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## TERMS and CONDITIONS of SUPPLY

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### 1. Definitions and interpretation

#### 1.1 In these Terms:

**'Contract'** means a contract between the parties for the sale and supply of Products and Services entered into in accordance with Clause (3);

**'Customer'** means the party to which the Products and Services are supplied;

**'Force Majeure Event'** means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**'Prices'** means those exhibited on the published VIP-System Limited Basic Price List for the Products and Services supplied by the Company;

**'Products'** means the products which may be or are purchased by the Customer from the Supplier under these Terms; in these Terms, Product (singular) and Products (plural) are interchangeable

**'Services'** means the Services provided to the Customer by the Supplier under these Terms; in these Terms, Service (singular) and Services (plural) are interchangeable

**'Supplier'** means VIP-System Limited a limited company incorporated in Scotland, Number Sc132864, having its registered office at 2 Rutherford Court, 15 North Avenue, Clydebank Business Park, Clydebank, Scotland, G81 2QP; and

**'Terms'** means these Terms and Conditions of Supply.

#### 1.2 The ejusdem generis rule is not intended to be used in the interpretation of these Terms; it follows that a general concept or category utilised in these Terms will not be limited by any specific examples or instances utilised in relation to such a concept or category.

### 2. These Terms

These Terms, those displayed on the Pre-listed Order Forms (PLOFs) issued by the Supplier, those published on the Supplier website related to 'sales conducted at a distance', and those defined in Facility Provision and Licensing Agreements (FPLAs) made between the Customer and the Supplier are the only conditions upon which the Supplier will deal with the Customer, and they govern all Contracts to the exclusion of all other terms and conditions.

### 3. Contracts

#### 3.1 Each order for Products or Services given by the Customer to the Supplier will be deemed to be an offer by the Customer to purchase Products or Services from the Supplier subject to these Terms.

#### 3.2 In order for a Contract to come into force;

- (a) the Customer must submit an order to the Supplier and must give to the Supplier its express written acceptance of these Terms; and
- (b) the Supplier must send to the Customer an order confirmation; and
- (c) upon the issue of an order confirmation by the Supplier a Contract will come into force between the parties.

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### 4. Delivery

4.1 Unless otherwise agreed in writing;

- (a) all Product will be delivered to the Customer's premises at an address made known to the Supplier by the Customer;
- (b) the Supplier will be responsible for arranging loading, carriage, transport, unloading and insurance in transit of the Product;
- (c) the Supplier will be responsible for paying all costs relating to loading, carriage, transport, unloading and insurance of the Product;
- (d) except where the net value of the order is lower than the amount published by the Supplier from time to time as the level below which the net cost to the Supplier for carriage will be charged to the Customer;
- (e) and risk in the Product will pass from the Supplier to the Customer when the Products are delivered to the Customer.

4.2 If the parties agree that delivery of the Product under a Contract will be by instalments, each instalment will constitute part of a single Contract, and not separate Contracts.

4.3 Any date or dates for the delivery of the Product agreed by the parties as part of a Contract will not be the essence of the Contract.

### 5. Title

5.1 Legal and equitable title to the Product will pass from the Supplier to the Customer upon the later of;

- (a) delivery of the Product; and
- (b) receipt by the Supplier of all amounts due from the Customer to the Supplier for the Product.

5.2 Until title to the Product has passed to the Customer;

- (a) the Customer will hold the Product as fiduciary agent and bailee of the Supplier;
- (b) the Customer will; (1) store the Product in a secure, safe, dry and clean environment separately from other products and goods; (2) ensure that the Product is easily identifiable as belonging to the Supplier; (3) not deface, destroy, alter or obscure any identifying mark of the Product or its packaging; and ensure that no charge, lien or other encumbrance is created over the Product; and (5) deliver up the Product to the Supplier upon demand.

5.3 The Supplier shall be entitled without further notice to inspect or recover possession of any Product to which it retains title: and the Customer grants to the Supplier and its employees and agents an irrevocable licence to enter at any time any premises where the Product is or may be situated for the purpose of inspecting or removing any such Products the title in which has remained with the Supplier.

5.4 The Supplier may bring an action for the Prices of Products, and any other amounts due under a Contract, notwithstanding that title to the Product has not passed to the Customer.

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### 6. Customers obligations

- 6.1 The Customer will not without the Supplier's prior written consent make or give any promises, representations, warranties or guarantees;
- (a) on behalf of the Supplier; or
  - (b) in relation to the Product (other than those set out in a Contract in relation to the Product or otherwise mandatory under applicable law).
- 6.2 Without prejudice to the Supplier's obligations under clause (8), the Customer must comply with all applicable laws, rules and regulations relating to, and must obtain all licences, permits and approvals required in relation to;
- (a) the marketing, promotion and advertising of the Product; and
  - (b) import, export, distribution, sale and supply and delivery of the Product.

### 7. Prices and payment

- 7.1 The Supplier may issue an invoice for the Prices under a Contract to the Customer at any time after the Products have been delivered to the Customer or the Service has been provided to the Customer.
- 7.2 The Customer will pay the Prices to the Supplier by the end of the calendar month following the month in which the invoice for the goods was dated.
- 7.3 All amounts payable under a Contract are exclusive of value added tax (VAT) and other taxes and duties which will be payable by the Customer (except for taxes payable on the Supplier's net income, which will be payable by the Supplier).
- 7.4 If the Customer does not pay any amount properly due to the Supplier under or in connection with a Contract, the Supplier may;
- (a) charge the Customer interest on the overdue amount at the rate of 10% per year above the published base rate of The Royal Bank of Scotland Plc from time to time (which interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable on demand); or
  - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

### 8. Warranties

- 8.1 The Supplier warrants that;
- (a) the Supplier has (or will have at the relevant time) the right to sell the Product or provide the Service;
  - (b) the Product or Service to be provided are free from any charge or encumbrance, subject to Clause (5) and subject to any charge or encumbrance disclosed or known to the Customer before the relevant Contract is made;
  - (c) the Customer shall enjoy quiet possession of the Product subject to the rights referred to in Clause 8.1(b)

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- (d) the Product corresponds to any description of the Product supplied by the Supplier to the Customer
- (e) the Service provided corresponds to the description of the Service supplied by the Supplier to the Customer
- (f) the Product is of satisfactory quality and the Service provided meets with the Customer's satisfaction
- (g) the Product is fit for any purpose expressly (or impliedly but not merely impliedly) made known by the Customer before the relevant Contract is made
- (h) the Product corresponds to any sample of the Product supplied by the Supplier to the Customer and will be free from any defect making its quality unsatisfactory which would not be apparent on reasonable examination of the sample; and
- (i) the Product or Service will comply with all laws, rules, regulations applicable to the marketing and sale of the Product or Service in the United Kingdom; and
- (j) the Product will bear all mandatory marks and signs associated with the laws, rules, regulations and standards referred to in Clause 8.1(h).

8.2 All of the parties' warranties, liabilities and obligations in respect of the subject matter of each Contract are expressly contained in these Terms or elsewhere in the relevant Contract. Subject to Clause 10.1 and to the maximum extent permitted by applicable law, no other terms concerning the subject matter of a Contract will be implied into that Contract or any related Contract.

### 9. Complaints, credits and replacements

- 9.1 The Supplier will promptly and in any event within 10 business days, fully respond to any reasonable enquiries and complaints by the Customer relating to the quality, performance and durability of the Product supplied or the Service performed.
- 9.2 If a Product or Service does not comply with any warranty given by the Supplier under a Contract the Customer may with the prior agreement of the Supplier return these products or reject the Service for either (at the option of the Supplier);
- (a) a full credit of the price paid to the Supplier for such Product or Service;
  - (b) replacement Product or Service;
  - (c) a credit note in respect of the Price of the Product or Service to be offset against future purchases from the Supplier.
- 9.3 Product returned under Clause 9.2 must be properly packed and returned to - GOODS RETURN, VIP-SYSTEM LIMITED, 2 RUTHERFORD COURT, 15 NORTH AVENUE, CLYDEBANK BUSINESS PARK, G81 2QP within 60 Business Days of receipt of the Product by the Customer. Any Product returned in contravention of this Clause will not be the subject of any credits or replacements and the Customer will continue to be liable for payment of the Price in respect of such Product.

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### 10. Limitations and exclusions of liability

10.1 Nothing in the Contract will:

- (a) limited or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit or exclude the liability of a party under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
- (d) limit any liability of a party that may not be excluded under applicable law; or
- (e) exclude any liability of a party that may not be excluded under applicable law.

10.2 The limitations and exclusions of liability set out in this Clause 10 and elsewhere in the Contract;

- (a) are subject to Clause 10.1
- (b) govern all liabilities arising under the Contract or in relation to the subject matter of the Contract, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and
- (c) will not limit or exclude the liability of the parties under the express indemnities set out in the Contract.

10.3 The Supplier will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.

10.4 The Supplier will not be liable for any loss of business, contracts or commercial opportunities.

10.5 The Supplier will not be liable for any loss of or damage to goodwill or reputation.

10.6 The Supplier will not be liable in respect of any loss or corruption of any data, database or software.

10.7 The Supplier will not be liable in respect of any special, indirect or consequential loss or damage.

10.8 The Supplier will not be liable for any loss arising out of a Force Majeure Event.

10.9 The Supplier's aggregate liability under the Contract will not exceed the greater of;

- (a) 1,000.00 GBP
- (b) the total amount paid and payable by the Customer to the Supplier under the Contract.

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### 11. Contract term and termination

- 11.1 Each Contract will remain in force in accordance with Clause 3, and will continue in force until the earlier of;
- (a) the later of completion of (1) the delivery of all Product or Service; and (2) the receipt by the Supplier of all amounts due to the Supplier under the Contract; and
  - (b) the termination of the Contract in accordance with the provisions of this Clause.
- 11.2 A Contract may be terminated in the following circumstances;
- (a) either party may terminate a Contract immediately by giving written notice to the other party if the other party commits any material breach of any term of the Contract;
  - (b) the Supplier may terminate any Contract immediately by giving written notice to the Customer if the Customer fails to pay to the Supplier any amount due under the Contract by the due date for payment; and
  - (c) the Supplier may terminate any Contract immediately by giving written notice to the Customer if the Customer fails to accept delivery of the Product or Service on the date agreed in the relevant Contract.
- 11.3 Either party may terminate any Contract immediately by giving notice to the other party if;
- (a) the other party: (1) is dissolved; (2) ceases to conduct all (or substantially all) of its business; (3) is or becomes unable to pay its debts as they fall due; (4) is or becomes insolvent or is declared insolvent; or (5) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Contract); or
  - (d) where that other party is an individual that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

### 12. Effects of termination

- 12.1 Upon termination of a Contract, all the provisions of that Contract will cease to have effect, save that the following provisions of these Terms will survive and continue to have effect in accordance with their terms or otherwise indefinitely: Clauses 1, 5, 6, 7.4, 9, 10, 12, and 13.
- 12.2 Termination of a Contract will not affect either party's accrued rights (including accrued rights to be paid and accrued rights to a remedy for breach of condition or warranty) as at the date of termination.

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### 13. Intellectual property

13.1 Whether or not supplied as part of a Contract;

- (a) all drawings, illustrations, printed matter, copies and sketches provided by the Supplier to the Customer are intended for the exclusive use of the Customer and may not without permission given in writing by the Supplier be transmitted to any third party by any means and are deemed to be the copyright property of the Supplier;
- (b) all samples and/or examples of the Product provided to the Customer without charge remain the property of the Supplier and may not be disposed of by the Customer or transferred to any third party without the permission of the Supplier given in writing.

### 14. General

- 14.1 No breach of any provision of a Contract will be waived except with the express written consent of the party not in breach.
- 14.2 If any provision of a Contract is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Contract will continue in effect. If any unlawful and/or unenforceable provision would be lawful if part of it were deleted, that part will be deemed to be deleted and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 14.3 Contracts may not be varied except by a written document signed by or on behalf of each of the parties.
- 14.4 The Supplier may freely assign its rights and obligations under a Contract without the Customer's consent. Save as expressly provided in this Clause or elsewhere in a Contract, neither party may without the written consent of the other party assign, transfer, charge, license, or otherwise dispose of or deal in a Contract or any rights or obligations under a Contract.
- 14.5 Each Contract is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to a Contract are not subject to the consent of any third party.
- 14.6 Subject to Clause 10.1:
- (a) these Terms will constitute the entire agreement between the parties in relation to the subject matter of the Contract, and supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter;
  - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into a Contract; and
  - (c) neither party will have any liability other than pursuant to the express terms of a Contract.
- 14.7 Contracts will be governed by and construed in accordance with the laws of Scotland and the courts of Scotland will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with a Contract.