

Terms and Conditions for the Supply of Services

These Terms and Conditions for the Supply of Services (the “Terms and Conditions”) shall apply to all contracts for the supply of services by KMB Ltd, a company registered in England and Wales with registration number 4129141 whose principal place of business is at KMB House, Secure Hold Business Centre, Studley Road, Redditch, B98 7LG, United Kingdom (“We”, “Us”, “Our”) and You, the client specified in the applicable proposal or Scope of Work (“You”, “Your”) (hereinafter jointly referred to as “Both of Us”).

WHEREAS

- a) We are in the business of delivering direct, database and digital marketing solutions to business to business and B2C clients; and
- b) You wish to use our services to support business to business marketing campaigns and programs.

Both of Us agree and covenant as follows:

1 Definitions.

The following terms have the meanings set forth below whenever they are used in these Terms and Conditions:

“Cancellation Fee” means the fee payable by You for termination of a Contract in accordance with Clause 8.3 of these Terms and Conditions and comprising of:

- a) The cost of Our reasonable time spent preparing the Proposal and/or performing the Services detailed in such Proposal to the date of such notice of termination charged at the rate detailed in the Proposal;
- b) all reasonable costs incurred by Us in the purchase of lists or other goods or services in order to perform the Services detailed in the Proposal; and
- c) A sum equivalent to Our loss of profit resulting from the termination of the Contract which shall be no less than 20% of the Services Fee.

“Client Material” means any copy, branding, trademarks, logos, artwork or images supplied to Us by You for the purposes of creating Marketing Material.

“Commencement Date” means the date the Services will commence as detailed in the Proposal.

“List” means a contact list of relevant business contacts which we may own or purchase a license for in order to provide the Services.

“Marketing Material” means the material created by Us for Your marketing campaign as part of the Services which may incorporate Your Client Material and may include copy, email templates, graphics and design.

“Methodology” means the methods and processes We use to perform the Services for You which may include, but are not limited to, list building, data services, communication planning, response handling, formatting of response data and reporting.

“Response Data” means the data collected as a result of running the marketing campaign which may include a modified List.

“Payment Plan” means the spread, timescales and frequency of payment of the Services Fee by You as detailed in the Proposal.

“Proposal” means the document attached to these Terms and Conditions in which We will detail Our service to You which may include a description of the Services, the campaign objectives, the Methodology, the Services Fee, timescales and payment terms, this may also be referred to as “Scope of Work”

“Services” means Our services as detailed in the Proposal, such as but not limited to the design and implementation of a marketing campaign.

“Services Fee” means the fee payable by You to Us for the provision of Services as detailed in the Proposal or Scope of Work.

2 Agreement Structure

2.1 These Terms and Conditions, together with Our Proposal or Scope of Work shall constitute a binding contract (the “Contract”) for the purchase and supply of Services as set out in the applicable Proposal or Scope of Work. Each applicable Proposal or Scope of Work together with these Terms and Conditions shall form a separate Contract, independent of all other Contracts that might exist between Us and You. In the event of any conflict between the signed Proposal or Scope of Work and these Terms and Conditions, the Proposal or Scope of Work shall take precedence.

2.2 These are the only terms and conditions that apply to Our supply of the Services, and take precedence over any additional or conflicting terms that may be printed on any order form or other documentation supplied by You. You hereby agree that the provision of Services shall not constitute deemed acceptance of any such additional or conflicting terms and conditions which shall be null and void.

2.3 For the purposes of these Terms and Conditions or any Contract electronic mail shall be considered as notification in writing.

3 Our Obligations

3.1 We shall provide the Services to You as detailed in Our Proposal or Scope of Work. You may request and We shall not unreasonably refuse an amendment to the Services. We may also give notice to You that a change in circumstances prompted by You constitutes an amendment to the Services even though no formal request for amendment has been issued by You. In response to such requests, We shall supply You with a written amendment to the Proposal or Scope of Work including the specification for the work, price and approximate timescales. Once You have accepted such amendment in writing it shall be attached to the Proposal or Scope of Work and shall be delivered subject to these Terms and Conditions.

3.2 We may create Marketing Material in order to provide the Services and You hereby grant Us the right to use Your Client Material for the creation of Marketing Material as appropriate to the provision of Services. The creation of Marketing Material is at Our discretion and it is not subject to sign off or approval by You.

3.3 Time-scales given in the Proposal or Scope of Work, including the Commencement Date, are given in good faith but because of the nature of work undertaken they must be considered to be estimates only. While We shall make reasonable endeavors to maintain the time-scales quoted, meeting such time-scales shall not constitute the essence of these Terms and Conditions.

3.4 We reserve the right to amend the Methodology or Marketing Material from time to time in order to perform the Services or to comply with any statutory requirement or change in circumstances prompted by You or any other third party associated with Our performance of the Services.

3.5 We may invoice You any additional expenses or costs incurred by Us in the provision of the Services as agreed by Both of Us prior to Us incurring the expenses or costs or as detailed in the Proposal or Scope of Work. These may include but are not limited to travel and expenses.

3.6 We reserve the right to amend the Services Fee upon thirty (30) days written notice to You. You may terminate the Contract without penalty within thirty (30) days of receipt of written notice from Us of an increase in the Services Fee. If We do not receive written notice within thirty (30) days You are deemed to have agreed to the amendment to the Services Fee.

3.7 Although We shall use Our reasonable endeavors to make the Proposal or Scope of Work as accurate as possible We do not warrant that the Proposal of Scope of Work will be free of typographical or clerical errors and We reserve the right to correct such errors without any liability on Our part.

3.8 We reserve the right to assign specific personnel to provide the Services and to change such personnel without prior notification to You. You may request specific personnel to perform the Services and We shall use Our reasonable endeavors to comply with such request.

4 Your Obligations

4.1 You shall provide co-operation and support to Us in Our efforts to perform the Services. Such cooperation and support shall include, but not be limited to:

- a) A reasonable level of responsiveness to Our requirements and communications;
- b) the timely transmittal and release to Us of appropriate and accurate documentation and information including Client Material and information reasonably requested by Us in order to prepare the Proposal and subsequently to provide the Services;

- c) The making available of competent personnel to assist Us when and to the extent as is reasonably requested by Us; and
- d) The timely review and confirmation of Your marketing campaign requirements as described by Us in the Proposal.

4.2 You agree that if You do not perform Your obligations under these Terms and Conditions or any Contract and such non-performance affects Our ability to perform, We shall not be considered in default under these Terms and Conditions or any Contract to the extent so affected, and You shall remain fully obligated to pay Us as provided in these Terms and Conditions or any Contract regardless of any failure to perform any Services so affected.

4.3 If You do not perform Your obligations under these Terms and Conditions or any Contract We may at Our discretion suspend the Services for so long as You are in breach of these Terms and Conditions or any Contract and the provisions of Clause 4.2 shall apply.

4.4 Without in any way restricting the right of an employee freely to accept employment and change employment, if You induce an employee of Ours to enter Your service at any time while Services are being provided under these Terms and Conditions or any Contract or during a period of twelve (12) months thereafter then You shall pay Us an amount being equivalent to twenty five percent (25%) of the employee's net annual salary such sum being a genuine pre-estimate of the cost of the disruption that such inducement would cause to the efficient conduct of Our business.

5 Fees and Payment

5.1 We shall provide an estimate of the Services Fee in an initial Proposal (the "Cost Estimate") and such Cost Estimate shall be valid for thirty (30) days from the date of the initial Proposal or Scope of Work. We reserve the right to withdraw or vary the Cost Estimate without prior notice but shall not unreasonably do so. Once a final Cost Estimate has been agreed in writing by Both of Us, it shall be set out in the Proposal as the Services Fee and the Proposal or Scope of Work shall then be signed by You and Us and shall form a binding contract in accordance with Clause 2.1.

5.2 We will invoice You the Services Fee in accordance with Payment Plan detailed in the Proposal or Scope of Work plus any additional costs in accordance with Clause 3.5. You shall pay each invoice within thirty (30) days of the date thereon or as otherwise set out in the Proposal.

5.3 The Service Fee is exclusive of VAT which is payable by You and You shall be liable for any other agreed upon fees, any national, European Union, value added, sales, excise, state, local or other taxes or customs duties applicable. You shall pay an interest charge on any undisputed sum outstanding to Us at the rate of 5% above HSBC Bank Sterling base rate as at the date of invoice. You shall notify Us in writing within 10 days of receipt of an invoice that the invoice is in dispute.

5.4 If payment of any undisputed invoice or any part thereof is overdue then We may at Our option:

- (a) Suspend all Services until such payment is made in which case any expenses to Us occasioned by such suspension and/or subsequent resumption shall be added to the Service Fee and the time-scales shall be delayed accordingly; and
- (b) Treat such as a material breach and terminate these Terms and Conditions and any Contract in accordance with Clause 8.2 (a).

6 Warranty.

6.1 Subject to the exceptions set out below and the limitations upon Our liability in Clause 7, We warrant that the Services will be carried out with reasonable skill and care by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.

6.2 Save as expressly provided in these Terms and Conditions or any Contract, We specifically exclude without limitation all conditions, warranties, representations or other terms relating to these Terms and Conditions or any Contract including any conditions, warranties, representations or other terms that might otherwise be implied or incorporated into these Terms and Conditions or any Contract, such as those of satisfactory quality, fitness for a particular or any purpose, or ability to achieve any particular result.

7 Limitation of Liability.

7.1 Nothing in these Terms and Conditions or any Contract shall exclude or limit Our liability for (i) fraud or other criminal act, (ii) personal injury or death caused by the negligence of Our employees in connection with the performance of their duties hereunder or by defects in any Services supplied pursuant to these Terms and Conditions or any Contract, or (iii) any other liability that cannot be excluded by law.

7.2 Subject to Clause 7.1, in no event will We be liable under these Terms and Conditions or any Contract for any damages resulting from: (i) loss of, damage to or corruption of data, (ii) loss of use, (iii) lost profits, (iv) loss of anticipated savings or revenues, (v) any product or service not provided by Us, (vi) loss of goodwill or reputation, and/or (vii) any indirect or consequential loss. Such liability is excluded whether such damages were reasonably foreseeable or actually foreseen.

7.3 Except as provided in Clause 7.1 and in Clause 7.2 Our maximum aggregate liability to You for any cause whatsoever shall be for direct costs and damages only and will be limited to a sum equivalent to 125% of the Services Fee paid and payable by You in respect of the Contract that is the cause of Your claim during the twelve (12) months preceding the date of any action arising from any breach of the corresponding Contract.

7.4 We hereby exclude all liability that we have not expressly accepted in these Terms and Conditions or any Contract. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause 7 “We” includes Our employees, sub-contractors, licensors and suppliers who shall therefore have the benefit of the limits and exclusions of liability set out in this Clause in terms of the Contracts (Rights of Third Parties) Act 1999.

7.5 No action, regardless of form, arising out of transactions occurring under or contemplated under these Terms and Conditions or any Contract may be brought by either party more than two (2) years after the cause of action has accrued.

7.6 Save as provided in Clause 7.7 You shall have no remedy in respect of any representation (whether written or oral) made to You upon which You relied in entering into these Terms and Conditions or any Contract (“Misrepresentation”) and We shall have no liability to You other than pursuant to the express terms of these Terms and Conditions or any Contract.

7.7 Nothing in these Terms and Conditions or any Contract shall exclude or limit Our liability for any Misrepresentation made by Us fraudulently.

8 Duration & Termination.

8.1 The Contract shall become effective on the date first written in the Proposal or Scope of Work and shall continue until the completion of the Services as detailed in the Proposal or Scope of Work, unless and until terminated in accordance with the provisions of Clauses 3.6, 5.4(b), Clause 8.2, and/or Clause 8.4.

8.2 Either party (“the Initiating Party”) may forthwith terminate the Contract at any time:

(a) On fourteen (14) days written notice if the other party commits any material breach of these Terms and Conditions or the Contract and has not remedied the breach set out in such notice by the end of such fourteen day period; or

(b) If the other party shall have a receiver or administrative receiver appointed over it or any of its undertaking or assets or shall pass a resolution for winding up or ceases to trade or any similar event occurs.

8.3 In the event of termination of a Contract by Us in accordance with Clause 8.2 a Cancellation Fee shall be payable to Us and shall be added to any payment for Services due to Us

8.4 You may terminate the Contract without cause upon thirty (30) days written notice or such other period of notice as may be stated in the Proposal or Scope of Work and You agree to pay the Cancellation Fee associated with such early termination which We may invoice at Our discretion.

8.5 Following termination in accordance with Clause 8.4 and where payment for Services has been received by Us in advance of delivery of such Services, You may request that We:

(a) Refund to You the unused portion of such advance payment less the Cancellation Fee (the “Balance”); or

(b) Transfer the Balance to payment for Services in another Proposal as agreed between Both of Us; or

(c) Transfer the Balance to another supplier or third party.

8.6 Transfer of any Balance in accordance with Clauses 8.5(b) and 8.5(c) above shall be at Our discretion and We shall be under no obligation to agree to or to perform such transfer and alternatively We may choose to refund the Balance to You directly.

8.7 The expiry or termination of these Terms and Conditions or any Contract for whatever reasons shall be without prejudice to any other rights or remedies a party may be entitled to under law and shall not affect the respective rights and liabilities of either of the parties accrued prior to such termination.

9 Intellectual Property.

9.1 We warrant that We are the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in the Lists and the Methodology. Title to the Lists and the Methodology shall remain vested in Us or Our licensors.

9.2 You warrant that You are the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in the Client Material. Title to the Client Material shall remain vested in You or Your licensors. Title to the Marketing Material and Response Data shall be vested in You or Your licensors upon payment in full of the corresponding Services Fee.

9.3 You hereby agree to indemnify Us against any and all loss or damage arising from the breach of any third party intellectual property right or any applicable law resulting from the possession or use of the Client Material in accordance with these Terms and Conditions or any Contract.

9.4 You hereby acknowledge and accept that due to the nature of the work We undertake We may produce marketing material for other clients similar to the Marketing Material in layout and design and You hereby grant Us a non-exclusive, perpetual right to use the Marketing Material in the preparation of marketing material for other clients provided always that such use will not include any Client Material or in any way reproduce Your business identity, branding, trade names, trademarks or other intellectual property rights.

9.5 Subject to Clause 9.2, in the event of any claim that the Marketing Material breaches any third party intellectual property right, We shall at Our discretion either modify the Marketing Material so that it no longer breaches such third party right, or secure for You the right to use the Marketing Material unmodified, at no cost to You. This shall be Your sole remedy in the event of any such breach of third party rights.

10 Confidentiality.

10.1 Confidential Information shall be defined as any information (whether disclosed in oral, written or electronic form) belonging or relating to Our or Your business affairs or activities and which: (i) has been marked as confidential or proprietary, (ii) has been identified orally or in writing as being of a confidential nature, or (iii) may reasonably be supposed to be confidential in the circumstances.

10.2 Each party undertakes that for a period of five years from the date of disclosure it will not, without the prior written consent of the other party, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than is necessary for the performance of its rights and obligations under these Terms and Conditions or any Contract and that all recipients of the Confidential Information shall be bound by the same confidentiality obligations as are set out in this Clause 10. If the Contract is terminated, each party shall, at the other party's option, return or destroy all Confidential Information of the other party.

10.3 The provisions of Clause 10.1 shall not apply to (a) any information in the public domain otherwise than by breach of these Terms and Conditions or any Contract; (b) information lawfully in the possession of the receiving party thereof before disclosure by the disclosing party; (c) information lawfully obtained without restriction from a third party; and (d) information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority provided that the party under such duty to disclose shall use all reasonable endeavors to give the other party as much prior notice of such disclosure as is reasonably practicable and permitted by law.

10.4 We may publicise Our involvement with You with Your prior consent such consent not to be unreasonably withheld or delayed and You may publicise Your involvement with Us with Our prior consent such consent not to be unreasonably withheld.

11 Assignment.

You may not assign these Terms and Conditions or any Contract or otherwise transfer any rights or obligations under these Terms and Conditions or any Contract except with Our prior written consent.

12 Dispute Resolution, Law & Jurisdiction.

12.1 In the event of any dispute arising under these Terms and Conditions or any Contract the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be appointed by CEDR. No party may commence court proceedings in respect of any dispute arising out of these Terms and Conditions or any Contract until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay. Notwithstanding the foregoing, nothing in these Terms and Conditions or any Contract shall limit either party's right to seek injunctive relief.

12.2 If a mediation as set out in Clause 12.1 is not successful in resolving any dispute Both of Us agree that the courts of England shall have exclusive jurisdiction to settle any disputes arising out of or in connection with any Contract and that the laws of England shall govern the Contract and these Terms and Conditions.

13 Survival.

The following clauses shall continue to be in effect after the termination or expiration of these Terms and Conditions or any Contract: 1, 3.5, 4.4, 5, 6, 7, 8.3, 8.5, 8.6, 8.7, 9-14 inclusive.

14 General.

If an English Court judges any provision of these Terms and Conditions or any Contract to be invalid, void, or unenforceable, the parties agree that the remaining provisions of these Terms and Conditions or any Contract shall remain valid and enforceable. No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto. No single or partial exercise of any power or right by either party shall preclude any other or further exercise thereof or the exercise of any such power or right under these Terms and Conditions or any Contract. Neither Terms and Conditions nor any Contract may be changed, modified, amended, released or discharged except by a subsequent written agreement or amendment executed by duly authorized representatives of Us and You. A person who is not a party to these Terms and Conditions or any Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms and Conditions or any Contract except as explicitly provided by Clause 7.4 herein but this does not affect any right or remedy of a third party that exists or is available apart from the Act. Neither party is responsible for failure to fulfil its obligations hereunder due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder. All notices made pursuant to these Terms and Conditions or any Contract must be made in writing, sent postage prepaid by registered or recorded mail, addressed to the other party's address stated above and marked for the attention of "The Company Secretary". These Terms and Conditions and the signed Proposals or Scope of Work together constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous representations, agreements and other communications between the parties, both oral and written.