

HARDWARE MAINTENANCE - TERMS & CONDITIONS

1. INTERPRETATION

1.1 In this agreement the following words and expressions shall have the following meanings:

“**Business Hours**” 9:00am to 5:00pm, Monday to Friday inclusive, excluding public holidays.

“**Commencement Date**” As shown on the face of this agreement.

“**Intellectual Property**” any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in design, know-how and all other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world.

“**Machines**” the machines identified on the face of this agreement as varied with the approval of Plumtree.

“**Premises**” As shown on the face of this agreement.

“**Services**” The provision and maintenance service as specified in **Clause 3**.

2. DURATION

This Agreement shall commence on the Commencement Date and (subject to clause 8) shall continue until terminated by either party at any time giving no less than 30 days prior written notice to the other.

3. PLUMTREE MAINTENANCE SERVICES

3.1 Plumtree agrees during the term of this Agreement to keep the Machines in satisfactory operating condition and to make all Machines in satisfactory operating condition and to make all emergency repairs and adjustments thereof and to supply such parts as may be required incidental to such maintenance. Time required to inspect, lubricate and adjust the Machines and to replace worn or defective parts will be performed during Business Hours. Replacement parts will be new or the equivalent thereof and replaced parts will be the property of Plumtree. Maintenance service covered by this agreement shall not include:

3.1.1 changes or alterations in specifications;

3.1.2 installation, moving or removing of units, options or attachments;

3.1.3 supplies or accessories;

3.1.4 rebuilding or overhauling;

3.1.5 the provision and fitting of manufacturer’s preventative maintenance (PM) and major rebuild (MR) kits;

3.1.6 replacements of parts or repair of damages resulting from accident, neglect, misuse, failure of electric power or air-conditioning or any other causes other than ordinary use or defects in workmanship or materials supplied by Plumtree.

4. TYPE OF SERVICE

Service may be provided either at the Premises, normally within 24 hours of notification by the Customer, or by the Customer returning the machine(s) carriage prepaid to Plumtree’s repair centre, when Plumtree will endeavour to dispatch the repaired machine(s) back to the Customer carriage prepaid within 24 hours of receipt. Fees charges vary according to the model of machine and the type of service selected by the Customer, which must be shown on the face of this agreement.

5. CUSTOMERS OBLIGATIONS

The Customer will:

5.1 use the Machine(s) only for the purposes for which the manufacturer intended;

5.2 ensure that the environmental and electrical supply conditions suitable for the Machines are provided and maintained in accordance with the Machine manufacturer’s specification; and

5.3 use with the Machine(s) only consumable approved by Plumtree.

6. FEES

6.1 Plumtree shall be entitled to invoice the Customer for the Fees (as shown on the face of this agreement) after Commencement Date one month in advance. Any other sums due to Plumtree pursuant to this Agreement may be invoiced by Plumtree at any time.

6.2 The Customer shall pay invoices within 30 days of the invoice date.

6.3 The Fees are exclusive of VAT or any other applicable tax, which the Customer shall be liable to pay when paying the Fees. In addition the Customer shall reimburse Plumtree for their out of pocket expenses in connection with the performance of this agreement at cost.

6.4 If the Customer fails to pay any invoice by the due date then (without prejudice to its other right and remedies) Plumtree may suspend the provision of the Services and/or charge the Customer interest (both before and after judgment) on the amount unpaid at the annual rate of 2% above Barclays Bank plc’s base rate from time to time until payment is made in full.

6.5 Plumtree shall be entitled to serve written notice to the Customer to increase the Fees.

6.6 The Fees shall be non-refundable, notwithstanding any termination of the Agreement by either party prior to the end of the period for which the Fees have been paid.

7. WARRANTIES AND LIMITATION OF LIABILITY

7.1 Plumtree warrants that the Services will be provided with reasonable care and skill.

In the event that the Services provided do not conform to this warranty, Plumtree will, at its option:

7.1.1 take such steps as it deems necessary (acting reasonably) to remedy the shortcomings; or

7.1.2 refund such part of the Fees as is reasonable and appropriate provided that performance of any one of the above options shall constitute an entire discharge of Plumtree’s liability under this warranty.

7.2 The warranty in Clause 7.1 is conditional upon the Customer giving written notice

to Plumtree detailing any alleged shortcoming within 7 days of the time when the Customer discovers or ought to have discovered the shortcoming.

7.3 To the maximum extent permissible in law, all conditions and warranties which are

to be implied by statute or otherwise by general law in relation to this Agreement (except the warranty in Clause 7.1) are hereby excluded.

7.4 Plumtree shall be under no liability for any indirect or consequential losses, damages, costs or expenses, for any loss of profits, loss of business, loss of goodwill,

or loss of anticipated savings (whether direct, indirect or consequential) in contract, tort (including negligence and breach of statutory duty) or otherwise howsoever arising which may be suffered by the Customer.

7.5 Nothing in this Agreement shall operate to exclude Plumtree’s liability to the Customer for fraudulent misrepresentations or for death or personal injury resulting from the negligence of Plumtree.

7.6 Without prejudice to the foregoing provisions of this Clause 7 Plumtree’s liability

to the Customer pursuant to this Agreement (in contract, tort, negligence, breach of statutory duty or otherwise) shall not exceed in aggregate the annual Fees payable under this Agreement.

8. TERMINATION

8.1 Either party may terminate this Agreement forthwith by notice in writing to the other if the other is in material or persistent breach of this Agreement and shall have failed (where the breach is capable of remedy) to remedy the breach within 21 days of the receipt of a request in writing from the party not in breach, to remedy the breach, such request setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement.

8.2 Plumtree shall be entitled to terminate this Agreement forthwith by notice in writing to the Customer if the Customer becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income, has passed a resolution for its winding-up, has a petition presented to any court for its winding-up or for an administration order or suffers any distraint, execution or other process levied or enforced on any of its property which is not paid, withdrawn or discharged within 20 days.

8.3 Either party may terminate this Agreement by giving the other 30 days prior written notice.

9. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations if such failure or delay is caused by circumstances outside the party’s reasonable control and such party shall be entitled to a reasonable extension of time for the performance of such obligations.

10. GENERAL

10.1 The Customer will not be entitled to assign the benefit or delegate the burden of this Agreement without the prior written consent of Plumtree. Plumtree will be free to sub-contract any or all of its rights and obligations under this Agreement.

10.2 Failure to exercise or a delay in exercising on the part of either party any right, power or privilege of that party under this Agreement shall not in any circumstances operate as a waiver thereof, nor shall any waiver of any breach of this Agreement be deemed to be a waiver of any subsequent breach.

10.3 The illegality, invalidity or unenforceability of any clause or part of this Agreement

will not affect the legality, validity or enforceability of the remainder. If any such clause or part is found by any competent Court of authority to be illegal, invalid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

10.4 This Agreement sets out the entire agreement between the parties with respect to

the subject matter and supersedes and replaces and all prior communications, representations, warranties, stipulations, undertakings and agreements whether oral or written between the parties, but this shall not operate so as to exclude any liability which either party would otherwise have for any fraudulent representations.

10.5 The construction, validity and performance of this Agreement shall be governed by English law, and both parties submit to the exclusive jurisdiction of the English courts.

10.6 This Agreement is enforceable by the original parties to it, by their successors in

title and permitted assignees. Any rights of any person to enforce the terms of this Agreement pursuant to the Contracts (Rights of the Third Parties) Act 1999 are excluded.