

2020

TERMS OF BUSINESS

1. DEFINITIONS

'Business Agreement' means the Business Agreement/Business Agreement – Quote Form setting out the details of the services we will provide and signed by the Provider and the Client.

'Charges' means the charges set out in the Business Agreement.

'Client' means the client of the Provider named in the Business Agreement.

'Commencement Date' means the date specified in the Business Agreement as such.

'Contract' means the agreement between the Client and the Provider relating to the supply of the Services, comprising and limited to the terms contained in the Standard Terms and the Business Agreement.

'Days' means calendar days and 'day' and 'days' shall be construed accordingly.

'Director' means a director of the Provider.

'Intellectual Property Rights' means all patents, trademarks, unregistered trademarks, trade names, copyright, design rights, know-how, confidential information and all or any other intellectual property rights whether or not registered or capable of registration.

'Provider' means Thornton & Lowe Ltd.

'Services' means the services as described in the Business Agreement.

'Standard Terms' means these Terms of Business.

'Term' means the term determined in accordance with Clause 2, that being either the fixed term under the agreement or any subsequent 12-month period and term shall be construed accordingly.

'A Year' means 365 days and 'part-year' shall be construed accordingly. This contract excludes all UK Public Holidays and the period between 16 December and 9 January.

'you/your' means the Client.

'we/us/our' means the Provider.

2. DURATION

- 2.1 The Contract shall commence on the earlier of the Commencement Date or the date on which we begin to provide Services. The Contract shall continue until terminated in accordance with these Standard Terms.

3. SERVICES

- 3.1 The Provider shall provide the Services, which are subject to the Standard Terms from the Commencement Date.
- 3.2 The Client understands and accepts that the provision of services is for such work as could reasonably be expected in the competent jurisdictions of England & Wales based on the laws of England & Wales and that no liability can be accepted for work provided by the Provider outside those jurisdictions, unless confirmed in writing and signed by a Director.
- 3.3 In supplying the Services, we shall:
- 3.3.1 Perform the Services with reasonable care and skill;
- 3.3.2 Use reasonable endeavours to perform the Services in accordance with any service description set out in the Business Agreement; and
- 3.3.3 Comply with any applicable laws, statutes, regulations which apply to us that are from time to time in force.

4. CLIENT OBLIGATIONS

- 4.1 The Client shall
- 4.1.1 co-operate with the Provider in all matters in respect of the Services;
- 4.1.2 meet any requirements specified for the Client in the business Agreement;
- 4.1.3 provide us in a timely manner and at no charge, access to your premises, data and other facilities as we reasonably require for the provision of the Services;
- 4.1.4 ensure any information provided is accurate in all material respects.
- 4.2 If our performance of our obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, we shall
- 4.2.1 not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay;

- 4.2.2 be entitled to payment of the Charges which we may reasonably expect to have received despite any such prevention or delay; and
- 4.2.3 be entitled to recover any additional costs, charges or losses we sustain or incur as a result.

5. CHARGES

- 5.1 The Provider's charges shall be calculated as specified in the Business Agreement and you agree to pay all Charges on the basis specified subject to the terms of these Standard Terms.
- 5.2 You shall not set off any sums due to us under this Contract howsoever against any other sums claimed from us.

6. PAYMENT

- 6.1 You shall pay the Charges in accordance with the provisions specified in the Business Agreement.
- 6.2 The time shall be of the essence in paying any Charges.
- 6.3 Simple interest shall be payable on any overdue amount from the date on which payment was due to that on which it is made (whether before or after judgment) at the rate of 2% above the base rate quoted by the Royal Bank of Scotland as in force at the time of payment falling due, accruing on a daily basis.
- 6.4 Without prejudice to any other rights we have, if you fail to make any payment when due we shall be entitled by giving written notice to you at any time to exercise any one or more of the following rights:-
 - 6.4.1 to suspend the performance of Services;
 - 6.4.2 to refrain from providing the Service if circumstances mean that additional costs will be incurred;
 - 6.4.3 to require the Client to pay all legal and other costs (including but not limited to court fees, enquiry agents, reasonable administrative costs) incurred by us in recovering any amounts, pursuant to clause 5, owing from you and such costs shall be due for payment immediately following written notice of invoice by us.
 - 6.5 Should any payment not be made within 30 days of the due date, the full outstanding balance for the remainder of any fixed term as detailed in the Business Agreement will automatically become due and payable in full.
 - 6.6 Any queries in connection with any invoice must be referred by the Client to the Provider within 7 days of receipt of that invoice.
 - 6.7 The parties agree that in any claim brought in any court of competent jurisdiction by the Provider for a failure on the part of the Client to comply with its obligations under clause 5, the Provider shall have the right to claim any such payment or payments due as an unpaid debt.
 - 6.8 In the event of the Contract being determined by the Client whether by notice, breach or otherwise, the Client shall pay to the Provider all sums due up until the expiry of the current term of the Contract, such sums being payable immediately. The statement of the Provider as to such sums shall, in the absence of manifest error, be conclusive.

7. PERFORMANCE

- 7.1 Time shall not be of the essence in the performance of any Services and the Provider shall not be liable for any loss, damage or expense arising from any delay in the performance of any Service or in the provision of such Services from whatever cause nor shall any such delay entitle the Client to repudiate the Contract.
- 7.2 The Client warrants that it shall notify the Provider within 30 days by written notice if, at any time during the Contract, the nature of the Client's business alters substantially from the nature of the Client's business at the commencement of the Contract. This clause shall form a condition of the Contract, and if breached by the Client, the Provider shall have the right to terminate the Contract.

8. LIABILITY

- 8.1 The liability of the Provider to the Client in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever under or in connection with the Contract shall be limited as follows:
 - 8.1.1 the Provider shall have no liability for any consequential loss or damage suffered by the Client or any customer of the Client under or in connection with the Contract occasioned by any act or omission on the part of the Provider or any of its service providers, whether directly or indirectly, including but not limited to wasted time or expenditure, loss of profits, use, revenue or goodwill;

- 8.1.2 the Provider shall have no liability in respect of any claim relating to the Services unless the Client gives the Provider written notice of the claim promptly and in any event within 15 days after the Client becomes aware (or should reasonably have become aware) of the circumstances giving rise to the claim and affords the Provider not less than 30 days following such notification in which to remedy the Services concerned; and
- 8.1.3 the Provider shall be discharged from all liability to which these terms apply unless proceedings are begun within 180 days after the Client became aware (or should reasonably have become aware) of the facts giving rise to such liability.
- 8.2 Subject to Clause 6.4.3, in all matters affecting or disputes arising out of the Contract each party shall bear its own legal costs incurred, including all costs incurred prior to, during or at the conclusion of any legal proceedings.
- 8.3 Nothing in this Contract shall limit or exclude the Provider's liability for:
- 8.3.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- 8.3.2 fraud or fraudulent misrepresentation;
- 8.3.3 breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982 or any other liability which cannot be excluded by law.
- 8.4 Subject to clause 8.3, the Provider's total liability to the Client, whether arising under or in connection with this Contract shall be limited to 50% of the Charges paid in the preceding 12 months and paid under the Contract.

9. TERMINATION

- 9.1 Either party may terminate this Agreement at the end of the Term by giving 30 days prior written notice.
- 9.2 Either party shall have the right by giving written notice to the other at any time to immediately terminate the Contract if there occurs any material breach, (which includes but is not limited to a failure by the Client to pay monies due) by the other party of any term of the Contract which is irremediable or if remediable is not remedied to the party providing notice's satisfaction within 15 days of a written notice by that party specifying the breach and requiring it to be remedied.
- 9.3 Without prejudice to the Provider's rights under clause 6.8, in the event of the Contract ending for any reason, the Client shall pay to the Provider all arrears of payments and of any other sums due under the terms of the Contract.
- 9.4 Any right or remedy to which the Provider is or may become entitled to under the Contract or in consequence of the Client's breach of a term, whether a condition or warranty, may be enforced from time to time separately or concurrently with any right or remedy given by the Contract or now or afterwards provided for and arising by operation of law so that such rights and remedies are not exclusive of the other or others but are cumulative.
- 9.5 The Provider shall have the right to terminate the Contract within 14 days of the commencement of the Contract by written notice. If the Provider exercises its discretion under this clause the Provider shall reimburse to the Client all sums paid by the Client in relation to the Service or part-Service within 30 days.

10. FORCE MAJEURE

- 10.1 The Provider shall not be liable for any delay or other failure to perform any Services or to provide any Facilities or for any temporary breakdown in the Service Provider's coverage by reason of any cause whatsoever beyond its reasonable control and the time for performance shall be extended by the period of any such delay.

11. CONFIDENTIALITY

- 11.1 The subject matter of the Contract and any information acquired by either party relating to the business of the other party or, as the case may be, its customers is confidential and neither party shall, without prior written consent of the other party make any use or disclosure thereof except for the purposes of the Contract save to the extent such information is or becomes publicly available otherwise than in breach of the foregoing obligations.

12. NON-POACHING

- 12.1 During the Term, and for a period of 24 months after termination neither party shall hire the other party's employees without the consent of the other party.

13. RIGHTS OF THIRD PARTIES

- 13.1 No person other than the Provider, any person, business or company to whom the Provider assigns the Contract and the Client shall have any enforceable rights under or in connection with the Contract.

14. ENTIRE CONTRACT

- 14.1 The Contract contains all the terms upon which the parties have agreed in relation to its subject matter and supersedes all previous oral or written communications between the parties. The Provider does not authorise the giving of representations that conflict with the aforesaid terms, on its behalf by any person unless confirmed in writing and signed by a Director.
- 14.2 The Client accepts that it has not been induced to enter into the Contract by or in reliance upon any statement or representation made by the Provider or its agents, servants, or representatives nor that any such term operates to form a condition, warranty or a term of the Contract.
- 14.3 Both parties acknowledge that the Contract contains the whole agreement between the parties and that neither party has relied upon any oral or other written representation made to it by the other party, its employees or agents and that each party has made its own independent investigation into all matters relevant to the Contract.
- 14.4 No failure or delay in exercising any of the Provider's rights under the Contract shall constitute a waiver of the same or of any other of its rights and shall not entitle the Client to treat the Contract as having been repudiated.

15. NOTICES

- 15.1 Notices shall be in writing ('written notice') and shall be sent either by first class post (tracked and signed as evidence) to the receiving party at its business address as last notified in writing to the other party or by email to accounts@thorntonandlowe.com with the Subject line clearly noting 'Termination Notice'.

16. LAW AND JURISDICTION

- 16.1 The law applicable to the Contract shall be the law of England and Wales in every particular, including the formation and interpretation and the Contract shall be deemed to have been made in England.
- 16.2 The parties agree to the exclusive jurisdiction of the English courts in all matters affecting or disputes arising out of the Contract.

17. INVALIDITY AND SEVERABILITY

- 17.1 The various provisions and sub-provisions of the Contract are severable and if any provision or sub-provision or identifiable part thereof is held to be invalid or unenforceable by any court of competent jurisdiction then such invalidity or unenforceability will not affect the validity or enforceability of the remaining provisions or sub-provisions or identifiable parts thereof in the Contract.
- 17.2 The parties shall amend any such provision or sub-provision or identifiable part thereof, held to be invalid or unenforceable, as referred to in clause 16.1 in such reasonable manner as achieves the business intention of the parties without illegality or the Provider shall have the right, at its discretion, to sever any such provision or sub-provision or identifiable part thereof from the Contract.

18. GENERAL

- 18.1 Both parties shall comply with all obligations under GDPR and Data Protection laws and the Client shall ensure that it has obtained all permissions and consents required for the Provider to process any data as required to provide the Services. The Provider shall keep Client information as long as they continue to have consent. Client information is stored in our library systems which are secure and hosted within the European Union and, or the USA where it is certified to the EU-US Privacy Shield (which requires effective safeguards for your information).
- 18.2 Our professional indemnity insurers are Markel International Insurance Company Limited and we are a company limited by shares.