

TERMS AND CONDITIONS FOR SOFTWARE RE-SALE

1. INTERPRETATION

The definitions and rules of interpretation in this condition apply in these terms and conditions.

1.1 Definitions:

CLOSA: the customer and online services agreement in the Third Party Provider's standard form.

Customer: the person, firm or company who purchases Services from the Supplier.

Customer Support Services Policy: the Third Party Provider's customer support services policy referred to in the CLOSA.

EUOF: the end-user order form of the Third Party Provider.

Force Majeure: i.e. circumstances beyond the reasonable control of a party or a Third Party Provider, including war, strike, lockout, unforeseen complications, operational disruptions for which the Supplier is not responsible and which have occurred or become known to the Supplier after conclusion of the Individual Agreement.

Individual Agreement: The agreement formed pursuant to Clause 3.1.

OST: the Third Party Provider's offering specific terms for the relevant software product.

Software: the software described in the EUOF.

Supplier: Simuserv Ltd (company number: 13813970).

Third Party Provider: Dassault Systemes.

VAT: value added tax imposed by the Value Added Tax Act 1994 or any similar tax chargeable in the UK.

2. APPLICATION OF CONDITIONS

2.1 These conditions shall:

- (a) apply to and be incorporated in the Individual Agreement; and
- (b) prevail over inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, or specification, or implied by law, trade custom, practice or course of dealing, other than Individual Agreements.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Individual Agreement shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

3. CONTRACT FORMATION

3.1 The Customer's signed EUOF and purchase order (if any) or equivalent order given by the Customer online constitutes an offer by the Customer to purchase the Software. Such purchase shall be subject to approval by the Third Party Provider and shall incorporate the terms of the CLOSA, OST, Customer Support Services Policy and these conditions. Accordingly, confirmation by the Supplier of the Third Party Provider's approval of the order, or the Supplier's commencement or execution of work pursuant to the order, shall establish an Individual Agreement for the supply of the Software incorporating all such terms and these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, any purchase order shall not apply to the Individual Agreement.

3.2 Fixed delivery dates and periods of delivery shall be non-binding unless expressly agreed otherwise in writing. A new delivery date must be agreed where any subsequent contractual amendments are applied.

3.3 The Customer shall be solely responsible for complying with any import and export regulations applicable to deliveries or Services. In the event of cross-border deliveries the Customer shall bear all customs, duties, fees, and other charges arising. Unless expressly otherwise agreed the Customer shall deal with any legal or official processes connected with cross-border deliveries to him and shall do this on his own responsibility.

3.4 Unless otherwise agreed, the Supplier will provide the licence keys for the Software to the Customer and the Software shall be installed and rolled out by the Customer.

3.5 Partial deliveries and partial Services shall be permitted to a reasonable extent. They shall be invoiced separately.

3.6 In the event of price changes the Supplier reserves the right to pass these on to the Customer or to withdraw from the Individual Agreement without compensation.

3.7 The Supplier shall not be obliged to comply with any requests for changes regarding configuration, intended use, conditions of use or other requirements that are notified to the Supplier by the Customer after the Individual Agreement has been concluded.

4. SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall inform the Customer without delay of any differences and problems that cannot be easily eliminated. If any action need to be taken by the Customer, the Supplier will notify the Customer about that immediately.

4.2 If the delivery by the Supplier requires some kind of contribution by the Customer, the agreed deadlines shall be extended for the period in which the Customer fails to meet these obligations.

4.3 The Supplier shall notify the Customer as soon as the software or data are available for the download on the respective website. The risk of accidental loss shall pass to the Customer when the Supplier provides notification that the software or data is available.

5. CHARGES AND PAYMENT

5.1 All invoices raised by the Supplier shall include VAT.

5.2 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 9 % above the base lending rate from time to time of European Central Bank , accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
- (b) suspend all deliveries and/or Services until payment has been made in full.

5.3 Time for payment shall be of the essence of the Individual Agreement.

5.4 The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt.

5.5 All payments payable to the Supplier under the Individual Agreement shall become due immediately on termination of the Individual Agreement, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Individual Agreement.

5.6 All amounts due under this agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

6. LIMITATION OF LIABILITY

6.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

- (a) any breach of the Individual Agreement however arising;
- (b) any use made by the Customer of the Software; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Individual Agreement.

6.2 All warranties, conditions and other terms implied by statute or common law are, to the greatest extent

permitted by law, excluded from the Individual Agreement.

6.3 Nothing in these conditions excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

6.4 Subject to condition 6.2 and condition 6.3:

- (a) the Supplier shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty however arising), Individual Agreement, misrepresentation (whether innocent or negligent) or otherwise for:
 - (i) loss or corruption of data or information; or
 - (ii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses
- (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty however arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Individual Agreement shall be limited to the price paid by the Customer to the Supplier under this agreement.

7. TERMINATION

7.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Individual Agreement without liability to the other if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or
- (c) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

7.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

7.3 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

8. FORCE MAJEURE

Neither party shall be in breach of this agreement or otherwise liable for any failure or delay in the performance of its obligations if such nor liable for

delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure is due to Force Majeure. The time for performance of such obligations shall be extended accordingly. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 weeks, the party not affected may terminate this agreement by giving 10 days' written notice to the affected party.

9. SEVERANCE

9.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

10. ENTIRE AGREEMENT

10.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

10.2 Each party acknowledges that, in entering into this agreement, it does not rely on , and shall have no

remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

10.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

10.4 Nothing in this clause shall limit or exclude any liability for fraud.

11. GOVERNING LAW

The Individual Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and interpreted in accordance with the law of England and Wales.

12. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).