

SMMT STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SMMT DATA (Order Form)

1. Interpretation

In these Conditions:

- a) **"the Customer"** means the company or business to which SMMT shall provide data under and in accordance with the Order Form.
- b) **"the Contract"** means the agreement between the Customer and the SMMT as set out in these Conditions and the Order Form (including any schedules attached thereto)
- c) **"the Data"** means all data and data materials whether consisting of Personal Data or other data including Code Manuals belonging to or supplied by SMMT to the Customer in connection with the Contract in any format including but not limited to data in electronic form, data supplied in CD-ROM format, other non-printed media and all printed materials.
- d) **"DPA"** means the data Protection Act 1998 and all associated regulations and statutory instruments, as amended or modified from time to time or as replaced in its entirety by any legislation which replaces them;
- e) **"loss"** includes destruction.
- f) **"month"** means calendar month.
- g) **"person"** includes corporation.
- h) **"Personal Data"** means any personal data (as defined in the DPA) and which, for the purposes of this Contract, the parties agree includes vehicle identification numbers (VIN) and vehicle registration marks (VRM);
- i) **"the Price"** means the price for the Data exclusive of any value added tax and all costs or charges in relation to packaging, labelling, loading, unloading, carriage, freight and insurance, payable to SMMT by the Customer.
- j) **"the Services"** means the Data to be supplied as set out in the Order Form.
- k) **"the Order Form"** means order form as signed by the Customer which details the supply of Data to be provided by SMMT subject to these Conditions.
- l) **"the SMMT"** means The Society of Motor Manufacturers and Traders Limited, 71 Great Peter Street, London SW1P 2BN. Registered number: 74359 England.
- m) **"unauthorised"** not expressly permitted in writing by the SMMT.

2. These terms and conditions ("Conditions") apply to the sale and supply of the Data by the SMMT to you the Customer. The Customer shall place an order for Data by returning a signed and dated copy of the Order Form. SMMT's acceptance of such order constitutes an agreement between SMMT and the Customer for the supply of the Data on these Conditions, the Order Form and, if attached, the Specification Schedule (which together shall form the "Contract") to the exclusion of all other terms and conditions. "Group Company" means any subsidiary or holding company of the Customer, in accordance with s. 1159 and Schedule 6 of the Companies Act 2006 (as amended from time to time).

3. Acceptance

No order placed by the Customer shall be deemed to be accepted by SMMT until a written acknowledgement of the order is issued by the SMMT or (if earlier) SMMT despatches the Data to the Customer. Any order shall be accepted entirely at the discretion of SMMT. SMMT shall not be bound by any variation, waiver or addition to the Contract except where agreed to by SMMT in writing.

4. Performance

Upon signing the Order Form the Customer accepts the provision of the Services by SMMT and the Customer shall grant SMMT, SMMT employees and agents all the information and access to systems, files, records and access to Customer premises such as may be required to enable the performance of the Services.

5. Delivery

Unless otherwise set out in the Order Form, delivery of the Data shall occur at the Customer's place of business in normal business hours. Any dates specified by SMMT for delivery of the Data are an estimate only and the parties agree that time for delivery shall not be of the essence. The Data shall be at the risk of the Customer from the time of delivery and full title to and property in the Data shall remain vested in SMMT (even though they have been delivered and risk has passed to the Customer) until payment in full, in cash or cleared funds, for all the Data has been received by SMMT and all other money payable by the Customer under the Contract or any other account or contract has been received by SMMT.

6. Payment and Charges

The price for the Data shall be the Price set out in the Order Form and will be correct as at the date of the Order Form. SMMT shall be entitled to increase the Price by up to 10% per annum without further formal notification to the Customer. SMMT reserves the right to increase the price for the Data at any time on two months' notice if the cost to SMMT of providing the Data increases for any reason. Payment for the Data is due on delivery unless expressly agreed otherwise in writing by SMMT. SMMT reserves the right if payment is late, to charge interest on any late payment due at a rate of four per cent (4%) per annum above the base lending rate of Barclays Bank plc until SMMT receives payment in full, and/or to withhold delivery of Data due to the Customer (whether relating to the overdue amount or otherwise) until cleared payment in full is received by SMMT. Payment will be made by the Customer in accordance with the Order Form. Changes to the Order Form will incur an administration fee of £250 plus VAT per change and any other changes as may be applicable. Where the Customer requests significant changes, SMMT may require the Customer to enter into a further, separate agreement.

7. Liability

- a) Whilst every care is taken by SMMT in the compilation and creation of the Data, whether they are in eye readable or electronic media format, SMMT can accept no liability for any inaccuracies in the data and the SMMT shall not be liable to the Customer for any economic loss, loss of contracts, loss of data or corruption to any data or loss of profit (direct or indirect), or any indirect, special or consequential loss or damage howsoever caused, or any liability arising to any third party.
- b) SMMT's total aggregate liability for any and all loss and damage arising out of or in connection with the Contract whether in tort (including negligence), breach of contract or otherwise shall in no event exceed 125% of the price paid or payable by the Customer for the Data, and in addition, shall not in any period of 12 consecutive months exceed the upper limit of the SMMT's insurance. Nothing in the Contract shall exclude or limit SMMT's liability for death or personal injury caused by SMMT's negligence or for fraudulent misrepresentation.
- c) SMMT does not warrant the suitability of the Data set out in the Order Form to the Customer and the Customer shall be wholly responsible for satisfying itself that the Data meets the Customer's needs.
- d) All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Contract.

8. Continuity of Supply

SMMT will use its reasonable endeavours to ensure that such persons, firms, companies, organisations, Government departments or Government agencies as may be engaged by SMMT in relation to supplying data for the Data carry out the services they have agreed to perform. However, SMMT shall not be liable to the Customer for any losses, damage, costs, charges, claims, actions, demands or expenses which may arise otherwise than to the extent that SMMT is able to recover the cost of any such losses, damage, costs, charges, claims, actions, demands or expenses from persons, firms, companies, organisations, Government departments or Government agencies engaged by SMMT in connection with the supply of the Data.

9. Customer Obligations

In order to ensure the continued provision by the relevant Government agency of the input data required for the purposes of providing the Data, the Customer agrees to observe and to fully comply with the reasonable requirements or instructions of SMMT or SMMT's authorised representative regarding the confidentiality, handling or use of the Data and the information and data which they contain which may from time to time be laid down by the relevant Government agency or SMMT.

10. Intellectual Property

All intellectual property rights in the Data vest in SMMT including database rights (if any), copyright of any part or parts thereof as published in either electronic media or eye readable format and all copies thereof. Unless expressly stated otherwise nothing in the Contract shall or shall be deemed to give, licence or otherwise transfer to the Customer any right in any intellectual property rights in the Data, whether or not such rights are owned by SMMT.

SMMT STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SMMT DATA (Order Form)

11. Licence

- a) Subject to the provisions of paragraphs b) c) d) and e) below, SMMT grants to the Customer a non-assignable, non-exclusive, royalty-free licence in the United Kingdom for ten (10) years from the earlier of the first day of the provision of the Services or the date the Customer signs the Order Form, to use the Data for the Customer's own and where permitted its Group Companies' own internal business purposes including those as set out below:
 - i) taking a reasonable number of photocopies to be used only for the purposes authorised under a)iii and a)iv below
 - ii) loading or copying on to the Customer's information technology systems
 - iii) where applicable; training of the Customer's employees
 - iv) other uses expressly permitted in the Order Form or with the prior written consent of SMMT
- b) Nothing in this licence shall prevent SMMT from developing, exploiting, using, dealing with or disposing of or manufacturing, assembling, selling, leasing or producing products using the SMMT data as SMMT sees fit whether alone or in conjunction with another party of its choosing in the absolute discretion of SMMT.
- c) The Customer agrees that the Customer will not release, reveal, sell, dispose or disclose in any way the Data or any of them to any third party save as expressly permitted in the Order Form. In the event that the Company breaches the terms of this paragraph 11c) then SMMT may terminate this licence immediately on notice to the Customer.
- d) In the event this licence is terminated for any reason the Data including any copies of the Data made by the Customer shall immediately be returned to the SMMT by the Customer. Any copies of the Data stored on the Customer's information technology systems, including that stored in CD-ROM format or other non-printed media shall be destroyed by the Customer.
- e) Save as expressly set out in these Conditions the Customer shall not be permitted to use, transfer, copy, distribute, adapt, improve, disclose, publicise, broadcast, electronically communicate, lend, hire, license (or sub-license), sell, export or reproduce the Data, and then only for the purposes set out in the Order Form.

12. Confidential Information

- a) The Data and any part or parts thereof, whether in eye readable or electronic media format, all information and data contained therein and all copies thereof, whether made by the Customer or SMMT are SMMT's property and confidential information ("Confidential Information"). The Customer shall ensure that its Group Companies, employees, officers, servants and agents shall keep and procure to keep secret and confidential the Confidential Information on terms no less onerous than under the Contract, and shall not use or disclose the same in whole or in part (except as set out in Condition 11) to any third party anywhere in the world (including without limitation to any suppliers or contractors) without the prior written consent of SMMT.
- b) The Customer shall indemnify SMMT in full against any costs, losses (including loss of revenue), expenses and damage SMMT may sustain or incur directly or indirectly as a result of any breach of any of the Customer's obligation(s) under the Contract, including without limitation the obligations of non-disclosure and of confidentiality (but excluding the Customer's data protection obligations, for which paragraph 20(e) shall apply). If the Customer discloses any Data to a third party not expressly identified as an authorised recipient within the Order Form, the Customer shall indemnify SMMT for the full Price SMMT would have charged that third party for the Data and costs incurred to recover or destroy the Data from the unauthorised recipient and any costs howsoever arising in respect of third party claims made against SMMT as a consequence of the Customer's breach of its obligations of non-disclosure and confidentiality.
- c) Except for the Customer's use of the Data for the purposes set out in the Order Form, the Customer is only permitted to produce such limited copies of the Data as are necessary and sufficient for the Customer's own and where permitted its Group Companies' own internal commercial operational use.

13. Termination

- a) Both parties acknowledge that business or other circumstances may require SMMT to alter or amend the Order Form including the Services or Data to be provided to the Customer. In the event of such alteration or amendment the Customer will be given 14 days within which to accept or reject the altered or amended Data such acceptance or rejection to be in writing. Where the Customer accepts altered or amended Data the original Contract will be deemed so amended and shall continue in full force and effect. Where the Customer rejects the altered or amended Data the Customer shall have in addition to any other rights of termination set out herein, the right to cancel the Contract with one month's notice such cancellation to be in writing. For the avoidance of doubt SMMT shall have no liability whatsoever to the Customer for termination in accordance with this Clause 13a).
- b) If either party commits a material breach of the Contract and in the case of a breach which is capable of remedy, fails to remedy such breach within 28 days of being required by the other party in writing to do so, the injured party shall be entitled to terminate the Contract with immediate effect by notice in writing to the other party and without prejudice to any rights of the parties accrued up to and including the date of the determination of the Contract. For the avoidance of doubt any misuse of the Data supplied by the SMMT to the Customer under the terms of this Contract including without limitation sharing the Data with an unauthorised recipient and using the Data for an Unauthorised purpose will constitute a material breach of this Contract by the Customer.
- c) The Customer shall notify SMMT in writing immediately if the Customer passes a resolution to wind-up or the court makes an administration order or winding up order, or the Customer makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or the court, or possession is taken of any of its property under the terms of a floating charge.
- d) On receipt of the notice under paragraph c) above or earlier discovery by SMMT of the occurrence of any of the events described in that paragraph, SMMT may, by notice in writing to the Customer summarily terminate the Contract without compensation or any other liability to the Customer and without prejudice to any right of action which may accrue to SMMT thereafter.
- e) SMMT reserves the right to terminate the Contract by giving 14 days' notice in writing to the Customer where outstanding sums owed by the Customer to SMMT in respect of any matter (whether in respect of purchase of data or of any other product or service) remain unpaid.

14. The Contracts (Rights of Third Parties) Act 1999

A Person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract and SMMT shall not be liable to any third party properly in receipt of the Data in accordance with the Contract or any third party in receipt of the Data as a result of the Customer's breach of the Contract or otherwise.

15. Special Provisions

- a) SMMT shall have the right from time to time at its own cost to conduct an audit of the Customer's and its Customer's Group Companies' and sub-contractors or agent's operations and facilities to check compliance with Condition 11 and Condition 12 and to check the calculation of any royalty payments (if any) in accordance with Condition 6 and for that purpose shall be entitled to have access to the Customer's and the Customer's Group Companies' premises and to any premises of the Customer's sub-contractors or agents during normal working hours on giving reasonable notice to the Customer.
- b) In the case of any conflict or inconsistency between these Conditions and any conditions contained within the Order Form, the latter conditions shall prevail.
- c) SMMT reserves the right to alter, amend or add to these Conditions from time to time providing copy of either such alteration or amendment in writing to the Customer.

16. Force Majeure

SMMT may delay or suspend the supply of any Data if SMMT is unable to continue in part or completely perform its obligations by reason of any force majeure event which includes (without limitation) an act of God, fire, flood, storm, tempest, aircraft damage, explosion, electrical failure, strikes, lock-outs, riots, civil commotion, war, terrorist act, state of national emergency, Government action, any action by a Government agency or public authority, any delays of any supplier due to any of these causes or events or any other cause whatsoever which is beyond the reasonable control of SMMT (whether or not of a similar nature to the foregoing). In any such case notice of suspension will be given to the Customer stating the reason. Any such suspension shall be without prejudice to the rights of SMMT and the Customer in respect of any matter arising beforehand.

17. Entire Agreement

The Order Form and these Conditions shall constitute the whole of the terms agreed between the parties in respect of the subject matter of this Contract and the Customer acknowledges that in entering into this Contract it has not relied upon any representations or warranties other than as expressly set out in the Order Form and any other warranties or representations (whether express or implied) are hereby excluded.

SMMT STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SMMT DATA (Order Form)

v.280616

18. Severability

If any condition, clause, or provision of these Conditions is held to be unlawful or unenforceable or otherwise invalid by a court or other competent authority in any proceedings relating to the Conditions the validity or enforceability of the remaining conditions shall not be affected and will remain in full force and effect.

19. General

- a) Communications under this Contract must be in writing and sent by first class post or by hand to the recipient's principle place of business.
- b) No amendment or variation in the terms of the Contract will be valid unless expressly agreed in writing between the SMMT and the Customer.
- c) SMMT is entitled to transfer its rights and obligations under the Agreement, or any part of it, to any person, firm or corporate body whomsoever it thinks fit.
- d) The Customer may not assign any part of the Contract without the prior written consent of the SMMT.
- e) The Customer will not entice any of the SMMT's employees into other employment.
- f) The headings in these Conditions are for convenience only and shall not affect their interpretation.
- g) No delay, neglect or forbearance on the part of either party in enforcing any of the terms of the Contract shall be or be deemed to be a waiver of any right of that party under the Contract or in any way prejudice any right of either party under the Contract.
- h) No failure by the SMMT to exercise any power given to it or to insist upon strict compliance by the Customer with any obligation hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute any waiver of the SMMT's rights under this Contract.

20. Data Protection

- (a) In this Condition 20, the terms data controller, data processor and processing shall have the meanings given to them in the DPA.
- (b) Both parties will comply with their obligations under the DPA to the extent that they are data controllers of the Personal Data.
- (c) In particular, and without prejudice to Condition 20(b) above, the Customer shall:
 - i. take all reasonable steps to ensure the reliability of any of its staff and agents who have access to Personal Data supplied in connection with this Contract;
 - ii. implement appropriate technical, organisational and other practical security measures against unauthorised or unlawful processing, accidental loss or destruction of or damage to Personal Data;
 - iii. provide such information as SMMT shall reasonably request from time to time, sufficient to demonstrate compliance with the Customer's obligations under the DPA and any other obligations set out in the Contract.
- (d) The Customer shall not:
 - i. process, disclose or use the Personal Data outside the European Economic Area unless the Customer and the data importer sign the Standard Contractual Clauses for the Transfer of Personal Data to Processors established in Third Countries, dated 5 February 2010 (2010/593/EC) as approved by the European Commission from time to time, or agreement of the data imported to abide by any other mechanism required to satisfy the requirements of the DPA;
 - ii. appoint any sub-processor, Group Company, agent or third party to process Personal Data unless such sub-processor, Group Company, agent or third party signs a written agreement which contains restrictions and obligations equivalent to those in this Contract and uses the Personal Data only for the Customer's or Group Company's internal business purposes or purposes set out in this Contract; and
 - iii. Process, disclose or use the Personal Data other than as permitted by and in accordance with the provisions of this Contract.
- (e) The Customer shall indemnify and keep indemnified SMMT up to a maximum of five hundred thousand pounds (£500,000) per claim against all costs, claims, losses, damages and expenses (including legal expenses) arising out of, or in connection with, any breach of this Condition 20 by the Customer, its employees, agents and/or Group Companies and their employees and agents.

21. Details of this Contract and the conduct of the Customer's account may be registered with a licensed credit agency. This and other information supplied by the Customer may be disclosed to any government department or government agency including without limitation the DVLA or to any person for whom SMMT acts as agent, to any SMMT member company or associated company or to any person acting on SMMT's behalf or any purposes connected with SMMT's business.

22. Law and Jurisdiction

The Contract shall be governed by and be construed in accordance with English law and all actions, disputes or claims arising out of or relating to it shall be subject to the exclusive jurisdiction of the English courts to which the parties irrevocably submit.

v.280616