

SUREFIRE LICENCE TERMS

1. DEFINITIONS

1.1 In these terms the following words have these meanings:

Documentation: all documentation supplied by either the Licensor or the Supplier regarding the Software;

Initial Subscription Period, Fees & Licensor: as set out on the Surefire Order;

Licence: these terms and the Surefire Order;

Software: the online application known as Surefire (together with any patches or minor improvements supplied by the Licensor from time to time) together with all associated data supplied by the Licensor; and

Supplier: as set out on the Surefire Order and if none, the Licensor;

Surefire Order: the online or paper order form completed by you.

System: the Surefire System comprising the Software and the Documentation.

1.2 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.3 Words in the singular shall include the plural and vice versa. A reference to one gender shall include a reference to the other genders.

1.4 A reference to writing or written includes faxes but not e-mail.

2. GRANT AND SCOPE OF LICENCE

2.1 In consideration of your agreeing to abide by the terms in this Licence, the Licensor hereby grants to you a non-exclusive, non-transferable licence to use the System in the UK, for the Subscription Term as defined in clause 11.1.

2.2 You may:

- (a) use the System for your own business purposes only, for the number of users specified by your Supplier; and
- (b) use any free supplementary software or update of the System as may be provided by the Licensor from time to time.

3. LICENSEE'S UNDERTAKINGS

3.1 You shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between us:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the System in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the System in order to build a product or service which competes with the System or any material part of it; or
- (c) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make any part of the System available to any third party, or
- (d) attempt to obtain, or assist third parties in obtaining, access to any part of the System.

3.2 You shall use all reasonable endeavours (including password protecting the any device you use for accessing the System) to prevent any unauthorised access to, or use of, the System and, in the event of any such unauthorised access or use, promptly notify the Licensor. You will ensure that all users of the System are suitably trained and are 'Gas Safe' registered where appropriate.

3.3 You must not access, store, distribute or transmit any Viruses or any material during the course of its use of the System that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
- (f) causes damage or injury to any person or property;

and the Licensor reserves the right, without liability to you, to disable your access to the System if you breach the provisions of this clause.

4. SUPPORT

4.1 Your Supplier's technical support staff will endeavour to answer by email any queries which you may have regarding the use or application of the System. Support hours

are between the hours of 8:00 am and 5:00 pm Monday to Friday and support may be contacted on support@surefiresoftware.co.uk.

- 4.2 Support includes assisting new users of the System for a maximum of two hours.
- 4.3 The Supplier shall have no obligation to provide Support (but may charge at its current rates if it does so) where the request arises from:
- (a) misuse, incorrect use of or damage to the Software from whatever cause
 - (b) use of the Software in combination with any equipment or software not supported by the Licensee or any fault in any such equipment or software;
 - (c) any breach of the Licensee's obligations under this agreement;
 - (d) a query that has been answered previously, where training is required or there is operator error.

5. TRAINING AND CONFIGURATION

- 5.1 The Licensor is prepared to provide training and configuration services (including the production of bespoke 'quote templates' both remotely and on site. Estimates can be provided on request and all such work will be chargeable at the Licensor's current consultancy rates.

6. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that all intellectual property rights in the System throughout the world belong to the Licensor, that rights in the Software are licensed (not sold) to you, and that you have no rights in, or to, the System other than the right to use them in accordance with the terms of this Licence.

7. LICENSOR'S OBLIGATIONS

- 7.1 The Licensor undertakes that its provision of the System will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the System contrary to the Licensor's instructions, or modification or alteration of the System by any party other than the Licensor or the Licensor's duly authorised contractors or agents. If the System does not conform with the foregoing undertaking, Licensor will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Licensee with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Licensee's sole and exclusive remedy

for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, the Licensor:

- (a) does not warrant that the Licensee's use of the System will be uninterrupted or error-free; nor that the System and/or the information obtained by the Licensee through the System will meet the Licensee's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Licensee acknowledges that the System may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 You acknowledge that the System has not been developed to meet your individual requirements and that it is therefore your responsibility to ensure that the facilities and functions of the System as described in the Documentation meet your requirements.

7.4 You acknowledge that the Software may not be free of errors or bugs and you agree that the existence of any minor errors shall not constitute a breach of this Licence.

7.5 You acknowledge that the mobile communications elements of the system are beyond the control of the Licensor and the uptime and geographic availability can be variable.

7.6 The Supplier provides, within the System sample prices of common plumbing items and also a database of spare parts their codes and trade prices. While the Supplier has used all reasonable care in providing these, you must check these directly with your own merchant before acting on them since errors are possible and prices may change without the Supplier being aware of the same.

8. CHARGES AND PAYMENT

8.1 You shall pay the Fees to the Licensor in accordance with this clause.

8.2 You must, prior to accessing the System, provide to the Licensor valid, up-to-date and complete direct debit details and any other relevant valid, up-to-date and complete contact and billing details. You authorise the Licensor to operate the direct debit for the Fees monthly in arrears and for any additional Fees incurred.

8.3 If the Licensee has not received payment within 3 days after the due date, and without prejudice to any other rights and remedies of the Licensor:

- (a) the Licensor may, without liability to the Licensee, disable the Licensee's password, account and access to all or part of the System and the Licensor

shall be under no obligation to provide any access to the System while the invoice(s) concerned remain unpaid;

- (b) interest shall accrue on such due amounts at an annual rate equal to 3% over the then current base lending rate of Lloyds Bank plc at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment; and
- (c) immediately terminate this Licence.

8.4 All amounts and fees stated or referred to in this Licence non-cancellable and non-refundable and are exclusive of value added tax, which shall be added to the Licensor's invoice(s) at the appropriate rate.

8.5 By default the texting and postcode lookup functionality is made available to you. Use of these services is at the rates set out on the Surefire Order and either or both may be disabled by you from your online account.

8.6 The Licensor shall be entitled to increase the Fees at the start of each Renewal Period upon 30 days' prior notice to the Licensee.

9. LICENSEE DATA

9.1 The Licensee shall own the rights, title and interest in and to all data it inputs to the System (**Licensee Data**) and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Licensee Data.

9.2 The Licensor shall follow its archiving procedures for Licensee Data which shall not be less frequent than nightly to a secure store on an alternative site. In the event of any loss or damage to Licensee Data, the Licensee's sole and exclusive remedy shall be for the Licensor to use reasonable commercial endeavours to restore the lost or damaged Licensee Data from the latest back-up of such Licensee Data maintained by the Licensor in accordance with the archiving procedure described above. The Licensor shall not be responsible for any loss, destruction, alteration or disclosure of Licensee Data caused by any third party (except those third parties sub-contracted by the Licensor to perform services related to Licensee Data maintenance and back-up).

9.3 If the Licensor processes any personal data on the Licensee's behalf when performing its obligations or rights under this Licence, the parties record their intention that the Licensee shall be the data controller and the Licensor shall be a data processor and in any such case:

- (a) the Licensee acknowledges and agrees that the personal data may be transferred or stored outside the EEA in order to carry out the Licensor's other obligations under this Licence;

- (b) the Licensee shall ensure that the Licensee is entitled to transfer the relevant personal data to the Licensor so that the Licensor may lawfully use, process and transfer the personal data in accordance with this Licence;
- (c) the Licensee shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- (d) the Licensor and the Supplier may process the Licensee Data when carrying out statistical analysis for quality, training, performance benchmarking and market analysis purposes;
- (e) the Licensor shall process the personal data only in accordance with the terms of this Licence and any lawful instructions reasonably given by the Licensee from time to time; and
- (f) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

10. LIMITATION OF LIABILITY

10.1 This clause 10 sets out the entire financial liability of the Licensor (including any liability for the acts or omissions of its employees, agents and sub-contractors) or the Supplier to the Licensee in respect of:

- (a) any breach of this Licence;
- (b) any use made by the Licensee of the System or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Licence.

10.2 Except as expressly and specifically provided in this Licence:

- (a) the Licensee assumes sole responsibility for results obtained from the use of the System by the Licensee, for conclusions drawn from such use and for its contracts with its customers. Neither the Supplier nor the Licensor shall have any liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Licensor or the Supplier by the Licensee in connection with the System, or any actions taken by the Licensor at the Licensee's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Licence; and

- (c) the System and each element of it is provided to the Licensee on an "as is" basis.

10.3 Nothing in this Licence excludes the liability of the Licensor or the Supplier:

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

10.4 Subject to clause 10.2 and clause 10.3:

- (a) neither the Licensor nor the Supplier shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Licence; and
- (b) the Licensor's and the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Licence shall be limited to twice the aggregate sums paid by the Licensee to the Licensor and the Supplier in respect of this Licence of the System in the previous 12 months.

11. TERMINATION

11.1 This Licence shall, unless otherwise terminated as provided in this clause 11, commence on the date you first access the Software and shall continue for the Initial Subscription Term and, thereafter, this Licence shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) the Licensee notifies the Supplier or the Licensor notifies the Licensee of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Licence shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this Licence;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

11.2 Licensee may notify the Supplier and the Licensor or the Licensor notify the Licensee of the immediate termination of this Licence by written notice if the party or parties notified:

- (a) commit a material or persistent breach of this Licence which they fail to remedy (if remediable) within 14 days after the service on them of written notice requiring them to do so;
- (b) (where they are an individual or a partnership) have a petition for a bankruptcy order to be made against them (or any partner) is presented to the court; or
- (c) (where they are a company) become insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), enter into liquidation, pass a resolution for its winding-up, have a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, make any composition or arrangement with its creditors or take or suffer any similar action in consequence of its debt, or become unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986); or
- (d) cease or threaten to cease to carry on business.

11.3 Upon termination for any reason:

- (a) all rights granted to you under this Licence shall cease;
- (b) you must cease all activities authorised by this Licence;
- (c) you must immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Documentation then in your possession, custody or control and, in the case of destruction, certify to the Licensor that you have done so; and
- (d) the Licensor may destroy or otherwise dispose of any of the Licensee Data in its possession unless the Licensor receives, no later than ten days after the effective date of the termination of this Licence, a written request for the delivery to the Licensee of the then most recent back-up of the Licensee Data. The Licensor shall use reasonable commercial endeavours to deliver the back-up to the Licensee within 30 days of its receipt of such a written request, provided that the Licensee has, at that time, paid all fees and charges.

12. TRANSFER OF RIGHTS AND OBLIGATIONS

- 12.1 This Licence is binding on you and us and on our respective successors and assigns.
- 12.2 You may not transfer, assign, charge or otherwise dispose of this Licence, or any of your rights or obligations arising under it, without our prior written consent.
- 12.3 We may transfer, assign, charge, sub-contract or otherwise dispose of this Licence, or any of our rights or obligations arising under it, at any time during the term of the Licence.

13. NOTICES

- 13.1 Any notice required to be given under this Licence shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at, in the case of the Licensor, its address set out in this Licence and in the case of the Licensee the address provided to your Supplier, or such other address as may have been notified by that party for such purposes.
- 13.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

14. EVENTS OUTSIDE THE LICENSOR'S CONTROL

The Licensor shall have no liability to the Licensee under this Licence if it is prevented from or delayed in performing its obligations under this Licence, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Licensor or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Licensee is notified of such an event and its expected duration.. If the period of delay or non-performance continues for 4 weeks the party not affected may terminate this agreement by giving 10 days written notice to the prevented or delayed party

15. WAIVER

- 15.1 If we fail, at any time during the term of this Licence, to insist upon strict performance of any of your obligations under this Licence, or if we fail to exercise any of the rights or remedies to which we are entitled under this Licence, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.
- 15.2 A waiver by us of any default shall not constitute a waiver of any subsequent default.
- 15.3 No waiver by us of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.

16. THIRD PARTY RIGHTS

This Licence is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

17. SEVERABILITY

If any of the terms of this Licence are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

18. ENTIRE AGREEMENT

18.1 This Licence and any document expressly referred to in it represents the entire agreement between us in relation to the licensing of the Software and Documentation and supersedes any prior agreement, understanding or arrangement between us, whether oral or in writing.

18.2 We each acknowledge that, in entering into this Licence, neither of us has relied on any representation, undertaking or promise given by the other or be implied from anything said or written in negotiations between us prior to entering into this Licence except as expressly stated in this Licence.

18.3 Neither of us shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date we entered into this Licence (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in these terms and conditions.

19. LAW AND JURISDICTION

This Licence, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and submitted to the non-exclusive jurisdiction of the English courts.