

## TERMS AND CONDITIONS OF BUSINESS

### THE STATS PEOPLE LTD

#### 1. Interpretation

1.1 In these terms and conditions (**Conditions**):-

**Client:** means the person, firm or company, engaging the Company to provide the Services as set out in the Proposal;

**Company:** means **THE STATS PEOPLE LTD** having its registered office at 19/21 Swan Street West Malling Kent ME19 6JU (company registration number 09828882), email: [garyb@statspeople.com](mailto:garyb@statspeople.com).

**Fees:** means the fees payable by the Client for the provision of the Services as set out in the Proposal;

**In-put Material:** all documents, information and materials provided by the Client relating to the Services including (without limitation), computer programs, data, reports and specifications.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software including source code, database right, topography rights, moral rights, rights in undisclosed or confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**MRS Code:** means the Code of Conduct for Market Research published by the UK Market Research Society as amended or adopted from time to time;

**Pre-existing Materials:** all documents (which shall include any drawing, design, picture or other image, tape, disk or other device or record embodying or recording information in any form and any media) information and materials provided by the Company relating to the Services, which existed prior to the commencement of the provision of the Services including computer programs, data, reports and specifications;

**Proposal:** the proposal issued by the Company detailing the services to be provided to the Client;

**Services:** the services to be provided by the Company as more particularly detailed in the Proposal.

1.2 A reference to **writing** or **written** includes faxes and e-mail.

1.3 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2. Application of Conditions**

2.1 The Client's acceptance of a Proposal, (whether in a purchase order or otherwise) constitutes an offer by the Client to purchase the Services on these Conditions. No offer placed by the Client shall be accepted by the Company other than by a written acknowledgement issued by the Company and executed by the parties or (if earlier) by the Company starting to provide the Services, when a contract for the supply and purchase of the Services will be established made up of the accepted Proposal and these Conditions.

2.2 The Client warrants that it is:

- a) using the Services for business purposes; and
- b) not a consumer.

2.3 These Conditions shall prevail over any terms or conditions contained, or referred to, in any communication from the Client to the Company or implied by law, trade custom, practice or course of dealing. If there is any conflict or ambiguity, the terms of the accepted Proposal shall have priority over the Conditions.

2.4 No variation of these Conditions shall be binding on the parties unless agreed in writing between the Company and the Client.

## **3. Company's obligations**

3.1 The Company shall diligently perform its duties to a professional standard which is not less than the standards generally observed by other suppliers of similar size providing similar services. The Company shall procure that its employees, agents or subcontractors providing the Services shall perform their obligations with reasonable care and skill.

3.2 The Company shall provide the Client with necessary instructions, materials, and feedback information as appropriate to enable the Client to perform its obligations as set forth in these Conditions.

3.3 All time scales given by the Company for the provision of the Services are given in good faith but are estimates only and the Company shall not be liable for any delay in connection therewith.

3.4 The Company will abide by the MRS Code, a copy of which can be provided to the Client upon request.

## **4. Client's obligations**

4.1 The Client shall:

- a) co-operate with the Company and follow its reasonable instructions in all matters relating to the Services;
- b) provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Client's facilities, premises, personnel and information as required by the Company;
- c) appoint an individual authorised by the Client to act on its behalf in relation to all matters, decisions and communications required by the provisions of or otherwise relating to these Conditions to be available to the Company during the Client's

normal business hours via telephone and/or email and to respond to the Company's enquiries (whether by telephone, email, or otherwise) within one (1) business day, and the Company shall be entitled to deal with that individual accordingly;

d) provide to the Company, in a timely manner, all In-put Material that it may require for the proper performance of its obligations hereunder and ensure that all In-put Material supplied is up-to-date, complete and accurate in all material respects; and

e) comply with the MRS Code.

4.2 The Company shall not be responsible for any delay, cost increase, charges, losses or other consequences whether arising directly or indirectly from the Client's failure to perform all or any of its obligations hereunder.

4.3 The Client acknowledges and agrees that details of the Client's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Company in connection with the provision of the Services.

## 5. Charges and payment

5.1 Unless otherwise agreed by the Company and the Client, **the Fees will be invoiced as to 50% upon the establishment of a contract** to provide the Services in accordance with clause 2.1 above ("Initial Amount") and the balance of the Fees and any additional charges incurred in the provision of the Services (if any) shall be invoiced at any time after the Company has delivered the final element of the Services as set out in the Proposal.

5.2 The Company reserves the right not to commence the provision of the Services until payment of the Initial Amount has been received and/or until it has received a duly signed and dated written acknowledgement of contract from the Client and satisfactory responses to any due diligence enquiries.

5.3 The Company reserves the right to levy additional fees:

- a) if the information provided by the Client is found to be misleading, incomplete or inaccurate;
- b) if the Client requests changes to the Services which result in higher costs being incurred and/or more time being expended; or
- c) if the Client postpones the commencement date for provision of the Services; or
- d) if failure or delay by the Client, in fulfilling its obligations, imposes additional costs on the Company.

Should it be necessary to levy additional fees, the Company shall advise the Client as soon as is reasonably practical.

5.4 If the Client cancels the provision of the Services the Company shall be at liberty to make a charge to cover fees and expenses on all work undertaken and the cost of all binding commitments entered into prior to receipt of the Client's written cancellation notice.

5.5 The Fees are exclusive of Value Added Tax (VAT) and, where appropriate, will be subject to the addition of VAT at the prevailing rate. The Fees shall become due and payable

immediately upon the invoice date and the Client shall pay each invoice submitted to it by the Company, in full and in cleared funds, **within 30 days of receipt** to a bank account nominated in writing by the Company. Time for payment shall be of the essence.

5.6 Overdue invoices shall accrue interest at the prevailing Bank of England Lending Rate in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and should the Company have to issue legal proceedings to enforce payment of any invoice, the Client accepts responsibility for all the Company's legal fees and disbursements notwithstanding the value of the claim, on a full indemnity basis.

## **6. Intellectual property rights**

6.1 As between the Client and the Company, all Intellectual Property Rights and all other rights in the Pre-existing Materials shall be owned by the Company. The Company licenses all such rights to the Client on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of all or any reports delivered to the Client as part of the provision of the Services. If the provision of the Services is terminated by the Company under condition 9.1, this licence shall automatically terminate. For the avoidance of doubt, the Company retains all rights to reproduce, use, and sublicense its Intellectual Property Rights to third parties.

6.2 Beyond the rights expressly set out in these Conditions, nothing in this clause 6 shall assign to the Client any further title, right or interest in any Company property including Intellectual Property Rights in Pre-existing Materials, data or works, technical knowhow and software.

6.3 The Company has the right to destroy all other written and electronic records, including questionnaires and working papers after a period of two years from the completion of the provision of the Services without reference to the Client.

## **7. Confidentiality and the Company's property**

7.1 The Client shall keep in strict confidence all Pre-existing Materials, technical or commercial know-how, reports, specifications, inventions, data, materials, technology, computer programs, software, processes or initiatives which are of a confidential nature and have been disclosed to the Client by the Company, its employees, agents, consultants or subcontractors and any other confidential information concerning the Company's business, its products and/or its services which the Client may obtain (Confidential Information) .

7.2 Subject at all times to its general duty set out in clause 7.1, the Client may only disclose Confidential Information to (a) its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Client's obligations in connection with the provision of the Services and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority provided that, to the extent it is legally permitted to do so, the Client gives the Company as much notice of such disclosure as possible. The Client shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 7 and enter into obligations of confidentiality to the Client that are no less onerous.

7.3 The Client shall not use any Confidential Information for any purpose other than to perform its obligations in connection with the provision of the Services.

7.4 All materials, drawings, specifications, reports and data supplied by the Company to the Client (including Pre-existing Materials) shall, at all times, be and remain as between the Company and the Client the exclusive property of the Company

7.5 Each party shall comply with its obligations under the Data Protection Act 1998 as amended from time to time and under any of its subordinate legislation, related codes of conduct and relevant guidelines at all times throughout the duration of this contract.

## **8. Liability**

8.1 The Client shall indemnify the Company against all claims, proceedings and liabilities (whether civil or criminal) of any kind whatsoever which may arise in consequence of the use by the Company of any In-put Material supplied by the Client (or the Client's servants or agents) for the purposes of the provision of the Services, and against all legal costs, fees and expenses incurred by the Company in relation to any such claims, proceedings or liabilities, on a full indemnity basis.

8.2 Any output, prognoses, conclusions, recommendations and advice given in any report generated by the Company are the result of careful analysis of data. The Client acknowledges that such output is based on small samples and the underlying assumptions of the statistical models used and such output merely provides results that are indicative only and these cannot be and are not guaranteed by the Company. Accordingly, such outputs, reports and presentations are subject to the usual "statistical norms and variables" applied to work of this nature.

8.3 In translating survey and statistical modelling results from the controlled test environment to the real market place it is possible that some of the assumptions on which outputs are based will not remain constant. Any subsequent change in market conditions, or to the test product/service itself, could impact the initial performance predictions including possible invalidation of the results. Further, as the results are just one factor to be taken into account by the Client, the Client accepts that the Company cannot be liable for the consequences of any action that has in whole or part relied or been based on its output or results or an interpretation thereof.

8.4 Nothing in this clause 8 shall limit or exclude the Company's liability for:

a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or sub-contractors;

b) fraud or fraudulent misrepresentation; and

c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

8.5 Subject to clause 8.4, the Company's total liability in contract, tort, including negligence and breach of statutory duty, misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Services shall be limited to the amount of the Fees paid by the Client to the Company for the provision of the Services.

8.6 Subject to clause 8.4, the Company shall not be liable to the Client for any indirect, incidental, special or consequential loss or damage (whether for loss of profit, loss of opportunity, sales or business, loss of anticipated savings, loss of use or corruption of

software, data or information, depletion of goodwill or otherwise), costs or expenses which arise out of or in connection with the provision of the Services.

8.7 The Company shall owe no duty of care in respect of the provision of the Services or the results obtained in the course thereof to any party other than the Client.

8.8 The Client shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under these Conditions.

## **9. Termination**

9.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the provision of the Services forthwith upon the happening of any of the following events:

- a) the Client fails to pay any amount due on the due date for payment; or
- b) the Client's financial position deteriorates to such an extent that in the Company's opinion the Client's capability to adequately fulfil its obligations under the contract has been placed in jeopardy;
- c) the other party commits a material breach of any of these Conditions and (if such a breach is remediable) fails to remedy that breach within 21 days of being required to do so by written notice identifying the breach; or
- d) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- e) if the Client enters into or proposes a voluntary arrangement with its creditors or reconstruction or re-scheduling of its debts or if its directors make a declaration of solvency for the purpose of a members' voluntary winding up, or if notice is given of a creditors' meeting in connection with a creditors' winding up, or if a special resolution is passed that the company be wound up by the court, or the holder of a qualifying charge over the assets of the Client has become entitled to appoint an administrative receiver, or if an administrative or other receiver is appointed, or if an application is made to the court for or the court makes an administration order or order that the company be wound up by the court, or if the company ceases to carry on its business or is unable or deemed unable to pay its debts within the meaning of the Insolvency Act 1986 Section 123.

9.2 On termination of the provision of the Services for any reason:

- a) the Company shall be entitled forthwith to render an invoice to the Client in respect of all work completed by the Company in connection with the provision of the Services up to and including the date of termination and such invoice shall be paid in full by the Client immediately;
- b) the Client shall, within a reasonable time, return to the Company the Pre-existing Materials and if the Client fails to do so, then the Company may enter the Client's premises and take possession of them.

- c) Until the Pre-existing Materials have been returned to or repossessed by the Company, the Client shall be solely responsible for their security and safe keeping;
- d) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected; and
- e) all sums payable to the Company shall become due immediately on its termination, despite any other provision.

## 10. Force majeure

10.1 Neither the Company nor the Client shall be liable for any delay in performing their obligations if such delay is caused by circumstances beyond their reasonable control (including without limitation any delay caused by any act or omission of the other party).

10.2 Subject to the party whose performance is unavoidably delayed (“the affected party”) giving prompt notice to the other party of the reasons for the delay and its likely duration, the affected party’s performance of its obligations shall be suspended for the period that the circumstances causing the delay persist (“the period of delay”) and the affected party shall be granted an extension of time for performance equal to the period of the delay. Both parties will use all reasonable endeavours to mitigate the impact of any period of delay and to recommence performance of their obligations as soon as reasonably possible.

10.3 Any costs arising from any period of delay shall be borne by the affected party and either party may, if such delay continues for more than 5 weeks, terminate the provision of the Services forthwith on giving notice in writing to the other in which event neither party shall be liable to the other by reason of such termination save that the Client shall pay the Company a reasonable sum in respect of any work carried out by it prior to such termination and for that purpose the Company may deduct such sum from any amounts previously paid by the Client (the balance (if any) of which shall be refunded to the Client whether paid by way of a deposit or otherwise).

## 11. Miscellaneous

**11.1 Notices:** Any notice required to be given under these Conditions shall be in writing and shall be sent by pre-paid first-class post, recorded delivery or e-mail and shall be deemed to have been received by the addressee within 2 working days of posting (in the case of first class post) or sending (in the case of e-mail) as the case may be provided always that the correct address has been used as indicated above in respect of the Company or in the Proposal in respect of the Client. This Condition 11.1 shall not apply to the service of any proceedings or other documents in any legal action.

**11.2 Waiver:** No failure or delay by a party in exercising any right or remedy under these Conditions or by law shall constitute a waiver of that (or any other or subsequent) right or remedy, nor preclude or restrict its further exercise.

**11.3 No Partnership.** Nothing in these Conditions is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the Company and the Client, nor constitute either as the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other in any way.

**11.4 Third Parties;** The Contracts (Rights of Third Parties) Act 1999 shall not apply to these Conditions.

**11.5 Restriction:** Each party agrees that during the provision of the Services and for a period of one (1) year immediately following completion of provision of the Services it shall not directly or indirectly, for itself or on behalf of any person, firm, partnership, corporation, entity or association, solicit any employee of the other party.

**11.6 Governing Law:** These Conditions shall be governed by the laws of England and Wales and any dispute arising out of any act to which these Conditions apply shall be subject to the exclusive jurisdiction of the English Courts.