

1 Services

- 1.1 Marketboomer shall provide access to ActiveSupplier via the Marketboomer Client Application. ActiveSupplier shall meet the functions and capabilities set out in the Service Level Agreement.
- 1.2 Marketboomer shall provide Supplier with access to the Marketboomer Central Catalogue and relevant reports.
- 1.3 Marketboomer shall provide Supplier with support to install ActiveSupplier, basic phone training and ongoing support as described in the Service Level Agreement.

2 Supplier's Obligations

- 2.1 Supplier shall install and use Marketboomer Trading Technology on Supplier's computer system in accordance with this Agreement.
- 2.2 Supplier shall only attempt to access Marketboomer Data and Marketboomer Trading Technology via ActiveSupplier or other approved Marketboomer web sites and technologies unless otherwise agreed to in writing by Marketboomer.
- 2.3 Supplier shall notify Marketboomer immediately of any fault or error in Marketboomer Trading Technology by logging the issue on Marketboomer Self Service Portal or by contacting Marketboomer Customer Support and advising them of the issue.
- 2.4 Supplier shall not distribute viruses or any other technologies that may harm Marketboomer Trading Technology or the interests or property of Marketboomer, other suppliers or Purchasers.
- 2.5 Supplier shall not harvest or otherwise collect information from Marketboomer Trading Technology except for the purpose of fulfilling its obligations to Purchasers and Marketboomer.
- 2.6 Supplier shall not use Marketboomer Trading Technology for any illegal or improper purpose or in a manner which constitutes an infringement of the rights of any person or a violation or infringement of any duty or obligation in contract, or otherwise, to any third party.
- 2.7 Supplier shall not copy, modify, or distribute Marketboomer's copyrights and trademarks.

3 Fees and payment terms

- 3.1 Supplier shall pay Marketboomer Fees in accordance with this Agreement.
- 3.2 Marketboomer shall send invoices to Supplier for Fees monthly, and Supplier shall pay such invoices in full within thirty (30) calendar days following the date of invoice ("Due Date").
- 3.3 If payment is not received by Marketboomer by the Due Date:
 - Marketboomer shall (where allowed by Applicable Law) have the right to charge Supplier interest on all outstanding amounts at the rate of 7% above the European Central Bank rate until payment is made; or
 - Marketboomer may suspend any or all of the Services to Supplier until such time as payment is received in full. Prior to suspension, Marketboomer shall give at least ten (10) calendar days notice of suspension.
- 3.4 In the event that Supplier disputes in good faith an invoice prepared by Marketboomer, Supplier must notify Marketboomer within fourteen (14) calendar days of receipt of the invoice in dispute, specifying the reason why Supplier disputes the invoice and the amount of dispute. The parties agree to use their best efforts to resolve any dispute through good faith negotiations and joint investigation. If the parties fail to resolve the dispute, either party may request dispute resolution in accordance with clause 12.1. Notwithstanding the bona fide dispute, Supplier must pay all undisputed amounts on or before Due Date.
- 3.5 Marketboomer reserves the right to change Merchant Fee from time to time by giving Supplier not less than one (1) year notice and other fees by giving thirty (30) calendar days notice.
- 3.6 Supplier acknowledges and agrees that Fees are independent of any claims Supplier has on Purchasers.

4 Supplier Information and Supplier Catalogue

- 4.1 Supplier grants Marketboomer the right to use Supplier Information and Supplier Catalogue to populate Host Server in accordance with the provisions of this Agreement.
- 4.2 Supplier acknowledges its participation on Marketboomer will be publicised on the Host Server and Marketboomer promotional materials. Supplier information published will include: the number of Orders sent to Supplier, number of buyers Supplier trades with and other information indicative of Suppliers participation on Marketboomer.
- 4.3 Supplier shall provide Product additions, deletions or Price amendments to Supplier Catalogue either through ActiveSupplier or by dispatching Marketboomer Price Update File to Marketboomer as set out in the Service Level Agreement.
- 4.4 Marketboomer reserves the right to remove from Host Server any Supplier Information or Supplier Catalogue or any other material that Marketboomer considers infringes any term of this Agreement or Applicable Law. Marketboomer shall notify Supplier as soon as it exercises this right.
- 4.5 It is specifically agreed that Supplier is at all times responsible for the integrity and accuracy of Supplier Information and Supplier Catalogue uploaded in Host Server. It is further agreed that Supplier shall have to promptly verify the accuracy of such information after any amendments made by Marketboomer.
- 4.6 Supplier acknowledges it shall be automatically accepted as an approved Supplier into Marketboomer enabled Trading and Supplier Zones. Supplier may remove itself from any Trading or Supplier Zone at any time and at no cost to the Supplier.

5 Consolidated Information

- 5.1 Subject to clause 5.2, Supplier acknowledges and agrees that Marketboomer will collect, store, use, reproduce, access, distribute, develop, transmit, display or otherwise deal with Consolidated Information for the purposes of:
 - further developing the capabilities, functionalities and features of Marketboomer Trading Technology;
 - analysing and demonstrating benefits achieved through Marketboomer Trading Technology;
 - creating statistics and generating product and service specific information (including but not limited to pricing), and making it available (whether for a fee or not) to Supplier, other suppliers and Purchasers alike;
 - marketing and promoting Marketboomer Trading Technology; and
 - performing its obligations under this Agreement.
- 5.2 Notwithstanding clause 5.1, Consolidated Information does not contain any information from which Supplier could reasonably be identified.
- 5.3 Marketboomer retains all rights (including but not limited to copyright, database right and confidentiality) in Consolidated Information, as and when created, during and after the term of this Agreement.

6 Confidential Information

- 6.1 The parties shall not at any time:
 - disclose or make public any of the terms of this Agreement save for professional advice or as required by Applicable Law;
 - disclose any Confidential Information belonging to or concerning the other which it has acquired by reason of its entering into this Agreement; or
 - use to the detriment of the other any information which it has obtained in confidence in the course of or as a result of its entering into this Agreement.
- 6.2 A party may use Confidential Information of the other party solely for the purpose of performing its obligations under this Agreement and must keep the other party's Confidential Information confidential and only use it for the purpose for which it was disclosed.
- 6.3 For the avoidance of doubt, the following is not regarded as a breach of the obligation of confidentiality:
 - Marketboomer's right to use Consolidated Information as specified in this Agreement; and
 - Marketboomer's contractual obligation to advise Purchasers of the terms of the standard Supplier Agreement (including the charging method) and any substantial amendments made to it.
- 6.4 Marketboomer shall publicise Supplier's participation on Marketboomer Trading Technology via the Marketboomer reports, Marketboomer web site and other means as deemed appropriate by Marketboomer from time to time.

7 Intellectual Property

- 7.1 Marketboomer hereby grants Supplier a non-exclusive right to use Marketboomer Trading Technology for the purpose of this Agreement. Marketboomer retains all intellectual property rights in Marketboomer Trading Technology and in all its materials. Marketboomer source code is not a public code and remains the property of Marketboomer.
- 7.2 If a third party claims that Marketboomer Trading Technology provided to Supplier infringes that party's intellectual property right, Marketboomer shall defend Supplier against that claim at its expense and pay all costs, damages, and legal fees that a court finally awards provided that Supplier:
 - promptly notifies Marketboomer in writing of the claim; and
 - allows Marketboomer to control and cooperate with Supplier in the defense and any related settlement negotiations.

- 7.3 If such a claim is made or appears likely to be made, Supplier shall permit Marketboomer to enable Supplier to continue to use Marketboomer Trading Technology, or to modify it, or replace it with one that is at least functionally equivalent. If Marketboomer determines that none of these alternatives is reasonably available, Supplier agrees to cease to access or use (or at Marketboomer's request to uninstall) Marketboomer Trading Technology on Marketboomer's written request.
- 7.4 This is Marketboomer's entire obligation to Supplier regarding any claim of infringement of intellectual property.

8 Warranties

- 8.1 Both parties warrant that to the best of its knowledge no computer file or database provided to the other party at any time contains any defect, virus or code that is intended to or likely to cause either party's computer systems cease being operational or to cause any damage to or interference with the other party's computer systems in any way.
- 8.2 Marketboomer warrants Services will be carried out by appropriately skilled personnel using reasonable skill and care and in a timely and efficient manner. Marketboomer shall use its reasonable efforts to maintain continuous Service but does not warrant error-free uninterrupted Service. Marketboomer shall use its commercially reasonable efforts to promptly rectify any fault or error in the provision of Service and inform Supplier of the same.
- 8.3 Marketboomer warrants that Marketboomer Trading Technology is hosted with a reputable and competent provider of hosting services. Marketboomer shall use reasonable care and skill in keeping Supplier Information and Supplier Catalogue secure and to prevent access by any unapproved third parties.
- 8.4 Supplier warrants that it has not relied on any representation made by Marketboomer that has not been expressly made in this Agreement.

9 Force Majeure

- 9.1 Notwithstanding any other provision of this Agreement, neither party will be liable for any failure to fulfil any term of this Agreement where the fulfilment is delayed, prevented, restricted or interfered with any reason beyond that party's control (Force Majeure event). The party unable to perform its obligations must notify the other party promptly of such delay and use its commercially reasonable efforts to resume performance in accordance with this Agreement. Upon receipt of such notice, the parties must agree to meet and discuss in good faith how to take account of any Force Majeure event and to resume performance in accordance with this Agreement.

10 Liabilities, Release and Disclaimer

- 10.1 Save for gross negligence or wilful misconduct, the liability for loss or damage suffered by other party or a person making a claim against the other party is excluded as far as the Applicable Law permits.
- 10.2 Marketboomer's liability for any breach of obligation, condition or warranty must be limited at the option of Marketboomer to any one or more of the following:
- if the breach relates to Marketboomer Trading Technology or documentation, replacement of the same or correction of defects in the same; and
 - if the breach relates to Service, the supply of the Service again or payment to Supplier by Marketboomer of the cost of having the Services supplied again.
- 10.3 Neither party will be liable to the other for any indirect, special, consequential, collateral, incidental or punitive loss or damage including without limitation loss of business, revenue, profit, data, contracts, anticipated savings or goodwill, claims of third parties and all associated and incidental costs and expenses, whether or not the relevant party should have been aware of the possibility that such damage and losses could occur.
- 10.4 Notwithstanding any clause of this Agreement, the aggregate liability of Marketboomer under or in connection with this Agreement, whether based on contract, tort, statute, breach of warranty or any other legal or equitable ground is limited to the sum of usage fees paid by Supplier in the six (6) month period prior to the accrual of such liability.
- 10.5 Marketboomer is not involved in the actual transaction between Supplier and Purchasers, and has no control over and does not guarantee the ability of Purchasers to pay for Products, or that Supplier or Purchaser will actually complete a transaction. Supplier shall indemnify and keep Marketboomer indemnified against any claim, liability, expense or cost incurred in respect of any dispute or claim between Supplier and Purchaser.

11 Term, Termination and Suspension

- 11.1 This Agreement shall commence on the Commencement Date and continue in force until terminated in accordance with this Agreement.
- 11.2 Either party may terminate this Agreement by giving forty five (45) calendar days notice in writing to the other party.
- 11.3 Either party may terminate this Agreement immediately by notice in writing to the other party if the other party:
- commits a material breach of its obligations under this Agreement (including the obligation to pay Fees) and does not rectify the same within ten (10) calendar days after being notified to do so; or
 - becomes or threatens to become subject to any form of insolvency administration.
- 11.4 Marketboomer shall have the right to suspend the provision of any or all of the Services in the event it has the right to terminate this Agreement.
- 11.5 Marketboomer may suspend the provision of any or all of the Services to Supplier by giving a prior notice where practicable if it reasonably believes it is necessary to:
- carry out scheduled or emergency maintenance, repair or upgrading of Marketboomer Trading Technology; or
 - reduce or prevent fraud.
- 11.6 Upon termination of this Agreement, Supplier's ActiveSupplier account will be deactivated in Marketboomer Trading Technology and removed from the Host Server.

12 General

- 12.1 If a dispute arises in respect of this Agreement, any party may by giving a written notice setting out particulars of the matter ("Dispute Notice") to the other require discussions in good faith within three (3) Business Days to resolve the dispute. If the parties fail to resolve the dispute, the parties will attempt to resolve it by holding discussions between the chief executive officers (or their delegated officers) of both parties within ten (10) Business Days. The parties must endeavour to resolve the dispute by mutual agreement before either party is entitled to institute court proceedings, except proceedings seeking an urgent injunction or order.
- 12.2 All notices, consents, approvals and amendments under this Agreement must be in writing, and shall be deemed to have been duly given:
- when delivered, if delivered by messenger during normal business hours of the recipient;
 - when sent by fax, if faxed (receipt confirmed) during normal business hours of the recipient; or
 - on the third Business Day following the mailing, if mailed by certified or registered mail, postage prepaid;
- in each case to the address or fax number (as the case may be) of the recipient as set out on the Execution Page. Any change of the contact details must be promptly notified to the other party in writing.
- 12.3 Nothing in this Agreement is to be construed as creating an agency, partnership or joint venture between the parties, and neither party has any authority to bind any liability on behalf of the other party, and no such authority is to be implied.
- 12.4 Subject to Supplier nominating a representative to carry out the obligations specified on the Execution Page of this Agreement, neither party may assign, transfer or sub-license this Agreement or any right or obligation thereof without the prior written consent of the other party. Such consent shall not be unreasonably withheld. Supplier shall at all times be responsible for all the acts and omissions of its representative in relation to this Agreement.
- 12.5 If any term or condition of this Agreement is construed to be illegal or invalid, such term or condition will be deleted from this Agreement, but all other provisions of this Agreement continue to be binding.
- 12.6 Failure by a party to exercise a right or delay in exercising that right does not prevent its exercise or operate as a waiver. A single or partial exercise of a right does not preclude a further exercise of that right or the exercise of another right.
- 12.7 The rights, powers and remedies of a party are cumulative and with rights, powers or remedies by provided by law.
- 12.8 The parties must do all things necessary to give effect to this Agreement and the transactions contemplated by this Agreement.
- 12.9 Termination or expiration of this Agreement does not affect the rights or remedies accrued to a party before termination or expiration, nor any rights or obligations of a party that survive termination or expiration.
- 12.10 This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all such prior agreement and representation between them.
- 12.11 This Agreement shall be governed by laws of England and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of England.
- 12.12 The parties acknowledge that this Agreement consists of:
- Execution Page;
 - Marketboomer Supplier Agreement (including Schedules);
 - Marketboomer Service Level Agreement;
 - Definitions; and
- if there is any inconsistency between them, then the former prevails over the latter as they appear to the extent of the inconsistency.

Schedule 1 - Fees payable by Supplier

1. Merchant/Licence Fees:

- Purchasers determine one of the three mechanisms used to charge by Marketboomer to Supplier for participation in their Purchaser Zone:
 - (a) **Merchant Fee:** 2.5% of the value of the combined Purchase Orders from Purchasers processed through Marketboomer Trading Technology, less tax (e.g. VAT), cancelled Purchase Orders and Credit Notes/adjustments. Marketboomer charges Supplier Merchant Fees for any Purchase Order sent to Supplier from any Purchaser approved by Supplier from any Trading Zone employing the 2.5% Merchant Fee model. Merchant Fee is subject to change in accordance with clause 3.5 of this Agreement.
 - (b) **Shared Merchant Fee:** Purchaser and Supplier share Merchant Fee. Purchaser who applies a Shared Merchant Fee will specify in writing to Supplier what its share of Merchant Fee is. Supplier will incur Merchant Fees only for the receipt of Purchase Orders from Purchasers Supplier has approved in advance to trade with on Marketboomer Trading Technology.
 - (c) **Usage Fee:** Purchaser pays a Usage Fee to access ActivePurchaser and process Purchase Orders to Sole Suppliers and Supplier pays a Usage Fee of US\$1.25 (ex tax) per Purchase Order if they wish to access ActiveSupplier.

2. Setup/Access Fee:

- For Purchasers using a Merchant fee, Supplier is charged a once off Setup Fee when Supplier is first set up to trade with a new Purchaser on Marketboomer Trading Technology.
- For Purchasers using a License fee, Supplier is charged an annual Access Fee when it is first set up to trade with a new Purchaser on Marketboomer Trading Technology and each year on the anniversary of Suppliers agreement with Marketboomer.
- The Setup/Access fee is quoted excluding local tax and is charged per Purchaser in Supplier's currency and equates to:
 - (a) \$75 USD
 - (b) €65 Euro
 - (c) £60 GBP
 - (d) 275 AED
 - (e) 280 SAR
 - (f) 580 CNY
 - (g) \$140 SGD
 - (h) 2,900 THB, or
 - (i) as specified in the "Supplier Nomination Letter" that individual Purchasers send to Supplier.

3. Cataloguing Fee:

- Cataloguing Fee becomes payable by Supplier for Time Sensitive Updates and Non-Standard Updates as specified in Service Level Agreement. Marketboomer will advise on the amount of Cataloguing Fees on a case-by-case basis.

4. Training and Consultancy Fee:

- Training and Consultancy Fee is charged on applicable daily rate as agreed by the parties in advance.

5. Other Fees:

- Supplier may incur other charges by trading on a particular Trading Zone that are over and above Merchant Fees (e.g. purchaser rebate). Such charges are incurred only after Supplier has accepted the terms and conditions of that Trading Zone.
- Charges may apply to additional value added services provided by Marketboomer (e.g. SMS notifications, Supplier requested fax notifications and additional fax copies). Fees will be agreed in advance by the parties.