

## Oscar James Partners Ltd.

### *Terms and Conditions of Business – Corporate Business Sales To The Buyer*

#### 1. Interpretation

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

##### 1.1 Definitions:

**Broker:** Oscar James Partners Ltd. Registered in England, company no. 12501898 trading address, 10 Towerfield Road, Shoeburyness, Southend-On-Sea, SS3 9QE

**Buyer:** the person, firm or corporate body together with any subsidiary or associated person, firm or corporate body as the case may be) who (i) instructs the Broker to introduce them to a potential Seller; (ii) requests further information from the Broker about a seller; (iii) accepts an Introduction from the Broker.

**Cancellation Fee:** the fee payable by the Buyer to the Broker when the Buyer withdraws an offer to purchase the Seller after the offer has been communicated to the Seller.

**Commencement Date:** means the date on which the Buyer signs these Terms of Business and or any Confidentially Undertaking document supplied by the Broker and for the avoidance of doubt all the provisions of these Terms shall be deemed to become effective at this date.

**Exclusivity Period:** the period during which these Terms shall remain in force commencing on the Commencement Date.

**Introduction:** (i) the passing to the Buyer of information which identifies the Seller or (ii) the Buyer's meeting of representatives of the Seller (in person, by telephone or by any other means), and "Introduces" and "Introduced" shall be construed accordingly.

**Introduction Date:** means the date upon which the Broker introduces the Seller to the Buyer.

**Introduction Fee:** the fee payable by the Buyer to the Broker for an Introduction resulting in an offer by the Buyer to purchase the Seller.

**Turnover:** the Turnover or total fee income generated from the services provided by the Seller.

**Seller:** any company introduced by the Broker to the Buyer within the Exclusivity Period.

1.2 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.

1.3 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.

1.4 A reference to **writing** or **written** includes fax and email.

#### 2. The Contract

2.1 These Terms and Conditions of Business and the attached Schedule(s) (**Terms**) constitute the contract between the Broker and the Buyer for the Introduction of a Seller(s) to the Buyer and are deemed to be accepted by the Buyer by virtue of an Introduction of a Seller.

2.2 These Terms contain the entire agreement between the parties and unless otherwise agreed in writing by a director of the Broker, these Terms will prevail over any other terms of business put forward by the Buyer.

2.3 No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between a director of the Broker and the Buyer and are set out in writing and a copy of the varied terms is given to the Buyer stating the date on or after which such varied terms shall apply.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Broker, and any descriptions or illustrations contained in the Broker'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 Contract or have any contractual force.

#### 3. Exclusivity Period

For the period of 18 months beginning on the Introduction Date, the Buyer agrees to the exclusive engagement of the Broker in relation to any Introduced Seller.

#### 4. Notification and Fees

4.1 The Buyer agrees to:

(a) Notify the Broker immediately of the terms of any offer to purchase a Seller;

- (b) Notify the Broker immediately that its offer to purchase a Seller has been accepted and to provide details to the Broker of the purchase price agreed with the Seller together with any documentary evidence as requested by the Broker; and
- (c) Pay the invoice submitted by the Broker:
- within 14 days of the date of the invoice; and
  - in full and in cleared funds to a bank account nominated in writing by the Broker, and
  - time for payment shall be of the essence of the Contract.

4.2 The Broker shall invoice the Buyer for the Introduction Fee, calculated in accordance with clause 4.3, on completion of the sale.

4.3 The Introduction Fee of 7.5% is calculated in accordance with the Seller's Turnover. The execution by you of these Terms, or your requirement for us to commence work as outlined herein shall constitute your irrevocable agreement to the Fee.

4.4 Any fee will be invoiced and sent to you the Buyer on the date that completion takes place

4.5 All amounts due under the Contract 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).

4.6 VAT is charged at the standard rate on all fees.

4.7 The Broker reserves the right to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 on invoiced amounts unpaid by the due date at the rate of 8% per annum above the base rate from time to time of the Bank of England from the due date until the date of payment.

4.8 For the avoidance of doubt, any completion of the purchase of a Seller by the Buyer shall incur the fees notwithstanding that the completion may take place after the expiry of the Exclusivity Period.

4.9 A Seller shall remain a Seller even if that introduction was effected by both the Broker and a third party and the fee shall be payable on completion of the purchase in accordance with these Terms.

#### 5. Withdrawal of offer

5.1 Subject to clause 5.2 if, after an offer to purchase the Seller has been made, and the offer has been accepted by the Seller (or the owners thereof), the Buyer decides for any reason to withdraw it prior to completion, the Buyer shall be liable to pay the Broker a Cancellation Fee equal to 50% of the Introduction Fee.

5.2 The Buyer shall be permitted to withdraw from the purchase of the Seller without liability to the Broker where that withdrawal is as a consequence of:

- a matter being identified in the course of the Buyer's due diligence into the Seller; and
- that matter is of material significance or seriousness to the business and affairs of the Seller (the assessment of the seriousness of the matter shall be made reasonably, and having due regard to the rights of both the Agent and the Buyer); and
- where that matter cannot be reasonably dealt with by virtue of an adjustment to the purchase price of the provision of the usual forms of contractual protection.

#### 6. Suitability Checks

6.1 The Broker endeavours to ensure the suitability of the Seller Introduced to the Buyer.

6.2 Notwithstanding clause 6.1 the Buyer shall be obliged to satisfy itself as to the suitability of the Seller and in particular, the Buyer should verify so far as possible all information supplied.

#### 7. General

##### 7.1 Force majeure.

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

##### 7.2 Liability.

The Broker shall not be liable under any circumstances for any loss, expense, damage, delay, costs or compensation (whether direct, indirect or consequential) which may be suffered or incurred by the Buyer arising from or in any way connected with the Broker introducing a Seller to the Buyer or from the failure of the Broker to introduce any Seller. For the avoidance of doubt, the Broker does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.

##### 7.3 Confidentiality.

- Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, Buyers or suppliers of the other party, except as permitted by clause 7.3(b).
- Each party may disclose the other party's confidential information:
  - to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's

- obligations under the Contract. 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 clause 6.3; and
- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
  - (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

**7.4 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract 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 Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**7.5 Variation.**

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**7.6 Waiver.**

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract 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 Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**7.7 Severance.**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**7.8 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.
- (c) 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.

**7.9 Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**7.10 Governing law.**

The Contract, and any dispute or claim (including non-contractual 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 law of England and Wales.

**7.11 Jurisdiction.**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

**I confirm that I am authorised to sign these Terms on behalf of the Buyer.**

.....  
Signed for and on behalf of the Buyer

.....  
Name (Printed)

.....  
Dated