

TERMS AND CONDITIONS

In consideration of receipt of services provided by Kingsbury International, Ltd. ("Kingsbury") relating to the Institute for Supply Management – Chicago ("ISM-Chicago") Business Survey, the party signing below ("Subscriber") hereby agrees to the following Terms and Conditions for the Kingsbury ISM-Chicago Business Survey Subscription Service.

- 1. Entire Agreement.** These Terms and Conditions, together with relevant price lists, price schedules, invoices, and/ or other attached schedules ("Individual Contract Documents"), as the case may be, constitutes the entire agreement between the parties with respect to the matters set forth herein and there are no understandings, commitments, representations or warranties of any kind, express or implied, written or oral, not expressly set forth in the Individual Contract Documents or these Terms and Conditions (together, this "Agreement"). Kingsbury may modify the terms of the Agreement by providing written notice to Subscriber of such changes. If Subscriber makes no written objection to such modified terms within 30 days of Kingsbury's notice, such modified terms shall become effective on the date when Kingsbury provided notice. If Subscriber objects to the modified terms, the parties shall confer and if they cannot reach agreement, Subscriber shall have the option to cancel this Agreement and receive a refund of the unused portion of any prepaid funds. No modification or waiver of any terms of this Agreement shall be affected by the acknowledgement or acceptance of purchase order forms, or other documents, or by any course of dealing between the parties or by any usage of trade. Kingsbury's waiver of any breach or failure to enforce any of the terms and conditions of this Agreement shall not in any way affect, limit or waive its right hereafter to enforce and compel strict compliance with every term and condition hereof.

If any term set forth in these Terms and Conditions shall be in conflict with a term regarding the same subject matter set forth in the Individual Contract Documents, the terms and conditions of Individual Contract Documents shall govern. For any matter not addressed within the Individual Contract Documents, these Terms and Conditions shall govern.

- 2. Services.** The provision of Data compiled from the Kingsbury ISM-Chicago Business Survey in the form of conference call, email transmission or otherwise, whether the summary numbers, including but not limited to the Chicago Business Barometer™ and its component series, the "Chicago Report," or Excel spreadsheets containing either historical data or historical and projected seasonal factors shall constitute the services to be provided hereunder by Kingsbury (the "Services").
- 3. Warranties.** Kingsbury warrants that Services provided hereunder shall be Kingsbury's standard quality and that the data contained in the Services are compiled and calculated with professional care. Subscriber has the responsibility to determine whether the Services meet Subscriber's requirements. KINGSBURY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, SUCH AS, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Kingsbury neither assumes nor authorizes any person to assume on its behalf any other liability in connection

with the provision or use of the Services sold hereunder.

4. Copyright and Limitations on Use:

A. The conference call, emailed or other form of transmitted data or report, historical, and seasonal factor data (together, the "Data") disseminated in connection with providing the Services are the property of the ISM-Chicago and Kingsbury and are protected by copyright and other intellectual property laws. The Data may be displayed, reformatted, and printed for the use of the Subscriber only. Subscriber hereby agrees and warrants that it will not reproduce, retransmit, distribute, sell, publish, or broadcast the Data to anyone other than an employee of Subscriber, and that it will require that each employee of Subscriber follow this limitation of use requirement. Subscriber acknowledges that violation of this provision will result in irreparable harm to Kingsbury and that Kingsbury is entitled to seek injunctive relief therefrom.

B. Rights for Redistribution. If the Subscriber pays the additional fees required by Kingsbury for the right to redistribute either the current, Historical, or Seasonal Factor data, or any combination of them, then the provisions regarding reproducing or publishing any or all of the Data, as set forth in Paragraph 4 A (above), shall not apply to the data series and the period of time for which the Subscriber purchased redistribution rights and Kingsbury shall grant to Subscriber, subject to the terms and conditions of this Agreement, a nonexclusive, worldwide license to: (i) use, store, reproduce, market, create derivative works from and deliver the Data to Users electronically by means of the Subscriber's Services and any related products or services; and (ii) use, store, reproduce, display, create derivative works from and deliver the Data worldwide without charge for, *inter alia*, marketing, promotional, demonstration, and data quality control purposes. In any such redistribution, the source must be stated as "Kingsbury International, Ltd., www.kingbiz.com."

5. Claims by Subscriber.

5.1 Time for Presentation of Claims. Claims as to non delivery of Services or inadequacy or inaccuracy of Services are waived unless made in writing within 10 days of the date services were provided or should have been provided. Subscriber's sole remedy for such claims shall be Kingsbury's provision of the equivalent Services free of charge within one year of the date when the original Services were or should have been provided. Although Kingsbury shall endeavor to provide Services on time, Subscriber acknowledges that Services provided via Facsimile or via E-mail (or other means) may be delayed by factors beyond the control of Kingsbury. Any action by Subscriber for non delivery of Services or for inadequacy or inaccuracy of Services must be commenced within one year of the date of delivery, or due date of delivery in the event of non-delivery, of the particular Services upon which such claim is based.

5.2 Limitation of Liability. KINGSBURY'S LIABILITY FOR DAMAGES, WHETHER BASED UPON KINGSBURY'S NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PARTICULAR SERVICES WITH RESPECT TO WHICH SUCH DAMAGES ARE CLAIMED AND

SHALL NOT INCLUDE LIABILITY FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES. Subscriber assumes all risks and liability for any loss or damage of any type to persons or property (including specifically loss of business profits) resulting from Subscriber's use of the Services. Kingsbury shall not be liable to Subscriber, and Subscriber shall be strictly liable and shall indemnify Kingsbury for damage to persons or property resulting from the use by Subscriber of Services provided hereunder.

6. **Price; Payment and Credit.** Price and payment terms shall be stated in the invoice. All credit terms are subject to approval of Kingsbury's Credit Department. Kingsbury shall have the right to decline to provide Services except upon advance payment therefor. After 30 calendar days, unpaid balances will be charged a \$100 service fee and assessed 1 ½% (one and one-half percent) interest compounded monthly (or such lesser amount as is allowed by law) until such account shall be paid in full. In the event that Kingsbury must seek legal enforcement of monies due, Subscriber shall pay Kingsbury's reasonable attorney's fees and court costs.
7. **Force Majeure.** Failure of Kingsbury to make Services available, if occasioned by (a) Act of God or the public enemy, fire, explosion, perils of the sea, flood, drought, war, riot, sabotage, accident, embargo; or (b) without limiting the foregoing circumstances, any circumstances of like or different character beyond the reasonable control of Kingsbury; or (c) interruption of or delay in transmission of phone or other communication services; or (d) compliance by Kingsbury with any order, action, direction or request of any governmental officer, department, agency, authority or committee thereof (including any direction or order restricting or limiting the selling price of the Services which renders it impossible for Kingsbury, in its sole discretion, to make a reasonable profit on such Services), shall excuse Kingsbury's failure until such time as such occurrence shall have ceased and shall absolve Kingsbury of liability to Subscriber.
8. **Termination.** Kingsbury may terminate Services to Subscriber for non payment, for sharing the Data or Services in violation of this Agreement, or for any other reason in Kingsbury's sole business judgment. Subscriber may cancel Services at any time within the 30 days of first receiving the Services and Kingsbury will refund the unused part of Subscriber's prepaid funds. If Subscriber cancels subsequent to the 30 day window, Kingsbury will not issue any refund of the prepaid subscription fee.
9. **Taxes.** Any tax, assessment, or other governmental charge (collectively "Governmental Assessments") upon the Services sold hereunder imposed by any governmental authority shall be added to the price herein provided and shall be paid by Subscriber. For purposes of this paragraph 9, Governmental Assessment shall not include income taxes payable by Kingsbury. Subscriber will indemnify, release and hold Kingsbury harmless from and against any and all liability for Governmental Assessments that are Subscriber's responsibility under this Agreement.
10. **Technical Assistance.** Upon request, Kingsbury may provide technical assistance to Subscriber. This assistance, if provided, is intended to support the Subscriber's use of the Data but without any assertion of special skill or

knowledge of Subscriber's business. Kingsbury offers such assistance in good faith BUT WITHOUT ANY WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE AS TO THE ACCURACY, COMPLETENESS OR SUFFICIENCY THEREOF. KINGSBURY EXPRESSLY DISCLAIMS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. Subscriber assumes all risks and liability for any loss, damage or injury to persons or property arising out of such assistance.

11. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties, their successors or assigns, provided that Subscriber may not assign its rights or obligations under this Agreement without Kingsbury's prior written consent.
12. **Governing Law.** This Agreement shall be governed by the laws of the State of Illinois, without regard to its conflict of laws provisions, and shall be deemed to have been executed and entered into within Illinois. Any claim shall only be brought in the courts of competent jurisdiction in Cook County, Illinois, USA and Subscriber hereby consents to the jurisdiction of such courts and waives any claims regarding lack of jurisdiction or venue, including forum non conveniens.
13. **Resolution of Disputes.** Except for claims by Kingsbury against Subscriber for nonpayment of moneys due or for injunctive or equitable relief, prior to initiation by any party of any legal or other action or proceeding against any other party, the parties shall attempt in good faith to resolve any controversy or claim arising from or relating to this Agreement promptly by negotiations between representatives of the respective parties. The disputing party shall give the other party written notice of the dispute. Within 20 days after receipt of such notice, the receiving party shall submit a written response to the other party. The notice and response shall include a statement of each party's position and arguments supporting its position. The representatives shall meet at a mutually acceptable time and place (including telephonic or other virtual meeting options) within 30 days after the date of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved through negotiation within 60 days after the date of the disputing party's notice, then either party may take such action or inaction as it deems appropriate. Alternatively, if either party will not meet with the other party within 30 days after the date of the disputing party's notice, then either party may take such action or inaction as it deems appropriate without waiting for the expiration of the 60 day resolution period. All deadlines specified in this paragraph may be extended by mutual agreement of the parties.
14. **Notices.** All notices or other communications provided for hereunder will be given in writing and shall be sent to Subscriber or Kingsbury by overnight courier, email, hand delivery, or telecopier, and if by telecopier, confirmed by telephone, if to Kingsbury as follows:
Kingsbury International, Ltd.
Attention: Jack L. Bishop, Jr., President
245 Ridge Road,
Highland Park, IL 60035
fax: 847-831-2846; telephone: 847-831-4770;



245 Ridge Road
 Highland Park IL 60035 USA
 www.kingbiz.com
 Telephone 847 831.4770
 Fax 847 831.2846

and if to Subscriber, at the email address used to send invoices or to the street address shown on the invoice. All such notices and communications so addressed shall be effective (a) when delivered by hand, (b) when delivered by overnight courier or (c) when telecopied or emailed, upon receipt.

- 15. **Severance.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 16. **Headings.** The headings in this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
- 17. **Survival.** The provisions of paragraphs 2, 3, 4, 5, 9, 11 and 12 shall survive the termination of this Agreement.

AGREED TO:

Date: _____

Subscriber signature: _____

(Print Name): _____

Company: _____

Street Address: _____

City / State / ZIP: _____

Phone: _____

Telecopier (Fax): _____

Email addresses: _____

 Primary: _____

 Billing: _____

Operation Size (CONFIDENTIAL - for fee determination only):
 Traders: _____

- Subscription services: Email release
 Conference call release
 Historical data
 Rights for Redistribution

Initial