

SCOTS FLEXIDRAFT GENERAL CONDITIONS

I 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 TELLING US ABOUT DEBTS AND CREDIT NOTES

- 2.1 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).
- 2.2 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.
- 2.3 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.
- 2.4 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.

3 REPAYMENT

- 3.1 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.
- 3.2 Where Condition 3.1 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 3.
- 3.3 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 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.
- 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 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 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 6.1(l).

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*. We may at any time end *Your* agency verbally or in *Writing*.

- 5.2 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.
- 5.3 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.

6 YOUR PROMISES

- 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) each *Transaction* (if any) creating a *Debt* and the *Debt* itself will be genuine, lawful, valid and binding and governed by English or Scots 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 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;
 - (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 and by signing this *Agreement* We acknowledge receipt of intimation of the creation of the 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.

7 RECORDS AND INFORMATION

- 7.1 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*.
- 7.2 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.

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 all *Disbursements*.
- 8.2 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*.
- 8.3 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.
- 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 *Value* of the *Debt* will be applied to the *Price* of the *Debt*.
- 8.5 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.
- 8.6 You will pay all VAT due on amounts payable by You under this *Agreement*. No *Fees* will be refunded.

9 ELECTRONIC FACILITY

- 9.1 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.
- 9.2 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.
- 9.3 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 9.3(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.
- 9.4 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 15.2.
- 9.5 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.

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 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*.
- 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* £500. Such charge will not apply if *You* are offered and take up any alternative finance facilities with any *Bibby Group Company*.

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 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

- 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).
- 11.3 If this *Agreement* ends other than due to a *Termination Event* *You* must buy all *Unpaid Debts* then existing for the amount in Condition 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.
- 11.4 *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.
- 11.5 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.

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 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 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, act of God, war, terrorism, revolution, 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:-

“Accounts Information”	Balance sheet and profit and loss account;
“Approved Currency”	All currencies other than sterling specified in or pursuant to the <i>Special Conditions</i> ;
“Associate”	<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 and any company, LLP, partnership or business in which <i>You</i> or any of the above has a material interest;
“Available Funds”	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> ;
“Bibby Group Company”	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);
“Collection”	A payment (in whatever form) received by <i>Us</i> in cleared funds in or towards paying a <i>Debt</i> ; and “Collected”, “Collecting” and “Collect” will be read in light of this;
“Control”	The right to direct how the business of a company, LLP or partnership will be managed;
“Credit Agency”	Credit reference and fraud prevention agencies <i>We</i> use from time to time;
“Customer”	Any person who owes a <i>Debt</i> ;
“Data Protection Laws”	Means (i) whilst the General Data Protection Regulation (Regulation (EU) 2016/679) (“ GDPR ”) is directly applicable in the <i>UK</i> , the GDPR and any national implementing laws in the <i>UK</i> including the Data Protection Act 2018 and (ii) any legislation which succeeds the GDPR or the Data Protection Act 2018;
“Debt”	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;
“Debt Information”	<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;
“Disbursements”	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 <i>We</i> incur directly or indirectly:- (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> ; (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; (C) in getting any <i>Guarantee</i> or any <i>Other Interest</i> given to <i>Us</i> relating to this <i>Agreement</i> ; (D) any charges for currency conversion or dishonoured payments <i>We</i> incur relating to this <i>Agreement</i> ; (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> ; (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 (G) such other charges as <i>We</i> tell <i>You</i> verbally or in <i>Writing</i> from time to time;

“Electronic Facility”	The information link between <i>You</i> and <i>Us</i> available through <i>Our</i> computer system;
“End Notice”	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> ;
“Fees”	The charges for <i>Our</i> services under this <i>Agreement</i> ;
“Guarantor”	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 “Guarantee” will be read in line with this;
“High Involvement”	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);
“Insolvent”	<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 or their apparent insolvency;</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 5 <i>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>and</p> <p>any analogous procedure or step being taken in any jurisdiction;</p> <p>and</p> <p>“Insolvency” will be read in line with this;</p>
“Linked Rights”	<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>

	(D) interest and all cash, cheques, bills of exchange, instruments (negotiable or not) and other forms of payment;
“Message”	Any data sent using the <i>Electronic Facility</i> ;
“Month”	A calendar month;
“Notified Value”	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>);
“Other Interest”	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;
“Prepayment”	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;
“Price”	The <i>Collection We</i> receive in relation to a <i>Debt</i> less (in relation to such <i>Debt</i>):- (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 (B) all other amounts due to <i>Us</i> by <i>You</i> ;
“Promises”	The commitments <i>You</i> give to <i>Us</i> and set out in Condition 6;
“Records”	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> ;
“Reduction”	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> ;
“Relevant Party”	<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> ;
“Repayment”	Repayment of any <i>Prepayment</i> ; and “Repay” will be read in light of this;
“Returned Goods”	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> ;
“Scottish Debt”	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;
“Sales Ledger Upload”	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 entries;
“Special Conditions”	The conditions contained in the section of this <i>Agreement</i> headed “Special Conditions”;
“Tell”	<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>Sales Ledger Upload</i> (or both), that a <i>Debt</i> exists or that a credit note has been issued; and “Telling” and “Told” will be read in light of this;
“Termination Event”	An event described in Condition 11.1;
“Transaction”	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;
“UK”	Great Britain and Northern Ireland, the Channel Islands and the Isle of Man;

“Unpaid”	A <i>Debt</i> which has not been fully paid;
“Value”	The amount of a <i>Debt</i> or credit note:- (A) as indicated in its <i>Notified Value</i> , if <i>You</i> 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 <i>You</i> 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> ;
“Website”	<i>Our</i> website detailed in the Introduction to this <i>Agreement</i> on which the <i>Conditions</i> can be found (or such other website as <i>We</i> notify <i>You</i> of from time to time);
“Working Day”	Every day except Saturday, Sunday and other days on which <i>We</i> are not open for business;
“Writing”	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 assignation or reassignation 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.

