# EDI INTERCHANGE AGREEMENT

*January 1999*

# Authors' Notice

This agreement has been drafted by EDI managers and legal advisors of French major companies within the activities of the CIGREF EDI task force. The intention is to standardise EDI Interchange Agreements among major Companies.

It will, indeed, be easily ratified by legal departments when it is standardised and acknowledged. It is essentially a document meant to lay down the responsibilities of each Party to the interchange, rather than a legal document.

It is consistent with the following texts on which it is based:
- the model EDI European agreement issued by the European Commission in 1994, the structure and the general features of which it conforms with, at the same time as being compatible with the French situation;
- the model legislation relating to Electronic Business issued by the UN-Commission for International Trading Rights, adopted at the 29th session which took place from May 28th to June 14th, 1996;
- existing agreements by CIGREF's Members, on whose experience it is based.

It is already used at an inter-company level, even outside France.

This main text shall be supplemented with as many technical annexes as functional domains of application exist, covered by the agreement. These technical annexes will be drafted by the operational and Information Systems departments of the sector for which they are responsible.
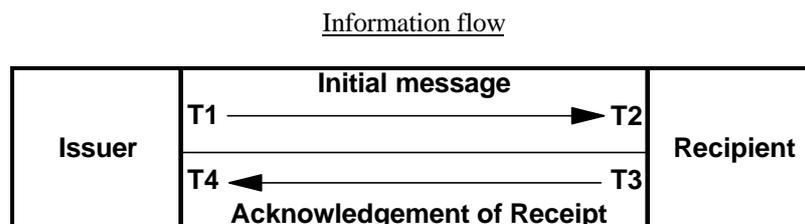
## Note on the dates of Acknowledgements of Receipt

A clear distinction must be made between the Functional Acknowledgement of Receipt (FAR) and the Technical Acknowledgement of Receipt (TAR), notably as to the formation of contracts.

The FAR is issued by the receiver's application system; it means that it has duly processed the message in the receiver's system and accepted the data contained therein.

On the other hand, the TAR is either issued by the receiving system before the message has been translated, or by the translator; it is merely an acknowledgement that the message has been duly received but contains no receiver's undertaking on the acceptance of content (it is equivalent to a "fax transmission report").

Therefore 4 dates (T1, T2, T3, T4) must be distinguished to define the dates of Acknowledgement of Receipt as shown in the chart below:

<u>Information flow</u>

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# FOREWORD AND IDENTIFICATION OF PARTIES

**ELECTRONIC DATA INTERCHANGE (EDI) AGREEMENT**

Contract n°:
Issuing date:

## BETWEEN …………

Represented by Mr. …………
hereafter "Company A",

## AND …………

Represented by Mr. …………
hereafter "Company B",

**RECITALS:**
Both Parties want to promote and give priority to Electronic Data Interchange (EDI) as their means of communication in their business relations.
The Parties recognise that they have all necessary means and technical knowledge enabling them to sign this agreement.

**THE FOLLOWING HAS BEEN AGREED:**

## 1 - SCOPE AND FIELD OF APPLICATION

The purpose of this agreement which is ancillary to the contractual relations already existing between the Parties, is to define the conditions applicable to exchange of EDI messages between them. They will compile, as necessary, a technical annex covering each functional domain, which will specify:

- the messages concerned,

- the standards used,

- the operational guidelines, including the services of a telecommunication network.

The technical annexes detailed in article 10 are an integral part of this contract.

Except when explicitly mentioned, this agreement does not give dispensation to the contractual conditions already existing between the Parties.

## 2 - DEFINITIONS

The words in this article printed in block letters are defined as follows:

a) **Functional Acknowledgement of Receipt** (FAR): designates a message with legal value, sent by the receiver in return to the issuer thereof, whereby the former confirms that his applications system has successfully processed the data tele-transmitted by the issuer, and that he accepts the undertakings contained therein.

b) **Network acknowledgement**: designates an item of information of technical value from the telecommunication network, stating to the message issuer whether or not the message has been passed to the receiver.
It cannot replace the Technical Acknowledgement of Receipt (TAR), nor the FAR.

c) **Technical Acknowledgement of Receipt** (TAR): designates a message with technical value whereby the receiver of the message or the telecommunication network, certifying that he has received and translated the issuer's messages and gives a report on the detected technical abnormalities.

d) **Electronic authentication**: designates the process whereby the electronic signature is checked, so as to make certain, prior to any processing, that the authorised signature can be identified with certainty, that the integrity of the authorised data has been preserved and that the data are the originating data.

e) **Functional domain**: designates a specific project of message exchange concerning a flow of information between the two Parties.

f) **Electronic Data Interchange** (EDI): designates any transfer of structured and standardised message, from computer system to computer system, by electronic means.

g) **Issuer**: designates the party who issues the message.

h) **Provider of network services**: designates the third party organisation which provides the transfer of the data and any associated service, between the Parties, by electronic means.

i) **Identification**: designates the procedure whereby the authorised user of a party makes his identity known and identifies himself towards the other party.

j) **Integrity**: designates a feature/characteristic which ensures that the data have not been changed or erased by a non-authorised way.

k) **Day of Work**: designates a day other than the weekly rest days in the Company, or other than bank holidays in the country of this Company. Days of Work are indicated in the technical annex.

l) **Working day**: designates a day other than a bank holiday in the country of the Company. Working days are indicated in the technical annex.

m) **Data log**: designates a full chronological record, by one party's computer system, of messages issued and received.

n) **Message**: designates a group of electronic data, structured and presented according to the standards defined in (o) below, intended for automatic transfer and use in a non-ambiguous way.

o) **Standards**: designates the French, European or International normative documents established by official bodies or acknowledged professional organisations, agreed upon by the Parties for the preparation and the transmission of the messages mentioned in the annex.

p) **Receiver**: designates the party, indicated by the issuer, to whom the message is being sent.

q) **Recovery**: designates the operation by which the receiver of a message requests that the message be sent again either by the provider of network services or by the issuer.

r) **Electronic signature**: designates an authentication method by the appropriate electronic means allowing the Parties to obtain a guarantee of source and integrity of the messages and to protect themselves from fraudulent use of the messages.

s) **UN/EDIFACT** (as defined by the UN/Economic Commission for Europe) : designates the International rules for Electronic Data Interchange For Administration, Commerce and Transport, they comprise a set of internationally agreed standards, directories and guidelines for the electronic interchange of structured data, and in particular, interchange related to trade in goods and services, between independent computerised information systems.

t) **Authorised user**: designates the individual who has been duly authorised by a party to act according to a message, in its name and on its behalf.

# 3 - NATIONAL LEGISLATION - VALIDITY AND FORMATION OF CONTRACTS

## 3.1 NATIONAL LEGISLATION

Each Party shall make sure that the form and the content of his EDI are compatible with the legislation in his country, notably as far as personal and private data are concerned. It shall take all necessary steps to inform the other Party of any incompatibility without delay.

## 3.2 FORMATION OF CONTRACTS

When a contract has to be placed by EDI, a functional acknowledgement shall be required. The contract will be considered to have been placed when the message of functional acknowledgement of receipt (FAR), as defined in the technical annex, has been accepted by the computer system of the original message issuer.

# 4 – ADMISSION AND PROBATIVE VALUE OF EDI MESSAGES

As soon as the acknowledgements required by the corresponding technical annex, have been supplied by a Party, a message sent in return by the latter in accordance with article 8 and the said technical annex, has the same probative value towards the other Party, as a written document.
Except to prove the non-authenticity or non-integrity of a message in any way, each Party expressly agrees not to contest any message which the other Party has sent back in accordance with the above paragraph, as a means of evidence.

# 5 – ADMINISTRATION AND ACKNOWLEDGEMENT OF RECEIPT OF EDI MESSAGES

## 5.1 PROCESSING TIME

Messages will be processed within the time limits stated in the technical annex.
If the principle of a FAR has been agreed between the parties, they will state in the technical annex the time limits in which this acknowledgement must be issued.

## 5.2 TECHNICAL ACKNOWLEDGEMENT OF RECEIPT (TAR)

The Parties do not require TAR unless expressly provided for in the technical annex.
If the receiver does not receive the TAR within the agreed time limit, he is entitled, subject to his informing the other Party, to consider the message concerned as null and void as soon as the mentioned time limit has elapsed, or to start the recovery procedure stated in the technical annex.

If the recovery procedure fails within the agreed time limit, the message shall be considered as null and void after the said time limit has expired.

## 5.3 FUNCTIONAL ACKNOWLEDGEMENT OF RECEIPT (FAR)

The starting point of the receiving time limit of this acknowledgement is:
  a) when a TAR is required: from the time this TAR is received by the initial message issuer, as defined by his data log,

b) when a TAR is **not** required: from the time of issue of the initial message as defined by the message issuer's data log, unless otherwise stated in the technical annex.

The parties must define in the technical annex, the complete list of the messages received or issued subject to the supply of FARs.

If the message issuer fails to receive the FAR within the agreed time limit, he is entitled, subject to his informing the other Party, to consider his initial message as null and void as soon as the mentioned time limit has lapsed away, or to start the recovery procedure stated in the technical annex.

If the recovery procedure fails within the agreed time limit, the message shall be finally considered as null and void after the said time limit has expired.

# 6 – Security of the EDI messages

## 6.1 Undertakings of the Parties

The parties undertake to set up and maintain security procedures and measures whereby the messages are protected from loss of integrity or from breach of confidentiality (e.g. unauthorised access, etc.)

## 6.2 Security procedures and measures

The security procedures and measures relating to the verification of origin and integrity, include the verification of origin, the verification of integrity, the non-denial of the origin and receipt, and the confidentiality of the messages.

These procedures, which shall allow a message issuer's and receiver's identification and ensure that a message received is complete and uncorrupted, are mandatory for all messages.

These security procedures and measures are defined in the technical annex.

## 6.3 Failure of the security procedures

If the security procedures and measures result in rejection of a message or detection of an error in the message, the receiver shall inform the issuer thereof immediately, in accordance with the applicable procedure stated in the technical annex.

The receiver of a message subject to rejection or which contains an error, is not allowed to act on the message without permission of the issuer thereof. When a rejected or corrupted message is re-transmitted by the issuer, the message shall clearly indicate that it is a corrected message; the correction shall conform to the provisions stated in the technical annex.

# 7 – Confidentiality and protection of data

## 7.1 Confidentiality and public domain

The Parties agree to grant the status « strictly confidential » to all EDI messages issued or received, together with their content. The information contained in the messages shall not be used otherwise than agreed by the Parties in their contractual relations.

However EDI messages are considered not to be confidential when the information given therein is in the public domain, except in the case of information disclosed by a third Party or one of the Parties without permission.

If the Parties ask any third Party to meet some or all of their obligations, they will make sure that the latter keeps strictly confidential the messages of which he has knowledge.

## 7.2 Specific form of protection

The Parties may decide to use a specific protection for given messages, such as a method of encryption within the limits of the applicable law in the country concerned.

# 8 – Data logging and recording of EDI messages

## 8.1 Procedures and archiving time

Each Party shall record all messages exchanged in a data-log which it will archive with all security measures guaranteeing that the data cannot be corrupted, in accordance with time limits and limitations of the national law applicable to each Party concerned and, in any case, for a minimum period stated in the technical annex, or if not possible for a period of time stated therein. Each Party is free to decide whether archiving may exceed this period of time and will bear the legal consequences thereof.

Each Party is responsible for the fulfilment of legal obligations relating to archiving.

## 8.2 Storage format

Unless otherwise stipulated by national legislation or special cases (e.g. zipped format, paperless invoice...), EDI messages shall be stored in the issuer's transmission format, and in the receiver's format of receipt. In all cases, the formats are explained in the technical annex.

## 8.3 Data logging

Each Party shall ensure that the EDI messages, which it stores in the data log, can be readily accessible and can be retrieved in an understandable language, and can be printed out, should it be necessary.

# 9 - EDI operational specifications

## 9.1 Operational environment

The Parties undertake to implement and maintain an operational environment which guarantees the quality of EDI, and more generally the fulfilment of this agreement and of their main contractual relations.

## 9.2 Operational equipment

Each Party shall be responsible for maintaining his hardware, software and services necessary to transmit, receive, translate, log-in and store the EDI messages at the quality level stated in the technical annex.

## 9.3 Means of communication

The parties shall agree in the technical annex, on the means of communication to be used, including the telecommunication protocols and, if need be, on the choice of service provider.

Each Party shall be responsible for the various contracts relating thereto.

## 9.4 Applicable standards

All EDI messages shall be transmitted in compliance with the standards and codes stated in the technical annex. Any modification to a message structure, or the adoption by the Parties of a new version of a standard, shall be implemented in accordance with the procedure stated in the corresponding technical annex.

## 9.5 Financial costs and expenses

The parties shall decide jointly on how expenses for implementation and operation of EDI exchanges will be shared. In case no agreement is possible, each Party shall pay those expenses incurred by it.

## 9.6 Authorisations

Each Party declares it has, on signing this agreement, all appropriate authorisations and legal, regulatory and administrative agreements corresponding to the electronic data exchange subject of this agreement.

Each Party undertakes to notify the other Party immediately of any change to such authorisations and agreements.

## 10 – TECHNICAL ANNEXES

Each technical annex shall contain the applicable technical, organisational and procedural specifications and requirements needed for the sound use of EDI, in compliance with the stipulations of this agreement, notably on:

A1 *Each functional domain of the interchange (types of transaction/interchange scenarios) covered by this agreement.*

A2 *Type of messages used:*

*Message descriptio*n,

*Implementation guideline,*

*Codes used,*

*Standards used.*

A3 *Tele-transmission and operation procedures, especially backup and replacement procedures, the management of technical problems, security.*

A4 *Test, follow-up, control protocols.*

A5 *Modification procedures of any section in the technical annex.*

## 11 - RESPONSIBILITIES

In conformity with common law, each Party is liable towards the other, for the damages of any kind, which occur during the fulfilment of its contractual obligations resulting from this agreement, including the fulfilment of obligations which it may have entrusted to a third Party, with or without the knowledge of the other Party.

## 12 – DISPUTE RESOLUTION[*]

### 12.1 OPTION 1 - ARBITRATION CLAUSE

Any dispute, notably relating to the validity, interpretation or execution of this agreement, will be subject to the exclusive competence of ………… even in the case of more than one defendant or introduction of third parties.

### 12.2 OPTION 2 - JUDICIAL CLAUSE

Any dispute, notably relating to the validity, interpretation or execution of this agreement, will be subject to the exclusive competence of the Court of ………… even in the case of more than one defendant or introduction of third parties.

## 13 – APPLICABLE LAW

This agreement is covered by the Law of the country agreed by the Parties, without prejudice to any mandatory national law which may be applicable to the Parties relating to the logging and storing of EDI messages or to the confidentiality and protection of private data.

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[*] The parties shall agree on the choice between option 1 "arbitration clause" and option 2 "judicial clause".

## 14 – EFFECT, MODIFICATIONS TERMINATION AND SEVERABILITY

### 14.1 EFFECT

This contract will come into effect on the date of signature by the Parties. As it is ancillary to the main contractual relations between the Parties, its term will be that of said contractual relations.

### 14.2 MODIFICATIONS

If need be, any rider to this agreement which may change, replace, add or cancel prior provisions and which is approved by the Parties in writing, shall be an integral part of this agreement as from the date of the signature of the rider.

### 14.3 TERMINATION

This agreement may be terminated by either Party by giving notice of at least 1 (one) month, by certified registered mail or by any other means agreed upon by the Parties. Only EDI exchanges after the termination date will be affected by this termination clause.

The termination of the agreement, for whatever reason, will not affect the Parties' rights or obligations stated in articles 4, 6, 7 and 8.

### 14.4 SEVERABILITY

Should any article or part of any article in this agreement become invalid, it will not affect the validity of other articles in the said agreement.

Made at:

**For Company A:**                                      **For Company B:**

Name:                                                  Name:

Position:                                              Position:

Date:                                                  Date:

Signature                                              Signature

# Comparison between the CIGREF EDI Interchange Agreement and the E.U. Agreement

In April 1998, CIGREF drafted out a Model of EDI Interchange Agreement with the intention to have it implemented on a large scale, to allow simple and standard avail of the Companies' internal Legal Departments.

It is widely based on the European Communities' Agreement (OJCE of December 28th, 1998) in its structure, its articles and their numbering, the wording and their underlying meaning and scope.
On the other hand CIGREF has endeavoured to be more pragmatic through experience acquired by the working group members in the course of several years of practice.

Here are the main differences which can be noted.

- article 1: specifies the place and the role of the technical annexes, as well as the position of this agreement towards other existing contractual conditions.
- in article 2 the list of definitions has been extended from 4 to 20 taking into account the transmission techniques and the EDI procedures.
- article 3: paragraph 1 of the E.U. Agreement looked somewhat outdated; it has been suppressed. Paragraph 2 is a word-by-word copy. On the other hand paragraph 3 is more complete and accurate.
- article 4 is more accurate: if procedures are fulfilled, the message is the beginning of a written means of evidence.
- article 5 is more accurate by distinguishing between technical and functional acknowledgements.
- article 6 has been re-written but keeps the original underlying meaning and scope.
- in article 7 the necessity for all parties to ascertain that VANs respect the strict confidentiality of messages.
- article 8 adds and specifies that the messages storage time is fixed in the technical annex (which allows adapting it to each message), and that each Party is responsible for the fulfilment of its legal obligations in this domain.
- article 9 adds that the technical annex defines the communication means to be used, and that each Party will be responsible for the various contracts with sub-contractors. The paragraph on codes has been removed and reappears in article 10. The standards used are detailed in the technical annex (and not limited to EDIFACT as in the European agreement, to account for present situation and later on allow more flexibility).
  On the other hand, 2 paragraphs have been added: one relates to the EDI expenditure, the other to the complementary legal authorisations (in France it concerns paperless invoicing and enciphering).
- In article 10 the technical specifications cover in addition, the message descriptions and their implementation guidelines, the tele-transmission and processing procedures, the modification procedure in the technical annex.
- article 11 has been simplified.
- article 12 is identical but specifies: 'even in the case of more than one defendant or introduction of third parties'.
- article 13 has been re-worded.
- article 14 has been copied word-by-word, but it is added that the validity time of the agreement is linked to that of existing contractual relations.

The major innovation is the important precision added in the form of a 'Writers' notice':
"This main text shall be supplemented with as many technical annexes as functional domains of application exist, covered by the agreement. These technical annexes will be drafted by the operational computer systems departments of the sector for which they are responsible."
This enables the document being considered as a framework agreement between each Party's internal Legal Department, signed once for all, but based on the technical annexes by operators and technicians, with the possibility of different lifetime, or to be amended with utmost flexibility.