

Langdon Systems Limited

e-CFSP Terms and Conditions of Use

e-CFSP is an online service provided by Langdon Systems Limited which enables Users to complete and submit HM Customs & Excise's Supplementary Declaration Warehouse (SDW) and Supplementary Declaration Import (SDI) forms and to submit Final Supplementary Declarations (FSD) online.

The SDW may be completed in one of two ways:

- (a) online at the Langdon Website;
- (b) by creating a data file and uploading it to the Langdon Website.

Langdon will then configure the data provided by the User into the format required under CFSP and submit it to the Customs entry processing computer system (referred to in these Conditions as "CHIEF").

Please read these Conditions carefully before accessing or using the Service. If you agree to be bound by them, please click on the "I Agree" icon below. If you do not agree to be bound by the Conditions, then please click on the "I do not agree" icon below. If you do so, you will not be able to access or use the Service.

The Service is available only to non-consumers in England (excluding the Isle of Man and the Channel Islands), Wales, Scotland and Northern Ireland who are authorised by HM Customs & Excise to use CFSP and to defer payment of Customs & Excise charges

1. Interpretation

1.1 In the context of these e-CFSP Terms and Conditions (unless the context otherwise requires):

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| "CFSP" | means Customs Freight Simplified Procedures as defined in Public Notice 760; |
| "Conditions" | means these terms and conditions or any of them; |
| "Customs Warehouse" | shall have the meaning given to that expression in Public Notice 232; |
| "Evaluation Licence" | means a licence to use the Service and the Software for evaluation purposes only; |
| "Fee" | means the monthly fee to be paid by the User as long as it remains a User to Langdon the current amount(s) of which are set out in Clause 2; |
| "FSD" | means Final Supplementary Declaration as defined in Public Notice 760; |
| "Langdon" | means Langdon Systems Limited (Company Number 1912934) of Westward House, King Street West, Wigan, Lancashire WN1 1LP; |
| "Langdon's Information" | means all information Confidential (whether written or oral) on or relating to the Langdon Website and the Software which is available only to Users and know-how of Langdon supplied or disclosed to Users or their employees, contractors or representatives both before the commencement of and during the course of the User's Subscription in accordance with these Conditions or otherwise; |
| "Licence" | means the licence granted pursuant to Condition 3; |
| "Parties" | means Langdon and the User; |
| "Permitted Use" | means the submission of SDIs, SDWs and FSDs to Customs & Excise in the course of the User's business only; |
| "Personal Data" | shall have the meaning given to that expression in the Data Protection Act 1998; |
| "SDI" | means Supplementary Declaration Imports as defined in Public Notice 760; |
| "SDW" | means Supplementary Declaration Warehouse as defined in Public Notice 760; |
| "the Service" | means the provision by Langdon of the following services: <ul style="list-style-type: none">(1) a facility for capturing data required for completion of the SDI;(2) facility for capturing data required for completion of the SDW |

- (3) automated electronic checking that all applicable fields required for the SDW or SDI have been completed, displaying error messages relating to fields in the data entry facility where appropriate;
- (4) formulating EDI CUSDEC messages based on the completed fields in the data entry facility
- (5) transmitting formulated EDI CUSDEC messages to CHIEF via a RACAL mailbox
- (6) receiving EDI CUSRES messages sent by CHIEF via a RACAL mailbox in response to EDI CUSDEC messages described at 5 above and displaying the results of CHIEF calculations and the entry reference number to the user;
- (7) receiving the EDI UKCTRL messages sent by CHIEF via a RACAL mailbox in response to the EDI CUSDEC messages described at 5 above and displaying the CHIEF error message number and associated text to the user;
- (8) in all other cases, forwarding HM Customs & Excise's response in relation to SDWs and SDIs submitted by the User to Customs & Excise using the Service to the User by e-mail;
- (9) providing the "Support Services";
- (10) displaying an online warning that an FSD is due;
- (11) transmission of an FSD to CHIEF via a Racal mailbox on instruction from the user;

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| "Software" | the software comprised within the Langdon Website; |
| "Subscription" | the User's subscription for the Service; |
| "Support Services" | the services described in Condition 4; |
| "URL" | means a World Wide Web universal resource locator; |
| "VAT" | means value added tax as defined in the Value Added Tax Act 1994; |
| "Working Day" | means any day on which the clearing banks in the City of London are open for business; |
| "Working Hours" | means the hours 9.00 a.m. to 5.00 p.m. on any Working Day. |

- 1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.3 The singular shall include the plural and vice versa and each of the male, female and neutral pronouns shall be interchangeable.
- 1.4 Reference to any rule of law includes common law, statute or statutory regulations, applicable laws of the European Union and the decisions of any court of competent jurisdiction.

2. Fees and Charges

- 2.1 The Fee payable by the User to Langdon for the Service is as follows:

Charges for e-cfsp for each SDI and SDW Module

Prices are available on application.

- 2.2 The User covenants with Langdon that it will pay all fees and charges on the date specified for the payment of such fees and charges.
- 2.3 Langdon shall be entitled to increase the Fee once in each calendar year by giving the User one calendar month's written notice. If Langdon does not receive written notice within 7 days of the date of such notice of any objection on the part of the User to such increase in the Fee, then the User shall be deemed to have accepted the increase. If the User serves notice of any objection on Langdon, then Langdon shall be entitled to terminate the User's Subscription on 7 days' written notice.
- 2.4 If the User makes use of the Service which Langdon deems (in its absolute discretion) to cause a degradation of the performance of the Service and/or the Software, Langdon reserves the right to increase the charges payable by the User or to offer the User an alternative Service.
- 2.5 All fees and charges are exclusive of any value added tax or applicable sales tax, for which the User shall be additionally liable at the applicable rate from time to time.

- 2.6 Langdon shall be entitled to charge the User interest on any Fee or other charges which remain outstanding from the User following the due date for payment (both before and after judgment) calculated on a monthly basis at the rate of 5% per annum above the base lending rate from time to time of Yorkshire Bank plc until payment is made.

3. Licence

- 3.1 Subject to payment by the User to Langdon of the Fee, Langdon grants to the User a non-exclusive non-transferable licence to:
- 3.1.1 use the Software for the Permitted Use and subject to all the provisions of these Conditions until this Licence is terminated in accordance with Condition 10 or otherwise; and
- 3.1.2 print off one copy of the on-line help files for reference purposes only during the term of the User's Subscription.
- 3.2 The User shall not:
- 3.2.1 use the Software or the Service other than for the Permitted Use;
- 3.2.2 make copies of the Software.

4. Support Services

- 4.1 If the User experiences any problems with the Service or the Software, he should first consult the on-line help files that are comprised within the Software.
- 4.2 During the continuance of the User's Subscription, Langdon shall maintain a premium rate telephone helpdesk facility which shall be available during Working Hours to deal with fault calls and Users' problems relating to the Software, the Service and the Langdon website.

5. Obligations of the User

The User:

- 5.1 agrees to be responsible for obtaining and maintaining, at its own expense, all computer hardware, software, communication equipment and access lines necessary to access and use the Service, except for the Software which Langdon will make available for the User's use pursuant to these Conditions;
- 5.2 agrees to maintain the confidentiality of its login ID and password. The User is responsible for all use of its account, whether or not such use was actually or expressly authorised by the User;
- 5.3 warrants that it has all authorisations from Customs & Excise necessary to use the Service, including without limitation that it is authorised by HM Customs & Excise to operate a Customs Warehouse for SDWs, to use CFSP and to defer payment of Customs & Excise charges;
- 5.4 agrees to inform Langdon immediately if any of the authorisations referred to in Condition 5.3 are revoked at any time during the User's Subscription;
- 5.5 agrees that it shall not use the Service in respect of any goods which are excluded from CFSP and that if at any time any such authorisation is withdrawn, the User shall immediately notify Langdon and cease use of the Service;
- 5.6 agrees to instruct Langdon to submit all FSDs by the due date therefore. If the User fails to submit an FSD for any given month, then the User shall not be able to submit SDWs for any subsequent month, until all due FSDs have been submitted;

- 5.7 agrees to indemnify Langdon and keep Langdon at all times fully indemnified from and against all actions, proceedings, claims, demands, costs (including without prejudice to the generality of this provision the legal costs of Langdon on a solicitor and own client basis) and other liabilities however arising directly or indirectly as a result of any breach or non-performance by the User of any User's undertakings, covenants, warranties or obligations under these Conditions.

6. Restrictions on User

The User:

- 6.1 shall not use the Service or the Software other than for the Permitted Use nor use the Service or the Software for the purpose of operating a bureau service whether for third parties including without limitation for associated companies, unless authorised by Langdon Systems;
- 6.2 shall not print off copies of the SDI's and, or SDW's submitted by the User using the Service other than as reasonably necessary for the purpose of record-keeping;
- 6.3 shall not make any copy of the whole or any part of the Software;
- 6.4 shall not merge or combine the whole or any part of the Software with any other software;
- 6.5 covenants during the term of the Subscription and for a period of one year after the expiration or termination for any reason of the Agreement, whether itself or together with any other person, firm or company in any capacity whatsoever, save as authorised hereunder, directly or indirectly not to employ or seek to employ any person who is at that time or has at any time in the previous year been employed by Langdon in connection with the provision of the Service nor otherwise directly or indirectly induce or seek to induce any such person to leave his or her employment.

7. Monitoring of the Service

Langdon may, at its discretion, monitor the User's use of the Service to determine and ensure compliance with these Conditions and to protect itself and other Users from fraudulent, unlawful or abusive use of the Service. Langdon may also disclose any content, record, use or other information to the extent reasonably necessary to protect the rights of Langdon or to comply with any law, regulation or government request.

8. Intellectual Property Rights

- 8.1 The User agrees that all copyright, database rights, trademarks, know-how and other intellectual property rights in the Software and the Service are and remain the exclusive property of Langdon.
- 8.2 Subject to the limitation contained in Condition 16, Langdon will indemnify the User and hold the User harmless against costs, expenses and liabilities reasonably incurred or sustained by the User directly resulting from any claim by any third party against the User that the Software or the Service infringes any intellectual property rights of such third party, provided that:
- 8.2.1 the User notifies Langdon immediately in writing of any notice of any such claim;
- 8.2.2 the User co-operates with Langdon in all reasonable respects in connection with the investigation and defence of any such claim;
- 8.2.3 Langdon shall have sole control of the defence of any such claim and all negotiations for its settlement or compromise.
- 8.3 If the Software or the Service become or are, in Langdon's opinion, likely to become, the subject of a claim for copyright, patent or trade mark infringement or trade secret misappropriation, the User will permit Langdon, at Langdon's expense, either to:
- 8.3.1 procure for the User the right to continue using the Software and/or the Service;
- 8.3.2 replace or modify the same so that it becomes non-infringing; or
- 8.3.3 terminate the User's Subscription.

9. Warranties

- 9.1 Subject to the provisions of Conditions 9.2 and 16, Langdon warrants to the User that it shall use its reasonable endeavours to provide the Service with reasonable care and skill.
- 9.2 The Service and the Software are provided by Langdon and accepted by the User "as is" and "as available". The Software and the Service are tools to aid the User, but should not be relied on in a business critical manner. Langdon will not be under any liability if the Software or the Service is used in a manner in breach of this Condition. Except as expressly provided in Condition 9.1, all other warranties and conditions, express or implied, including any warranties of satisfactory quality or fitness for any particular purpose, are specifically excluded and disclaimed to the fullest extent permitted by law. Langdon does not warrant that the Software or the Service will meet the User's requirements, that the operation of the Software or the Service will be uninterrupted or error free, or that all problems with the Software will be corrected.

9.3 Langdon will at all times use reasonable endeavours to maintain an uninterrupted and error-free service; however, Langdon makes no representations or warranties that use of the Service and the Software will be uninterrupted or error-free. Langdon cannot accept any responsibility for interruption to the Service or the availability of the Software if this is due to circumstances beyond Langdon's direct control, in particular, interruption to the availability of the Internet or the communications links that are provided to Langdon by third parties.

10. Termination

10.1 Either Party may terminate the User's Subscription by giving the other Party at least [one month's] prior written notice.

10.2 Langdon may terminate the User's Subscription immediately by giving notice in writing to the User upon the occurrence of any of the following events:

10.2.1 if the User shall at any time fail to pay the Fee or any part thereof within 5 days of the due date for its payment;

10.2.2 if the User transfers or disposes of the whole or a substantial part of its business or assets;

10.2.3 if the User ceases or changes the nature of its business, suspends a substantial part of the present business operations which they now conduct directly or indirectly, or any governmental authority expropriates all or part of their assets;

10.2.4 if at any time control (as defined in S.840 of the Income and Corporation Taxes Act 1988) of the User is acquired by any person or group of connected persons (as defined in S.839 of that Act) not having control of the User at the date of commencement of the Agreement;

10.2.5 if any material change shall occur in the management, ownership or control of the User;

10.2.6 if the User commits any continuing or material breach of any of the provisions of these Conditions and, in the case of such a breach which is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

10.2.7 if an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the User;

10.2.8 if the User makes any voluntary arrangement with its creditors generally or becomes subject to an administration order;

10.2.9 if the User goes into liquidation.

10.3 If any of the Public Notices or any legislation, statutes, statutory instruments or regulations relating to VAT are amended, re-enacted or extended in such a manner as to (in Langdon's opinion) affect the provision of the Service or the Software, then Langdon shall be entitled at its sole discretion to terminate the User's Subscription, in which case the provisions of Condition 11 shall apply, or to suspend the User's Subscription until such time as Langdon has amended the Software and/or the Service in order to take account of the necessary changes. If the User's Subscription is suspended, then [the User's obligation to pay the Fee shall be suspended during such suspension] OR [the Fee shall be reduced by [50]% during such suspension].

11. Consequences of termination

11.1 The expiration or termination of the User's Subscription shall be without prejudice to the accrued rights of the parties and any provision of these Conditions which relates to or governs the acts of the parties subsequent to such expiry or termination hereof shall remain in full force and effect and shall be enforceable notwithstanding such expiry or termination.

11.2 If the User's Subscription is terminated by the User pursuant to Condition 10.1 or by Langdon pursuant to Condition 10.2, then:

11.2.1 the User shall not be entitled to a refund of the Fee or any part of the Fee; and

11.2.2 the User shall immediately cease to use the Service and the Software, shall destroy its password and shall (at Langdon's option) return to Langdon or destroy any copies of the on-line help files in its possession.

12. No partnership or agency

The User shall not pledge the credit of Langdon nor represent itself as being Langdon nor an agent, partner, employee or representative of Langdon and shall not hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied, on behalf of Langdon and nothing in the Agreement shall operate so as to constitute the User an agent, partner, employee or representative of Langdon.

13. Assignment and Third Party Rights

13.1 The User's Subscription and the Licence and all the rights and benefits of the User under these Conditions may under no

circumstances be assigned, disposed of, transferred, held in trust or otherwise dealt with by the User in any way whatsoever unless, in the case of a proposed assignment of all such rights and benefits, Langdon has received written notice from the User of the person, body or company to whom it is intended to assign the User's Subscription and the Licence, and has given its consent in writing to the assignment.

13.2 The User agrees that Langdon may delegate or subcontract the responsibility for performing any of its obligations hereunder to any third party at any time whatsoever.

13.3 It is the intention of the parties that nothing in these Conditions shall confer on any third parties any rights or benefits.

14. Force majeure

Langdon shall not be responsible to the User for any delay in performance or non-performance due to any causes beyond the reasonable control of Langdon including Acts of God, earthquakes, floods, fires, riot, embargoes, strikes or lock-outs.

15. Severance

If any of the provisions of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of these Conditions and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties agree to attempt to substitute for any valid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

16. Liability

16.1 Except in respect of death or personal injury caused by the negligence of Langdon or its employees, Langdon shall not be liable to the User by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of these Conditions, for any indirect, special or consequential loss or damage (whether for loss of profit, data or goodwill or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Langdon, its employees or agents or otherwise) which arise out of or in connection with the Service or the Software and the entire liability from time to time of Langdon under or in connection with the Service shall not exceed [a sum equal to twice the amount of the Fee paid by the User in the preceding twelve month period or £5,000 (whichever is the greater sum)] OR [£1,000,000].

16.2 The User acknowledges and accepts that computers need routine maintenance and sometimes break down and that the Service is provided on an "as-is, as-available" basis. As a result, Langdon does not guarantee to anyone that the User or any third parties will be able to access the Langdon Web Site at any particular time and the User agrees that Langdon shall have no liability to the User if any such persons are not able to access the Langdon Website for any given period of time.

16.3 The User acknowledges and accepts that WWW web sites in general are not error, fault or bug free nor secure from persons wishing to misuse, tamper with, erase, alter or in any other way corrupt web sites, and the data, information, and records they display, retrieve, collate, transfer or disseminate and the User agrees with Langdon that Langdon shall have no liability to the User nor to any other third party for any such occurrences arising in respect of or in relation to the Langdon Web Site.

16.4 The User acknowledges and agrees that the Service is limited to Langdon checking that all applicable fields of the SDI and or SDW have been completed and then forwarding the SDI and or SDW to HM Customs & Excise. Langdon shall have no responsibility for checking, by means of real time electronic customised procedures, the accuracy of the information that the User has inserted in the SDI and or SDW. Accordingly, Langdon shall have no liability for any errors in or omissions from such information, any incorrect calculations, nor for any underpayment or overpayment of VAT or customs duty by the User nor for any civil penalties incurred by the User as a result of any underpayment. The User acknowledges and agrees that the use of the Service is no substitute for taking the advice of and engaging the services of an accountant. The User shall be responsible for checking all calculations of VAT and/or customs duty received from Customs & Excise via the Service and if it considers that any such calculations are incorrect, for making an appeal to Customs & Excise.

16.5 When Langdon receives an SDI and or SDW from the User, Langdon will send an electronic acknowledgment of receipt to the User. The User shall be responsible for checking that it receives an acknowledgment of receipt in respect of every SDI and or SDW that it submits to Langdon via the Service. Langdon shall have no responsibility whatsoever in respect of any SDI and or SDW which it does not receive for any reason.

17. Data Protection

17.1 Langdon will hold all Personal Data supplied by the User to Langdon in accordance with the provisions of the Data Protection Act 1998. The User acknowledges and agrees that Langdon shall submit all data contained in SDI's and or SDW's submitted by the User to Langdon to Customs & Excise and that Langdon is required by Customs & Excise to retain all data which Langdon has submitted to Customs & Excise on behalf of the User for seven years from the date of such submission.

17.2 The User must obtain the consent of any individual who will represent the User for Langdon to use that individual's Personal Data in accordance with Condition 18.1 before submitting such individual's Personal Data to Langdon.

18. Confidentiality

- 18.1 The User undertakes to Langdon to:
- 19.1.1 keep confidential all Langdon's Confidential Information and not to disclose any of Langdon's Confidential Information to any person other than to the extent its disclosure to those employees of the User who need to know or have access to such information is necessary for the purpose of the User using the Software and the Service for the Permitted Use in accordance with these Conditions;
 - 19.1.2 use Langdon's Confidential Information solely for using the Services and the Software for the Permitted Use in accordance with these Conditions.
- 18.2 The provisions of Condition 19.1 shall not apply to the extent that Langdon's Confidential Information is:
- 19.2.1 in the public domain; or
 - 19.2.2 trivial or obvious.
- 18.3 For the avoidance of doubt, Langdon's Confidential Information shall not be deemed for the purpose of this Condition 19 to be in the public domain if it is known by other Users as a consequence of the use by such persons of the Service and the Software.

19. Waiver

No failure of Langdon to exercise any power given to it hereunder or to insist upon strict compliance by the User with any obligation or condition hereof and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any of Langdon's rights hereunder.

21. Notices

Any notice required to be given hereunder by any party shall be in writing sent by prepaid recorded delivery or registered post or by facsimile and shall be deemed effective if sent by post at the expiration of 72 hours after the same was posted whether or not received or, if by facsimile, 24 hours after despatch to the correct facsimile number of the addressee. Each of the parties hereto shall notify the others of any change of address within 48 hours of such change.

22. Public Notices

References to Public Notices are to Customs & Excise Public Notices as at the date of the User's Subscription. If any of the Public Notices are amended or extended following the date of the User's Subscription, then to the extent that Langdon elects to continue to provide the Service pursuant to these Conditions, the meaning of the expressions contained in these Conditions which are stated to have the meanings given to those expressions in a Public Notice shall be deemed to have the meaning given to those expressions in that Public Notice as amended or extended.

23. Entire agreement

These Conditions constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions, express or implied, by statute or otherwise, or imposed or sought to be imposed by the User, are excluded to the fullest extent permitted by law.

24. Applicable law

English law shall apply to these Conditions and the parties agree to submit to the exclusive jurisdiction of the English Courts.