

GENERAL TERMS AND CONDITIONS

1 Definitions

- 1.1 In these General Terms and Conditions the following expressions shall have the following meaning.
- "**The Client**" – as defined in the Proposal and/or Order/Enquiry Form.
- "**The Company**" – BM Interim Management Limited.
- "**Confidential Information**" – any information about a party's business, client's statistical, financial matters which is disclosed to the other party in whatever format.
- "**Nominated Person(s)**" – the Client's nominated agents, advisers, or subcontractors.
- "**The Consultant(s)/Interim Manager(s)**" – the person(s) utilised by the Company to perform the Services for the Client.
- "**The Services**" – as detailed in the Proposal and/or Order/Enquiry Form

2 The Agreement

- 2.1 The Agreement between the Company and the Client is set out in the following documents:
- These General Terms and Conditions
 - The Proposal and/or Order/Enquiry Form and Appendix thereto.
- 2.2 If there is any discrepancy in or divergence between the above documents, these General Terms and Conditions shall prevail.
- 2.3 The above documents embody the entire agreement between the Company and the Client and supersede and replace any provision or representation on the same subject whether in writing or made orally or by conduct prior to the date of this Agreement.
- 2.4 This Agreement may not be amended, varied or supplemented except in writing signed by the Company.
- 2.5 The Company reserves the right to vary the Services provided at any time without further notice.
- 2.6 Each provision of these General Terms and Conditions is to be construed as a separate provision applying and surviving even if for any reason one or other of the said provisions is held inapplicable or unreasonable in any circumstances.
- 2.7 The Company and the Client agree that if any part of these conditions be found to be unreasonable, invalid or unlawful under any enactment or rule of law pertaining thereto, the Court shall have the power to strike out or override that part, whether it be an entire condition or conditions or of some part or parts thereof, and enforce these conditions as if the unreasonable or unlawful part or parts had not been included.

3 Payment

- 3.1 All fees, expenses, charges or otherwise shall be paid in Sterling to a bank account nominated by the Company and shall be deemed to be quoted exclusive of any Value Added Tax.
- 3.2 The Client shall pay the Company the fee and/or at the rate as set out in the Order/Enquiry Form and/or Appendix to the Proposal.
- 3.3 The fee and/or rate is set out in the Order/Enquiry Form and/or Appendix to the Proposal and will apply for 12 months from the date of the Client's signature/acceptance of the Proposal. Thereafter the Company reserves the right to annually vary the charges up to 5%.
- 3.4 Payment of the Company's charges due under any invoice/order must be received in full by the Company at the time of placing the order.
- 3.5 If the Client fails to make payment in accordance with Clause 3.4 above, the Company will be entitled (in addition to any other right or remedy it may have) to charge the Client interest on the outstanding amount at a rate of four per cent above the base rate of Cooperative Bank plc calculated daily from the date the payment became due until actual payment.
- 3.6 The Client is not entitled to offset and/or make any deduction to the Company's charges without the prior written consent of the Company.

4 Access & Information

- 4.1 The Client shall give and/or cause to be given as requested by the Company and within reasonable time.
- Access to key personnel.
 - All instruction, drawings, details, plans and other information of whatsoever kind.

5 Time

- 5.1 The date or time set in the Order/Enquiry Form and/or Proposal and the Appendix thereto represents the Company's best estimate of the date or time by which the Services can be provided. However, the Company gives no warranties that it will carry out all and/or any of the Services by such date or time, and the Company shall not be liable for any damage or claims of any kind in respect of delay in the provision of such services.

6 Confidentiality

- 6.1 Except as permitted by law, neither party shall disclose any Confidential Information relating to the other party without the other party's prior written consent.
- 6.2 Either party shall immediately notify the other party if it becomes aware of the possession, use or knowledge of any of the Confidential Information by any unauthorised person, whether during or after the term of the Agreement and shall provide such assistance as is reasonable to deal with such an event.
- 6.3 Notwithstanding the above provisions any party may disclose Confidential Information if and to the extent:
- It considers it necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on a confidential basis
 - The information has come into the public domain through no fault of the party

7 Restrictions

- 7.1 The Client hereby acknowledges that the Company has expended significant resources in sourcing the Consultant, training & developing the Consultant, as well as the sales, project management, procurement and marketing resources towards attaining and managing the Services under this Agreement.
- 7.2 Neither the Client, nor any subsidiary or associated company of the Client, nor any client of the Client shall during this Agreement be permitted to utilise the Services of the Consultant other than through the Company.
- 7.3 If the Client or any subsidiary or associated company of the Client wishes to re-engage or retain the Services of the Consultant after the termination of the Agreement, the Agreement must be renegotiated with the Company and with no other party. The Company may alter the terms of any subsequent agreement.
- 7.4 Upon termination or expiration of this Agreement, should the Client, or any subsidiary or associated company of the Client or any client of the Client retain or re-engage the services of the Consultant other than through the Company, a fee equivalent to 100% of our daily fee rate existing at the time being which represents the loss of earnings to the Company shall be payable to the Company by the Client, which the parties accept represents a fair pre-estimate of the damage caused to the Company by the Client's breach.
- 7.5 Should the Client, or any subsidiary or associated company of the Client or any client of the Client permanently employ the Consultant, either during the term of the Agreement or thereafter then the Client shall pay the Company the equivalent of 50% of the Company's estimated annual earnings based on the daily rate charged for the Consultant by the Company to the Client, which the parties accept represents a fair pre-estimate of the damage caused to the Company by the Client's breach.
- 7.6 Clause 7.3, 7.4 and 7.5 shall survive the termination of this Agreement for a period of 12 months.

8 Limitation of Liability

- 8.1 Advice and information in whatever form it may be given, is provided by the Company for the Client, its employees and the Nominated Persons only, and the Client shall indemnify the Company against any liability claims, loss, damage, costs or expenses arising out of any other persons relying upon such advice or information. Except under special arrangements previously made in writing, advice and information which is not related to specific instructions accepted by the Company is provided gratuitously and without liability.

- 8.2 The Company shall be liable to the Client (and then only to the limited extent set out below) for any physical loss and damage to the Client's property caused by negligence, breach of duty or other wrongful act or omission of the Company itself or its agents or employees acting within the course of their employment. The Company's entire liability to the Client under this Agreement shall be limited to a sum equivalent to the value of the charges under the Proposal or £5,000 whichever is the lesser.

- 8.3 The parties acknowledge that the Company's above limitation of liability is reasonable in relation to the fees that the Company is likely to receive under the Agreement. It is also acknowledged that the Client is in the best position to insure against such loss and that it shall do so.

- 8.4 The Company will not be liable for the following loss or damage however caused and even if foreseeable by the Company: economic loss including administrative and overhead costs, loss of profits, business, contracts, revenues, goodwill, production and anticipated savings [of every description];

- 8.5 Notwithstanding any statement to the contrary within this Agreement the Company does not exclude liability for death or personal injury to the extent only that the same arises as a result of the negligence of the Company, its employees, agents or authorised representatives.

9 Insurance

- 9.1 The Client shall be responsible for effecting all necessary and usual insurance including (but without limiting the generality of this obligation) public and employers' liability covering damage caused to the Properties and equipment in such amounts and with such company and on such terms as shall be acceptable to the Company. Such insurance shall ensure that the Company is covered whilst carrying out the Services whether at the Premises or elsewhere on the Client's behalf. In the event that the Company suffers any loss or damage of any nature arising from any act or omission of the Client shall indemnify on demand the Company in respect to such loss or damage in full.

- 9.2 The Client shall provide such evidence as the Company may reasonably require that the insurance referred to in clause 8.3 and/or 9.1 and 9.2 hereof has been taken out and is in force at all material times

10 Notice

- 10.1 Subject to the provision of clause 12 below, if the Order/Enquiry Form and/or Proposal has not specified the provision of notice required to terminate this agreement, this Agreement shall remain in force unless and until it shall be determined by 12 months notice in writing on either side, expiring at any time or terminated at any time by either party upon the provision of notice specified in the Proposal.

11 Force majeure

- 11.1 The Company shall in its sole discretion be entitled to cancel this agreement if prevented from complying with its terms by strikes, wars (declared or undeclared), any local hostility, rebellion, civil riot or commotion or other like disturbances, any epidemic or disease in the UK, acts of God or by any act or cause that is beyond the control of the Company.

12 Termination

- 12.1 Without prejudice to any other rights or remedies which the Company may possess, the Company may terminate this Agreement forthwith by notice in writing if:
- the Client is in breach of this Agreement; or
 - the Client is deemed unable to pay its debts within the meaning of Section 123(1)(a), (b), (c) or (d) of the insolvency act 1986 (as that section may be amended by order under the Section 416 of the act or otherwise), or
 - the value of the Client's assets falls to less than the amount of its liabilities (taking into account for both these purposes contingent and prospective liabilities), or
 - the Client suspends making payments (whether of principal or interest) with respect to all or any class of its debts or announces an intention to do so or makes any composition or arrangement with its creditors or any of them, or
 - the Client becomes otherwise insolvent, or
 - an application for an administration order in relation to the Client is presented to the court or any meeting of the Client is convened for the purpose of considering any resolution to present an application for such an order, or
 - anything analogous to having a substantially similar effect to any of the events specified in sub-paragraphs 12.1(a) – 12.1(f) shall happen under the laws of any applicable jurisdiction.

- 12.2 Notwithstanding termination of the agreement pursuant to clause 12.1 above and/or without prejudice to any proceeding in which the validity of such termination is at issue the full Company's charges set out in clause 3 above that have been incurred prior to the date of the notice in writing shall be a debt immediately payable to the Company by the Client.

13 Assignment

- 13.1 The benefit of this Agreement is personal to the Client only and shall not be assignable by the Client without the prior written agreement of the Company.

14 Copyright

- 14.1 The Company reserves the rights in any publication or other document it produces for or to the Client. No part of such publication may be reproduced or transmitted in any form, or by any means, electronic, mechanical, photocopying, recording or otherwise, or stored in a mechanical retrieval system without the prior written permission of the Company.

15 Waiver and Postponement

- 15.1 Performance at any condition or obligation to be performed by the Client shall not be deemed to have been waived or postponed unless the Company shall have expressly granted such waiver or postponement in writing.
- 15.2 Any such written waiver or postponement of any one or more obligations or defaults by the Client shall not operate or be construed as a waiver of any other obligation or defaults of the Client whether of a like or a different character.

16 Indemnity

- 16.1 The Client shall indemnify and/or hold the Company harmless against all Claims, losses and damages of any nature whatsoever, save for those which the Company expressly accept liability in clause 8.2 above, including without prejudice to the generality of the foregoing claims for loss or damage to property cause by or resulting from this Agreement brought by and/or made on behalf of any third party including but not limited to a Nominated Person or Nominated Persons.

17 Governing law and jurisdiction

This agreement shall be governed by and construed in accordance with English law and the parties hereto submit themselves to the exclusive jurisdiction of the English Courts in relation to this Agreement and all matters arising out of it.