations. *We* may use the courts of another jurisdiction if *We* choose.

## 18 DEFINITIONS

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

<b>“Accounts Information”</b>	Balance sheet and profit and loss account;
<b>“Approved Currency”</b>	All currencies other than sterling specified in or pursuant to the <i>Special Conditions</i> ;
<b>“Associate”</b>	<i>Your</i> 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 <i>You</i> or any of the above has a material interest;
<b>“Available Funds”</b>	An amount worked out at the relevant time by <i>Us</i> deducting the debit balance on <i>Your Current Account</i> from the <i>Funding Limit</i> ;
<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> ; 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>“Credit Agency”</b>	Credit reference and fraud prevention agencies We use from time to time;
<b>“Customer”</b>	Any person who owes a <i>Debt</i> ;
<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 We require;
<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> table of disbursements set out in the <i>Special Conditions</i>) and any VAT or similar tax thereon We incur directly or indirectly:-</p> <p>(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>Value</i>;</p> <p>(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;</p> <p>(C) in getting any <i>Guarantee</i> or any <i>Other Interest</i> given to <i>Us</i> relating to this <i>Agreement</i>;</p> <p>(D) any charges for currency conversion or dishonoured payments We incur relating to this <i>Agreement</i>;</p> <p>(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>;</p> <p>(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 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 <i>You</i> verbally or in <i>Writing</i> from time to time;</p>
<b>“DPA”</b>	The Data Protection Act 1998;
<b>“Electronic Facility”</b>	The information link between <i>You</i> and <i>Us</i> available through <i>Our</i> computer system;

<p><b>“End Notice”</b></p>	<p>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>;</p>
<p><b>“Fees”</b></p>	<p>The charges for <i>Our</i> services under this <i>Agreement</i>;</p>
<p><b>“Guarantor”</b></p>	<p>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;</p>
<p><b>“High Involvement”</b></p>	<p>The maximum percentage or amount of all <i>Unpaid Debts</i> about which <i>You</i> have <i>Told Us</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);</p>
<p><b>“Insolvent”</b></p>	<p>(A) being deemed unable to pay its or their debts in accordance with either section 123 or section 268 of the Insolvency Act 1986 or being deemed insolvent under the Insolvency Act 1986;</p> <p>(B) service of a statutory demand against it or them or 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 or their 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> <p>(D) anyone taking steps to obtain an interim order or moratorium or making proposals for a voluntary arrangement with its or their creditors and/or the appointment of a nominee to act in relation to a proposed voluntary arrangement with its or their creditors;</p> <p>(E) steps being taken to obtain an interim order or proposing a compromise, arrangement or composition or making a general assignment, arrangement or composition with or for the benefit of its or their creditors or convening a meeting of creditors; or commencing negotiations with one or more of its or their creditors with a view to the general readjustment or rescheduling of all or part of its or their debts;</p> <p>(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;</p> <p>(G) anyone issuing a petition for a bankruptcy or sequestration order to be made against them which is not withdrawn or dismissed within <i>5 Working Days</i> or a bankruptcy or sequestration order being made against them; their apparent insolvency; or them giving a trust deed for their creditors;</p> <p><b>and</b></p> <p>any analogous procedure or step being taken in any jurisdiction;</p> <p><b>and</b></p> <p><b>“Insolvency”</b> will be read in line with this;</p>

<p><b>“Linked Rights”</b></p>	<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 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>
<p><b>“Message”</b></p>	<p>Any data sent using the <i>Electronic Facility</i>;</p>
<p><b>“Month”</b></p>	<p>A calendar month;</p>
<p><b>“Notified Value”</b></p>	<p>The amount of a <i>Debt</i> or credit note <i>You Tell Us</i> on the most recent occasion on which <i>You Told Us</i> about such <i>Debt</i> or credit note (before taking away any <i>Reductions</i>);</p>
<p><b>“Other Interest”</b></p>	<p>Any present or future mortgage, charge, security assignment, 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;</p>
<p><b>“Prepayment”</b></p>	<p>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;</p>
<p><b>“Price”</b></p>	<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 Usage Charge</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><b>“Promises”</b></p>	<p>The commitments <i>You</i> give to <i>Us</i> and set out in Condition 7;</p>
<p><b>“Records”</b></p>	<p>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 <i>Agreement</i> which will include a <i>Sales Ledger Control Account</i>, <i>Current Account</i> and <i>Client Account</i>;</p>
<p><b>“Reduction”</b></p>	<p>Any deduction, discount or set off claimed by a <i>Customer</i> or other alteration which reduces the <i>Value</i> of a <i>Debt</i>;</p>
<p><b>“Relevant Party”</b></p>	<p><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>;</p>
<p><b>“Repayment”</b></p>	<p>Repayment of any <i>Prepayment</i>; and <b>“Repay”</b> will be read in light of this;</p>
<p><b>“Returned Goods”</b></p>	<p>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>;</p>
<p><b>“Sales Ledger Upload”</b></p>	<p>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> in accordance with the terms of this <i>Agreement</i> and, where <i>We</i> allow, which may be sent to <i>Us</i> using the <i>Electronic Facility</i> and which will contain such details as <i>We</i> require including invoices, credit notes, adjustments, debit notes and cash</p>

	entries;
<b>“Special Conditions”</b>	The conditions contained in the section of this <i>Agreement</i> headed “Special Conditions”;
<b>“Tell”</b>	You telling Us in such form as We require, including within a <i>Message</i> or in a <i>Sales Ledger Upload</i> (or both), that a <i>Debt</i> exists or 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 12.1;
<b>“Transaction”</b>	An agreement entered into by (or the benefit of which has been transferred to) You 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>“Value”</b>	The amount of a <i>Debt</i> or credit note:- (A) as indicated in its <i>Notified Value</i> , if You have <i>Told Us</i> about such <i>Debt</i> or credit note at the relevant time; (B) truthfully and accurately identified in <i>Your Debt Information</i> , if You have not <i>Told Us</i> about such <i>Debt</i> or credit note at the relevant time; and in either case before taking away any <i>Reductions</i> ;
<b>“Website”</b>	Our website detailed in the Introduction to this <i>Agreement</i> on which the <i>Conditions</i> can be found (or such other website as We notify You of from time to time);
<b>“Working Day”</b>	Every day except Saturday, Sunday and bank and public holidays;
<b>“Writing”</b>	Letter, fax, e-mail and (where such facility allows) by using the <i>Electronic Facility</i> .

18.2 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) 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;
- (E) 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*;

(F) 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

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

18.3 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).

18.4 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".

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

18.6 *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*.

18.7 Where in any place outside England and Wales 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.