

# ARM CONDITIONS OF SUPPLY OF SERVICE

## 1. INTERPRETATION

### 1.1 Definitions

- 1.1.1 **"ARM"** means ARM Credit Control (RIMA ADAMS LIMITED), A Limited Liability Company. Registered office at 91 Marlow Bottom, Marlow, Bucks SL7 3NA. Registration No. 05064897
- 1.1.2 **"ARM Material"** means any Documents or other materials, and any data or other information or goods provided by us relating to the Services.
- 1.1.3 **"Conditions"** means the standard terms and conditions set out in this document and includes any special terms and conditions agreed in writing between the customer and ourselves.
- 1.1.4 **"Contract"** means the Credit Control Services Agreement and these Conditions (collectively "Contract") which shall govern the supply of the Services by ARM to the Customer.
- 1.1.5 **"Credit Control Services Agreement"** means the document attached to these Conditions outlining the Services to be supplied by ARM (and, where applicable, the sales of goods) which are subject to these Conditions.
- 1.1.6 **"Commencement Date"** means the date agreed in writing between the parties for the commencement of the Services and as detailed on the Credit Control Services Agreement.
- 1.1.7 **"Customer"** means the customer as detailed in the Credit Control Services Agreement, attached to these conditions.
- 1.1.8 **"Customer Material"** means any Documents or other materials, and any data or other information provided by the Customer relating to the Services.
- 1.1.9 **"Document"** includes, in addition to a document in writing, a map, plan, design, drawing, picture or other images, or any other record of any information in any form.
- 1.1.10 **"Monthly Fee"** means the fee to be paid by the Customer to ARM in relation to the Services provided.
- 1.1.11 **"Services"** means the services (including any instalment or partial supply) which ARM is to supply (or procure the supply) in accordance with the Contract (which, where applicable, shall include the ARM material) and which are more fully described in the.
- 1.1.12 **"Site"** means the premises upon which the Services are to be carried out as provided by the Contract.

1.2 The headings are for reference purposes only and do not limit or otherwise affect the interpretation of the Conditions.

1.3 Each of the Clauses and sub-clauses of these Conditions shall be construed as separate and severable.

1.4 References to the Parties shall include their respective successors and assigns

## 2. MONTHLY FEES

2.1 Monthly Fees at the date of quotation shall remain valid for the Services for a 12 month contract period however, ARM's costs may rise over time and so ARM reserve the right to increase the Monthly Fee upon giving Customer written notice of not less than 30 days.

## 3. ACCURACY, SUBSEQUENT VARIATION OR CANCELLATION

3.1 Any description of Service given by ARM in the Credit Control Services Agreement are intended to merely present a general idea of the Services described therein and as such the Services may vary slightly.

3.2 ARM may at any time make changes to the Services which are necessary to comply with any statutory or regulatory requirements. ARM shall endeavour (but not be obliged) to notify Customer of any such changes.

3.3 Any error or omission in any document or information issued by ARM may be corrected by ARM without liability to ARM. ARM shall notify Customer as to any corrections made.

3.4 In the event that a Credit Control Services Agreement is with ARM's approval varied as a result of the Customer's request ARM shall be at liberty to vary the Monthly Fee in order to take account of any additional work or cost to ARM. Any change must be confirmed in writing by completion and signature by both parties of a variation to the Credit Control Services Agreement which shall be deemed acceptance by both parties of any variations (including without limitation the Monthly Fee and the Services).

3.5 No cancellation in whole or in part can be made by the Customer without ARM's consent which will normally only be granted (a) where ARM can cancel any relevant order placed with our own supplier and (b) provided that a cancellation charge is paid by the Customer to cover all expenses and charges incurred by ARM.

## 4. ACCEPTANCE AND COMPLETION OF SERVICES

4.1 Unless ARM are notified to the contrary by telephone or fax on the day of delivery and such notification is confirmed in writing within two days the Services shall be deemed to have been accepted by the Customer as being in accordance with the Contract. The Customer shall not be entitled to withhold payment of all or any of the price while any claim is being investigated by ARM.

## 5. TERMS OF PAYMENT

5.1 Payment is due as set out in the Credit Control Services Agreement notwithstanding that delivery or completion of the Services may not have taken place. The times of payment of the Monthly Fees are of the essence. Receipts for payment will be issued only upon request.

5.2 If full payment is not received by the due date for payment (without limiting any other rights ARM may have) ARM shall have the right at our option to:-

5.2.1 charge interest (both before and after judgement) from the date by which payment should have been made until the outstanding amount is paid in full on the unpaid amount on a daily basis at the Late Payment of Commercial Debts rate from time to time in force unless otherwise specified; and

5.2.2 suspend any further Services under the particular Credit Control Services Agreement or any other contract or accepted order until payment is made in full; and cancel the particular Credit Control Services Agreement in relation to such further Services and any other contract with the Customer or accepted order; and

5.2.3 appropriate any payment made by the Customer to such of the Services (or any other Credit Control Services Agreement between the Customer and ARM) as ARM think fit (notwithstanding any purported appropriation by the Customer); and

5.2.4 dis-apply any agreed discount in which case the payment due shall be increased accordingly.

5.3 No deduction shall be made by the Customer in respect of any set-off or counter-claim howsoever arising; and no time or indulgence granted by ARM to the Customer shall prejudice any right or remedy which ARM may have in any manner whatsoever.

## 6. DELIVERY & ACCESS

6.1 Dates for delivery are estimates given in good faith and as accurately as possible but are not guaranteed and ARM cannot accept responsibility for any failure to deliver or late delivery due to circumstances beyond ARM's control.

## 7. TERM AND TERMINATION

7.1 Subject to Clause 7.2 below, the Contract shall begin from the Commencement Date and continue indefinitely, or, until terminated in writing by either party giving 30 days notice.

7.2 In the case of any breach or non-observance of any of these Conditions by the Customer or in case of force majeure or if the Customer becomes insolvent or in our opinion is likely to go into bankruptcy receivership administration or liquidation (or other analogous act) or makes default in or commits a breach of the Contract ARM may (without prejudice to our rights which may have accrued up to the date of termination) either

7.2.1 forthwith on written notice to the Customer terminate the Contract or suspend any further instalments of the Services under the Contract without incurring liability to the Customer; or

7.2.2 give to such administrator, receiver, liquidator or other such officeholder the option of carrying out the Contract subject to their providing sufficient guarantee for the performance of the Contract.

## **8. WARRANTIES AND LIABILITY**

8.1 ARM warrant (the "Warranty") to the Customer that:

8.1.1 the Services will be provided using reasonable care and skill; and

8.1.2 where ARM supply any Services or goods (including ARM Material) supplied or based upon information supplied by a third party, ARM rely in good faith on such information at the time of supply to ARM and ARM do not give any warranty, guarantee or other term as to their accuracy, continuing accuracy, quality, fitness for purpose or otherwise, but the provisions of clause 8.8 shall apply.

8.2 ARM's obligation under the Warranty shall be to correct any defective Services which are shown to our satisfaction to have been defective or at our option make a cash settlement provided that notice of such defects and satisfactory proof thereof is given by the Customer immediately after discovery and in any event in writing within seven days of the Services being supplied or on discovery of the defect (whichever is the later).

8.3 ARM are not liable under the Warranty (or any other warranty, condition or guarantee) if the relevant Monthly Fee due under the Contract has not been paid by the due date for payment.

8.4 Save as stated in this Clause 8, ARM shall be under no liability for direct or indirect or consequential loss of profits, loss of anticipated savings, remedial costs and loss of staff time or any indirect, special, consequential or other loss or damage of whatsoever kind or howsoever caused as a result of any Services supplied being defective or not in accordance with any order or as a result of anything done or omitted in connection with any Services including any breach by ARM of any fundamental term of any Contract.

8.5 ARM shall have no liability to the Customer or any third party for any loss, damage, costs, expenses or other claims for compensation arising from any Customer Material or instructions supplied by the Customer.

8.6 ARM's liability under this Clause 8 shall be in lieu of and to the exclusion of any liability, condition, guarantee, warranty, term undertaking or representation whether express or implied, statutory or otherwise

8.7 ARM's liability shall be limited to the price of the Services supplied under the Contract to which any claim relates.

8.8 Notwithstanding anything contained in the last foregoing paragraphs, ARM's liability in respect of any Services based on information provided by third parties shall be to give the Customer the benefit of any guarantee or other rights (if any) which are available to ARM against the supplier of such information.

8.9 Nothing contained in this Clause shall exclude ARM from any liability for: (i) any breach of ARM's implied undertakings as to title; (ii) any liability arising from ARM's negligence causing death or personal injury; or (iii) any liability arising from ARM's fraudulent misrepresentation.

8.10 The Customer recognises that the limitation of liability contained in this clause is reasonable in that the Monthly Fees quoted by ARM are dependent upon such limitation being incorporated in the Contract, and that ARM may have insurance cover which covers some or all of the losses purported to be excluded herein, but that there are legitimate business reasons for still excluding such liability, including (but not limited to) the maintenance of a clean insurance claims record.

## **9. INTELLECTUAL PROPERTY RIGHTS and CONFIDENTIALITY**

9.1 ARM shall retain the exclusive property and reserve the copyright in all ARM Materials supplied or produced to the Customer in connection with the Contract and it shall be a condition of such supply or production that the contents of such ARM Materials or any part thereof shall not be reproduced or communicated either directly or indirectly to any other person, firm or company without our prior written consent and subject to such terms and payments as ARM may require. All communications in connection with any Contract or intended Contract shall be regarded as strictly confidential between ARM and Customer and shall not be divulged to any other person firm or company without our prior written consent.

9.2 The Customer agrees to indemnify ARMs against all demands claims damages charges liabilities costs and expenses which may be incurred or sustained by ARM by reason of or arising directly or indirectly out of any breach of Clause 9.1 above or any third party claims or rights or otherwise howsoever in respect of any ARM Material and Services in accordance with any specification information or instruction given by or on behalf of the Customer and whether relating to the infringement or the alleged infringement of a patent copyright registered design or other protected industrial right or property or otherwise howsoever.

9.3 All ARM Material, Customer Material or other information provided by either party which is so designated as confidential shall be kept confidential by both parties; but the foregoing shall not apply to any Documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party. All ARM Material and other information provided by ARM to the Customer is intended for the sole use of the Customer for the purpose of the Contract and ARM shall not be liable for any other use or reproduction of the same.

9.4 Notwithstanding that ownership of any ARM Material remains with ARM, ARM shall be entitled to maintain an action for the any outstanding payment of Monthly Fees in the event of default in payment by the Customer.

## **10. DATA PROTECTION**

10.1 The Customer confirms that where the Customer provides ARM with any personal data (as defined in the Data Protection Act 1998 - "the Act") that the Customer gives ARM or obtains on ARM's behalf all consents necessary in order for ARM to lawfully process such data for the purposes set out in the Services which include but are not limited to the administration of orders and accounts, marketing, staff training and administration, obtaining credit insurance, making credit reference agency searches, credit control, assessment and analysis (including credit scoring, market, product and statistical analysis); securitisation and protecting our interests and those of our financiers and investors, and in each case the data may pass outside the European Economic Area.

## **11. NOTICES**

11.1 Any notice given under this Agreement shall be in writing and shall be delivered or sent by paid recorded or special delivery post or by fax or by email to the address of the relevant party as set out in the Credit Control Services Agreement, or to such address as subsequently notified to the other party/ies pursuant to this clause. In the case of post, the notice shall be deemed to have been received 48 hours after it was posted, in the case of fax, as soon as it has been dispatched, provided that the sending machine confirms that the receiving machine has received the notice error-free, and the identification code of the receiving machine is correct, and if sent by email within 12 hours provided that within that time no notice of delivery failure has been received.

## **12. GENERAL**

12.1 Failure or neglect by ARM to enforce at any time any of the Contract provisions hereof shall not be construed nor shall be deemed to be a waiver of ARM's rights hereunder nor in any way affect the validity of the whole or any part of the Contract nor prejudice our rights to take subsequent action.

12.2 These Conditions are not intended to convey a benefit on any person not a party to it and accordingly the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded.

12.3 The rights and remedies of the parties under these Conditions are cumulative and are without prejudice and in addition to any rights or remedies a Party may have a law or in equity.

12.4 No exercise by a party of any one right or remedy under these Conditions or at law or in equity, shall (save to the extent, if any, provided expressly in these Conditions, or at law or in equity) operate so as to hinder or prevent the exercise by it of any other such right or remedy.

12.5 The Contract is between ARM and the Customer as principals and is not assignable without ARM's consent. ARM may perform any of our obligations or exercise any of ARM's rights under the Contract through any agents or subcontractors appointed by ARM in our absolute discretion for the purpose, as notified to the Customer from time to time.

12.6 ARM shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of our obligations in relation to the Services, if the delay or failure was due to any cause beyond ARM's reasonable control.

## **13. LAW AND ARBITRATION**

13.1 The contract shall be governed by and construed in all respects in accordance with English law and the parties hereby submit for all purposes of and in connection with the Contract to the exclusive jurisdiction of the English Courts.

13.2 Any dispute or difference arising out of or in connection with the Contract shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators.