

# SOFTWARE SALE - TERMS & CONDITIONS

## 1 INTERPRETATION

1.1 In this agreement the following expressions shall have the following meanings unless the context otherwise requires:

“Fees” as shown on the face of this agreement.

“Installation Address” the Customers premises 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 or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the UK or any part of the world.

“Licence” the licence to the Customer to use the Software detailed with these terms and conditions.

“Computer System” the computer configuration and operational environment specified in the proposal document on which the Software is to run.

“Services” the installation consultancy services and any other services to be provided by Plumtree pursuant to this Agreement.

“Software” the software product listed on the face of this agreement.

## 2 PROVISION OF SOFTWARE

This agreement is founded on the basis that the Software is to be supplied by Plumtree in accordance with these terms and conditions. Title to the Software does not pass to the Customer in any circumstances. The Customer acknowledges that it is licensed to use the Software provided by Plumtree in accordance with the Licence.

## 3 DELIVERY AND INSTALLATION

3.1 Plumtree agrees with the Customer that the delivery of the Software will be made at the Installation Address.

3.2 The pre and post installation Services to be provided by Plumtree as agreed between the parties and, unless otherwise agreed the Services shall be provided at the Installation Address.

## 4 PAYMENT TERMS

4.1 In consideration for the granting of the Licence and the provision of the Services, the Customer will pay Plumtree the Fees in advance, as specified on the face of this agreement.

4.2 If any Fees or other sums payable under this Agreement are not paid by the due date then (without prejudice to Plumtree’s other rights) Plumtree reserves the right to charge interest on such sum from the due date until payment is made in full, both before and after any judgment, at the rate of two (2) per cent per annum above the base rate of Barclays Bank plc for the time being in force and/or suspend delivery of the Software and performance of the Services.

4.3 All fees are exclusive of VAT and any other taxes, duties and levies which shall be added to any invoice and payable by the Customer.

## 5 INTELLECTUAL PROPERTY RIGHTS

5.1 No title or rights of ownership, copyright or other Intellectual Property Rights in the Software and the product of the Services is or will be transferred to the Customer. All Intellectual Property Rights in the Software and the product of the Services are and shall remain the property of the manufacturers of the Software.

5.2 The Customer is licensed to use the Software strictly in accordance with the terms of the Licence only and hereby agrees to comply with the provisions hereof.

## 6 CUSTOMER UNDERTAKINGS

The Customer undertakes:

6.1 to satisfy itself that the Software meets the needs of its business. It is the sole responsibility of the customer to determine that the Software is ready for operational use in the Customer’s business before it is so used;

6.2 to ensure that the operating system and any other software with which the Software will be used is either the property of the Customer or is legally licensed to the Customer for use with the Software. The Customer will indemnify Plumtree in the event of any alleged violation of third party proprietary rights which result in any claims against Plumtree;

6.3 to procure the Computer System and install the same at the Installation Address in sufficient time to enable Plumtree to comply with its obligations in relation to the provision of the Services; and

6.4 to allow Plumtree to study the Customer’s data used with the Software for the purposes of rectifying any problems with the Software.

## 7 INTEGRITY OF DATA

7.1 The parties agree that the Customer is the best judge of the value and importance of the data held on the Customer’s Computer System, and the Customer will be solely responsible for:

7.1.1 instituting and operating all necessary back-up procedures, for its own benefit to ensure that data integrity can be maintained in the event of loss of data for any reason; and

7.1.2 taking out any insurance policy or other financial cover for loss or damage which may arise from loss of data for any reason.

7.2 Plumtree disclaims any liability arising from the loss or corruption of data from the Customer’s Computer System for any reason and the Customer agrees to indemnify Plumtree against any third party claims which arise from loss or corruption of data or for any reason.

## 8 GENERAL

8.1 Each party (unless contrary to law):

8.1.1 shall keep confidential information obtained from the other and/or in connection with this agreement;

8.1.2 shall not disclose any of that information to a third party without the prior written consent of the other except to such persons and to such extent as may be strictly necessary for the performance of this agreement; and

8.1.3 shall not use any of that information otherwise than for the purpose of this agreement.

8.2 The provisions of **clause 8.1** shall not apply to information:

8.2.1 which is or becomes public knowledge (otherwise than by a breach of this condition); or

8.2.2 which was in the possession of the party concerned without restrictions as to its disclosure before receiving it from the disclosing party; or

8.2.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

## 9 WARRANTY

9.1 Plumtree warrants that the Services will be provided with reasonable care and skill. The Software shall be warranted by Plumtree in accordance with the provisions of the Licence.

9.2 Plumtree shall not be liable for a breach of warranty in this **clause 9** unless the Customer notifies Plumtree in writing of such failure within 30 days of the performance of the Services.

9.3 If the Customer makes a valid claim against Plumtree based on the failure of Plumtree to comply with the warranty in **clause 9.1**, Plumtree shall at its option take such steps as it deems necessary to remedy such failure, provided that the liability of Plumtree under the warranty in **clause 9.1** shall in no event exceed the fees for the performance of the Services.

## 10 LIMITATION OF LIABILITY

10.1 Plumtree does not exclude its liability (if any) to the Customer:

10.1.1 for breach of Plumtree’s obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;

10.1.2 for personal injury or death resulting from Plumtree’s negligence;

10.1.3 under section 2(3) Consumer Protection Act 1987;

10.1.4 for any matter which it would be illegal for Plumtree to exclude or attempt to exclude its liability; or

10.1.5 for fraud.

10.2 Except as provided in **clauses 9** and **10.1** and the Licence, Plumtree will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill, loss of data and like loss) howsoever caused arising out of or in connection with:

10.2.1 the provision of the Software;

10.2.2 the performance of the Services;

10.2.3 any breach by Plumtree of any of the express or implied terms of this agreement;

10.2.4 any statement made or not made, or advice given or not given, by or on behalf of Plumtree; or

10.2.5 otherwise in connection with this agreement.

10.3 Except as set out in **clauses 9** and **10.1** and the Licence, Plumtree hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express other than those set out in this Agreement) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.

10.4 Subject to **clause 10.1**, Plumtree’s aggregate liability under this agreement, including, without limitation, the Licence (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) howsoever caused will be limited to the price of the Software.

10.5 The Customer acknowledges that the above provisions of this **clause 10** are reasonable and reflected in the Fees which would be higher without those provisions, and the Customer will accept such risk and/or insure accordingly.

## 11 TERMINATION

11.1 Without prejudice to any rights of termination set out elsewhere in this agreement Plumtree shall be entitled to terminate this agreement forthwith by notice in writing to the Customer if the Customer shall fail to pay to Plumtree any sum due under this agreement on the due date for payment.

11.2 Either party shall be entitled to terminate this agreement (or, at its option, any part of this agreement) forthwith by notice in writing to the other if the other:

11.2.1 is in material breach of this agreement and shall have failed (where the breach is capable of remedy) to remedy the breach within 30 days of the receipt of a request in writing from Plumtree to remedy the breach, such request setting out the breach and indicating that failure to remedy the breach may result in termination of the agreement;

11.2.2 becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986;

11.2.3 is unable to pay its debts within the meaning under section 123 of the Insolvency Act 1986; or

11.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any parts of its undertaking, assets or income, has passed a resolution for its winding-up, or has a petition presented to any court for its winding-up or for an administration order.

## 12 CONSEQUENCES OF TERMINATION

12.1 Upon termination of this agreement for the avoidance of any doubt the Licence shall also terminate and the Customer shall forthwith:

12.1.1 cease to use the Software;

12.1.2 return to Plumtree the Software and all copies of the whole or any part thereof or, if requested by Plumtree, shall destroy the Software and all such copies and certify to Plumtree that they have been destroyed; and

12.1.3 erase the Software from its computer systems and shall certify to Plumtree that this has been done.

## 13 SUPPORT

Plumtree shall not be obliged to provide any support services in respect of the Software or updates of the Software to the Customer unless the Customer enters into a separate Software Support Agreement.

## 14 ENTIRE AGREEMENT/RELIANCE ON REPRESENTATIONS

14.1 This agreement contains all terms which the parties have agreed in relation to the subject matter of this agreement and supersedes any prior written or oral agreements, representations or understandings between the parties in relation to such subject matter.

14.2 The Customer acknowledges that this agreement has not been entered into wholly or partly in reliance on any statement, promise or representation made by or on behalf of Plumtree.

14.3 Nothing in this **clause 14** will exclude any liability which one party would otherwise have the other party in respect of any statements made fraudulently.

## 15 GENERAL

15.1 The illegality, invalidity or unenforceability of any provisions of this agreement will not affect the legality, validity or unenforceability of the remainder. If any such provision is found by any court or competent authority to be illegal, invalid or unenforceable, the parties agree that they will substitute provisions in a form similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

15.2 The failure or delay by either party in exercising any right, power or remedy of that party under this Agreement shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party of any right, power or remedy under this agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

15.3 The Customer shall be entitled to assign the benefit or delegate the burden of this agreement without the prior written consent of Plumtree. Plumtree shall be entitled to assign any or all of its rights and obligations under this agreement.

15.4 No variation of this agreement shall be valid unless in writing signed by the parties.

15.5 Any dispute in relation to this agreement shall be governed by English law. The English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this agreement.