



– THE PORTFOLIO – BROKERS

Terms and conditions for the supply of services by The Portfolio Brokers Ltd

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF 8 (LIMITATION OF LIABILITY).

1. Definitions and interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

- 1 **Business Day:** a day, other than a Saturday or Sunday, when banks in Edinburgh are open for business.
- 2 **Charges:** the charges payable by the Client for the supply of the Services in accordance with these terms and conditions and any other contracts or agreements entered into between the parties to this agreement;
- 3 **Client:** the individual, firm, limited company, business or other entity which agrees or purchases Services from the Consultant
- 4 **Client's Premises:** any property or other form of land, construction, vehicle or shelter owned, leased or otherwise made available to the Client.
- 5 **Client Default:** has the meaning set out in these terms and conditions.
- 6 **Commencement Date:** is the date these terms and conditions are sent to the Client or its agent or nominee by the Consultant or its agent or nominee.
- 7 **Conditions:** these terms and conditions as amended from time to time
- 8 **Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.
- 9 **Consultant:** The Portfolio Brokers Ltd registered in Scotland with company number SC670529.
- 10 **Consultant Materials:** has the meaning set out in these terms and conditions
- 11 **Deliverables:** the deliverables set out in any agreement or contract produced by the Consultant for the Client or other deliverables agreed in writing between the parties.
- 12 **Engagement:** The Consultant's services to the Client and the details of same, all as set out in the Specification, Consultancy Agreement or other agreement or contract between the parties and always under these Terms and Conditions.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

13 **Services:** the services, including the Deliverables, provided by the Consultant to the Client as set out in any Specification, Consultancy Agreement or other agreement, contract or communication in writing between the parties, which writing shall include, but not be limited to, email.

14 **Specification:** the description or specification of the Services which may be provided in writing by the Consultant to the Client from time to time, which writing shall include, but not be limited to, email.

15 **Terms and Conditions:** these Terms and Conditions between the Consultant and the Client

1.2 Interpretation:

(a) References to clauses and the Schedule are to the clauses of and the Schedule to these Conditions.

(b) The Schedule forms part of these Conditions and any reference to these Conditions includes the Schedule.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to **writing** or **written** includes hard copy and email but not fax, except where email is specifically excluded.

2. Basis of Terms and Conditions

The Engagement is constituted as defined above. The terms Engagement shall only be deemed to be accepted by the Consultant when the Consultant issues written acceptance of any terms proposed by the Client, which writing shall include, but not be limited to, email. If these terms and Conditions are not returned signed but the Client or its associated companies or businesses, employees, advisers, sub-contractors, agents or nominees continue to work with the Consultant, the or if no Notice is given after the initial instruction, the Consultant will assume that the Client is in agreement with these Terms and Conditions. Notwithstanding the Engagement, once the terms and Conditions have been sent to the Client, the Client is liable to pay the Consultant a reasonable fee for any work carried out by the Consultant for the Client.

2.1 Any samples, drawings, descriptive matter or advertising issued by the Consultant, and any descriptions or illustrations contained in the Consultant's catalogues or 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 Terms and Conditions or have any contractual force.

2.2 Any changes made by the Client to the Specification provided by the Consultant must be approved in writing by the Consultant.

3. Supply of Services

16 3.1 The Consultant shall supply the Services to the Client in accordance with these Terms and Conditions and any other agreement in writing between the parties which writing shall include, but not be limited to, email.

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18 3.2 The Consultant shall use all reasonable endeavours to meet any performance dates specified in the Engagement and but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. If time is of the essence for the performance of Services, this must be specifically agreed in writing between the parties, which writing shall include, but not be limited to, email.

3.3 The Consultant reserves the right to amend the Specification if necessary, to comply with any applicable law, regulatory requirement, and Government guidance and / or if the amendment will not materially affect the nature or quality of the Services in the sole view of the Consultant. The Consultant shall notify the Client in any such event.

3.4 The Consultant warrants to the Client that the Services will be provided using reasonable care and skill.

4. Client's obligations

4.4 The Client shall:

- (a) ensure that the terms of the Services to be provided by the Consultant in respect of the Engagement and any information it provides in the Specification are complete and accurate;
- (b) co-operate with the Consultant in all matters relating to the Services or any other agreements between the parties;
- (c) provide the Consultant, its employees, agents, consultants and sub-contractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Consultant;
- (d) provide the Consultant with such information and materials as the Consultant may reasonably require to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services to be provided by the Consultant and to provide same before the date on which the Services are to start
- (f) comply with all applicable laws, guidance and regulations including health and safety laws, guidance and regulations
- (g) keep all materials, equipment, documents and other property of the Consultant (**Consultant Materials**) at the Client's Premises in safe custody at its own risk and to maintain the Consultant Materials in good condition until returned to the Consultant; further the Client shall not dispose of or use the Consultant Materials other than in accordance with the Consultant's verbal and written engagements or authorisation; and

(h) comply with any additional obligations as set out in these Terms and Conditions, the Specification and Engagement.

4.5 If the Consultant's performance of any of its obligations under the Terms and Conditions is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

(a) without limiting or affecting any other right or remedy available to it, the Consultant shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve the Consultant from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Consultant's performance of any of its obligations, the definition of which prevention or delay shall be at the sole interpretation of the Consultant;

(b) the Consultant shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Consultant's failure or delay to perform any of its obligations as set out in these terms and conditions; and

(c) the Client shall reimburse the Consultant on written demand for any costs or losses sustained or incurred by the Consultant arising directly or indirectly from the Client Default.

5. Charges and payment

The Charges for the Services shall be calculated on a time and materials basis, or on a percentage of project cost basis or on a daily, hourly or fixed fee, or on any other basis agreed in writing between the parties. Always as follows:

(a) if an hourly fee rate is calculated, this is the Consultant's hourly fee rates and are calculated on the basis of a one hour broken down in to 6-minute units and charged as a six-minute unit even if less than the six-minute unit is incurred and is calculated for time worked on Business Day;

(b) if a daily fee rate is calculated, this is the Consultant's daily fee rates and are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on a Business Day; and

(c) the Consultant shall be entitled to charge an overtime rate, being either a fixed rate or percentage add on of the hourly or daily fee rate on a pro-rata basis for each part day, six-minute unit or for any time worked by individuals whom it engages on the Services outside the hours referred to in these terms and conditions.

1.2 The Consultant shall be entitled to charge the Client for any expenses reasonably incurred by the Consultant and/or any individuals whom the Consultant engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Consultant for the performance of the Services, and for the cost of any materials

1.3 The Consultant reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date.

1.4 The Consultant reserves the right to amend the Charges or the charging basis having given 28 days' notice in terms of these terms and conditions of its intention to do so, or sooner period as agreed between the parties and having detailed the new charges and/or the new

charging basis, even if that charging basis differs from those Charges previously referred to in this clause of these terms and conditions.

1.5 The Consultant shall invoice the Client on completion of the Services, weekly **or** monthly in arrears, all as agreed between the parties.

1.6 The Client shall pay each invoice submitted by the Consultant:
(a) within 14 days in full and in cleared funds to a bank account nominated in writing by the Consultant, and
(b) time for payment shall be of the essence of the Terms and Conditions.

1.7 Any debit due and payable by the Client to the Consultant is a commercial debt for the purposes of the Late Payment of Commercial Debts (Interest Act) 1998 and additional sums can, at the discretion of the Consultant, be sought in terms of that legislation.

1.8 All amounts payable by the Client under the Terms and Conditions are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Terms and Conditions by the Consultant to the Client, the Client shall, on receipt of a valid VAT invoice from the Consultant, pay to the Consultant such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

1.9 If the Client fails to make a payment due to the Consultant under the Terms and Conditions by the due date, then, without limiting the Consultant's remedies under these terms and conditions, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this will accrue each day at 4% a year above the Bank of Scotland base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

1.10 All amounts due under the Terms and Conditions shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

1.11 Upon acceptance of a formal offer, the Client shall pay a non-refundable deposit of 20% (subject to a minimum of £2,000). If a client withdraws from the transaction prior to the target completion date, they agree to pay 50% of the total fee. If a client withdraws or for any reason, the transaction ceases to continue after the initial agreed target completion date, they agree to pay the fee in full.

2. Intellectual property rights

2.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by the Consultant.

2.2 The Client grants the Consultant a non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to the Consultant for the term of the

Terms and Conditions for the purpose of providing the Services to the Client at no cost to the Consultant.

3. DATA PROTECTION

The parties shall comply with their data protection obligations as set out in the General Data Protection Regulations.

4. Limitation of liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

4.1 The Consultant has obtained Professional Indemnity Insurance cover in respect of its own legal liability for total claims not exceeding £250,000. The Client is responsible for making its own arrangements for the insurance of any excess potential loss over the above figure.

4.2 Restrictions on liability in this 8 include every kind of liability arising under or in connection with these Terms and Conditions including liability in delict, under statute or otherwise (including liability arising from negligence restricted to the above sums of £250,000).

4.3 Nothing in the Terms and Conditions limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 11B of the Supply of Goods and Services Act 1982 (title and quiet possession).

4.4 The caps on the Consultant's liabilities shall be reduced by:

- (a) payments of an uncapped liability;
- (b) amounts awarded or agreed to be paid under these terms and conditions or prior to any final quantification of loss;
- (c) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.

4.5 Subject to 8 (Liabilities which cannot legally be limited), the Consultant is not liable to the Client for any:

- (a) loss of profits on resale, let or otherwise;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings and/or financial reward;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

4.6 Subject to 8 (Liabilities which cannot legally be limited), the Consultant is not liable to the Client for any contractors, third parties, businesses or other professional advisers unless these parties are instructed direct by the Contractor in fulfilment of its provision of Services to the Client. The Contractor may recommend contractors, third parties or professional advisers to the Client but the Client is deemed to have contracted with them direct

4.7 The Consultant has given commitments as to compliance of the Services with relevant specifications in these terms and conditions and the terms implied by sections 11C, 11D and 11E of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Terms and Conditions.

4.8 Unless the Client notifies the Consultant that it intends to make a claim in respect of an event within the notice period, the Consultant shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire 4 weeks from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

4.9 This shall survive termination of the Terms and Conditions.

5. Termination

5.1 Without affecting any other right or remedy available to it, either party may terminate the Terms and Conditions by giving the other party two months' written notice.

5.2 Without affecting any other right or remedy available to it, either party may terminate the Terms and Conditions with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Terms and Conditions and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Schedule A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by engagement of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Client's financial position deteriorates to such an extent that in the Consultant's opinion the Client's capability to adequately fulfil its obligations under the Terms and Conditions has been placed in jeopardy.

5.3 Without affecting any other right or remedy available to it, the Consultant may terminate the Terms and Conditions with immediate effect by giving written notice to the Client if:

- (a) the Client fails to pay any amount due under the Terms and Conditions on the due date for payment; or
- (b) there is a change of control of the Client, within 2 months' if the Consultant becoming aware of that change of control.

5.4 Without affecting any other right or remedy available to it, the Consultant may suspend the supply of Services under the Terms and Conditions or any other Terms and Conditions between the Client and the Consultant if:

- (a) the Client fails to pay any amount due under the Terms and Conditions on the due date for payment;
- (b) the Client becomes subject to any of the events listed in this clause or the Consultant reasonably believes that the Client is about to become subject to any of them; and
- (c) the Consultant reasonably believes that the Client is about to become subject to any of the events listed in this clause.

6. Consequences of termination

6.1 On termination of the Terms and Conditions:

- (a) the Client shall immediately pay to the Consultant all of the Consultant's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Consultant shall submit an invoice, which shall be payable by the Client immediately on receipt; and
- (b) the Client shall return all of the Consultant Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Consultant may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Terms and Conditions.

6.2 Termination or expiry of the Terms and Conditions shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Terms and Conditions which existed at or before the date of termination or expiry.

6.3 Any provision of the Terms and Conditions that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Terms and Conditions shall remain in full force and effect.

7. General

7.1 Force majeure. Neither party shall be in breach of the Terms and Conditions nor liable for delay in performing, or failure to perform, any of its obligations under the Terms and Conditions if such delay or failure result from events, circumstances or causes beyond its reasonable control.

7.2 Assignment and other dealings

- (a) The Consultant may at any time assign, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under these Terms and Conditions.
- (b) The Client shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Terms and Conditions without the prior written consent of the Consultant.

7.3 Confidentiality

11.3.1 Each party acknowledges that in the course of the Engagement it will have access to Confidential Information. Each party has therefore agreed to accept the restrictions in this agreement.

11.3.2 Each party shall not (except in the proper course of their duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use their best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

- (a) any use or disclosure authorised by the other party;
- (b) any use or disclosure required by law, a court of competent jurisdiction or any governmental or regulatory authority;
- (c) any information which is already in, or comes into, the public domain otherwise than through that party's unauthorised disclosure;
- (d) any use or disclosure to employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Terms and Conditions. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this ; and

7.4 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Terms and Conditions.

7.5 At any stage during the Engagement, each party will promptly on request return all and any of the other party's property in their possession to that party or allow the other party to uplift that property.

7.6 Nothing in this clause shall prevent the Consultant or the Client (or any of its officers, employees, workers or agents) from:

- (a) reporting a suspected criminal offence to the police or any law enforcement agency or co-operating with the police or any law enforcement agency regarding a criminal investigation or prosecution;
- (b) doing or saying anything that is required by HMRC or a regulator, ombudsman or supervisory authority;
- (c) whether required to or not, making a disclosure to, or co-operating with any investigation by, HMRC or a regulator, ombudsman or supervisory authority regarding any misconduct, wrongdoing or serious breach of regulatory requirements (including giving evidence at a hearing);
- (d) complying with an order from a court or tribunal to disclose or give evidence;
- or
- (e) making any other disclosure as required by law.

8. Entire agreement

(a) These terms and conditions constitute basis on which the Consultant will carry out work for the Client and the Client's obligations. There may be additional agreements as part of the Engagement of the parties which will form part of the Engagement between the parties only when agreed in writing by the parties, which writing shall include, but not be limited to, email.

(b) Each party acknowledges that in entering into the Terms and Conditions it does not rely on, and shall have no remedies in respect of any statement, representation,

assurance or warranty (whether made innocently or negligently) that is not set out in the Terms and Conditions or in any additional agreement between the parties in writing, which writing shall include, but not be limited to, email.. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Terms and Conditions.

9. Variation. Except as set out in these Conditions, no variation of the Terms and Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives) which writing shall include, but not be limited to, email.

10. Waiver. A waiver of any right or remedy under the Terms and Conditions or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Terms and Conditions or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Terms and Conditions or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11. Severance. If any provision or part-provision of the Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these terms and conditions. If any provision or part-provision of this Terms and Conditions is deleted under this the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

12. Notices

Any notice or other communication given to a party under or in connection with the Terms and Conditions shall be in writing and shall be delivered by hand by Sheriff officer or by pre-paid signed for first-class post or other next working day signed for delivery service at its registered office (if a company) or its principal place of business (in any other case);

(a) Any notice shall be deemed to have been received:

(i) if delivered by hand by Sheriff officer, at the time the notice is left at the proper address;

(ii) if sent by pre-paid signed for first-class post or other next working day signed for delivery service, the date and time stated on the track and trace receipt confirming delivery and signature.

(b) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

13. Notices. A notice given under these terms and conditions is not valid if sent by email. Third party rights. Unless it expressly states otherwise, the Terms and Conditions does not give rise to any rights under the Terms and Conditions (Third Party Rights) (Scotland) Act 2017 for any third party to enforce or otherwise invoke any term of the Terms and Conditions.

14. Governing law. The Terms and Conditions, and any dispute or claim (including non-Terms and Conditional disputes or claims) arising out of or in connection with it or its

subject matter or formation, shall be governed by and construed in accordance with the laws of Scotland.

15. Jurisdiction. Each party irrevocably agrees that the Scottish courts shall have exclusive jurisdiction to settle any dispute or claim (including non-Terms and Conditional disputes or claims) arising out of or in connection with the Terms and Conditions or its subject matter or formation.