

**Terms and Conditions**

**1. DEFINITIONS**

1.1 For the purposes of this Agreement except where expressly stated to the contrary, the following words capitalised shall have the following meanings:

**Accepted Order** means the contract for the supply of Goods, Gift Cards and/or Services described in an Order that has been accepted by Comet pursuant to clause 4.1;

**Agreement** means the main body of this Agreement, and any and all parts, schedules and appendices collectively;

**Comet Group** shall mean Comet, its holding company, its subsidiaries and any subsidiaries of its holding company (such terms having the meanings ascribed by sections 736 and 736A of the Companies Act 1985 (as amended));

**Confidential Information** means any information of a confidential nature including but not limited to any know how, trade secret, information of a sensitive or proprietary nature or any other information and data (of whatever nature and however recorded or preserved (if at all)) relating to the party disclosing it, its business or activities that is disclosed by the Disclosing Party to the Receiving Party as a result of the discussions leading up to, the entering into or the performance of this Agreement;

**Contract Year** means the twelve-month period beginning on the Commencement Date and each subsequent period of twelve consecutive months, each beginning on an anniversary of the Commencement Date;

**Customer** means a consumer to whom the Partner requests that Comet delivers Goods, Gift Cards and/or Services pursuant to an Accepted Order;

**Data** means any personal data (such term having the meaning ascribed in the DPA), information, records or documentation relating to Customers which is provided or made available to Comet by the Partner in connection with this Agreement;

**Disclosing Party** means the party disclosing Confidential Information to the other party;

**DPA** means the Data Protection Act 1998;

**Gift Cards** means the stored value closed loop plastic cards that Comet may issue pursuant to clause 4.1 from time to time;

**Goods** means all those household electrical goods and appliances that Comet makes available to the Partner to purchase from time to time;

**IP Rights** means all intellectual property rights

including, without limitation, patents, trademarks, registered designs (including any applications for the foregoing), copyrights, database rights, design rights, know-how and business names and all and any other intellectual or industrial property rights in any country;

**Order** means the Partners orders from time to time for Goods, Gift Cards and/or Services, as the case may be;

**Receiving Party** means the party receiving Confidential Information from the Disclosing Party;

**Services** means those of the Connection Service, Delivery Service, Installation Service and/or Removal Service to be provided by Comet pursuant an Accepted Order;

**Working Day** means Monday to Friday (inclusive) save for any statutory or common law Bank Holidays in England.

**2. TERM OF THIS AGREEMENT**

2.1 This Agreement shall take effect on the date stated below after clause 15 and shall continue unless and until terminated pursuant to clause 2.2 (or otherwise terminated in accordance with its terms).

2.2 Either party may terminate this Agreement on giving the other party no less than 30 days' prior written notice.

**3. APPOINTMENT OF COMET**

3.1 The Partner appoints Comet as its non-exclusive supplier of Appliances and Gift Cards in mainland United Kingdom for the continuance of this Agreement.

3.2 This Agreement shall operate as a framework between the parties and save as set out in each Accepted Order, nothing in this Agreement shall place a commitment upon the Partner to order Goods, Services and/or Gift Cards from Comet.

**4. ORDER PROCESS FOR GOODS, GIFT CARDS AND SERVICES**

4.1 The Partner may, from time to time, issue Orders to Comet, each being an irrevocable offer to enter into a contract with Comet for the provision of Goods, Gift Cards and/or Services detailed within such Order. Comet shall promptly respond to the Partner via its customer information centre as to the availability of the Goods, Gift Cards and/or Services. Comet shall accept the Order upon despatch of the relevant Goods and Gift Cards, at which point it becomes an Accepted Order.

4.2 Comet shall contact the Customer to arrange for delivery of the Goods, and/or

Gift Cards and performance of the Services.

4.3 This Agreement is the only basis upon which Comet is prepared to deal with the Partner for the sale and purchase of Goods, Gift Cards and/or Services and it shall apply to each and every Accepted Order to the entire exclusion of all other terms and conditions, whether express (including (without limitation) those implied (save for those implied terms that cannot be excluded at law)). The parties agree that every Accepted Order shall in all respects be governed by this Agreement and in entering into any Accepted Order the Partner acknowledges that this Agreement shall prevail over any other terms and conditions published on any purchase order, delivery note, acknowledgement of order, acceptance notice, invoice or proof of delivery or any other document used in the ordering of the Goods, Gift Cards and/or Services or otherwise purported to be imposed by the Partner and the Partner hereby waives any right which it otherwise might have to rely on such terms and conditions.

**5. ACTIONS FOR EACH ACCEPTED ORDER**

5.1 Once an Accepted Order is formed, Comet shall deliver the Goods, Gift Cards and/or Services detailed within that Accepted Order within a reasonable time of such Accepted Order being formed. Time for delivery is not of the essence.

5.2 Notwithstanding each Accepted Order is between the Partner and Comet, the parties recognise that unless otherwise directed by the Partner in writing:

- (a) Comet shall deliver the Goods, Gift Cards and/or Services directly to the relevant Customer;
- (b) risk in the Goods and/or Gift Cards shall pass to the Partner upon delivery to the relevant Customer; and
- (c) title in the Goods and/or Gift Cards shall pass to the Partner upon payment by the Partner for the same.

5.3 Following the issue of a Gift Card pursuant to an Accepted Order, Comet agrees to accept such Gift Card against payment (or part payment) for Goods and/or Services in its stores at the face value of the Gift Card, subject to Comet's standard terms of sale and policies regarding the use of Gift Cards. For the avoidance of doubt the contract pursuant to which a Customer makes payment with a Gift Card (or part-payment) shall be between Comet and that Customer.

## 6. THE STANDARD OF THE GOODS AND SERVICES

6.1 Throughout the continuance of this Agreement, Comet shall use its reasonable endeavours to make available to the Partner a comprehensive range of different types and brands of Goods. Comet shall perform its obligations under this Agreement in accordance and in compliance with all relevant legislation, regulation and good industry practice in the United Kingdom.

6.2 Comet shall provide the Services in an efficient, professional, ethical and courteous manner exercising reasonable skill and care. In its provision of the Services, Comet shall use its reasonable endeavours to comply with the Service Levels (to the extent that they apply).

6.3 Where Goods are used for the purposes that goods of that type are commonly used, Comet warrants that they shall comply with sections 12, 13 and 14 of the Sale of Goods Act 1979 or sections 2, 3 and 4 of the Supply of Goods and Services Act 1982 (as applicable). Where Goods that are intended for domestic use are used for commercial and/or industrial applications, Comet warrants that they shall comply with sections 12, 13 and 14 of the Sale of Goods Act 1979 or sections 2, 3 and 4 of the Supply of Goods and Services Act 1982 (as applicable) for a period of thirty days commencing upon their delivery.

6.4 Comet warrants that:

(a) all Services shall comply with sections 13 and 14 of the Supply of Goods and Services Act 1982; and

(b) all Goods shall comply with Part 1 of The Consumer Protection Act 1987 (Product Liability).

6.5 All other warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

## 7. WEEE

Comet shall comply with the applicable requirements of the Waste Electrical and Electronic Equipment (WEEE) Directive.

## 8. INVOICING AND PAYMENT

8.1 Comet shall invoice the Partner for:

- (a) the Goods;
- (b) the Services; and
- (c) the Gift Cards

within a reasonable time of an Accepted Order being formed.

8.2 The Partner shall pay Comet's invoices within thirty (30) days of the date of the invoice in full without deduction, withholding or set-off of any kind. Where payment is overdue, Comet shall be entitled to charge the Partner daily interest until payment is received in full at a rate equal to 4% per annum above the base rate of the HSBC plc from time to time whether before or after judgment and until the date that payment is made in full.

8.3 Time shall be of the essence for the payment of Comet's invoices.

8.4 All prices quoted and payments to be made under this Agreement are, unless otherwise stated, exclusive of VAT, which the relevant party shall pay in addition at the rate prevailing at the date of the relevant invoice.

8.5 Where any charges or other monies properly due to any member of the Comet Group from the Partner under this Agreement, any Accepted Order or any other contract between any member of the Comet Group and the Partner are overdue, then Comet or any member of the Comet Group shall be entitled to set off such overdue sums against any amounts owing from any member of the Comet Group to the Partner whether under this Agreement, an Accepted Order or any other contract between any member of the Comet Group and the Partner.

## 9. CONFIDENTIALITY

9.1 Save as permitted by clause 9.2, 9.3 or 9.5, the Receiving Party undertakes to the Disclosing Party to keep confidential and not disclose to any third party any of the Disclosing Party's Confidential Information.

9.2 The obligations of confidentiality contained in clause 9.1 do not apply to information which: (a) is in (or comes into) the public domain (other than through the Receiving Party's breach of this clause 9)); (b) the Receiving Party can demonstrate by documentary evidence was in its possession prior to the Disclosing Party's disclosure to the Receiving Party; or (c) subsequently comes lawfully into the Receiving Party's possession from a third-party, free of any confidentiality obligation.

9.3 The Receiving Party may disclose the Disclosing Party's confidential information to: (a) those of its employees, officers, agents or sub-contractors on a need to know basis provided that: (i) it ensures they are made aware that the information is the Disclosing Party's confidential information; (ii) it obtains confidentiality undertakings from them at least as onerous as those contained within this clause 9, which the Receiving

Party agrees to enforce at its own expense and the Disclosing Party's request; and (iii) notwithstanding the foregoing sub-clause 9.3(a)(ii), the Receiving Party remains liable for their breaches of confidentiality (if any); and (b) to any competent authority acting lawfully that requires access to the Disclosing Party's confidential information, providing that the Receiving Party give the Disclosing Party as much notice as reasonably practicable in the circumstances and assists the Disclosing Party in any lawful actions it takes to prevent such disclosure.

9.4 Save as permitted by clause 9.5, the Partner shall not make any type of announcement or disclosure concerning the existence of a commercial relationship between the parties, including (without limitation) reference to Comet being a supplier of the Partner, without Comet's prior written consent.

9.5 The Partner may disclose the existence of the supply relationship (although not the details thereof) to its Customers for the purpose of Comet fulfilling an Accepted Order.

9.6 The provisions of this clause 9 shall survive termination of this Agreement.

## 10. INTELLECTUAL PROPERTY RIGHTS

10.1 The IP Rights in any data transmitted by the Partner to Comet pursuant this Agreement shall remain the property of the Partner. The Partner grants Comet a royalty-free non-exclusive licence to use such data for the purpose of Comet fulfilling its obligations under this Agreement and the relevant Accepted Orders, such licence being irrevocable until such time as Comet has fulfilled all such relevant obligations.

10.2 The IP Rights in any data collected from the Customers by Comet pursuant to transactions between Comet and those Customers shall remain the exclusive property of Comet.

10.3 Nothing in this Agreement shall grant either party the permission to use, register, apply to register or reproduce the other party's names, logos or registered or unregistered trademarks without the other party's prior written consent.

## 11. DATA PROTECTION

11.1 Each party agrees that, in the performance of its respective obligations under the Agreement, it shall comply with the provisions of the DPA, to the extent that they apply.

11.2 Where the Partner provides personal data to Comet, the Partner appoints Comet as a data processor for the purpose of Comet performing its obligations pursuant to this

Agreement. In relation to such personal data, Comet shall:

- (a) take appropriate technical and organisational measures designed to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
- (b) without prejudice to the generality of sub-clause 11.2(a) above, comply at all times with the seventh principle in Part 1 of Schedule 1 to the 1998 Act as if applicable to Comet directly;
- (c) answer the Partner's reasonable enquiries to enable it to monitor Comet's compliance with this clause 11.2;
- (d) act in accordance with the Partner's lawful reasonable instructions in relation to its processing of the personal data (provided that it shall not be required to incur any expenditure in doing so (including internal management time) for which it will not be adequately remunerated).

## 12. LIABILITY, INDEMNITY AND WARRANTY

- 12.1 Nothing in this Agreement shall limit or exclude either party's liability for any matter for which liability cannot be limited or excluded at law.
- 12.2 Neither party shall under any circumstances be liable to the other party for any indirect, special or consequential loss or loss of anticipated profits or savings (even when advised of the same), loss of data, loss of goodwill whether arising in contract, tort (including negligence) or breach of statutory duty or otherwise.
- 12.3 Other than pursuant to clauses 12.4 and 12.5 and subject to clauses 12.1 and 12.2, Comet's maximum aggregate liability under this Agreement in any Contract Year, whether arising in contract, tort (including (without limitation) negligence), breach of statutory duty or otherwise shall be limited to £50,000.00.
- 12.4 Other than pursuant to clauses 12.3 and 12.5 and subject to clauses 12.1 and 12.5 and any other provisions of this Agreement, Comet's maximum aggregate liability howsoever arising in relation to each Accepted Order and the Services performed thereunder whether in contract, tort (including (without limitation) negligence), breach of statutory duty or otherwise shall be limited to the greater of:
  - (a) the aggregate value of the Goods, Gift Cards and Services purchased pursuant to that Accepted Order less the Discount thereon; or

(b) £2,000.00,

whichever is the greater.

- 12.5 Comet's maximum aggregate liability for damage to the Partner's tangible property (or that of its Customers) caused by Comet's negligence shall be limited to £5,000,000 in each Contract Year. This liability cap shall not be applicable to death or personal injury caused by Comet's negligence.

## 13. TERMINATION AND EFFECTS OF TERMINATION

- 13.1 Either party shall be entitled to terminate this Agreement immediately on written notice where:
  - (a) the other party is in material breach of its obligations under this Agreement and (in the case of a breach capable of remedy) fails to remedy such breach within 30 days of a written notice requiring its remedy (such notice to contain a statement of the first party's intention to terminate for non-remedy within such 30 day period);
  - (b) the other party makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986);
  - (c) the other party (being an individual or firm) becomes bankrupt;
  - (d) the other party (being a company) becomes subject to an administration order or goes into liquidation (either voluntary or compulsory) (other than for the purpose of amalgamation or reconstruction);
  - (e) an encumbrancer takes possession, or a receiver is appointed, over any of the other party's property or assets; or
  - (f) the other party ceases, or threatens to cease, to carry on business.

13.2 Upon and following termination of this Agreement, the Partner will not forward any further Orders to Comet.

13.3 Where this Agreement is terminated other than by Comet pursuant to clause 13.1 or 14, all Accepted Orders that remain unperformed upon termination (in whole or part) shall remain in full force and effect and each party shall perform its relevant obligations thereunder.

13.4 Where Comet terminates this Agreement pursuant to clause 13, all Accepted Orders that remain unperformed upon termination (in whole or part) shall be

automatically terminated, regardless of whether Comet's notice states the same.

13.5 Where Comet terminates this Agreement pursuant to any of sub-clauses 13.1(b) to 13.1(f) (inclusive), any such termination may include the suspension of those Gift Cards that Comet has issued but have not been spent at the date of termination.

13.6 The termination of this Agreement shall not affect any rights and remedies to which a party may be entitled under this Agreement or at law and will not affect any accrued rights, responsibilities or liabilities of either party or the coming into or continuance in force of any provision that is expressly or by implication intended to come into or continue in force on or after the termination of this Agreement.

13.7 The provisions of those clauses expressed as surviving termination and those that, by their very nature, impliedly survive termination, shall survive termination of this Agreement.

## 14 FORCE MAJEURE

Whilst each party shall use its reasonable endeavours to fulfil its obligations pursuant to this Agreement, a party shall not be liable for any delay due to, or any loss or damage occasioned by any cause arising from or attributable to, acts, events, omissions or accidents beyond its reasonable control including, but not limited to acts of God, strikes, lock-outs, shortage of labour or any other labour trouble, shortage of power, materials, malicious damage or obligatory compliance with any request, order or regulation of any person having or appearing to have authority in that regard whether for defence or other national or local governmental purposes or otherwise. Where such circumstances continue for a period of 90 days or more, either party shall be entitled to terminate this Agreement forthwith on written notice to the other party. The provisions of this clause shall not apply to the obligations of clause 9.

## 15 GENERAL

15.1 This Agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement.

15.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as set out in this Agreement. Nothing in this Agreement shall operate to limit or exclude any liability for fraud.

15.3 Should any provision of this Agreement be held to be void or voidable the remaining

provisions of this Agreement will continue in full force and effect.

15.10 This Agreement will be governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.

15.4 No forbearance, delay or indulgence by either party in enforcing the provision of this Agreement will prejudice or restrict the rights of that party nor will any waiver of its rights operate as a waiver of any past or subsequent breach.

15.5 Members of the Comet Group may enforce Comet's rights under this Agreement but save as aforesaid, any other person or body who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement (but this does not affect any rights or remedies of a third party which exist or are available apart from that Act).

15.6 Neither party shall assign, charge, mortgage, novate or sub-contract this Agreement or otherwise deal with its rights and obligations (in whole or part) under this Agreement without the other Party's prior written consent save that Comet may subcontract performance of any or all of its obligations under this Agreement or assign this Agreement to any third party provided Comet gives the Partner written notice thereof.

15.7 Any variations to this Agreement must be in agreed in writing and signed on behalf of each of the parties.

15.8 At all times in connection with this Agreement the parties shall be independent contractors and nothing in this Agreement shall create a relationship of agency, partnership or joint venture as between the parties and accordingly, neither party shall have any authority to bind the other party save as otherwise expressly permitted by the terms of this Agreement. The definition of the party other than Comet as the 'Partner' shall in no way signify the existence of a partnership between the parties (within the meaning of section 1 of the Partnership Act 1890).

15.9 Any notice under or in connection with this Agreement shall unless otherwise agreed be in writing shall either be delivered by hand to or sent by first class post or by facsimile (confirmed by post) to (in the case of the Partner) a director of the Partner or (in the case of Comet) the Company Secretary at the address of the party concerned set out in this Agreement, the party concerned's registered address or any other address notified by that party from time to time. Any notice so addressed shall be deemed to have been given or made on the second Working Day after posting if sent by first class post upon delivery if delivered by hand and if sent by fax on the next Working Day after the date of transmission provided the sender's facsimile machine produces a report showing successful transmission to the correct facsimile.

<b>Your full corporate name:</b>	
<b>Signed for and on Your behalf:</b>	
<b>Signatory's name:</b>	
<b>Date:</b>	