



IT SERVICES

MFD TERMS AND CONDITIONS OF SUPPLY

1. INTERPRETATION

1.1 In these Terms and Conditions unless inconsistent with the context:

- "Acknowledgement of Order"** means Commercial's acknowledgement of order, referred to in clause 2.2;
- "Business Day"** means a day other than a Saturday, Sunday or a day which is a public or bank holiday in England;
- "Charges"** means the cost of the Products and/or Services as set out in each Acknowledgement of Order;
- "Commercial"** means Commercial Limited (registered number 02589514) whose registered office is at Commercial House, Old Station Drive, Leckhampton, Cheltenham, Gloucestershire, GL53 0DL;
- "Confidential Information"** means all information in respect of either party's business including, without prejudice to the generality of the foregoing, any ideas; business methods; finance; prices, business, financial, marketing, development plans; customer lists or details; computer systems and software; products or services, including but not limited to know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by that party and information concerning that party's relationships with actual or potential clients, customers or suppliers and the needs and requirements of either party and of such persons;
- "Consumable Supplies"**: consumable supplies to be used in conjunction with the Support Services and the Supported Products;
- "Copy Charge"**: means the copy charge specified in the Acknowledgement of Order and calculated as detailed in clause 17.22;
- "Contract"** means the contract between Commercial and the Customer for the sale and purchase of the Products, the hire of the Products and/or supply of Services formed in accordance with clause 2;
- "Copy or Copies"** means single sided copies or prints up to A4 size paper;
- "Customer"** means the person whose order for the Products and/or Services is accepted by Commercial in accordance with clause 2.2;
- "Customer Environment"** means the Customer's information technology infrastructure pertinent to the supply and operation of the Products;
- "Delivery Point"** means the place where delivery of the Products is to take place under each Contract, as set out in the Acknowledgement of Order or as otherwise agreed in writing by the parties;
- "Equipment"** means the hardware equipment which is supplied by Commercial to the Customer under the Contract;
- "Expenses"** means any cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by Commercial's employees, agents and/or sub-contractors in the provision of the Services;
- "Fault"** "an error in the Supported Products that causes them to fail to operate substantially in accordance with the relevant documentation or Specification;
- "Help Desk"** means the Help Desk technical support services provided under clause 17;
- "Intellectual Property Rights"** means all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;
- "Products"** any product including Equipment and/or Software and Supported Services supplied by Commercial to the Customer (including any part of them) under each Contract;
- "Project Plan"** means a detailed plan describing and setting out the estimated timetable (including delivery dates) and responsibilities for the provision of the Services;
- "Services"** any services supplied by Commercial to the Customer (including any of them or any part of them) under the Contract;
- "Service Levels"** means those standards of performance to be achieved by Commercial and/or Third Party Suppliers as set out in the Acknowledgement of Order;
- "Service Level Agreement"** the service level agreement set out in/referred to in the Acknowledgement of Order (if any);
- "Service Point"** the place at which the Services are to be performed, as set out in the Acknowledgement of Order or as otherwise agreed in writing by the parties;
- "Software"** software incorporated into any Equipment or supplied separately by Commercial under the Contract;
- "Specification"** in relation to the Products and/or Services, the technical specifications of those Products and/or the description of the Services; as set out in or referred to more particularly in the Acknowledgement of Order;
- "Standard Support Hours"** means 8.30 am to 5.30 pm Monday to Friday, except on days which are bank holidays in England;
- "Supported Products"** means the Products supplied by Commercial for which Commercial provides Support Services, including but not limited to MFD, single function scanners, fax machines, single function printers and duplicators and any Software or Equipment relating to them as described in the Acknowledgement of Order, and any Contract and as more particularly described in the Acknowledgement of Order;
- "Support Services"** means the maintenance and support and additional services as described in the Acknowledgement of Order and carried out in accordance with this Contract and any Service Level Agreements, including any Supported Product Support Services;
- "Support Staff"** means those individuals who perform Commercial's obligations under any Contract
- "Terms and Conditions"** these standard terms and conditions of supply together with any special terms agreed in writing between the Customer and Commercial.
- "Third Party Suppliers"** means a third party supplier of software, services and equipment with whom the Customer or Commercial on the Customer's behalf has entered into a support or maintenance agreement;

1.2 Reference to any statute or any statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/ or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/ or replaced and in force from time to time. Any words following the words "include", "includes", "including", "in particular" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them. The headings in these Terms and Conditions are for ease of reference only and shall not affect the construction or interpretation of these Terms and Conditions.

2. FORMATION AND INCORPORATION

- 2.1 Any quotation or other proposal given by Commercial to the Customer is valid for a period of 30 days only from its date, provided Commercial has not previously withdrawn it.
- 2.2 Each order or acceptance of a quotation for Products and/or Services will be deemed to be an offer by the Customer to purchase and/or hire (as applicable) the Products and/or Services upon these Terms and Conditions. The Contract is formed when the order is accepted by Commercial, by way of a written acknowledgement of order. No contract will come into existence until a written acknowledgement of the order is issued by Commercial.
- 2.3 Acceptance of delivery of the Products or commencement of the performance of the Services will be deemed conclusive evidence of the Customer's acceptance of the Terms and Conditions.
- 2.4 Subject to any variation under clause 2.8, the Contract will be upon the Terms and Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.
- 2.5 These Terms and Conditions and the other terms of the Contract as referred to herein constitute the entire agreement between the parties in connection with its subject matter and supersede any prior agreement or other arrangement in respect of its subject matter provided that the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict with the Contract, and: (a) neither party has entered into the Contract in reliance upon, and it shall have no remedy in respect of, any representation or statement which is not expressly set out in these Terms and Conditions, the Acknowledgement of Order or otherwise in the Contract; (b) nothing in this clause 2.5 shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.
- 2.6 Subject to clause 12.2, all warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) are excluded from the Contract.
- 2.7 The Customer must ensure that the terms of each Acknowledgement of Order and any applicable Specification are complete and accurate.
- 2.8 Variation to these Terms and Conditions shall have no effect unless expressly agreed in writing and signed by a director on behalf of Commercial.
- 2.9 Subject to clause 7.1, or unless otherwise set out in the Acknowledgement of Order, the Customer may not cancel the Contract. The Company may cancel the Contract at any time within 5 Business Days of the date of the Acknowledgement of Order prior to delivery or performance.

3. PRODUCTS AND SERVICES

- 3.1 Subject to clause 4 and payment of the Charges by the Customer, Commercial will use its reasonable endeavours during the term of each Contract to supply the Products and/or the Services specified in that Contract using reasonable skill, care and diligence in accordance with good industry practice for supplying products and/or services of the same nature as the Products and/or Services.
- 3.2 If Commercial needs to make any changes to the Products and/or Services, which are necessary to comply with any safety requirements or applicable laws; or do not materially affect the nature or quality of the Products and/or Services,

Commercial will notify the Customer of such changes in advance of their implementation and, where any such change would have a material effect on the Products and/or Services, obtain the Customer's prior approval.
3.3 Except as otherwise agreed upon in the Acknowledgement of Order, any indicative volumes of Products and/or Services agreed in respect of the Contract will be binding on the Customer.

4. CUSTOMER OBLIGATIONS

- 4.1 The Customer will comply with all of its obligations in each Contract in a reasonable and timely manner.
- 4.2 Unless otherwise set out in the Acknowledgement of Order, the Customer will at all times: (a) comply with all applicable laws; (b) provide Commercial with timely and reasonable instructions and directions in respect of the delivery of the Products and/or the performance of the Services; (c) respond promptly to requests for information, directions and/or recommendation which Commercial or any relevant third party requests in order to deliver the Products and/or perform the Services; (d) obtain and maintain in force all memberships, licences, registrations, approvals, consents or qualifications necessary to perform its obligations under the Contract or otherwise in respect of the Products and/or Services; (e) respond to and provide such documentation, data and other information as Commercial reasonably requests; (f) be responsible (at its own cost) for preparing the relevant premises and Commercial Environment for the supply of Products and/or Services; (g) take all reasonable and usual precautions to safeguard and maintain the Customer Environment and the Products, including taking regular and useable backups, operating firewalls and virus checks, and implementing effective and appropriate data security; (h) provide such access for any of Commercial's employees, agents or sub-contractors to: (i) the relevant Delivery Point and/or Service Point, to other premises, and to all parts of the Customer Environment, as may be reasonably required in connection with the delivery of the Products and/or performance of the Services; (ii) appropriate members of the Customer's staff, as such access is reasonably requested by Commercial; (i) provide free of charge all electric power, office space, lighting and heating at the Delivery Point and/or Service Point and the provision of normal office services reasonably needed by Commercial's employees, agents or sub-contractors to deliver the Products and/or perform the Services; and (j) notify Commercial of any circumstance of which the Customer or any of its employees, agents or sub-contractors are aware, which would or could impact on Commercial's employees, agents or sub-contractors' ability to deliver the Products and/or perform the Services in accordance with the Contract.
- 4.3 On the expiry or termination of the Contract, the Customer shall on reasonable notice provide Commercial with such access as Commercial reasonably requires to the relevant Delivery Point and/or Service Point and such other premises as may be reasonably required to remove any of Commercial's Equipment and/or Services, the ownership of which remains with Commercial and has not passed to the Customer. All such equipment shall be removed by Commercial as soon as reasonably practicable.
- 4.4 The Customer shall use its reasonable endeavours to ensure that all of its staff who will use the Products and/or Services complete the relevant training, as agreed with Commercial, to help them to become competent in the use of the Products and/or Services.

5. DELIVERY AND PERFORMANCE

- 5.1 Commercial will use its reasonable endeavours to deliver the Products and perform the Services by the delivery and performance dates set out in the Acknowledgement of Order, but any such dates will be estimates only and time will not be of the essence of the Contract. If, despite those endeavours, Commercial is unable for any reason to fulfil any delivery or performance on the specified date, Commercial will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will Commercial have any liability to the Customer for direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery and/or performance except as set out in this clause. Any delay in delivery and/or performance will not entitle the Customer to cancel the order unless and until the Customer has given 21 days' written notice to Commercial requiring the delivery and/or performance to be made and Commercial has not fulfilled the delivery and/or performance within that period. If the Customer cancels the order in accordance with this clause 5.1 then Commercial will refund to the Customer any sums which the Customer has paid to Commercial in respect of that order or part of the order which has been cancelled.
- 5.2 Unless otherwise set out in the Acknowledgement of Order, delivery of the Products will be made at the Delivery Point and the Services will be performed at the Service Point. The Customer acknowledges that certain Services may not be performed by Commercial at the Service Point.
- 5.3 Where a site and/or technical survey has been required prior to installation, delivery or performance of the Products and/or Services, the Customer will ensure that any necessary actions notified in the survey report have been implemented prior to delivery.
- 5.4 If Commercial's performance of its obligations under the Contract is hindered, prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer will be liable to pay to Commercial on demand all reasonable costs, charges or losses sustained or incurred by it (including any direct, indirect or consequential losses, loss of profit, loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Commercial confirming such costs, charges and losses to the Customer in writing.
- 5.5 Where delivery or performance is required by the Customer outside the hours of 9am – 5.30pm on any Business Day, additional charges will apply, as will be specified on the Acknowledgement of Order.

6. SALE OF PRODUCTS

- 6.1 Risk of damage to or loss of the Products will pass to the Customer on delivery (or deemed delivery in accordance with clause 7).
- 6.2 Ownership of the Products will not pass to the Customer until Commercial has received in full (in cash or cleared funds) all sums due to it in respect of: (i) the Products; and (ii) all other sums which are or which become due to Commercial from the Customer on any account. Unless otherwise set out in the Acknowledgement of Order, Commercial or its licensor will retain the title in and ownership of any Software supplied by Commercial.
- 6.3 Until ownership of the Products has passed to the Customer, the Customer must: (a) hold the Products on a fiduciary basis as Commercial's bailee; (b) store the Products (at no cost to Commercial) separately from all other Products of the Customer or any third party in such a way that they remain readily identifiable as Commercial's property; (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and (d) maintain the Products in satisfactory condition insured on Commercial's behalf for their full price against all risks to the reasonable satisfaction of Commercial, and will whenever requested by Commercial produce a copy of the policy of insurance.
- 6.4 The Customer's right to possession of the Products will terminate immediately if the Customer becomes insolvent or if Commercial serves notice to terminate the Contract.
- 6.5 Commercial will be entitled to recover payment for the Products notwithstanding that title in any of the Products has not passed from Commercial.
- 6.6 The Customer grants Commercial, its sub-contractors, agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 6.7 If the Customer's right to possession of the Products terminates in accordance with clause 6.4, Commercial shall be entitled to issue the Customer with a credit note for all or any part of the price of the Products together with value added tax thereon.
- 6.8 On termination of the Contract, howsoever caused, Commercial's (but not the Customer's) rights contained in this clause 6 will remain in effect.
- 6.9 Unless otherwise set out in the Acknowledgement of Order, Commercial is not responsible for unpacking, installing, or checking the Products, which will be the responsibility of the Customer.

7. DELIVERY OF PRODUCTS

- 7.1 If the Customer fails to take delivery of any of the Products when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Products to be delivered and/or Services to be performed on time (except solely on account of Commercial's default), the Products and/or Services will be deemed to have been delivered or performed on the due date and (without prejudice to its other rights) Commercial may: (a) store or arrange for storage of the Products until actual delivery or sale in accordance with clause 7.1(b) and charge the Customer for all related costs and expenses (including storage and insurance); and/or (b) following written notice to the Customer, sell any of the Products at the best price reasonably obtainable in the circumstances and charge the Customer for any shortfall below the relevant Charges or account to the Customer for any excess achieved over the relevant Charges, in both cases having taken into account any charges related to the sale.

8. CHARGES AND PAYMENT

- 8.1 The Customer shall pay the Charges to Commercial in accordance with the Acknowledgement of Order.
- 8.2 Unless otherwise set out in the Acknowledgement of Order, the Charges are exclusive of packaging, insurance, carriage, and delivery costs in respect of Products and Expenses in respect of Services.
- 8.3 Unless otherwise set out in the Acknowledgement of Order: (a) Any sum payable under the Contract is exclusive of VAT (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which shall be payable in addition to that sum in the manner and at the rate prescribed



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by law from time to time; (b) Commercial shall be entitled to invoice the Customer for the Charges for Products and/or Services delivered and/or performed prior to the 26th day of each month and any Expenses, packaging, insurance, carriage and delivery costs payable by the Customer in addition to the Charges, on or after the first Business Day following the 26th day of each month; (c) each invoice shall be payable by the Customer within 30 days following the date on which the invoice is issued; (d) all payments shall be made in pounds sterling in cleared funds by BACS (Bank Automated Clearing System) transfer to such bank account as Commercial may nominate from time to time.

8.4 Notwithstanding any purported contrary appropriation by the Customer, Commercial shall be entitled, by giving written notice to the Customer, to appropriate any payment by the Customer to any invoice issued by Commercial.

8.5 Without prejudice to any other rights or remedies available to Commercial under these Terms and Conditions, if any sum payable under the Contract is not paid on or before the due date for payment Commercial shall be entitled to charge the Customer interest on that sum at 3% per annum above the base lending rate from time to time of the Bank of England from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis. 8.6 If the Customer fails to make any payment due to Commercial under the Contract on or before the due date for payment Commercial shall be entitled, without prejudice to any other rights or remedies of Commercial, to: (a) withhold further deliveries and/or performance of Products and/or Services under the Contract until payment of all overdue sums has been made; and/or (b) terminate the Contract.

8.7 Save as otherwise expressly provided in the Contract or required by law, all payments to be made by the Customer to Commercial under the Contract shall be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.

8.8 On termination of the Contract: (a) for any reason, all invoices issued by Commercial (including those issued in accordance with clause 8.8 (b)), will become immediately due and payable by the Customer; and (c) where Commercial terminates in accordance with clauses 13.1 or 13.2, Commercial shall be entitled to invoice all Charges and any Expenses, packaging, insurance, carriage and delivery costs incurred which have not yet been invoiced, and which would have become payable under that Contract during its expected term.

9. INTELLECTUAL PROPERTY

9.1 Nothing in the Contract will effect the ownership of either party's Intellectual Property Rights existing prior to formation of the Contract in accordance with clause 2 ("Commencement Date").

9.2 Subject as otherwise provided for in the Acknowledgement of Order, all Intellectual Property Rights in the Products and/or Services shall be owned by Commercial or its licensors.

9.3 Commercial shall have no liability for any claim of Intellectual Property Rights infringement: (a) caused by the Customer's use of the Products in combination with software or equipment not supplied or approved in writing by Commercial; and/or (b) resulting from any unauthorised modification of the Products, and/or (c) otherwise arising from the Customer's use of the Services not approved in writing by Commercial.

10. CONFIDENTIALITY

10.1 Each party will keep confidential: (a) the terms of the Contract; and (b) any and all Confidential Information that it may acquire in relation to the other party.

10.2 Neither party will use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract. Each party will ensure that its officers and employees comply with the provisions of clause 10.1.

10.3 The obligations on a party set out in clause 10.1 will not apply to any Confidential Information which: (a) either of the parties can demonstrate is in the public domain (other than as a result of a breach of this clause 10); or (b) a party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.

10.4 The provisions of this clause 10 will survive any termination of the Contract for a period of 5 years from the expiry or termination of the Contract.

11. WARRANTY

11.1 Unless otherwise provided for in these Terms and Conditions, Commercial will, free of charge, within a period of 3 months from the date of performance of Services which are proved to the reasonable satisfaction of Commercial to be defective due to defects in workmanship or design (other than a design made, furnished or specified by the Customer), re-perform the Services. This obligation will not apply where: (a) any maintenance requirements relating to the Services have not been complied with; or (b) the Customer has failed to notify Commercial of any defect or suspected defect within 14 days of the performance where the defect should be apparent on reasonable inspection, or within 14 days of the same coming to the knowledge of the Customer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than 3 months from the date of performance.

11.2 Any re-performed Services will be liable to re-performance (as applicable), under the terms specified in clause 11.1, for the unexpired portion of the 3 month period from the original date of performance of the re-performed Services.

11.3 Any warranty provided to Commercial in respect of third party Products supplied under the Contract shall, where possible, be transferred to the Customer, subject to any terms or restrictions imposed by the manufacturer.

11.4 Commercial does not warrant that any Product will be fit to operate in conjunction with any other equipment or software that are identified in the Documentation as being compatible with the Products.

12. LIABILITY AND INDEMNITIES

12.1 In the event of any breach of Commercial's express obligations under clauses 11.1, 11.2 and 11.3 above the remedies of the Customer will be limited to damages.

12.2 Commercial does not exclude its liability (if any) to the Customer: (a) for breach of Commercial's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982; (b) for personal injury or death resulting from Commercial's negligence; (c) under section 2(3) Consumer Protection Act 1987; (d) for any matter for which it would be illegal for Commercial to exclude or to attempt to exclude its liability; or (e) for fraud.

12.3 Except as provided in clause 9 and clauses 12.1 and 12.2, Commercial 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, loss of business opportunity, wasted expenditure, loss or corruption of data or information, depletion of goodwill and like loss) howsoever caused arising out of or in connection with: (a) any of the Products and/or the Services, or the manufacture or sale or supply, or failure or delay in supply, of the Products and/or the Services by Commercial or on the part of Commercial's employees, agents or sub-contractors; (b) any breach by Commercial of any of the express or implied terms of the Contract; (c) any use made or resale by the Customer of any of the Products and/or the Services, or of any product incorporating any of the Products and/or the Services; or (d) any statement made or not made, or advice given or not given, by or on behalf of Commercial; and Commercial hereby recommends that the Customer considers taking insurance to cover any such injury, death, damage or loss.

12.3 Except as set out in clauses 11, 12.1 and 12.2, Commercial hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in these Terms and Conditions or elsewhere in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.

12.4 Commercial's Charges to the Customer are determined on the basis of the exclusions from and limitations of liability contained in these Terms and Conditions.

12.5 Subject to clauses 12.2 and 12.3, Commercial's aggregate liability under each Contract whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct loss howsoever caused (other than for death or personal injury caused by Commercial's and its employees' or agents' negligence) will be limited to the total Charges paid for the Products and/or Services by the Customer to Commercial in the 6 months immediately preceding the date on which the claim arose.

12.6 Commercial shall, at its own cost, maintain in full force and effect with reputable insurers for the term of each Contract the following insurance policies: (a) Professional Indemnity insurance; (b) Employer's Liability insurance; and (c) any other insurances which Commercial is required by Applicable Law to maintain, (which together are referred to as the "Required Insurances"). Details of the Required Insurances may be provided to the Customer from time to time on reasonable request from the Customer.

13. TERMINATION

13.1 Either party may terminate the Contract, or any part thereof, immediately by written notice to that effect to the other party if: (a) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; (b) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); (c) a receiver is appointed of any of the other party's assets or undertakings, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of, or sells, the other party's assets; (d) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; (e) the other party ceases, or threatens to cease, to trade; or the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

13.2 If a party: (a) commits a material breach of the Contract which cannot be remedied; or (b) commits a material breach of the Contract which can be remedied but fails to remedy that breach within 30 Business Days of a written notice setting out the breach and requiring it to be remedied being given by the other party, the other party may terminate the Contract by giving not less than 14 days' written notice to that effect to the party in breach. This clause is without prejudice to the provisions of clause 8.6.

13.3 A material breach can be remedied if the party in breach can comply with the relevant obligation in all respects other than as to time of performance, unless time of performance of such obligation is of the essence.

13.4 Commercial may terminate any and all Contracts immediately by giving written notice to that effect to the Customer if the Customer fails to make any payment due to Commercial under any Contract within 30 days after the due date.

13.5 Commercial may, on giving the Customer 3 months' prior written notice at any time, terminate without liability to the Customer, any Contract.

13.6 The rights of termination set out in these Terms and Conditions shall apply (to the maximum extent permitted by law) to the exclusion of any and all rights of termination which may exist at common law.

14. CONSEQUENCES OF TERMINATION

14.4 On termination of this agreement for any reason: (a) Commercial shall immediately cease provision of the Supported Services but may agree to provide transition services as may be agreed in writing between the parties for a further period; (b) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; (c) Commercial may destroy or otherwise dispose of any of the customer's data in its possession unless Commercial receives, no later than ten days after the effective date of the termination or expiry of this agreement, a written request for the delivery to the Customer of the most recent backup of the customer's data held by Commercial. Commercial shall use reasonable commercial efforts to deliver the backup to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at, and resulting from, termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Commercial in returning or disposing of customer's data; and, (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15. FORCE MAJEURE

Commercial shall have no liability to the Customer under this agreement if it is prevented from, or delayed in, performing its obligations under this agreement or any Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors, provided that the Customer is notified of such an event and its expected duration.

16. GENERAL TERMS

16.1 **Severability.** If any provision of these Terms and Conditions, the other terms of the Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or, at the discretion of Commercial, it may be severed from these Terms and Conditions, or elsewhere from the Contract (as applicable) and the remaining provisions of the Contract shall remain in full force and effect unless Commercial in Commercial's absolute discretion decides that the effect of such declaration is to defeat the original intention of the parties in which event Commercial shall be entitled to terminate the Contract by 30 days notice to the Customer and the provisions of clause 14 shall apply accordingly.

16.2 **Notices.** Any notice or other communication to be given under the Contract must be in writing and shall either be delivered personally or sent by first class prepaid post or by facsimile transmission to the party to be served at that party's last-known address and/or facsimile number and in respect of Commercial, marked for the attention of the Alistair Adams, Director of IT Services Division or such other individual as may be notified by Commercial to the Customer from time to time in accordance with this clause 16.2 and shall be deemed duly served: (a) in the case of a notice delivered personally, at the time of delivery; (b) in the case of a notice sent inland by first class prepaid post, 2 Business Days after the date of dispatch; (c) in the case of a facsimile transmission, if sent during normal business hours then at the time of transmission and if sent outside normal business hours then on the next following Business Day provided (in each case) that a confirmatory copy is sent by first class prepaid post or by hand by the end of the next Business Day. Each of the parties shall give notice to the other of the change or acquisition of any address or fax number at the earliest possible opportunity but in any event within 48 hours of such change or acquisition.

16.3 **No Partnership.** No Contract will constitute or imply any partnership, joint venture, agency, fiduciary or other relationship between the parties other than the contractual relationship expressly provided for in the Contract.

16.4 **Waiver.** All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under the Contract shall restrict or prejudice the exercise of any other right granted by the Contract or otherwise available to it. A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract shall not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor shall the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default shall only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it is given and shall not constitute a waiver of any other right, remedy, breach or default.

16.5 **Assignment.** The Customer shall not without the prior written consent of Commercial assign, transfer, charge, hold on trust for any person or deal in any other similar manner with the Contract or its rights or any part of them under the Contract, or purport to do any of the same. The Customer shall only be entitled to sub-contract any of its obligations under the Contract if it has obtained the prior written consent of Commercial. Any sub-contracting of the Customer shall not relieve the Customer from its liabilities to Commercial under the Contract. The Customer shall be liable to Commercial for the acts and omissions of its sub-contractors in relation to the Contract. Commercial shall be entitled to assign and/or sub-contract any of its obligations under the Contract.

16.6 **Successors and Assigns.** The Contract shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party to the Contract shall include its successors and assigns.

16.7 **Non-solicitation.** Neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services at (or in the case of the Customer) in the receipt of the Services either whilst the Services are being provided or for a further period of 6 months after the termination of the Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.

16.8 **Third Parties.** The parties do not intend that any term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.

16.9 **Jurisdiction.** The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law. The parties submit to the exclusive jurisdiction of the English courts, save that: (a) Commercial will have the right to sue to recover Charges in any jurisdiction in which the Customer is operating or has assets; (b) Commercial will have the right to sue for breach of its Intellectual Property Rights and other proprietary information (whether in connection with the Contract or otherwise) in any country where it believed that infringement or a breach of the Contract relating to its Intellectual Property Rights and/or other proprietary information might be taking place, and agree that in respect of proceedings in England and any other jurisdiction, process may be served by either of them in the manner specified for notices in clause 16.2.

16.10 **Dispute Resolution.** It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters arising out of this agreement. Accordingly, it is agreed that the procedure set out in this clause 16.10 shall be followed before the serving of written notice terminating this agreement, or in relation to any matter of dispute between the parties concerning this agreement. If any disagreement or difference of opinion arises out of this agreement the matter shall be disposed of as follows: (a) the parties' Support Manager's shall meet to attempt resolution. Should they not meet within 14 days of the date on which either party convenes a meeting to resolve the matter, or should they not be able to resolve the matter with 14 days of first meeting; then (b) the matter shall promptly be referred by either party to the Managing Director of the Customer and the IT Director of Commercial for immediate resolution. If, within 14 days of the matter first having been referred to the Managing Director of the Customer and the IT Director of Commercial no agreement has been reached as to the matter in dispute, the dispute resolution process set out in this clause shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by this agreement in respect of such matter without further reference to the dispute resolution process. For the avoidance of doubt, this clause shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's intellectual property rights.

16.11 **Variation.** No variation of this agreement shall be effective unless it is in writing and signed by a director of Commercial.



IT SERVICES

MFD TERMS AND CONDITIONS OF SUPPLY

PART II – SUPPORT SERVICES CONTRACT

Where purchased as part of the Contract, Commercial shall provide Support Services for all Products (including MFDs, scanners, single function printers, duplicators and other equipment specified in the Acknowledgement of Order as being Supported Products in accordance with any Service Level Agreements (a "Support Services Contract"). Maintenance will, unless indicated otherwise, include parts and labour. At the end of a Support Service Contract for any Product, parts, labour and any other support or maintenance services will be chargeable.

17 SUPPORT SERVICES

17.1 Standard Commercial Support Services ("Administrative Support") comprises: (a) a telephone help desk during Standard Support Hours to provide support to users of the Supported Products ("Standard Help Desk Support"); (b) provision of parts and labour and Consumable Supplies within the Copy Charge except paper and staples; and, (c) co-ordinating Support Services with Third Party Suppliers.

17.2 If additional on-site support is required in any month it may be provided by Commercial at its option at the rates set out in the Acknowledgement of Order. Where not purchased as part of the Contract, Customer's reporting incidents or Faults to the Network Operating Centre (NOC) shall, following connection to the NOC, be charged a fixed fee of £95 for the first 20 minutes of assistance provided and £1.50 per minute for each subsequent minute of service used.

17.3 Commercial shall be entitled, on prior notice to the Customer to make changes to the Support Services, provided such changes do not have a material adverse effect on the Customer's business operations.

17.4 **Fault Reporting.** The Customer shall promptly notify Commercial of any Faults in the Services. Serious Faults should always be reported by telephone at the earliest opportunity. In reporting a Fault, the Customer shall supply Commercial with a detailed description of any Fault and the circumstances in which it arose and shall use best endeavours to submit sufficient material and information to enable Commercial's support staff to replicate the Fault.

1.6 Response times for Faults in Supported Products are provided in accordance with the level of Supported Product Support Services detailed in the Acknowledgement of Order.

Support Service – Gold

Response Time

If applicable, response to via Network Operating Centre	4hrs
If applicable, response to Service Point at Customer site	8hrs
Preventative maintenance calls	3-5 days
Consumable Supplies delivered to Service Point at a Customer site	3-5 days

Response Times are measured within Standard Support Hours only. The "Response Time" begins when a Fault with Supported Services is recorded by Commercial in the Commercial Support Services monitoring system. No representation or warranty of any kind is given by Commercial that any Faults will be fixed or will be fixed within a specified period.

Commercial may agree separate service levels with you in writing. These may specify response times, helpline support and other specific service details.

17.5 Charges for Support Services are for a reasonable level of support provided for the Supported Products. If Commercial believe, in its sole opinion, that Standard or Technical Help Desk Support or any other Support Services are being used excessively, for example as a replacement for training, Commercial reserves the right to charge for such Help Desk Support or other Support Services on an hourly basis in accordance with Commercial's then reasonably accounted for rates for such Support Services.

17.6 **Product Support Services.** Following a report of a Fault in accordance with clause 17.4, Commercial will use reasonable endeavours to resolve any Supported Product Fault in accordance with Service Levels for that Supported Product. Where possible, Commercial will use its reasonable endeavours to rectify any Supported Product Fault on-site. Items of a consumable nature will not generally be covered under Supported Product Support Services, unless such items have, in Commercial's sole discretion, clearly suffered undue wear as a direct result of an original manufacturing defect.

17.6 **Third Party Suppliers.** The Customer's use of any third party products and/or services is governed by the terms of the agreement with the provider of those products and/or services, and its warranties. Use of third party Products is at the Customer's sole risk. Unless otherwise provided for in the Contract or by written agreement between the parties, Commercial is not responsible in any way for any third party equipment, services or product's performance, features or failures. The Customer agrees that the provision of a response to a Fault or service request from Third Party Suppliers will be dependent on the service levels established within their or Commercial's contractual arrangements with that Third Party Supplier. Commercial will liaise with other support partners and Third Party Suppliers to assist with the resolution of Faults in so far as it is reasonably possible, however, Commercial shall not be responsible for any acts or omissions of such Third Party Suppliers, disclaims all liability for, and makes no representation or warranty that any Faults or service requests dependent on a response from any third party will be fixed or that any service request will be responded to within a specified period of time by that third party.

17.7 **Consumable Supplies.** Consumable Supplies shall include, as detailed, black and/or colour toner. Black and colour toner are charged separately unless stated as being included in the Copy Charge charges in the Acknowledgement of Order. Charges for Services are calculated on 5% mono toner coverage and 20% colour toner coverage. In the event that Customer's toner usage is in excess of these figures, Commercial may, at its discretion, increase the Charges for Consumable Supplies.

Commercial is providing Support Services for Supported Products using Consumable Supplies or any other items designated by Commercial as Customer replaceable units, the Customer agrees to use only unmodified Consumable Supplies or such items purchased from Commercial. Failure to use Consumable Supplies or items purchased from Commercial will void any warranty applicable to such Supported Products.

17.8 The Customer agrees that the Consumable Supplies are Commercial's property until used by the Customer and that the Customer will only use them in accordance with recommended guidance provided by Commercial or any Third Party Supplier. Toner is supplied by Commercial only for use with Supported Products provided by Commercial. Except where such items are owned by the Customer, the Customer will return all Consumable Supplies to Commercial once they have run to their cease-function point and on any termination of the Contract or any Support Services Contract.

17.9 The Customer shall ensure that any Consumable Supplies used on the Supported Products are of suitable quality and provided or approved by Commercial. Support Services carried out by Commercial, which, in Commercial's sole opinion, result from use of Consumable Supplies not purchased from or approved by Commercial will be charged at Commercial's then current rates for additional support services.

17.10 All Consumable Supplies must be kept in a safe place in accordance with Commercial or any Third Party Supplier's manufacturer's instructions and available for collection by Commercial at any time. On termination of Supported Service Contracts all unused Consumable Supplies (including any contained in the Supported Products) provided to the Customer by Commercial but not yet paid for must be immediately returned to Commercial.

17.11 **Meter Readings and Inventory Requests.** If applicable, at any time, when requested by Commercial, the Customer agrees to provide meter readings for Supported Products and an inventory of any Consumable Supplies in the Customer's possession in the manner prescribed by Commercial. If the Customer does not provide Commercial with meter readings where requested, Commercial may estimate meter readings and bill the Customer accordingly. In the event of a dispute in respect to meter readings based either on: (a) an estimate meter reading provided to the Customer by Commercial which the Customer disputes; or, (b) a meter reading provided by the Customer which Commercial believes may be inaccurate or disputes, the Customer shall promptly provide reasonable access to its premises to Commercial so that Commercial may obtain and record appropriate correct meter readings from Supported Products. Commercial shall at its sole discretion be entitled to charge the Customer for all reasonable call out and administration charges incurred in investigating a dispute in respect to meter readings.

17.12 **Capacity Guidelines.** The Customer agrees to use the Supported Products in accordance with guidance provided by Commercial or Third Party Supplier's manufacturer's instructions (including any manufacturer's capacity guidelines) not in a manner likely to result in excessive wear and tear and to maintain the necessary environmental conditions for use of the Supported Products.

17.13 **Minimum Customer Equipment Requirements.** The Customer's use of certain Supported Products and or Support Services requires the Customer Environment to meet minimum standards set by Commercial or Third Party Suppliers ("Minimum Standards"). Where relevant, the Customer will be informed of any Minimum Standards required in order to make use of such Supported Products and/or Support Services. Commercial shall have no obligation to provide the Support Services (and be entitled to charge the Customer additional support charges at its then current rates) where Faults arise from the Customer's failure to meet Minimum Standards.

17.14 **Installation and Acceptance.** If, where required in the Acknowledgement of Order the provision of Support Services requires installation of Products on the Customer Environment, the Customer shall ensure that a suitably

qualified and authorised representative is present to install and carry out Acceptance Tests to integrate the Products with the Customer Environment in accordance with the Project Plan (if any) to meet the required Specification.

17.15 **Relocation.** The Customer shall not, without Commercial's written consent (not to be unreasonably withheld) relocate any part of the Supported Products. Where relocation of Supported Products is requested by the Customer, Commercial shall charge the Customer for such relocation at its then current rates.

17.16 **Support and Training.** (i) The Customer shall appoint one member of its staff as Primary Support Contact for Support Services. Commercial will provide basic operator training to one Primary Support Contact in the use of Supported Products. Additional training for Supported Products, where requested, is available to the Customer from Commercial at its then current hourly rates. (ii) The Primary Support Contact will be responsible for liaising with Commercial's Support Staff and shall provide Commercial with such information, co-operation and access as may be required to assist Commercial's Support Staff in the provision of the Support Services and any attempts to determine the cause of or in rectify any Fault.

17.17 **Additional Customer obligations in relation to Support Services.** (a) The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Products and shall take all reasonable steps to ensure that the Supported Products are operated in a proper manner by the Customer's employees, agents, sub-contractors (or any third parties) who have access to and make use of the Supported Products. (b) The Customer shall co-operate with Commercial in performing the Support Services and provide any assistance, network access, or information as may reasonably be required by Commercial; report any Faults promptly to Commercial and keep full back-up copies of its data. (c) The Customer shall not, without Commercial's prior written approval, allow any person other than a representative of Commercial to modify, repair, replace or maintain any part of the Supported Products. Commercial shall have no liability to rectify any particular Fault if attempts to rectify such Fault have been made by the Customers' personnel or any third parties without the permission of Commercial.

17.18 **Customer Breach.** Commercial shall have no obligation to provide the Support Services (and shall be entitled to charge the Customer additional support charges at its then current rates) where Faults arise from: (a) misuse, incorrect, unauthorised use of or damage to the Supported Products; or (b) failure to maintain the necessary environmental conditions for use of the Supported Products; or (c) use of the Supported Products in combination with any equipment, consumables or software not provided by or approved by Commercial, or any fault in any such equipment or software; or (d) relocation or installation of the Supported Products or any part of them by any person other than Commercial or a person acting under Commercial's instructions; or (e) use of any Supported Products not used in accordance with guidance provided by Commercial or Third Party Supplier's manufacturer's instructions (including any manufacturer's capacity guidelines); (f) for Consumable Supplies; (g) for Services requested to be performed outside of Standard Support Hours or (h) any breach of the Customer's obligations under the Contract. In the event that Third Party Supplier support charges are required in order to resolve any issues with Supported Products, these will be passed on to the Customer after first receiving the Customer's authorisation to incur them

SUPPORT SERVICES

17.19 **Enhanced Support Services.** Where purchased as part of the Contract, support for Network Peripherals (being printer controller, network interface card, scanner control and fax card) shall be included as part of the Support Services for Supported Products connected to the Customer Environment or to an external telephone line ("Network Peripherals Support"). Where purchased as part of the Contract, Support Services shall include (in addition to Administrative Support): (a) a telephone help desk during the Standard Support Hours to provide first-line technical support to users of the Supported Products ("Technical Help Desk Support"); (b) remote diagnosis and, where possible, correction of Faults using software management tools in accordance with specific Service Levels; (c) second-line on-site diagnosis and correction of Faults, repair or replacement of Supported Products in accordance with specific Service Levels; and (d) a managed service to incorporate automated meter billing and Consumables replenishment. Products connected to the Customer Environment or to an external telephone line not covered by Network Peripherals Support, may, in the event of failure, be supported at Commercial's discretion on a reasonable endeavours basis only and Commercial reserve the right to charge on a time and materials basis for such support at its then current rates.

17.20 **Hardware and Software RIP Support.** Where purchased as part of the Contract, support for RIP firmware, hardware and software ("RIP Support") shall be included as part of Support Services for Supported Products. Products incorporating RIP, not covered by RIP Support, may, in the event of failure, be supported at Commercial's discretion on a reasonable endeavours basis only and Commercial reserve the right to charge on a time and materials basis for such support at its then current rates.

CHARGES FOR SUPPORT SERVICES

17.21 The Customer will pay the Charges to Commercial for the Support Services in accordance with the Acknowledgement of Order. In order to calculate the Charges due for the Supported Services, Commercial may obtain meter readings from either the Customer (by phone, e-mail, fax or e-services) or Commercial Support Staff when they provide Support Services.

17.22 **Copy Charge** Each metered copy charge is for one single sided copy or print made on the Supported Product up to A4 size. Scans taken on the Supported Product (where no Copy or print is simultaneously made) are included in Administrative Support Service Charges for up to 6000 scans in any Quarter, in the event that this threshold is met, Commercial reserve the right to charge 0.2p per scan for each additional scan over 6000 scans in any Quarter. Where purchased as part of the Contract, Enhanced Support Services include all scans taken on a Supported Product. Support Services Charges are calculated Quarterly by reference to the agreed Copy Charge multiplied by the number of pages utilised by the Customer quarter.

17.23 Commercial may, at any time after the first 12 months of providing Support Services and no more than once in any subsequent 12 month period increase the Copy Charge. Excluding increases in relation to clauses 17.24, 17.25, 17.26 and 17.34 any such increase shall be up to a maximum of 12%.

17.24 The provisions of 17.23 above shall not apply if Support Services are in respect to Products which are more than five years old. In which case Commercial may increase the Charges for Support Services, no more than twice in any 12 month period, on 30 days advance notice to the Customer.

17.25 The Copy Charge is based on a single side A4 page. Double sided A4 and pages that are larger than A4 are charged as two pages. Commercial may increase the Copy Charge (and any other Charges) at any time commensurate with an increase in the cost of any raw materials.

17.26 Toner is not included as part of the Charges for Support Services unless Supported Products are specified as "toner inclusive" in the Acknowledgement of Order. Where the Supported Services are specified as "toner inclusive" the Copy Charge only includes the supply of toner necessary to produce prints on the Supported Products to yield an overall average image coverage of 5% on black prints and 20% on colour prints (on white paper). Toner used in excess of this level will be charged at Commercial's current rates at the time.

17.27 All other output materials including but not limited to: (i) staples, paper, card, transparencies and labels; and, (b) inks, master and thermal heads for duplicators; will be charged at Commercial's then current prices.

17.28 The Customer agrees to pay for the collection of each Supported Product at the end of the Contract and/or the Support Services Contract for that Supported Product at a cost of £295 +VAT.

BILLING TYPES

Your billing type will be as specified in the Acknowledgement of Order:

17.29 **Copy Charge monthly and quarterly in arrears.** Charges based on the collection of meter readings and based on multiplying this usage by the Copy Charge.

17.30 **Minimum Billing - monthly/quarterly.** Based on an agreed amount of usage of the Supported Products as further detailed in the Acknowledgement of Order. Minimum Billing Charges are invoiced Quarterly or monthly in advance or in arrears (as detailed in the Acknowledgement of Order) and such Charges shall be made up of the agreed number of Minimum Quarterly Impressions ("MQI") (detailed in the Acknowledgement of Order) multiplied by the page charge. The Minimum Billing Charge will not be reduced if the Customer has used less pages in the quarter than agreed in the Acknowledgement of Order. At each anniversary of the Contract and/or a Support Services Contract (or at any other reasonable time at its discretion), Commercial will calculate actual impressions used by obtaining meter readings as provided in these Terms and Conditions. If no readings are available then Commercial will invoice the Customer based on estimates and this will be deemed to be the final reading for the year. Once the actual number of impressions used in each year has been established and if applicable, Commercial will invoice the Customer for any impressions used in that year in excess of 4 times the MQI. If, at any time, the Customer's use does, or in Commercial's sole opinion is likely to, exceed MQI in any Quarter, Commercial may, at its sole discretion, review the agreed number of MQI with the Customer and adjust the Minimum Billing Charge payable by the Customer to acknowledge such excess. At each anniversary of the Contract and/or a Support Services Contract, Commercial reserve the right to charge the MQI for the forthcoming 12 month period if the number of actual Impressions taken in the preceding year is more than 10% greater than the MQI set out in the Acknowledgement of Order.

17.31 **Annual labour charge.** A fixed annual fee is payable in advance of Support Services being provided to cover the estimated cost of engineer call outs. Consumable Supplies are not included in this charge and will be billed as meter click, quarterly in arrears or in the case of low volume use, every 6 months.



MFD TERMS AND CONDITIONS OF SUPPLY

TERMINATION OF SERVICES AGREEMENT

17.32 The initial term of the Contract for Supported Product Support Services (a "Support Services Contract") will be fixed for an initial term of 36 months (or where Rental of Products is specified in the Acknowledgement of Order for the term of such Hire Period as specified in the Acknowledgement of Order) (the "Initial Term"). At the end of the Initial Term and to the extent that the Support Services for a Supported Product continues, the Support Services Contract will automatically continue for additional 12 month terms unless and until either Party gives the other written notice of termination in accordance with clause 17.33.

17.33 Subject to any other termination rights of either Party in accordance with these Terms and Conditions, or any Contract, a Support Services Contract may be terminated; (a) by the Customer after the Initial Term or on any subsequent anniversary of that date on 12 months prior notice in writing to Commercial; or (b) by Commercial in the event that the Copy Charge for the Supported Product in any quarter falls below 50 per cent of the average of the Supported Products Copy Charge since the date of the Supported Products installation.

17.34 In addition to Commercial's rights under clause 13, and without prejudice to any other rights Commercial may have under this Contract, Commercial may, if the Customer consistently exceeds the manufacturers recommended monthly volumes for a Supported Product, at its sole option: (i) increase the Copy Charge payable by the Customer to a sum which Commercial reasonably consider reflects the Customer's actual use of the Supported Product and Commercial's extra costs incurred in supporting the Supported Product; (ii) terminate the Support Services Contract and recover all outstanding sums due from the Customer.

17.35 In the event that in Commercial's opinion any Supported Product becomes out-dated or uneconomic for Commercial to maintain then Commercial may terminate the Support Services Contract for that Supported Product on 90 days prior notice in writing.

17.36 In the event of termination of the Support Services Contract, the Customer shall immediately return to Commercial all Supported Products and Consumable Supplies which were subject to or provided as part of the Support Services and pay to Commercial all outstanding sums due under the Support Services Contract. The charges due in the notice period shall be twelve months of any Supported Product Support Services Charge plus the greater of the following: (a) charges for actual Copies taken on the Supported Products during the notice period; or, (b) the equivalent of twelve months Charges based on the average quarterly Copy Charge of the Supported Products subject to termination. All charges will be calculated using the Copy Charge per Copy in force at the time notice is given. Unexpired periods of pre-paid Support Services Charges at the time of effective termination are not refundable.

18 RENTAL OF EQUIPMENT AND SOFTWARE

Where purchased as part of the Contract, Commercial shall provide Rental of Products as specified in the Acknowledgement of Order.

"Hire Period" the period specified in the Acknowledgement of Order, and any extension of the same agreed by the parties in writing (that being 3 years for refurbished Equipment, 4 years or 5 years for new Equipment);

"Hire Products" the hardware equipment, and software to be hired to the Customer by Commercial under the Contract;

"Licence" means the licence granted by Commercial pursuant to this clause 18;

"Location" means the delivery point or such other location where the Hire Products are to be installed and used as agreed with Commercial by the Customer from time to time;

18.1 **Rental Terms.** Commercial grants to the Customer a non-exclusive, non-transferable licence to use the Hire Products throughout the Hire Period subject to these Terms and Conditions and agrees to hire the Hire Products to the Customer for the duration of the Hire Period in consideration of the Customer paying the Charges for the Hire Products for the duration of the Hire Period.

18.2 The Customer acknowledges that it is licensed to use the Hire Products only in accordance with the express terms of the Contract for processing its own data, in the ordinary course of its business and for its own internal business purposes only and not further or otherwise and shall not without the prior written consent of Commercial use the Hire Products in any location except the Location.

18.3 Risk of damage to or loss of the Hire Products will pass to the Customer on delivery.

18.5 **Obligations of Commercial.** Commercial will maintain the Hire Products that are subject to a Support Services Contract during the Hire Period.

18.6 **Obligations of the Customer.** The Customer agrees: (a) to use the Hire Products in a skilful and proper manner and in accordance with any operating instructions issued for them and to ensure that the Hire Products are operated and used by properly skilled and trained personnel, and indemnify, keep indemnified and hold harmless Commercial against any failure to do so; (b) to keep the Hire Products at its own expense and at all times in good repair, condition, and working order properly serviced and maintained; (c) to make no alteration and not remove any existing components from the Hire Products (unless in the ordinary course of repair and maintenance); (d) to keep or procure to be kept throughout the Hire Period accurate and complete records of all use, maintenance, servicing and repairs carried out to the Hire Products and shall make such records available to Commercial on request; (e) to insure the Hire Products and keep the Hire Products insured throughout the Hire Period, for their full replacement value against all risks on a comprehensive insurance policy with a reputable insurer. The Customer will provide evidence of such insurance policy on request from Commercial from time to time; (f) to keep the Hire Products in its own possession at the Location and in compliance with any policy of insurance affecting the Hire Products; (g) not to transfer, sell, assign, sub-license, pledge, or otherwise dispose of, encumber or suffer a lien or encumbrance upon or against any interest in the Hire Products; (h) to deliver up the Hire Products serviced and maintained and in good repair and working order at the end of the Hire Period or upon earlier determination of the Contract to such address as Commercial will notify the Customer; (i) to notify Commercial in writing immediately on the loss of or damage to the Hire Products; (j) to indemnify, keep indemnified and hold harmless against any loss or damage to the Hire Products while in the possession of the Customer, ordinary wear and tear accepted; (k) to pay for all data communications costs arising out of the use of the Hire Products while at the Location; (l) to use the Hire Products in any conformance or inter-operability testing activities, either internally or externally; (m) to notify Commercial immediately if the Customer becomes aware of any unauthorised use of the whole or any part of the Hire Products by any person; (n) to arrange and pay for the delivery to and installation of the Hire Products at the Location at the beginning of the Hire Period, and de-installation of the Hire Products and their return to Commercial at the end of the Hire Period; (o) to pay for any correction or maintenance of the Hire Products

18.7 **Termination.** Notwithstanding any other rights of termination Commercial has under this Contract, Commercial may terminate the Contract, or any part of the Contract relating to Hire Products, immediately on giving notice to the Customer, if the Customer permanently discontinues its use of the Hire Products. Any termination of the Contract or a part of the Contract relating to Hire Products, will automatically terminate the licence granted under this clause 18. Immediately upon termination of the Contract, or the part of the Contract relating to Hire Products, the Customer will make no further use of the Hire Products and return to Commercial the Hire Products and any associated documentation and data or, if requested by Commercial, will destroy the same and certifying in writing to Commercial that they have been destroyed, provided that the Customer may extract and store any Customer data upon a separate media for continuity purposes.

Early Termination. In the event of termination of the Contract or part of the Contract relating to Hire Products before the end of any relevant Hire Period all Charges payable up to the end of the Hire Period shall become immediately due and payable to Commercial.

18.8 **Hire Product Warranty** Commercial agrees on request and at the cost and expense of the Customer to assign to the Customer for the duration of the Hire Period the benefit of all express warranties granted in favour of Commercial by the third party supplier of the Hire Products or the manufacturer of them. The Hire Products are selected by the Customer and acquired by Commercial at the request of the Customer solely for the purpose of hiring the Hire Products to the Customer and save as above Commercial does not let or supply the Hire Products with any representation concerning the condition, performance or qualities of the Hire Products or with or subject to any term condition or warranty express or to be implied and all such representations, conditions, warranties whether relating to the capacity, age, quality, description, condition, leasing, possession, transportation, or use of the Products or to the suitability or fitness of the Hire Products for a particular or any purpose are excluded. Commercial does not warrant that the Hire Products do not or that the Customer's use of the Hire Products will not infringe any patent, trade marks and registered designs, copyrights or confidential information or Intellectual Property Rights owned or possessed by any third party and Commercial shall not be liable to the Customer for any loss suffered by the Customer in any way by reason of any such infringement.