Supplementary Terms and Conditions for the Sale, Loan or Rental of Goods

Eloquent shall sell, loan or rent Goods to the Client on the terms and conditions set out in Eloquent's General Terms and Conditions and the terms and conditions of this Supplement. All definitions set out in the General Terms and Conditions shall, unless otherwise specified below, have the same meaning when used in this Supplement.

1. SUPPLEMENTARY DEFINITIONS

1.1 'Contract Price' means the price of the Goods agreed between the parties.

1.2 'Faulty' means that the Goods does not conform substantially to its specification.

1.3 'List Price' means the manufacturers retail price of the Goods prevailing at the Commencement Date.

1.4 'Subscription Period' means the period during which the Client makes payments for the purchase of Software by way of periodic subscription charges, as set out on the Order.

2. TERM

2.1 This Agreement will be deemed to come into effect on acceptance of the Client's Order by Eloquent and shall run until the occurrence of the latest of the following events:

2.1.1 The expiry of the warranty period set out herein;

2.1.2 The termination of any agreement for the rental of Equipment as set out in the Order;

2.1.3 The expiry of the applicable Subscription Period.

3. RENTAL AND LOAN OF EQUIPMENT

3.1 Eloquent may, at its sole discretion agree to rent or loan to the Client. The provisions of this clause 3 shall only apply to Equipment that is rented from or loaned by Eloquent.

3.2 If Eloquent loans Equipment to the Client, all of the provisions of this clause 3, save sub-clause 3.3 shall apply.

3.3 If the Equipment is rented by the Client, the Client agrees:

3.3.1 The rental charge, Minimum Term and billing period are as set out on the relevant Order for additional Services;

3.3.2 If the Client terminates this Agreement for the Rental of Equipment at convenience prior to the end of the Minimum Term or any subsequent Additional Term, the Client shall be liable for the rental charges payable for the remainder of the Minimum Term or Additional Term as appropriate, plus any charges for the removal of the Rented Equipment;

3.3.3 If Eloquent terminates this Agreement for the Rental of Equipment due to the Client's un-remedied breach thereof prior to the end of the Minimum Term or any subsequent Additional Term, the Client shall be liable for the rental charges payable for the remainder of the Minimum Term or Additional Term as appropriate, plus any charges for the removal of the Rented Equipment;

3.4 Rented Equipment and Loaned Equipment shall at all times remain the property of Eloquent.

3.5 Without prejudice to any of its other rights, Eloquent may recover or resell the Rented Equipment or Loaned Equipment supplied and its servants or agents may enter upon the Client's premises for that

purpose if any of the provisions of Clause 11.1 of the General Terms and Conditions are exercised by Eloquent and Eloquent has reasonable grounds to believe that its interest in the Rented Equipment or Loaned Equipment is or is likely to be in jeopardy.

3.6   In the event of a malfunction of the Loaned Equipment or Rented Equipment Eloquent shall at its sole discretion either repair the defective equipment or replace the defective equipment with equipment of equal or greater functional specification.

3.7   Eloquent shall at its sole discretion install the Rented Equipment or Loaned Equipment at the Client's site.

3.8   The Client undertakes to:

3.8.1   Only use the Rented Equipment or Loaned Equipment in conjunction with the Services for which it has been provided;

3.8.2   Store the Rented Equipment or Loaned Equipment in a manner that makes it readily identifiable as the Rented Equipment;

3.8.3   Keep the Rented Equipment or Loaned Equipment properly insured for not less than its List Price;

3.8.4   Obtain and pay for all necessary licences, consents and approvals required for the installation and operation of the Rented Equipment or Loaned Equipment;

3.8.5   Notify Eloquent promptly of any faults in, loss of or damage to the Rented Equipment or Loaned Equipment;

3.8.6   Pay Eloquent by way of liquidated damages the List Price for the Rented Equipment or Loaned Equipment and any additional losses incurred by Eloquent in the event of loss of or damage to the Rented Equipment or Loaned Equipment, howsoever caused, save by Eloquent, its employees or subcontractors.

3.9   The Client undertakes not to:

3.9.1   Pledge the Rented Equipment, Loaned Equipment or documents to title thereon, or allow any credit to arise thereon;

3.9.2   Dispose of the Rented Equipment, Loaned Equipment or documents of title thereon or any interest therein; or

3.9.3   Hold itself out as Eloquent's agent in respect of the Rented Equipment or Loaned Equipment; or

3.9.4   Repair, modify or otherwise maintain, or allow any other party to do same to the Rented Equipment or Loaned Equipment.

3.10   On termination of this Agreement, howsoever occasioned the Client shall:

3.10.1 Return the Rented Equipment or Loaned Equipment to Eloquent in good condition, subject to reasonable wear and tear;

3.10.2 Remain liable for the Rented Equipment or Loaned Equipment until such time as it has been delivered to Eloquent;

3.11   If the Rented Equipment or Loaned Equipment is not returned to Eloquent or is returned damaged, Eloquent shall be entitled to charge the Client, by way of liquidated damages, the List Price for the Rented Equipment or Loaned Equipment and any additional losses incurred by Eloquent.

3.12   The Client shall return Loaned Equipment to Eloquent within 30 days of any request by Eloquent to return such.

4. PRICES AND CHARGES

4.1 The Contract Price for Goods and optionally the rental price thereof are set out in the Order subject to the provisions of clause 4.2 hereof.

4.2 Eloquent shall at any time be entitled to increase the prices for Goods or Rented Equipment set out in the Order:

    4.2.1 Should the Client alter its specification or instructions after the date of Order or Eloquent otherwise has to alter, modify or otherwise carry out work on any Goods;

    4.2.2 Should there be any increase in the cost to Eloquent of purchasing any Goods by reason of any foreign or currency fluctuations, alterations in any taxes or duties, variations in the cost of Eloquent materials or components or labour or transport or by reason of any other cause whatsoever beyond the reasonable control of Eloquent.

4.3 All prices quoted by Eloquent are ex-works and are exclusive of Value Added Tax and other taxes, duties and other impositions and the Client shall pay all taxes, duties and other government charges in respect of the Goods or Rented Equipment at the rate ruling at the tax point, together with transport costs for delivery of the Goods or Rented Equipment to the Client.

4.4 Save charges which may be made under the terms of clause 3 hereof for the rental of Equipment, there shall be no recurring charges under the terms of this Supplement.

5. PAYMENT

5.1 Payment for purchased Goods is due within thirty days of the date of Eloquent's invoice, save that if a different period is set out on Eloquent's invoice; payment is due within such period.

5.2 Eloquent shall be entitled, at its sole discretion, to request payment for purchased Goods prior to the despatch of such Goods to the Client.

5.3 If Eloquent allows provisional credit or extends credit in respect of any part of the Goods, it shall be without prejudice to its right to refuse to give up possession of any other part of the Goods save against payment.

5.4 Where the Goods is to be supplied or payment theretofore is to be made by instalments the failure of the Client to pay any of the instalments in due time shall entitle Eloquent to treat such failure as repudiation of the whole Contract with the Client and to recover damages incurred as a result of said breach of Contract.

5.5 If payment is overdue in whole or in part then the whole of any amounts outstanding to Eloquent shall immediately become payable whether or not such monies should have been payable at that time but for the provisions of this sub-clause.

5.6 Time is of the essence with respect to payment under the terms of this Agreement.

5.7 Eloquent shall raise invoices for Rented Equipment charges according to the charges and billing period set out on the Order.

5.8 Eloquent shall raise invoices for subscriptions for Software according to the charges and billing period set out on the Order.

5.9 If the Client is unable to accept delivery of the Goods on the agreed delivery date, Eloquent shall invoice the Client as if such delivery had taken place.

6. WARRANTY

6.1 With respect to Goods that is manufactured by a third party and sold by Eloquent:

6.1.1 Eloquent's only warranty to the Client is that the Goods shall conform substantially to its description provided by Eloquent and is free of any rightful claims of their manufacturer.

6.1.2 To the extent that any warranties extended to Eloquent by their manufacturer are transferable, Eloquent shall transfer such warranties to the Client.

6.1.3 Eloquent cannot pass onto the Client any greater warranty in respect of the Goods than that which has been conferred on Eloquent under the terms of Eloquent's agreement with its own supplier(s).

6.2 Subject to clause 14, the warranty contained in sub clause 6.1 is given in lieu of and shall be deemed to exclude all other warranties and conditions, whether express or implied and whether arising by common statute or otherwise.

6.3 If the supplied goods is Faulty or becomes Faulty and the manufacturer agrees to accept a claim under its warranty provisions, the Client shall return the Goods to the location specified by Eloquent for the purpose of repair under such warranty. The Client shall pay for packaging and carriage and such carriage will be at the Client's risk.

7. TECHNICAL INFORMATION

7.1 Eloquent shall be under no liability whatsoever resulting from or arising out of or in connection with or in relation to any statement made by any of its employees, servants or agents or contained in any document before the Contract between Eloquent and the Client unless Eloquent gives notice in writing to the Client that it intends to rely on any such statement or document.

7.2 Without prejudice to the generality of sub-clause 7.1:

7.2.1 Any description contained in any catalogue, sample price lists or other advertising material supplied by Eloquent is intended merely to present a general picture of the Goods sold by Eloquent and shall not form a representation to the Client or become part of any contract for sale of Goods made between Eloquent and the Client;

7.2.2 Eloquent makes no warranty express or implied concerning any advice or recommendation made to it by the Client.

8. DELIVERY

8.1 If Goods is to be delivered by Eloquent to the Client, such Goods shall be delivered to the location set out in the Order. Unless it is otherwise agreed in writing, such Goods shall be delivered by any means chosen by Eloquent and Eloquent shall not be under any obligation to provide personnel, plant or power to assist the unloading of the Goods.

8.2 If the Client is unable to take delivery of the Goods, Eloquent may at its sole discretion store the Goods at its risk, but may be entitled to charge the Client its reasonable costs for doing so.

8.3 Eloquent shall make reasonable endeavours to avoid delay but no responsibility is undertaken for meeting any specific delivery dates. Accordingly no liability will be accepted for any direct or indirect loss which may be caused by delayed delivery whether brought about by a cause beyond the control of Eloquent or not.

8.4 Eloquent shall be entitled to deliver the Goods or Rented Equipment in one or more consignments unless otherwise agreed.

8.5 The Client shall inspect the Goods immediately on delivery thereof and shall within two Working Days from such delivery give Eloquent notice of any matter or thing by reason whereof the Client may allege that the Goods are not in accordance with the Contract or are defective in material or workmanship. If the Client fails to give such notice the Goods shall be conclusively presumed to be in all respects in accordance with the Contract and free from any defect which would be apparent on any reasonable examination and the Client shall be deemed to have accepted the Goods accordingly. If the Client establishes to Eloquent's reasonable satisfaction that the Goods are not in accordance with the Contract or are so defective, Eloquent may elect to repair the Goods or to replace the Goods or to refund the purchase price against the return of the Goods.

8.6 If Goods is damaged in transit the Client shall notify both Eloquent and the carrier of the loss or damage within two Working Days of the delivery.

8.7 Eloquent shall not be responsible for the installation of Equipment at the Client's site under the terms of this Supplement.

9. RETURNS

9.1 Equipment supplied to the Client under the terms of this Agreement which the Client wishes to return for reasons other than those set out in sub-clause 8.6 cannot be returned without Eloquent's prior written consent.

9.2 The Client shall be responsible for delivering the Equipment to Eloquent's premises and the Client shall be liable for all packaging and carriage costs.

9.3 All Equipment returned to Eloquent shall be returned in the same condition and packaging in which it was originally delivered to the Client.

9.4 Eloquent shall be entitled to levy a handling charge of twenty-five per cent of the Contract Price of the Equipment excluding VAT.

10. PASSING OF RISK

10.1 The Goods shall be at the Client's risk from the time of delivery of the Goods to the Client or a third party identified by the Client and if the Client returns Goods to Eloquent, until the time of delivery back to Eloquent.

10.2 Where Goods are to be collected by the Client, or by the Client's carrier the Goods shall be at the Client's risk from the time of collection of the Goods.

10.3 Eloquent shall not be liable for any loss of any kind to the Client arising from any damage to the Goods occurring after the risk has passed to the Client howsoever caused, nor shall any liability of the Client to Eloquent be diminished or extinguished by such loss.

11. RETENTION OF TITLE

11.1 The Goods agreed to be sold shall remain the property of Eloquent until all sums due to Eloquent have been paid in full.

11.2 Without prejudice to any of its other rights, Eloquent may recover or resell the Goods supplied and its servants or agents may enter upon the Client's premises for that purpose on the occurrence of any of the events listed in sub-clauses 11.1.1, 11.1.4, 11.1.7 and 11.1.9 of the General Terms and Conditions; or

11.2.1 Eloquent has reasonable grounds to believe that the Client is insolvent or that Eloquent's right to receive payment or its interest in the Goods is or is likely to be in jeopardy.

11.3   Until such time as the Client becomes the owner of the Goods supplied it will store the Goods on its premises separately from its own Goods in a manner which makes them readily identifiable as the Goods.

11.4   Until property in the Goods has passed to the Client hereunder the Client shall not:

11.4.1   Pledge the Goods or documents to title thereon, or allow any credit to arise thereon; or

11.4.2   Dispose of the Goods or documents of title thereon or any interest therein ; or

11.4.3   Hold itself out as Eloquent's agent in respect of the Goods.

11.5   Until such times as the Client becomes the owner of the Goods supplied to it, the Client will keep the Goods properly insured for not less than its List Price.

12.   USE OF EQUIPMENT

12.1   The Client shall bring to the attention of all persons using the Equipment all of Eloquent's instructions and recommendations for use packed by Eloquent with the Equipment or referred to in Eloquent's catalogues or brochures or which Eloquent has notified to the Client. Further the Client shall take such steps as are necessary to ensure that there will be available in connection with the use of the same adequate information about the use for which they were designed and about any conditions necessary to ensure that when put to that use they will be safe and without risk to health.

12.2   The Client shall not remove or deface any label affixed to the Equipment referring any user thereof to Eloquent's instructions and or recommendations for use.

12.3   If any item comprised in the Equipment is resold by the Client, the Client shall bring to the attention of its purchaser all of Eloquent's instructions / recommendations for use packed by Eloquent with the Equipment or referred to in Eloquent's catalogues or brochures or which Eloquent has notified to the Client. Further on such resale the Client shall exact an enforceable undertaking from its purchaser not to remove any label affixed to the Equipment referring any user thereof to Eloquent's instructions and or recommendations for use and that such purchaser shall take such steps as are necessary to ensure that there will be available in connection with the use of the Equipment adequate information about the use for which they were designed and about any conditions necessary to ensure that when put to that use they will be safe and without risk to health.

12.4   Where the Equipment has been manufactured or constructed according to designs or configurations or by processes specified or supplied by the Client, the Client represents and warrants to Eloquent that the Client has or will have satisfied itself that all necessary tests and examinations have been made or will be made prior to the Equipment being brought into use to ensure that the Equipment are designed, constructed and operational so as to be safe and without risk to the health and safety of workmen or others using the same and that it will take such steps as are necessary to ensure that there will be available in connection with the use of the Equipment adequate information about the use for which they were designed and have been tested and about any conditions necessary to ensure that when put to that use they will be safe and without risk to health.

12.5   The Client shall indemnify and keep indemnified Eloquent on a continuing basis against all actions, suits, claims, demands, losses, charges costs and expenses which Eloquent may suffer or incur in connection with any claim or third party alleging the facts which if established would indicate a breach of the undertakings, representations and warranties on the part of the Client contained in this clause 12 or which if established would indicate a breach by any purchaser from the Client of any undertaking, which the Client is required in this clause 12 to exact from such purchaser.

13. CANCELLATION

13.1 No cancellation, alteration, amendment or postponement of delivery of all or part of its order by the Client shall be effective unless communicated in writing to Eloquent and agreed in writing by Eloquent.

13.2 Upon any such cancellation Eloquent shall be entitled to be paid the price of the Goods purchased or manufactured by Eloquent or supplied to the date of the cancellation and the Client shall take over and pay for at the current price such materials as have been allocated by Eloquent to the Contract.

14. COMPUTER SOFTWARE

14.1 All Software shall be supplied to the Client for use under the terms of the licence granted by the owner of the Software to the Client and all intellectual property and title and the rights in the Software shall remain vested in any third party owning such property, title and rights.

14.2 Any warranty or guarantee given by Eloquent in respect of the Software shall be strictly limited to the medium of storage and Eloquent shall not be liable in respect of any loss or damage occasioned to the Software itself or consequential upon the use of the Software for any purpose.

15. EXCLUSION OF LIABILITY

15.1 Save as expressly set out in this Supplement the Goods is not supplied with or subject to any condition, warranty or other term whether express or implied unless specifically stated by Eloquent in writing and except for the terms implied by section 12 of Sale of Goods Act 1979.

15.2 In no circumstances except under clause 6 above shall be Eloquent's liability whether in contract or in respect of any negligence or otherwise to the Client arising under or out of or in connection with any contract for the supply of Goods exceed the cost to the Client in replacing or repairing the said Goods. Except in any case where a claim is made under Section 12 of the Sale of Goods Act 1979 or where clause 13.2 applies, Eloquent shall not be under any liability for any cost or expenses incurred by the Client in repairing or replacing the said Goods unless Eloquent is first afforded a reasonable opportunity of repairing or replacing them provided that the Client shall be entitled to effect such repairs or replacements before affording such an opportunity as may be reasonably necessary to prevent any consequential loss or damage to the Client.

15.3 The Client shall indemnify Eloquent and keep Eloquent indemnified on a continuing basis from and against all damage, injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection herewith arising from the condition or use of the Goods in the event and to the extent of that damage, injury or loss shall have been occasioned partly or wholly by the carelessness of the Client, its servants or agents and any breach by the Client of its obligations to Eloquent hereunder.

16. PATENTS, TRADEMARKS, ETC

16.1 The Goods are sold subject to the rights of any person, whether in respect of any patent, trade mark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods in any part of the world; and the Client will in this respect accept such title to the Goods as Eloquent may have.

16.2 Where the Goods have been manufactured or constructed according to designs or configurations or by processes specified or supplied by the Client, the Client represents and warrants to Eloquent that the Goods as so designed or configured and/or the processes so used do not infringe the rights of any persons, whether in respect of any patent, trademark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods or the use of such processes in any part of the world. the Client shall indemnify Eloquent and keep Eloquent indemnified on a continuing basis from and against all damage, injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses which Eloquent may suffer or incur in connection with any claim by which any third party alleging facts which if established would indicate a breach of the representations and warranties in this sub-clause

17. TERMINATION

17.1 If the Client fails to take and pay for Goods sold in accordance with the Contract Eloquent shall be entitled to treat the Contract as repudiated. Without prejudice to Eloquent's right to recover from the Client by way of damages any loss or expense which Eloquent may suffer or incur by reason of the Client's default and Eloquent shall be entitled to dispose of the Goods as he shall think fit and shall not be under any liability to account to the Client for the price received therefore or otherwise.

17.2 Eloquent shall be entitled immediately to terminate the Contract at any time upon occurrence of any of the events specified in clause 11.2. Upon any such termination Eloquent shall be entitled to be paid the price of the Goods manufactured or supplied to the date of the cancellation and the Client shall take over and pay for at the current price such materials as have been allocated by Eloquent to the Contract.

18. FINANCE

If the Client requests Eloquent to arrange finance for the purchase of Goods on the Client's behalf, the Client agrees that:

18.1.1 Eloquent will act as an agent for the Client and for the avoidance of doubt, not for the finance provider;

18.1.2 If Eloquent is unable to procure finance terms or is unable to procure finance terms that are acceptable to the Client, this Agreement shall be terminated and any deposit made by the Client shall be returned by Eloquent and the Client will have no further liability under the terms of this Agreement;

18.1.3 If the Client fails to provide third party indemnities that are required by the finance provider, such failure will be a deemed to be a breach of this Agreement and the Agreement will be terminated forthwith and Eloquent shall be entitled to retain any deposit made by the Client;

18.1.4 It is a condition of this Agreement that regardless of any provisions made by the finance provider in its contracts, the Client shall finalise the finance arrangement immediately upon Eloquent's delivery of the Goods to the Client's site.

18.1.5 If the Client fails to finalise the finance agreement or fails to commence payment under the terms of the finance agreement, the Client shall forthwith become liable for the full cost of the Goods supplied under the terms of this Agreement.

18.1.6 The Client hereby consents to and procures that its directors, owners and officers consent to Eloquent carrying out such credit reference checks as are deemed necessary and reasonable during its procurement of finance services on the Client's behalf. the Client also agrees to

provide all information requested by Eloquent that is necessary to carry out credit reference checks.