



## SUPPORT SERVICES TERMS AND CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply in these terms and conditions:

**Business Day:** means a day other than a Saturday, Sunday or a public holiday in the United Kingdom when banks in London are open for business;

**Charges:** means the charges set out in the Order and at clause 6, plus any charges in respect of a minimum volume commitment which may be set out in the Order;

**Commercial:** means Commercial IT Services Limited (company no. 07482128) whose registered office address is at Commercial House, Old Station Drive, Leckhampton, Cheltenham, Gloucestershire, GL53 0DL;

**Conditions:** means Commercial's terms and conditions as set out in this document;

**Contract:** means the agreement between Commercial and the Customer for the Services incorporating these Conditions and the Order;

**Contract Term:** means the Initial Term plus any Extension Term;

**Customer:** means the person who purchases the Services from Commercial and whose details are set out in the Order;

**Force Majeure:** means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster; war, riot or civil unrest; interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service; or material required for performance of the Contract; strike, lockout or boycott or other industrial action including strikes or other industrial disputes involving the Commercial's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

**Order:** means the Customer's order for the Services to which these Conditions are attached and which is signed by both parties;

**Services:** mean the maintenance, support and additional services as set out at clause 3 and described in the Order.

### 2. APPLICATION OF THESE CONDITIONS

2.1 These Conditions apply to and form part of the Contract between Commercial and the Customer. They supersede any previously

issued terms and conditions of purchase or supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract.

2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of Commercial.

2.4 Each Order by the Customer to Commercial shall be an offer to purchase the Services subject to these Conditions.

2.5 An Order may be withdrawn or amended by the Customer at any time before acceptance by Commercial. If Commercial is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.

2.6 An Order is accepted and the Contract is formed when the Order is signed by both parties.

2.7 Commercial may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply services and are incapable of being accepted by the Customer.

2.8 Marketing and other promotional material relating to goods and/or services are illustrative only and do not form part of the Contract.

### 3. SERVICES

3.1 In consideration of the Charges, Commercial shall provide the Services specified in the Order using reasonable skill, care and diligence in accordance with good industry practice.

3.2 Routine maintenance and repairs shall be provided between 9am and 5pm on a Business Day.

3.3 Commercial shall supply standard toner only. If toner is not included in the Order, it (as well as all other consumables) must be purchased from Commercial, except paper. Where the Customer uses an alternative supplier, Commercial shall have no liability to the Customer in respect of any degradation of the performance of the equipment, and the Customer shall be liable to Commercial for any parts, consumables and labour required to return the equipment to its original specification.

### 4. CUSTOMER OBLIGATIONS

4.1 During the Contract Term, the Customer shall:



- 4.1.1 make all payments in full and on time;
- 4.1.2 submit meter readings to Commercial upon Commercial's request. Failure to do so will result in estimated invoices;
- 4.1.3 return all unused toner and any other consumables to Commercial upon termination or expiry of the Contract, howsoever arising; and
- 4.1.4 use paper or other 'through put' material, of a good standard that, in Commercial's opinion does not impair, damage or cause more frequent call outs due to excessive dust build up or abrasion of rollers and feed tyres, or excessive curling.

## 5. LIABILITY

- 5.1 Neither party limits or excludes its liability for:
  - 5.1.1 death or personal injury caused by negligence;
  - 5.1.2 fraud or fraudulent misrepresentation; or
  - 5.1.3 any losses which cannot be excluded or limited by law.
- 5.2 Commercial shall not be liable to the Customer (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any consequential, indirect or special losses, and any loss of profit, loss of data, loss of use, loss of production, loss of contract, loss of business opportunity, loss of saving, discount or rebate (actual or anticipated), harm to reputation or loss of goodwill, in each case whether deemed direct or indirect.
- 5.3 Except as otherwise set out in the Contract, Commercial excludes to the fullest extent permissible in law all conditions, warranties and stipulations, express or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
- 5.4 Subject to clause 5.1, Commercial's total liability under each Contract shall be limited to the total Charges paid by the Customer to Commercial in the 6 months immediately preceding the date on which the claim arose.

## 6. CHARGES AND PAYMENT

- 6.1 The Customer shall pay the Charges to Commercial in accordance with these Conditions and the Order.
- 6.2 Unless otherwise set out in the Order, the Charges are exclusive of:
  - 6.2.1 VAT (or equivalent sales tax);

- 6.2.2 any packaging and delivery costs which shall be charged in addition at Commercial's standard rates; and
- 6.2.3 any other expenses of Commercial which shall be subject to the Customer's prior written agreement.
- 6.3 Commercial shall be entitled to invoice the Customer for the Charges and any packaging and delivery costs on a monthly basis. Each invoice shall be payable by direct debit unless otherwise agreed in the Contract whereby Commercial will be entitled to charge the Customer an additional 2.5% of the monthly Charges, including packaging and delivery cost.
- 6.4 Commercial shall be entitled to increase its Charges by up to 10% to reflect increases in its costs of providing the Services, provided that such Charges cannot be increased more than once in any 12 month period during the Contract Term. Commercial will give the Customer written notice of any such increase not less than 30 days before the proposed date of the increase.
- 6.5 Without prejudice to any other rights or remedies of Commercial under the Contract, where any sums due under the Contract are not paid on or before the due date for payment, Commercial shall be entitled to charge the Customer statutory interest on such sums pursuant to the Late Payments of Commercial Debts (Interest) Act 1998.
- 6.6 **Basic Charge.** The basic charge will be payable on a monthly basis unless otherwise agreed in the Order. Each invoice shall be payable within 30 days following the date on which the invoice is issued and made in pounds sterling in cleared funds by BACS transfer to such bank account as Commercial may nominate from time to time.
  - 6.6.1 The copy charge/IT support charge as set out in the relevant Order will be invoiced monthly in arrears. It does not include network, software, or driver support for any device. The copy charge does not include hardware cover for fiery controllers. This item is subject to a separate service agreement.
  - 6.6.2 In the event that colour/black toner is included in the cost per copy, Commercial will only provide inclusive toner up to a combined coverage of toner per page of 5% per colour (i.e. 20% for full colour copy) or as laid out in the manufacturer's specification. If excessive

toner is used, Commercial reserves the right to charge for additional colour/black toner used. Toner deliveries are charged at the current courier rate. Notwithstanding the foregoing, after the Initial Term (as defined in clause 8.1), parts and consumables will be subject to additional charges at Commercial's then current standard rates.

6.6.3 The scan charge will be invoiced monthly in arrears and will be charged at 0.2p per scan. A scan is a single sided A4 copy. Double sided A4 size scans will count as two scans. Commercial will calculate the number of scans either from meter readings (taken by Commercial or the Customer), or from previous readings.

6.6.4 The Customer shall pay a support and maintenance charge as set out in the relevant Order.

6.7 **Quarterly IT Charge.** For the first 12 months of the Contract Term, Commercial will provide the products and Services at section 6.7.1 to 6.7.4 free of charge. Thereafter, the Customer shall pay a quarterly IT charge in respect of the following products and Services:

- 6.7.1 first line telephone IT support;
- 6.7.2 machine network hardware fitted onto the device itself only;
- 6.7.3 management software on all network connected equipment;
- 6.7.4 intelligence analytic and reporting software.

6.8 If the Customer does not wish to continue with any of the above products or Services, it shall give Commercial three months' written notice prior to each 12 month anniversary to terminate the relevant product or Service. Cancelling any of the products or services does not affect any other product or Service provided under the Contract.

## 7. CONFIDENTIAL INFORMATION

7.1 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.

7.2 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 7.1.

7.3 The obligations on a party set out in clause 7.1 will not apply to any Confidential Information

which: (a) is in the public domain (other than as a result of a breach of this clause 7); or (b) a party is required to disclose by order of court of competent jurisdiction.

7.4 This provisions of this clause 7 will remain in force from the date of the Contract and until 5 years after its expiry or termination.

## 8. TERM AND TERMINATION

8.1 The term of the Contract shall be 60 months from the date of the Order (**Initial Term**). Save where the Contract is terminated pursuant to this clause 8, the Initial Term shall automatically extend for successive 12 month periods (each, an **Extension Term**), but in no event shall the Contract Term exceed six years.

8.2 The Customer may terminate its Contract with Commercial on giving not less than 3 months' notice:

8.2.1 for convenience, such notice to expire at the end of the Initial Term or any Extension Term; or

8.2.2 for Commercial's material breach, provided only that the Customer has first exhausted the dispute resolution procedure pursuant to clause 9.

8.3 Without limiting its other rights or remedies, Commercial may terminate its Contract with the Customer with immediate effect by giving written notice to the Customer if:

8.3.1 the Customer fails to comply with any of its obligations under the Contract;

8.3.2 the Customer ceases to carry on business, becomes insolvent or enters into or is subject to any form of winding up, administration, receivership, liquidation, bankruptcy, arrangement with creditors generally or any other insolvency procedure in respect of it or any of its assets, or suffers from enforcement of security or legal process or repossession or any event analogous to any of the above in the United Kingdom;

8.3.3 the Customer fails to make any payment due to Commercial under the Contract and/or any other contract with Commercial by the due date for payment; or

8.3.4 where, in Commercial's reasonable opinion, the Contract is no longer profitable.

8.4 Without limiting its other rights and remedies under the Contract and notwithstanding earlier

termination thereof, where Commercial terminates the Contract pursuant to any of clauses 8.3.1 to 8.3.3 (inclusive), the Customer shall be liable to Commercial for all Charges, whether or not the Services under it have been performed. The Charges will be calculated by multiplying the average Charges for the period of six months immediately before the termination of the Contract (or, where six months has not passed, the average Charges paid or payable for the first six months of the Contract Term notwithstanding its earlier termination) by the number of months remaining on the Contract Term and applying a 10% discount.

## 9. DISPUTE RESOLUTION

9.1 Where the Customer has a genuine cause for grievance, the Customer shall notify Commercial, such notice shall be made for the attention of the Director of the Managed Print Services Division, setting out full details of the grievance. Commercial shall respond to the Customer within 14 days of having received such notice setting out how it intends to resolve the matter. If, within 90 days of the date of Commercial's first response to the Customer, the parties, acting reasonably, have failed to reach an agreement as to the matter in dispute, the dispute resolution process set out in this clause 9 shall be deemed to have been exhausted in respect of the matter in dispute, and the Customer shall be free to pursue the rights granted to it by the Contract in respect of such matter without further reference to the dispute resolution process.

9.2 For the avoidance of doubt, this clause 9 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.

## 10. FORCE MAJEURE

Commercial shall have no liability to the Customer under any Contract if it is prevented from, or delayed in, performing its obligations under a Contract, or from carrying on its business due to Force Majeure.

## 11. VARIATION

11.1 **Minor changes to the Services and these terms.** Commercial may make changes to the Services and these terms:

- 11.1.1 to reflect developments in relevant laws and regulatory requirements; and
- 11.1.2 to implement minor technical adjustments and improvements.

These changes will not affect the Customer's enjoyment of the Services supplied by Commercial.

11.2 **Major changes to the Services and these terms.** Commercial may make changes to these terms by giving written notice to the Customer. The Customer may contact Commercial to terminate the Contract pursuant to clause 8.2.1 before the changes take effect should it decide not to accept new terms.

## 12. GENERAL

12.1 **No partnership or agency.** The parties are independent of each other and are not partners, principal and agent or employer and employee.

12.2 **Severance.** If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract will not be affected.

12.3 **Waiver.** No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy.

12.4 **Rights of third parties.** No person other than a party to the Contract will have any right to enforce any of its provisions.

12.5 **Entire agreement.** The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral, in respect of its subject matter.

12.6 **Governing law and jurisdiction.** The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) will be governed by, and construed in accordance with, the laws of England and Wales and all disputes or claims arising out of or relating to the Contract shall be subject to the exclusive jurisdiction of the English Courts to which the parties irrevocably submit.