

# Zodeq Limited

## Invoice Finance Conditions

### 1 **Incorporation**

These **conditions** are incorporated with the **invoice finance document** and the **particulars** to constitute this **agreement**.

### 2 **Defined terms**

#### 2.1 In this **agreement**:

- (a) “we”, “us” and “our” refer to Zodeq Limited (a company registered in England and Wales with the number 10369607) and our successors and assigns;
- (b) “you” and “your” refer to the business for whom we provide our invoice finance services under this **agreement**;
- (c) **particulars** means the specified terms attached to the **invoice finance document** and incorporated in this **agreement**;
- (d) where the context allows the singular includes the plural and the other way around and any gender includes all;
- (e) references to ‘clause’, ‘paragraph’ or ‘condition’ (except where otherwise specified) are to clauses of the **invoice finance document**, to paragraphs in the **particulars** and to conditions in the **conditions** and any headings are used for convenience only and do not affect their meaning;
- (f) the meanings of general words introduced by the word “other” are not limited by reference to any preceding word indicating a particular class of acts matters or things;
- (g) reference to any legislation includes such legislation as amended or re-enacted from time to time and any order or regulation made under it;
- (h) where we have a right or option to do anything then the right or option is at our absolute discretion; and

(i) the following have the meanings given to them below:

**administration charge**

our charge for the service we provide as stated in the **particulars**

**agency**

the appointment of you to act as our agent, whether disclosed or undisclosed, to collect **debts** and enforce **rights** in accordance with your **facility** as stated in the **particulars** or as later agreed with you; **agent** will be construed accordingly

**agreement**

the agreement between you and us as it may in the future be amended varied or modified

**approved debt**

any **debt** within the **funding limit** when added in invoice date order to the value of **outstanding debts** from one **debtor** which is not disputed or not in some other way subject to any breach of your warranties or undertakings and remains so or specified by us as such at any time, and which entitles you to a **first payment**

**associate**

any director, company secretary, shareholder, member, if you are a limited liability partnership , employee or agent or their spouses or partners or any other form of associate as stated in s.184 Consumer Credit Act 1974

**availability**

the amount available to you, subject to any restrictions in this **agreement**, worked out by taking the **percentage** of all **outstanding approved debts** and taking away from that amount the **reserve** and any debit balance on the **current account**

**back office**

the additional service we provide under clause 7 of the **invoice finance document** where stated in the **particulars** or as later agreed with you

**BACS**

Bankers' Automated Clearing Service

**CHAPS**

Clearing Houses Automated Payments System

**client account**

a combination of all accounts maintained by us to record all the transactions under the **facility**

**collection**

the responsibility for chasing and collecting your **debts** where stated in the **particulars** or as later agreed with you

**collection date**

the deemed date of payment of any **debt**, being either the date we receive into the **debt account** any cash or five days after a cheque is paid into the **debt account** or a **BACS, CHAPS** or other electronic payment is received by our bank, subject in either case to variation by thirty days written notice to you

**composite charge**

our inclusive charge for our services where the **facility** so provides as stated in the **particulars**

**concentration limit**

the limit for the total of **first payments** for **debts outstanding** from one **debtor** at any time when compared with the total of all **first payments** for **debts outstanding** from all **debtors** at that time, as stated in the **particulars**

**contract**

a contract for the sale of goods, work done, services supplied or hiring by you

**credit charge**

a charge for all credit notes issued by you as stated in the **particulars**

**current account**

an account maintained by us to show all payments received by us in respect of **debts** and their **rights** and any charges and all debits made by us in respect of payments and charges to you

**data policy**

the data protection information about how we store and use data relating to individuals available if you ask and as stated on our website

**debt**

the amount or part of the amount of any obligation of a **debtor** to pay you under a **contract**

**debt account**

the bank account specified by us into which all payments for **debts** and **rights** must be paid

**debt turn**

the average number of days it takes **debtors** to pay **debts** as stated in the **particulars**

**debtor**

anyone owing money to you under a **contract**

**delivered**

for any invoice or **goods**, despatched in the **UK** to the **debtor** or collected by him or his agent from your premises, and for any work, services or hiring, fully performed

**disapproved debt**

any **debt** other than an **approved debt** and does not entitle you to a **first payment**

**disbursements**

all losses, costs, charges and expenses (including, without intending to limit, management charges, legal and bank charges and stamp duty) incurred by us, in any way, in entering into or enforcing the provisions of this **agreement** or any guarantee, indemnity or other security taken in respect of your obligations, or any release waiver or priority given to us, or preparing assignments of **debts** and **rights**, or in attempting to collect, compromise or enforce payment of any **debts** or realise any **rights**, or arising from any indemnity given to our bankers by us to enable them to collect any instruments in your name, and following any breach of any obligation, undertaking or warranty by you under this **agreement**

**disclosure**

notice to a **debtor** that a **debt** (including its **rights**) has been bought by us and that payment can only be made to us in payment of it and, if appropriate, that you are authorised to act as our agent in **collection**

**discount charge**

a charge for the service we provide being as stated in the **particulars** of the **funds in use** from day to day as may be varied by us from time to time on 30 days written notice

**event**

any of the events stated in condition 16 after which we may end this **agreement** immediately

**extended administration charge**

a charge for additional services we provide to you in respect of any **debt outstanding** after the **recourse period** if we agree not to use **recourse**

**extra charges**

the table of charges published by us from time to time and available if you ask covering any services outside the scope of your **facility** which we may provide to you

**facility**

the type of invoice finance service we agree to provide to you as stated in the **particulars** and covered by this **agreement**

**facility level**

the limit at any time for all **first payments** made by us to you in respect of **debts** then **outstanding**, as stated in the **particulars**

**final charge**

the charge if this **agreement** is ended early, worked out by taking for each month or part left to run, either (a) the monthly average of each **composite charge** (where appropriate) or all **discount charges** and **administration charges** earned in the previous six months (or simply the monthly average of such if less than that time), or (b) the **minimum administration charge** (or monthly pro rata amount if the period in the particulars is more than a month), whichever is greater

**first payment**

a payment by us on account of the **price**

**first period**

the length of the initial period of this **agreement** as stated in the **particulars**

**full invoice amount**

the total amount to be paid by the **debtor** for the **goods** under a **contract** as stated in the invoice, including any duty or tax, and before taking off any allowances

**funding limit**

a limit set by us in our absolute discretion when you ask, to enable us to work out the total value of **approved debts** for any **debtor** at any time

**funds in use**

the amount worked out by taking away the total of all payments we have received for **debts** from their **collection date, rights** and charges from the total of all payments made and charges debited to you at any time

**goods**

any actual goods, work, services or hiring under a **contract**

**insolvency**

the state of being **insolvent**

**insolvent**

for any entity, the issue of a petition for a bankruptcy, sequestration, winding up or administration order or the making of any application for the appointment of an administrator in relation to you; the calling of any meeting of your creditors or members for the purpose of winding up or for making any formal or informal arrangement or composition with your creditors; the appointment of any receiver in respect of any part of your assets or income; the making of any application for a voluntary arrangement

**liability**

the extent of all your monetary and other obligations incurred at any time to us whether actual or contingent and whether under this **agreement** or not and whether in your own right or as surety and whether arising in or by contract, tort, assignment or restitution and without limiting the former including any sum you owe to us as a customer of any other client; if any amount cannot be worked out we may make a reasonable estimate of it

**minimum administration charge**

the minimum total of **administration charges** for the period as stated in the **particulars**

**non-notifiable debt**

a **debt** bought by us under this **agreement** which you do not have to **notify** to us until we ask you and which you will collect as our agent until we tell you otherwise, including any **debt** owing by any **debtor** who is an **associate** or a supplier to you or where the contract is governed by the Consumer Credit Act 1974 or provides for payment by instalments or where the **goods** are supplied on approval, consignment, trial or sale or return or which are your fixed or capital assets; or which we have asked you not to **notify** as stated in the special conditions in the **invoice finance document** or as we specify in writing later

**non-recourse**

the additional service we provide under condition 17 where stated in the **particulars** or as later agreed with you

**notice**

the number of months written notice to end this **agreement** after the **first period** as stated in the **particulars**

**notify**

to include a **debt** or credit note in a **notification** and the further assignment to us of **debts** and **rights** owing from specified **debtors**; **notified** will be taken to mean included in a **notification**

**notification**

the communication from you to us in whatever format we agree with you (either signed by an authorised signatory or authorised by a password given to you by us) telling us about **outstanding debts** or credit notes and making the further specific assignment of such **debts** to us together with any documents we ask you for and where appropriate its receipt by us

**outstanding**

unpaid and owned by, or held in trust for, us

**percentage**

the percentage of the **full invoice amount** of **approved debts** up to which we are prepared to make a **first payment** as stated in the **particulars**

**price**

the price payable by us to buy a **debt** and its **rights** being the **full invoice amount** after taking away any settlement discount or any other allowance due to the **debtor** and any **composite charge** or the **discount charge**

**records**

all books, records, ledgers, financial statements, computer data and all documents in which accounting entries are recorded relating to your sales, purchases, expenses and **debts**, and all invoices, credit notes or other documents and data relating to the creation, collection or enforcement of **debts**

**recourse**

our right to ask you to repay to us any **first payment** made by us for an **outstanding debt**

**recourse period**

the period stated in the **particulars** after which we may use **recourse** in relation to any **outstanding debt**

**reserve**

a reserve which we may set, at our discretion, to retain from amounts due to you from us to cover any amount included in your **liability**

**rights**

in respect of any **debt**, all your rights under any **contract** including, without intending to limit, any right to invoice if not undertaken by you and as an unpaid seller; all **specific goods**; the benefit of all guarantees indemnities insurance policies and securities given to or held by you; all **records**; any statutory right to interest; and the right to call for the transfer of ownership of any **goods**, other than **specific goods**, before the **debtor** owns them

**sales administration**

the services we provide in running your sales ledger

**Scottish debt**

any **debt** where the **debtor** is trading in Scotland or the **contract** is governed by Scots law

**set-up charge**

our charge for arranging this **facility** as stated in the **particulars**

**specific goods**

any **goods** that are not **delivered**, but which should have been, at the time the **debt** is **notified** to us, are returned or rejected by the **debtor** whether accepted by you or not or are reclaimed from the **debtor** by you or us

**start**

the date this **agreement** will start as stated in the **particulars**

**statement**

a statement of the **client account** at the end of each month

**UK**

United Kingdom of Great Britain, Northern Ireland, Channel Islands and Isle of Man

**VAT**

Value Added Tax

**your business**

the business carried on by you as stated in the **particulars**.

**3      Sale and ownership**

3.1      You agree to sell to us with full title guarantee and we agree to buy from you all **debts** existing at the **start** and those created later during this **agreement**.

3.2      Without further formality, each **debt** and **rights** existing at the **start** will belong to us then. All future **debts** and **rights** will belong to us immediately when created.



- 3.3 If for any reason any **debt** or **rights** fail to be transferred absolutely to us you will hold such in trust for us and keep separately from your own property. In accordance with the terms of your **facility** we may give **disclosure** to your **debtors**.
- 3.4 At any time we ask you will, at your expense, provide a written legal assignment or assignation in our format of any **outstanding debt** or **rights**. Any instruments or securities that are still retained by you should be given to us at that time.
- 3.5 If any **specific goods** are in your possession you will hold such in trust for us and keep separately from your own property. You will mark them clearly with our name, keep them securely and deal with them as we ask.
- 3.6 We may ask you to transfer to us ownership of any **goods** other than **specific goods** at any time before the **debtor** owns them.
- 3.7 For any **Scottish debt** and **rights** you declare a trust in our favour with you acting as trustee for us as beneficiary. Each **debt, rights** and any **specific goods** will constitute the property of the trust which you will hold in trust for us until we have absolute and unrestricted ownership of each **Scottish debt** or, in relation to the **rights** and **specific goods**, until we have received full payment of the **debt**.
- 3.8 Any payment in respect of a **debt** or **rights** received by you will be held in trust for us and, according to whatever **facility** you have, promptly given to us or paid into the **debt account** or any other bank account we tell you about.
- 3.9 You agree to inform your accountants about, and to ensure that your books and other accounting data reflect, the transfer of ownership established in this condition.

#### **4. Telling us about debts**

- 4.1 At the **start** you will deliver to us a **notification** containing details of all **debts** then **outstanding** and all relevant credit notes. After the **start** and as soon as **goods** have been **delivered** you will **notify** each **debt** created and each credit note once issued. You will provide such other documents as we ask you for with each **notification**.
- 4.2 Any **notification** communicated to us electronically will be deemed to contain the following wording and constitute a further specific assignment to us of each **notified debt** and **rights**:
- “As provided in the **agreement** we **notify** to you and further assign to you each **debt** included in this **notification**. We confirm that all the warranties undertakings and restrictions contained

in the **agreement** relating to the **debts notified** apply fully and in particular that the **goods** have been **delivered**.”

- 4.3 You will **notify** a **debt** once only unless we ask you to do so again.
- 4.4 You will **notify** separately any **debt** if you are unable to confirm all your warranties and undertakings in relation to it and fully explain the reasons why you are unable to do so.
- 4.5 You do not need to **notify** us about any **non-notifiable debt** unless we ask you to do so.
- 4.6 We may in writing, ask you to provide us with full details of any proposed credit note for our prior consent before issue to any **debtor**.

## **5. Approval and disapproval**

- 5.1 In order for us to provide **first payments** we need to work out which **debts** are **approved debts**. You will ask us to provide a **funding limit** for each **debtor**. Subject to the other requirements of this **agreement**, each **debt** within the **funding limit** when taken in date order will be an **approved debt**.
- 5.2 Any **debt** which is more than, or is without, a **funding limit** will be a **disapproved debt**. After payment of an **approved debt** any **disapproved debt** then falling within the **funding limit** may become an **approved debt**.
- 5.3 We will set a **funding limit** in our absolute discretion for the purposes of this **agreement** only and we may, at any time, by writing to you or simply telling you, increase, reduce or remove any **funding limit** with immediate effect.
- 5.4 An **approved debt** will automatically become a **disapproved debt** if at any time it is subject to any breach of any warranty or undertaking given by you to us in respect of it, it remains **outstanding** after the **recourse period**, it exceeds the **concentration limit** or legal proceedings are issued to recover it.
- 5.5 We may, at any time, without giving any reason, designate any **debt** an **approved debt** or a **disapproved debt**.
- 5.6 You will not tell anyone about any **funding limit** for any **debtor**.
- 5.7 If any **approved debt** becomes a **disapproved debt** you will immediately repay to us any **first payment** made by us.

## 6. Payment of the price

- 6.1 We will credit the **price** of any **debt** to the **client account** as soon as it is **notified**. You will be entitled to receive the full payment of the **price** of any **debt**, after taking into account any **first payment**, on the **collection date** subject to any restrictions in this **agreement**.
- 6.2 Subject to conditions 6.3, 6.5 and 6.8, when you ask, we may, but do not have to, make a **first payment** up to the amount of the **percentage** of any **approved debt** at any time after it has been **notified**.
- 6.3 We may make such enquiries, as we think fit, to verify any **debt** and hold back any **first payment** until we are satisfied.
- 6.4 All our payments to you will be in sterling and paid directly into your bank account by three day **BACS**. We will only pay you in another way if we agree to do so at your expense and we have not agreed otherwise with **your bankers**. Any payment will be debited to the **client account** as soon as we arrange it.
- 6.5 We do not have to make any **first payment** if by doing so would mean that your **availability**, the **facility level** or **concentration limit** would be exceeded or there would not be sufficient to cover any **reserve**.
- 6.6 The amount of every payment made by us will be debited to the **client account**.
- 6.7 When we ask you will pay to us the amount of any debit balance on the **client account** and of any debit balance on the **current account** that is beyond your **availability** or the **facility level**.
- 6.8 At any time after an **event** we may, whether we end the **agreement** or not, withhold any payment due to you and call upon you to repay to us all **first payments** made in respect of **outstanding debts** and the amount of your **liability**.

## 7. Our charges

- 7.1 You will pay us, where shown in the **particulars** (or as later agreed with you), either:-
- 7.1.1 the **composite charge**, at the (input if applicable) of each month following the **start**;
- or the following:
- 7.1.2 the **administration charge** for each **debt notified** to us, on **notification**; and

- 7.1.3 any shortfall between the **minimum administration charge** and the **administration charges** (excluding any **extended administration charges**) due for the relevant period, at the end of the period. If that period is more than one month we may estimate any shortfall and debit that at the end of each month making the appropriate adjustment at the end of the period or when this **agreement** is ended.
- 7.2 You will also pay:
- 7.2.1 an **extended administration charge** for all **debts outstanding** at the end of the **recourse period**, at that time and then at the beginning of each month while the **debt** remains **outstanding**; and
- 7.2.2 a **credit charge** on all credit notes issued by you;
- 7.2.3 the **discount charge** on the **funds in use**, worked out daily and payable monthly in arrears, and which we may vary on 30 days written notice to you;
- 7.2.4 a **set-up charge** on the **start**;
- 7.2.5 any **extra charges**, when you ask for any services not covered by this **facility**;
- 7.2.6 all **disbursements**, when we ask you;
- 7.2.7 a **final charge**, when either we agree to accept your ending this **agreement** before the date you are able to do so, or we end it after an **event** before such date.
- 7.3 All charges are quoted exclusive of any applicable **VAT**.

## **8. Accounts and set-off**

- 8.1 We will maintain such accounts as we consider appropriate to record all the transactions between us under this **facility** and you will be able to view the information online or by printed copies.
- 8.2 At the end of each month (or as often as we agree with you) we will provide a **statement** to you, online or in print, which will be deemed to be correct (other than any obvious error) unless you tell us otherwise within seven days of the month end.
- 8.3 We may combine all accounts at any time.

8.4 We may at any time set off any amount of your **liability** against any amount due to you by us but you agree that at no time will you attempt to set off any amount of your **liability** against any amount we may owe to you.

8.5 We may at any time set up a **reserve** on the **client account** which we will be entitled to hold, even after the **agreement** has ended, until all your **liability** has been fully cleared.

8.6 A certificate signed by any of our directors as to the amount of your **liability** at any time will be treated as binding for all purposes.

## 9. **Currency**

9.1 If we have included in this **agreement** any **debts** arising from **contracts** with **debtors** based outside the **UK** and we have agreed to buy invoices in a currency other than sterling, the **price** of each **debt** will be worked out by using the spot selling rate used by our bankers on the **collection date**.

9.2 In order to estimate the **price** and work out any charges under condition 7 we may apply such selling rate used on the date you **notify** the **debt** and make any adjustment after the **collection date**.

9.3 You will indemnify us against all bank charges, fees and commissions incurred in any conversion together with all resulting exchange rate losses and we will be entitled to debit such to the **current account**.

## 10. **Disclosure**

10.1 Where the **facility** provides, as stated in the **particulars** or when required by us later, you will give **disclosure** upon your invoices and copies and upon any statement you send out. If we ask you will also give **disclosure** by way of a general letter to all or any **debtor**. If appropriate, the **disclosure** may also say you are authorised to act as our agent for **collection**.

10.2 We may at any time and at your expense give **disclosure** for you.

10.3 No **disclosure** should appear on any credit note.

## 11. **Your warranties and undertakings**

11.1 In relation to the **agreement** you warrant to us that:

11.1.1 you have told us about everything known to you which you knew or ought to have known would have been taken into account by us when we considered entering into this **agreement** and the terms of your **facility**, including, without limitation, providing or changing any **funding limit**;

11.1.2 **your business** and your sale terms are as stated in the **particulars**; and

11.1.3 save as already disclosed to us, neither you (or any member, if you are a limited liability partnership) nor, as far as you are aware, any **debtor** is **insolvent** or about to become so.

You will tell us immediately of any matter or situation affecting these warranties at any time before the end of this **agreement**.

11.2 In relation to each **outstanding debt**, you will be treated as having warranted and undertaken to us, that:

11.2.1 it is free to be bought by us and is not subject to a ban on any sale;

11.2.2 no one other than you or the **debtor** owns or has any interest in the **goods** or their proceeds of sale;

11.2.3 you have fully performed all you had to do under the **contract** and the **goods** have been **delivered**;

11.2.4 it arises from a **contract** in the ordinary course of **your business** which provides for payment in sterling (or in such other currency stated in the **particulars**) and on your sale terms as stated in the **particulars**;

11.2.5 it is a legally binding obligation of the **debtor**, will be paid in full by the end of the **recourse period** and will not be the subject of any return, set-off, discount or deduction from its **full invoice amount**;

11.2.6 the **debtor** has an established place of business in the **UK** (or in such other place stated in the **particulars**) and is not your **associate**;

11.2.7 it has not been **notified** before;

11.2.8 you have given **disclosure** where required under this **facility** or as otherwise directed by us;

- 11.2.9 you will indemnify us against any claim made against us by the **debtor** arising from the **contract** relating to it;
  - 11.2.10 you will immediately send to us any payment of it, without paying into any account, and hold on trust for us until we receive the payment;
  - 11.2.11 you will tell us promptly about any dispute and do all things necessary to protect our interest in it and its **rights** and will follow any reasonable instructions we give you, at your expense;
  - 11.2.12 will ensure that all requirements of any credit insurance policy will be fulfilled;
  - 11.2.13 you will not at any time attempt to collect it or interfere in its collection unless we ask or following any appointment as our **agent**;
  - 11.2.14 you will not end, alter or rescind the **contract** relating to it;
  - 11.2.15 you will keep safe complete and insured against loss any documents or data included in the **rights** referring to it and give such to us when we ask;
  - 11.2.16 you will assist us in any way we ask to collect it;
  - 11.2.17 it is not a **non-notifiable debt**;
  - 11.2.18 you will carry out any procedures relating to it as we may ask.
- 11.3 You further warrant and undertake to us that:
- 11.3.1 you will advise your sole trader and partnership **debtors** about how you use personal data and other information about them and how you have disclosed such to others, including us, and the use we will make of such; and
  - 11.3.2 any personal data and other information disclosed, or to be disclosed, to us is accurate and in all other respects fully compliant with the Data Protection Act 1998.
- 11.4 You further undertake that you will indemnify us fully in respect of all **disbursements**.

## 12. Collection of debts

- 12.1 Only we will have the right to collect and enforce payment of any **outstanding debt** which we will do as we think best. Unless your **facility** provides otherwise, we will maintain all **debtor** accounts.
- 12.2 We may bring, defend or settle any proceedings relating to **debts** on any terms we wish. You will cooperate with us fully when we ask, including giving evidence and providing any documents. You agree to be bound by anything we agree with any **debtor**.
- 12.3 Unless we have appointed you as our **agent**, you will not attempt to collect any **outstanding debt**, enforce any **rights** or in any way interfere with our collection activity.
- 12.4 You will ensure that **debtors** make any payment for any **outstanding debt** or **rights** to us or into the **debt account**. If any such payment is received by you, you must send it to us immediately or pay it into the **debt account**. Under no circumstances can you correctly pay any such remittance into any other account.
- 12.5 You will tell us about any **debt** that is disputed as soon as you know and will attempt to settle it. If you are unable to do this, you agree that we may try to do so, at your expense, on such terms as we consider appropriate, including any reduction in the **full invoice amount**.
- 12.6 If a **debtor** is entitled to any credit or allowance in relation to any **debt** you must issue and deliver a credit note and promptly **notify** to us a copy of each credit note issued. If we ask, you will pay to us the amount of it. We may, in writing, ask that full details of any proposed credit note be sent to us for our approval before issue to any **debtor**.
- 12.7 You agree that we may pay to any **debtor** the amount of any credit balance that appears in the accounts regardless of any reason for it.
- 12.8 We may use any payment of any **debt** or **rights**, or any credit or allowance given to any **debtor**, on account of an **approved debt** instead of a **disapproved debt** regardless of any other allocation by the **debtor**.
- 12.9 You will provide us with suitable evidence at the **start** that you have authorised **your bankers** to immediately transfer to us any payments relating to **outstanding debts** received into any bank account with them.
- 12.10 In order to assist with **collection** you will also give authorisation to our bankers, and such indemnity as they may ask for, to allow them to effect clearance of any cheques payable to you which are not transferable.



- 12.11 You warrant, in addition to any other warranty given to us, that you will, and if appropriate, you warrant that you will ensure that all directors, officers or members of you will, assist us in any way we ask to collect any **outstanding debt** or realise any **rights** until this **agreement** has been ended and your **liability** cleared.
- 12.12 If your **facility** is **full invoice finance** or **invoice finance with CHOCCS** or **disclosed invoice finance**, you must give **disclosure** in accordance with condition 10.1 as soon as possible after the **start** and in respect of each **debt** created after the **start**. We may, at any time and at your expense, give **disclosure** for you.
- 12.13 You will ensure that all stationery is reprinted to include the appropriate form of **disclosure** notice in a prominent position as soon as possible after the **start**.
- 12.14 If your **facility** is **undisclosed invoice finance** or **confidential invoice finance** you do not have to give **disclosure** until we ask. When we ask you to do so, you will comply with condition 12.4 or we will do it for you.
- 12.15 If under your **facility** we appoint you as our **agent** to collect **debts** and enforce **rights** you will:
- 12.15.1 where required, give **disclosure** to all your **debtors** in accordance with condition 10.1;
- 12.15.2 act promptly, efficiently and honestly in performing your work in accordance with any directions we give you;
- 12.15.3 not compromise or agree any extension of time to pay any **debt** without our prior written consent;
- 12.15.4 maintain your own sales ledger together with a detailed record of all action taken by you to collect **debts** and make your **records** available to us if we ask;
- 12.15.5 make all efforts to ensure that the **debt turn** is not exceeded;
- 12.15.6 retain all remittance advices, cheques and transfer authorities relating to payments made by **debtors** and send to us copies of these documents, if we ask;
- 12.15.7 instruct **your bankers** to send us at least once a month a detailed statement of every bank account maintained by you;
- 12.15.8 tell your **debtors** that all **debts** can only be paid into the **debt account**; and

12.15.9 not hold yourself out as our agent for any other purpose.

12.16 If your **facility** is **undisclosed invoice finance** or **confidential invoice finance**, details of the **debt account** must be printed in a prominent position on all invoices and statements of account sent to **debtors** as soon as possible after the **start**.

12.17 We may cancel your **agency** at any time. If we do so:

12.17.1 we alone will be entitled to collect payment of **outstanding debts** and enforce the **rights**;

12.17.2 you must give **disclosure** to the relevant **debtors** in relation to all **outstanding debts** and any **debts** created later;

12.17.3 you will not hold yourself out as our **agent** for any purpose;

12.17.4 you must provide to us any **records** and assistance we ask for; and

12.17.5 we may charge you an **additional administration charge** of up to 5% of the **full invoice amount** of all **debts outstanding** at the time of cancellation of the **agency** and those created later, as soon as **notified**.

12.18 If your **facility** is **undisclosed invoice finance** or **confidential invoice finance**, you must deliver to us within 10 days of the end of each month:

12.18.1 an aged sales ledger complete to the end of the month detailing all **debts outstanding** on the final day of that month; *Specify what type and the detail of the aged sales ledger you need]*

12.18.2 a reconciliation in a format prescribed by us between the balances on the *[sales ledger account]* at the end of that month and your sales ledger;

12.18.3 copies of statements of account or an open item ledger including details of each **debtor** name and address and the date, number and amount of each invoice, identifying due dates for payment, and credit note comprising the **outstanding debt** due by that **debtor**;

12.18.4 an aged analysis of your purchase ledger complete to the end of that month;

12.18.5 copies of all bank and building society statements detailing transactions on your bank and building society accounts in that month; and

12.18.6 any other information we ask for.

### 13. **Recourse**

13.1 We may exercise **recourse** in respect of any **debt** that:

13.1.1 is or becomes a **disapproved debt**;

13.1.2 comprises only discount or any other deduction wrongly claimed or made by the **debtor**;

13.1.3 is subject to any dispute or claim by the **debtor** or anyone claiming through him;

13.1.4 is **outstanding** at the end of the **recourse period**.

13.2 We may at the time of the **event** giving rise to **recourse**, or later, debit the amount of the **first payment** to the **client account** or ask you to pay us separately. Every **debt** and its **rights** which is subject to **recourse** will continue to belong to us after we receive repayment of the **first payment**. At any time we may reassign to you any **debt** and **rights** the subject of **recourse** which will continue to belong to us until the repurchase price has been paid in full.

13.3 When any **VAT** bad debt relief is available for any **outstanding debt** you undertake to assist us in any way we ask to obtain payment of it, including, without intending to limit, accepting a transfer back to you of the **debt** to enable the relief to be claimed. You will pay to us the amount of the relevant relief either at that time or upon receipt of the refund by you. Any dividend you receive in respect of any such **debt** will be paid to us, and held on trust for us until we receive it.

### 14. **Information, records and authority**

14.1 You will provide:

14.1.1 a draft copy of your audited balance sheet and related accounts for each financial year ending while this **agreement** continues, as soon as they are available and in any case within two months of the end of that year and a signed copy of each of them as soon as they are filed; and

14.1.2 any other management accounts or statements of your financial position or affairs that we may ask for at any time; and

- 14.1.3 any of the **records** and any necessary copies of them, as soon as we ask.
- 14.2 We or authorised agents may enter at any time any premises where you carry on business or where any of your property is and inspect, verify, check and (at your expense) take copies of any of the **records** and any other documents relating to **debts** or your financial position and, if we ask, take possession of any of the **records**. This licence is intended to continue after the end of the **agreement** until all your **liability** has been cleared.
- 14.3 You agree that we may at any time:
- 14.3.1 give to your bank, auditors, accountants ,other professional advisers and to any factor, broker, insurer, guarantor or indemnifier and, if you are a limited liability partnership, any of your members any details they ask for about your accounts, the operation of this **agreement** and your relationship with us;
- 14.3.2 share the same details with any group company or any partnership or joint venture in which we or any group company is a member if they ask;
- 14.3.3 get from your bank, auditors, accountants and other professional advisers any information we ask for. You warrant and agree that you have or will when we ask give appropriate authority to the above.
- 14.4 You will provide us with the names and signatures of anyone who is authorised to sign or transmit any **notification** or otherwise perform any of your obligations under this **agreement**. However, we may at all times rely upon anything done or said or any letter or other document signed or any communication by fax or any data transmitted electronically to us by anyone who appears to us to be acting for you, whether they are authorised or not, and you will be bound by it.

**15. Power to act**

- 15.1 You irrevocably appoint us, our directors and officers and anyone deriving title under or through us, as your attorney to secure the performance of your obligations under this **agreement** and, at any time in your name and on your behalf, to execute legal assignments or to obtain payment of all or any **debts** bought by us, to institute legal proceedings and to make any arrangement or compromise which we think fit, to endorse on your behalf negotiable instruments or other securities received in respect of **debts** and generally at any time to execute and do such further documents and things as we may in our absolute discretion consider to be necessary or

expedient for perfecting our title to such **debts** and the **rights** and for the recovery or realisation of them and for the full exercise of all or any of the powers conferred on us by you.

15.2 We, and any attorney appointed by us, may appoint and remove any other attorney for you in respect of the above.

15.3 You further agree to ratify and confirm all agreements, documents, acts and things and all transactions entered into by us in the exercise or purported exercise of our powers.

## 16. **Events**

16.1 We may by notice to you end this **agreement** immediately at any time after any of these **events** occur:

16.1.1 you commit a breach of any term of this **agreement**;

16.1.2 you, or any director, shareholder, member or partner, become **insolvent** or are convicted of an offence involving dishonesty;

16.1.3 you cease, or threaten to cease, carrying on business;

16.1.4 your partnership is dissolved;

16.1.5 all or any part of your income or assets is seized under any distress, execution or legal process;

16.1.6 any third party debt order or other attachment order is made on any **debt** owing to you in favour of any of your creditors;

16.1.7 any change in the ownership, control or nature of **your business** which we regard as material;

16.1.8 any final judgment, decree or award against you for the payment of money remains unsatisfied after seven days;

16.1.9 any person who has given to us a guarantee or indemnity in respect of your obligations under the **agreement** withdraws it, or becomes **insolvent** or dies;

16.1.10 any person who has given to us a waiver, release or priority of any security interest to enable us to provide this **facility** withdraws it;

16.1.11 any of your directors is disqualified from acting as a director;

- 16.1.12 you fail to **notify debts** for thirty consecutive days;
- 16.1.13 you, or any director, shareholder, member or partner, commit an offence under the Proceeds of Crime Act 2002 or we otherwise have reasonable grounds for suspecting money laundering;
- 16.1.14 we in our absolute discretion consider that your financial position has deteriorated to such an extent that payment of your **liability** is at risk.
- 16.2 After any **event**, whether we end the **agreement** or not at that time, we may do any of the following:
- 16.2.1 classify any **outstanding approved debt** as a **disapproved debt**;
- 16.2.2 exercise **recourse** in respect of any **outstanding debt**;
- 16.2.3 hold back any payment or **first payment** due to you until your **liability** is cleared or reduce the **percentage** as we think fit;
- 16.2.4 ask you to repay all **first payments** made;
- 16.2.5 increase the **discount charge** by such amount as we may decide, at our absolute discretion;
- 16.2.6 serve notice under condition 12.6 requiring our consent to the issue of any credit note;
- 16.2.7 make an **additional administration charge** to cover our additional costs of **collection**;
- 16.2.8 ask you to pay the full amount of your **liability**.
- 16.3 If you become **insolvent** then automatically:
- 16.3.1 all our accounts will be deemed combined; and
- 16.3.2 any **goods** already appropriated to any **contract** and held by you, will be deemed the subject of a request by us under condition 3.6, in exercise of the **rights**, effective one day before your **insolvency**.
- 16.4 If this **agreement** is ended in any way, unless otherwise stated, it will not affect the rights and obligations of you and us in respect of any **outstanding debt** or **rights** created before the ending of the **agreement**.

16.5 Any discharge in full settlement of your **liability** will be of no effect to the extent that any amount received by us is later set aside.

**17. Non-recourse**

17.1 This condition will apply where stated in the **particulars** or as later agreed with you. It will apply if we have agreed to provide a service for **non-recourse debts** we agree to buy from you. Unless stated here or otherwise obvious, all provisions in the **agreement** relating to **debts** will apply to **non-recourse debts**. If there is any conflict this condition will prevail.

*Either insert 17.2 here or add to main list of definitions at beginning of the conditions*

17.2 Words used in this condition will have the meanings given in condition 2 apart from the following:

**debtor default**

either of the following:

**debtor insolvency** being, in relation to the **debtor**, the making of a winding-up, administration or bankruptcy order, the appointment of a liquidator, administrator, administrative receiver, trustee in bankruptcy, trustee in sequestration of it or similar officer or the approval by a court of a binding arrangement or composition of its creditors or an informal arrangement approved by us made by it with the majority of its creditors in full and final settlement of its debts due to its inability to pay its debts as they fall due or the failure to satisfy the full amount of any judgment following execution of it or you satisfy us (in our sole discretion) that its financial position is such that to start or continue legal proceedings will not be cost effective; or

**protracted default**, being the failure of the **debtor** to pay a **non-recourse debt** within 180 days of the **due date**

**debtor limit**

the maximum value of **notified debts** owing by a **debtor** where we will accept the risk that a **debtor** will not pay due to **debtor default**

**default date**

the date which is 60 days after the **due date**

**due date**

the due date for payment of a **debt** under the **contract**

**excess**

the excess to be borne by you in respect of a **non-recourse debt** as stated in the **particulars** or as later agreed with you

**non- recourse debt**

a **debt** which is an **approved debt** and within a **debtor limit** or as so specified by us

**notifiable event**

any of the following:

the dishonour of any payment tendered by a **debtor**, a request by a **debtor** to extend your standard payment terms or payment of a **debt** until after the **default date**, the publication of any advertisement of an impending **debtor insolvency** or information received by you of actual or impending **debtor insolvency**, the issue of any proceedings against a **debtor** for non-payment of any amount owing or you have reason to believe the **debtor** is unable to comply with the terms of the **contract** or the failure by a **debtor** to pay less than an amount equivalent to 10% of any **debtor limit** in payment of a **non-recourse debt** within 30 days of the **default date**

17.3 If a **debt** is designated by us as a **non-recourse debt**, you comply fully with this condition and the **agreement** has not ended we will accept the risk that the **debtor** may not pay the **non-recourse debt** due to a **debtor default**.

17.4 A **non-recourse debt** will not include any **debt**:

17.4.1 owing by **debtors** who are a registered charity, a government or a government ministry, department or agency, a regional or local authority, a local authority department or agency, a nationalised undertaking or entity controlled by a government or local authority or who are **associates** or are **insolvent** prior to **goods** being **delivered**;

17.4.2 payable when **delivered** without credit terms or on "pay when paid" terms;

17.4.3 payable by a confirmed letter of credit;

17.4.4 created:

17.4.4.1 before a **debtor limit** is established (unless we have agreed in writing to backdate the **debtor limit**);



- 17.4.4.2 after a **debtor limit** has been cancelled;
- 17.4.4.3 after **protracted default** or a **notifiable event**; or
- 17.4.4.4 as the result of **goods** being **delivered** after the **default date** (unless we have agreed in writing that **goods** you should continue to be **delivered** to comply with your contractual obligations);
- 17.4.5 in excess of a **debtor limit**;
- 17.4.6 eligible as a **non-recourse debt** which when added to other eligible **non-recourse debts** owing by the same **debtor** are less than the **non-recourse debt** minimum qualifying amount limit at the time of **notification** or the date of the **debtor default**;
- 17.4.7 not invoiced within 31 days of the performance of the **contract** or are payable more than 90 days after **goods** are **delivered**;
- 17.4.8 owing by a **debtor** if the total amount of **debts** then owing exceeds three times the **debtor limit** for that **debtor**;
- 17.4.9 which is a **non-notifiable debt**;
- 17.4.10 owing by **debtors** that are insured under an insurance policy; and
- 17.4.11 which is **VAT**.

17.5 A **debt** is not eligible to be a **non-recourse debt** until a **debtor limit** has been established for the relevant **debtor**. You will apply for a **debtor limit** using our application form and all information provided by you must be complete and accurate. Additionally in relation to any **debtor** you must tell us in writing if you:

- 17.5.1 hold any of its shareholding and/or voting rights;
- 17.5.2 possess or are entitled to acquire a substantial part of its income or assets;
- 17.5.3 are both under the control of the same person or persons whether directly or indirectly, or otherwise part of the same group;
- 17.5.4 have common directors;
- 17.5.5 have significant control or influence over its management, whether directly or indirectly, or vice versa;
- 17.5.6 (or shareholders of you) have any family relationship with its directors or management;
- 17.5.7 have any loans or financial guarantees between you, either directly or indirectly.

You must also tell us in the future until this **agreement** has ended if any of the above applies to any **debtor**, or if any other form of control or interest exists between you and a **debtor**.

- 17.6 We may establish, reduce, decline or cancel a **debtor limit** at any time with immediate effect. Any reduction or cancellation of a **debtor limit** will not affect **non-recourse debts** that were **outstanding** at the date of reduction or cancellation except where conditions 17.8 and 17.9 apply.
- 17.7 We may also designate any **debt** created after the cancellation of a **debtor limit** as a **non-recourse debt** provided that:
- 17.7.1 no **notifiable event** has occurred;
- 17.7.2 the **contract** was made before the **debtor limit** was cancelled;
- 17.7.3 you can satisfy us that you are not entitled to cancel the relevant **contract**; and
- 17.7.4 your remaining obligations under the **contract** will be completely performed within 60 days of the cancellation of the **debtor limit**.
- 17.8 We may cancel all **debtor limits** at any time after the occurrence of an **event** and we will not be liable for the **price** of any **non-recourse debt** which is **outstanding** at the date of the **event**.
- 17.9 All **debtor limits** will be cancelled automatically upon the ending of this **agreement** and we will not be liable for the **price** of any **non-recourse debt** which is **outstanding** on the date it is ended.
- 17.10 You must not tell a **debtor** of the amount of a **debtor limit** or of our decision to reduce, decline or cancel any **debtor limit**.
- 17.11 We may appropriate any payment against a **non-recourse debt** (in chronological order of the **due date** of each invoice) in priority to any other **debt** owing by a **debtor** despite contrary appropriation by the **debtor** or you.
- 17.12 **Debts** will be **non-recourse debts** in the order in which they are **notified**.
- 17.13 You must take reasonable care in granting credit to any **debtor** for whom a **debtor limit** has been established. You must not vary the terms of the **contract** or your standard payment terms after a **non-recourse debt** has been **notified**. If we have appointed you as our **agent** to collect **debts**, you must follow the collection procedures we specify including the institution of legal proceedings.

17.14 You must tell us immediately (and in any case within 7 days of your becoming aware) of:

17.14.1 the occurrence of any **notifiable event** or **debtor default**; or

17.14.2 any information that would influence us in deciding whether to continue, vary or cancel a **debtor limit**.

17.15 If your **facility** is **undisclosed invoice finance** or **confidential invoice finance**, you must also comply with the following provisions:

17.15.1 proceedings must be issued to recover payment of an **outstanding debt** within 60 days of the relevant **due date** (unless **debtor insolvency** has occurred prior to this date);

17.15.2 in the case of a **non-recourse debt** which is not paid due to **protracted default**, you must supply to us a copy of the judgment entered against the **debtor** in respect of the **debt**; and

17.15.3 you must submit to us within 15 days of the end of each month an overdue and **notifiable event** report in our standard form detailing (i) all **outstanding debts** which have not been paid by the relevant **default date** and (ii) all **notifiable events**.

17.16 If your **facility** is an **undisclosed invoice finance** or a **confidential invoice finance**, you must submit to us within 15 days of the end of each month an overtrading report in our standard form detailing each **debtor** by whom the aggregate balance of **outstanding debts** exceeds three times the value of the relevant **debtor limit**.

17.17 Subject to compliance with this **agreement** and, in particular, this condition 17, we will credit the **price** of a **non-recourse debt** which is **outstanding** after **debtor default** to the **current account** within 60 days of our receiving from you:

17.17.1 (*in the case of **protracted default***) written notice that a **debt** has not been paid due to **protracted default**, subject to (if your **facility** is **undisclosed invoice finance** or **confidential invoice finance**) compliance with condition 17.15;

17.17.2 (*in the case of **debtor insolvency***) satisfactory evidence that the **debt** is undisputed and (where appropriate) has been acknowledged by the **debtor's** insolvency practitioner in writing

as due and owing by the **debtor** and eligible for the payment of a dividend in the **debtor's** insolvency.

- 17.18 The **price** of a **non-recourse debt** which is **outstanding** after a **debtor default** will be 90% of the **full invoice amount** of that **outstanding debt** after deduction of the **VAT** and the **excess**.
- 17.19 If we pay to you the **price** of a **non-recourse debt**, you will provide to us all reasonable assistance to enforce the **rights**, recover any dividends payable in respect of the **non-recourse debt** and recover any refund of **VAT**. Any recovery of dividends or refund of **VAT** is a payment that must be paid to us or into the **debt account** in accordance with condition 3.8.
- 17.20 We will not be liable for the **price** of a **non-recourse debt** if:
- 17.20.1 it is disputed;
- 17.20.2 it arises after the occurrence of any of the events stated in condition 17.14 or after we have told you to cease trading with the **debtor**;
- 17.20.3 you have not complied fully with the provisions stated in this condition 17 or any conditions applicable to the **debtor limit**;
- 17.20.4 you have an **undisclosed invoice finance** or a **confidential invoice finance facility** and you have not fully complied with your obligations under condition 12.15 and 12.16;
- 17.20.5 it is unpaid because you have not obtained any relevant licence or authorisation or you have failed to comply with any relevant law; or
- 17.21.6 the **debtor** does not make payment as a result of an unforeseeable event beyond our control, war, invasion, act of a foreign enemy, hostilities or warlike operations, civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, expropriation, nationalisation, requisition, sequestration or confiscation by a public authority or government, terrorism or other political risks, strikes, riots, social or political disorder, or arising directly or indirectly from or caused by any process of nuclear fission or handling radioactive material, the use of radioactive materials and any weapon of war or explosive device employing nuclear fission or fusion.
- 17.22 You will exercise the same reasonable care and prudence in granting credit to and withholding credit from a **debtor** as an uninsured supplier and will act promptly in accordance with any reasonable instructions that we give to you.

17.23 You will disclose to us every relevant fact known to you about a **debtor** which would influence our decision to establish, reduce or cancel a **debtor limit** or assist us to collect a **non-recourse debt**.

## 18. Communications between us

18.1 You will ensure that:

18.1.1 all data passing from you to us is accurate and correct; and

18.1.2 you maintain a record and copy of all **notifications** and other data electronically communicated between you and us; and

18.1.3 only those who are authorised by you can or will communicate with us; and

18.1.4 you keep secure and confidential any device or procedure we agree to use with you for ensuring and maintaining the authenticity or integrity of any data from you; and

18.1.5 you comply with all legislation or directives relating to the use of electronic communication and the transmission of data; and

18.1.6 you will tell us if you fail to do any of the above at any time.

18.2 We will maintain the electronic record which you agree will be satisfactory proof of the authenticity and integrity of the data contained in it unless that data is clearly corrupted.

## 19. Your status

19.1 If you consist of more than one person (other than a limited liability partnership) you agree that:

19.1.1 references to "you" or "your" include references to any one or more of you or to matters relating to any one or more of you;

19.1.2 all relevant individuals have given all necessary consents to us and received all appropriate information from us relating to data protection;

19.1.3 all authorities, consents, assurances, appointments, undertakings and warranties given or made by you in this **agreement** will be deemed to have been given and made by every one of you;

- 19.1.4 all your **liability** will be joint and several and we may release or compromise with any one or more of you without affecting our rights against the others; and
- 19.1.5 we may in our sole discretion (but will not have to) treat any notice to or demand on any one or more of you as notice to or demand on you all and any notice to us by any of you as notice by you all.
- 19.2 If you are a partnership (other than a limited liability partnership) all the persons who have signed warrant that all the present persons comprising your partnership are named in the Schedule and you undertake to procure that any partner admitted by you will sign such documents as we may require to bind him to the terms of this **agreement**.
- 19.3 If you are a limited liability partnership the persons who have signed warrant that they are members of you and have full authority to enter this **agreement** on all its terms on your behalf and you undertake to tell us about any person who stops being a member or becomes one and any changes in the name or address of any member.
- 19.4 Save as above this **agreement** and all its terms will remain in full force and effect in spite of any change in your constitution, composition or legal entity.

## **20. Transfer**

- 20.1 You will not assign or charge any of your rights or benefits or transfer any of your obligations under this **agreement**.
- 20.2 We may assign all our rights and benefits under this **agreement** to any other person and the terms of this **agreement** will then apply to them. You also agree that we may novate this **agreement** to anyone and you agree to sign such further documents as we may need to do this.

## **21. Variation**

Except as already stated, any variation of this **agreement** can only be made by a document signed by or on behalf of you and us.

## **22. Waiver**

None of our rights under this **agreement** will be lost or affected in any way if we choose to allow further time to you or anyone else or do not exercise any right or enforce any remedy available to us. Any apparent waiver by us of any breach of any obligation by you will not mean that you can do so again.

**23. Liability**

We will not be liable to you for any kind of loss or damage, consequential or other that is caused in any way by us unless such loss or damage arises directly from any fraudulent act of us or any of our officers. If we are unable to perform our services as a result of any failure of any computer or communication system we will have no liability to you.

**24. Notices**

24.1 Any written notice from us to you may be given by handing, as appropriate, to you, any partner, any member of a limited liability partnership or any of your officers, or delivering or posting to your registered office or your address in the offer letter or any other business or residential address known to us, or by sending by fax or email to any number or address you tell us about. The notice will be effective when handed, delivered or transmitted and, if sent by post, the day after it was posted.

24.2 Any notice that must be given by you to us must be in writing and sent by post to us at our registered office and will be effective when we receive it.

**25. Acceptance**

You accept that this **agreement** is reasonable in all respects and if any provision of it will be held to be invalid or unenforceable for any reason you agree that it will not affect any other provision and the rest of the **agreement** will be fully effective.

**26. Law**

This **agreement** will be governed and construed according to English law and you accept the jurisdiction of the English courts.