

3MINDS LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF CONSULTANCY SERVICES

The Buyer's attention is in particular drawn to the provisions of condition 11.4.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

- (a) **Buyer:** the person, firm or company who purchases the Services from the Company.
- (b) **Company:** 3Minds Limited.
- (c) **Contract:** any contract between the Company and the Buyer for the sale and purchase of the Services, incorporating these conditions.
- (d) **Delivery Point:** the place where delivery of Services is to take place under condition 7.
- (e) **Services:** any consultancy services agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Services shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Services subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Services to the Buyer.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION

3.1 It is the sole responsibility of the Buyer to ensure that the specification for the

Services is complete and comprehensive in respect of the intended outcome or purpose of the specification.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract and this is not a sale by sample.

4. COMPANY'S OBLIGATIONS

4.1 The Company undertakes to the Buyer that:

- (a) it will provide the Services to the Buyer diligently and efficiently using reasonable skill and care;
- (b) it will provide suitably skilled and appropriately trained personnel to carry out the Services; and
- (c) the services will be provided in a professional manner.

5. BUYER'S OBLIGATIONS

5.1 The Buyer shall:

- (a) where applicable, make available to the Company working space, equipment (when required) and other resources necessary for its work under this Agreement;
- (b) ensure that its employees co-operate fully with the Company in relation to the provision of the Services;
- (c) promptly give the Company such information and documents as it may reasonably request for the proper performance of its obligations under this Agreement; and
- (d) take all reasonable steps to ensure the health and safety of the Company's employees whilst they are on the Buyer's premises.

6. LICENCE OF MATERIALS

6.1 Unless otherwise agreed the Company agrees to grant a perpetual licence of the Intellectual Property in the Materials to the Buyer for the purposes of its business.

7. DELIVERY

7.1 Unless otherwise agreed in writing by the Company, delivery of the Services shall take place at the Buyer's place of business.

7.2 The Buyer shall take delivery of the Services when tendered in accordance with the Contract.

7.3 Any dates specified by the Company for delivery of the Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

7.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Services (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

7.5 If for any reason the Buyer fails to accept delivery of any of the Services or the Company is unable to deliver the Services on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations

7.5 the Services shall be deemed to have been delivered.

7.6 The Company may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

7.7 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to

repudiate or cancel any other Contract or instalment.

7.8 Work which the Buyer requests to be done which is not subject of a written acceptance or is outside the specification of a contract will be chargeable in accordance with prevailing rates of charge in force from time to time.

8. NON-DELIVERY

8.1 The Company shall not be liable for any non-delivery of Services (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 14 days of the date when the Services would in the ordinary course of events have been received.

8.2 Any liability of the Company for non-delivery of the Services shall be limited to supplying the Services within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Services.

9. PRICE

9.1 Unless otherwise agreed by the Company in writing, the price for the Services shall be the price set out in the Company's quotation or if none has been set out in the Company's quotation or otherwise agreed the price will be as set out in the Company's price list published on the date of delivery or deemed delivery.

9.2 The price for the Services shall be exclusive of any value added tax which the Buyer shall pay in addition when it is due to pay for the Services.

10. PAYMENT

10.1 Payment of the price for the Services is due in pounds sterling within 30 days of the date on which the Services are delivered or deemed to be delivered. Any extension of credit by the Company may be withdrawn at any time by the Company.

10.2 Time for payment shall be of the essence.

10.3 No payment shall be deemed to have been received until the Company has received cleared funds.

10.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

10.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

10.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Lloyds TSB Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

11. LIMITATION OF LIABILITY

11.1 Subject to condition 7 and condition 8, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of these conditions;
- (b) any use made or resale by the Buyer of any of the Services, or of any product incorporating any of the Services; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.3Nothing in these conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

11.4Subject to condition 11.2 and condition 11.3:

- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited by the Company's policy for professional indemnity in place at the time of the contract.
- (b) the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11.5The Company's prices are determined on the basis of the limits of liability set out in these terms and conditions for supply of consultancy services.

11.6The Company will indemnify the Buyer for direct physical injury or death caused either by defects in the Materials or by the acts or omissions of its employees.

11.7Neither party shall be liable to the other for any indirect or consequential loss of whatever nature, howsoever caused whether occurring in contract, tort or otherwise.

11.8The Company does not warrant either that the Services will achieve any intended result other than as expressly set out in any specification agreed between the parties or that the implementation by the Buyer of any

designs provided by the Company under this Agreement will be error free.

12.ASSIGNMENT

12.1The Company may assign the Contract or any part of it to any person, firm or company.

12.2The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13.FORCE MAJEURE

- (a) The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the amount of the Services ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

14.GENERAL

14.1Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

14.2If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.3Failure or delay by the Company in enforcing or partially enforcing any

provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.4Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

14.5The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

15.COMMUNICATIONS

15.1All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:

- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

15.2Communications shall be deemed to have been received:

- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

15.3Communications addressed to the Company shall be marked for the attention of the Managing Director.