

THE MARKETING EYE

Terms & Conditions

1. Contracts

- 1.1. Each quotation or estimate given, order or contract issued for the supply of services by THE MARKETING EYE (a “relevant contract” and “THE MARKETING EYE” respectively) is deemed to incorporate these Conditions.
- 1.2. No estimate, proposal, quotation or other document issued by THE MARKETING EYE is an offer to sell the services capable of acceptance by the Client. An order for the services shall be constituted by the Client signing off of the proposal document or by placing a purchase order with THE MARKETING EYE.
- 1.3. The Client warrants and represents that the signatory has the required authority to place an order with THE MARKETING EYE. THE MARKETING EYE shall not be responsible for any failure by the Client to obtain any such authority or approval.
- 1.4. Employees or agents of THE MARKETING EYE are not authorised to make any representations concerning the services of THE MARKETING EYE unless such representations are confirmed by THE MARKETING EYE in writing.
- 1.5. No amendments to or cancellation of all or any part of the relevant contract shall be permitted unless expressly agreed by THE MARKETING EYE in writing.
- 1.6. These Conditions override and take the place of any other terms or conditions emanating from or referred to by the Client.
- 1.7. In these Conditions headings shall not affect construction; references to statutes are to them as amended re-enacted and replaced and to any subordinate legislation in force thereunder from time to time; “subsidiary” and “holding company” are as defined in the Companies Act 1985; and the “affiliates” of a company meaning its subsidiaries and holding companies and the subsidiaries of its holding companies.

2. Fees

- 2.1. The fees are for performance in accordance with the relevant contract.
- 2.2. The fees agreed by the Client unless stated otherwise are not subject to alteration for any reason whatsoever (other than to take into account any change in the rate of UK value added tax applicable to the supply of the services) unless expressly agreed by THE MARKETING EYE in writing.
- 2.3. THE MARKETING EYE reserves the right to charge the Client travelling and other expenses reasonably incurred in carrying out the services specified in the relevant contract.

2.4. The amount of any value added tax shall be identified separately and THE MARKETING EYE shall issue a tax invoice in accordance with the relevant legislation.

3. Payment

3.1. The Client will pay for the services in each case without any deduction or set-off within 30 days of the date of the THE MARKETING EYE invoice.

3.2. THE MARKETING EYE shall be entitled to issue interim or final invoices to the Client for the price of the services at any time.

3.3. The Client must pay to THE MARKETING EYE interest on any overdue account at 5 per cent per annum above the base rate from time to time of NatWest Bank PLC from the due date calculated on a daily basis and compounded monthly until actual payment before and after any judgement.

4. Performance of services

4.1. THE MARKETING EYE will perform the services agreed by the Client as set out in the relevant contract.

4.2. The time stipulated for performance of the services shall not be of the essence of each relevant contract. THE MARKETING EYE shall use reasonable endeavours to meet such dates but so long as it uses such reasonable endeavours it shall not be liable to the Client in contract, tort or otherwise for any delay in performance.

4.3. The Client may at all such times as shall be reasonable during performance inspect the work being carried out but no such inspection shall relieve the Client of any of its obligation.

4.4. THE MARKETING EYE gives no warranties and makes no representations in relation to the services or otherwise in relation to the relevant contract and all such warranties and representations, whether express or implied, are excluded.

4.5. In no event shall THE MARKETING EYE be liable to the Client, its agents or representatives, in contract, tort or otherwise, for any consequential loss or damage whatsoever and however caused arising in any way out of or in connection with the relevant contract including (but not limited to) any loss of profit, business, revenue, goodwill or anticipated savings.

5. Quality & rejection

5.1. If within 1 month after performance the services prove to be inadequate or otherwise than in full accordance with the relevant contract then the Client may at its option and without prejudicing its other rights with or without terminating the relevant contract reject or refuse to accept performance by giving notice in writing.

5.2. In the event of rejection THE MARKETING EYE will fix, patch, remedy or otherwise perform the services again to the Clients satisfaction. THE

MARKETING EYE will not reimburse any payment already made for services previously accepted; set-off the charges against services still to be performed or reimburse the Client for the cost of performance carried out by it or any third party at its direction.

6. Confidentiality & ownership of materials

- 6.1. Any secrets or confidential information supplied by the Client to THE MARKETING EYE shall at all times be kept confidential and used by THE MARKETING EYE only in order to perform the services for the Client and not disclosed to any other person other than in order to perform the relevant contract and then on a basis of confidentiality.
- 6.2. The Client represents and warrants that the Client has obtained and/or will make available to THE MARKETING EYE all licences, clearances, consents and authorisation necessary in respect of all items, materials and properties supplied by the Client to THE MARKETING EYE. Any relevant items supplied shall be kept in good condition at the risk of the Client and be returned by THE MARKETING EYE on demand.
- 6.3. THE MARKETING EYE shall use its best endeavours to take due care of any items of whatever nature provided by or on behalf of the client for the purposes of the relevant contract.
- 6.4. Title to and ownership of all materials copyright and other intellectual and moral rights in any items supplied by THE MARKETING EYE to the Client or created by THE MARKETING EYE for the client ("relevant items") shall become and/or remain the property of THE MARKETING EYE until such time as payment is received in full.

7. Force majeure

- 7.1. THE MARKETING EYE shall have the right to cancel or delay the relevant contract or to reduce the level of services to be performed without liability to the extent that (a) the activities of THE MARKETING EYE for the services requested are prevented restricted or interfered with through any circumstances which are beyond THE MARKETING EYE's control or which THE MARKETING EYE could not reasonably have been expected to control or prevent including (but not limited to) any Act of God, war, armed hostilities, act of terrorism, riot, civil commotion, revolution, blockage, embargo, strike, lock-out, sit-in, industrial or trade dispute, fire, explosion, flood, adverse weather, disease, accident to or breakdown of plant or machinery, shortage of any material, labour, transport, electricity or other supply, change of law or regulation or any firm of government official or regulatory intervention or (b) in THE MARKETING EYE's opinion the intended use by the Client of the services to be provided would infringe any third party intellectual property rights.

8. Sub-contracting & assignment

- 8.1. THE MARKETING EYE may sub-contract assign mortgage charge or otherwise dispose of any relevant contract or any rights or obligations thereunder in whole or in part.

8.2. The Client shall not unreasonably withhold consent to a novation of any contract to any person to which THE MARKETING EYE may transfer its business or a relevant part of it.

8.3. THE MARKETING EYE shall not be liable for the failure to perform of any suppliers or sub-contractors.

9. Default

9.1. The Client shall be deemed to be in default under and to have repudiated a relevant contract if:-

9.1.1. the Client or any of the Client's affiliates is in breach of that or any other contract (whether or not a relevant contract) with THE MARKETING EYE or any of THE MARKETING EYE's associates; or

9.1.2. the Client or any of the Client's affiliates or any of its or their assets is subject to any form of winding up administration receivership, insolvency, proceedings, arrangements with creditors generally enforcement of security or legal process or repossession; or

9.1.3. THE MARKETING EYE certifies to the Client that it otherwise has reasonable grounds for believing that the Client or any of the Client's affiliates is insolvent; or

9.1.4. the Client comes under the control (as defined in s.840 of the Income and Corporation Taxes Act 1988) of any person who does not control the Client at the date of THE MARKETING EYE's order

9.2. If 9.1 applies THE MARKETING EYE may at any time (at its discretion and without prejudice to its other rights and whether or not it accepts any further contracts or receives any further payments) by written notice to the Client;-

9.2.1. suspend any services to be performed under or terminate cancel or rescind the relevant contract and any other relevant contracts with the Client;

9.2.2. become entitled to recover from the Client any amounts unpaid for services under the relevant contract the performance of which are suspended or are no longer to take place;

9.2.3. declare (whereupon it shall forthwith become) immediately due and payable any indebtedness of the Client to THE MARKETING EYE on any account whatsoever; and

9.2.4. set off any indebtedness of THE MARKETING EYE to the Client.

10. Miscellaneous

10.1. THE MARKETING EYE's rights shall not be prejudiced or restricted by any concession, indulgence or forbearance extended to the Client.

- 10.2. No waiver by THE MARKETING EYE of any breach shall operate as a waiver of any other or subsequent breach.
- 10.3. THE MARKETING EYE's rights under these Conditions are in addition to any other rights which THE MARKETING EYE may have under the general law or otherwise.
- 10.4. If the Client comprises 2 or more persons their obligations are joint and several.
- 10.5. Failure by THE MARKETING EYE to enforce any rights under the relevant contract shall not amount to a waiver of those rights.

11. Indemnity & insurance

- 11.1. The Client undertakes to indemnify and hold harmless THE MARKETING EYE, its associates and its and their officers, employees and agents from and against all liabilities, losses, damages, costs, charges, expenses (including without limitation legal fees and expenses on a full indemnity basis) actions, proceedings, claims and demands incurred by any of them and arising directly or indirectly out of or in connection with any breach of the Client's obligation under any relevant contract between the Client and THE MARKETING EYE or any wilful default or negligence on the part of the Client in relation to the performance of the services provided by THE MARKETING EYE.
- 11.2. If any claim is made against THE MARKETING EYE in respect of (or THE MARKETING EYE suffers) liability, loss or damage of any kind whatsoever (without limitation including economic loss and/or consequential loss) due to alleged defect in the performance of the Client's obligations under the relevant contract the Client will provide all facilities assistance or advice required by THE MARKETING EYE for the purpose of contesting or dealing with the same.
- 11.3. The Client shall maintain insurance cover in such amount and against such professional liability, personal injury and other risks as THE MARKETING EYE may reasonably require from time to time.

12. Severance

- 12.1. Any complete or partial invalidity or unenforceability of a provision in these Conditions or any relevant contract for any purpose shall not affect its validity or enforceability for any other purpose or the remaining provisions; but it shall be deemed to be severed for that purpose subject to such consequential modification as may be necessary as a result.

13. Notices

- 13.1. Any notice under these Conditions or any relevant contract to THE MARKETING EYE shall be in writing and given by post or hand delivery to 13 Ashdown Chase, Nutley, East Sussex, TN22 3LY in each case for the attention of the Company Secretary or to such other address or fax number or for the attention of such other person as THE MARKETING EYE may notify to the Client.

13.2. Any notice under these Conditions or any relevant contract to the Client shall be in writing and given by post or hand delivery or by fax to any address or fax number from which THE MARKETING EYE has received communications from the Client in connection with these Conditions.

14. Law & jurisdiction

14.1. These Conditions and each relevant contract shall be governed by and construed in accordance with the laws of England.

14.2. For THE MARKETING EYE's benefit the Contractor submits to the jurisdiction of the English courts and agrees (without limiting THE MARKETING EYE's rights to bring proceedings in any other courts of competent jurisdiction whether concurrently or not) that the English courts shall have jurisdiction to settle any claim or dispute in relation to any relevant contract and that their judgements will be binding and enforceable by the courts of other jurisdictions.

For and on behalf of

Signed: Date:

Position:

Company: Address:
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For and on behalf of THE MARKETING EYE

Signed: Date:

Position: