

HORNBLOWER BUSINESS BROKERS LIMITED
TERMS OF BUSINESS
AS AT FEBRUARY 2007

1. DEFINITIONS

- 1.1 "Agreement" means these Terms of Business ("Terms") together with the Engagement Letter.
- 1.2 "Charges" means our fees for the Services together with disbursements and VAT and other governmental or overseas taxes (where applicable) as set out in the Engagement Letter.
- 1.3 "Engagement" means each separate engagement by you of our Services as described in the Engagement Letter provided for each Engagement.
- 1.4 "Engagement Letter" means a letter enclosing these Terms and any other documents or terms applicable to the Services ("Additional Terms") that are referred to in the Engagement Letter, which records the Services to be provided to you and which has been accepted and signed by you.
- 1.5 "Hornblower" or "we" (or any derivatives) means Hornblower Business Brokers Limited, a company registered in England and Wales under company number 5974172 and whose registered address is 16-19 Copperfields, Spital Street, Dartford, Kent DA1 2DE
- 1.6 "Services" means the services to be provided to you under each Engagement, including but not limited to business valuations, pre-due diligence, business grooming, business marketing, assistance with negotiations and facilitation of the final sale.
- 1.7 "You" (or any derivatives) means the addressee of the Engagement Letter to whom the Services are to be provided.

2. BASIS OF AGREEMENT

- 2.1 The following Terms apply to all Engagements accepted by us. All Services to be carried out by us will be set out in the Engagement Letter and will be subject to these Terms. Where there are differences between the Terms and the Engagement Letter, the Engagement Letter shall take precedence.
- 2.2 You are responsible for ensuring the accuracy of the information you have supplied to us on which any Services are based.

3. CHARGES

- 3.1 We shall render invoices in respect of the Charges on the terms set out in the Engagement Letter.
- 3.2 Invoices will be payable in full at such time and in the manner specified in the Engagement Letter or within 30 days if not so specified. In certain circumstances we may require you to pay our Charges (whether in part or in full) in advance of providing the Services. You shall not be entitled to exercise any right of set-off.
- 3.3 If you fail to make any payment on the due date then without prejudice to any other right or remedy available to us we shall be entitled to:
- 3.3.1 charge you interest (both before and after judgement) on the amount of any unpaid invoices at the rate of 2% per annum above Barclays Bank's base rate from time to time from the date payment became due until the date of payment;
- 3.3.2 recover any costs incurred by us in collecting overdue payments (including the costs of any agents we may have appointed to collect such amounts) and you hereby indemnify us on a full basis against any such costs so incurred;
- 3.3.3 suspend any further performance of the Services or terminate the Agreement; and
- 3.3.4 appropriate payment from you for such of the Services supplied or expenses incurred as we may think fit.
- 3.4 You shall not be entitled to withhold payment of any amount payable to us on any account by reason of any dispute or claim by you in connection with this Agreement.

4. OUR RESPONSIBILITIES

- 4.1 The nature and content of any advice or information we provide will necessarily reflect the specific scope and limitations of our Engagement, the amount and accuracy of the information provided to us and the timescale within which the advice is required.
- 4.2 Where you have not provided us with full details of any issue which may be relevant to the provision of the Services we shall not be liable to the extent that advice or statements provided are inappropriate or insufficient due to full details having not been provided.
- 4.3 Any advice, opinion, statement of expectation, forecast or recommendation supplied by us as part of the Services shall not amount to any form of guarantee that we have determined or predicted future events or circumstances.
- 4.4 If general advice is provided, the applicability of this will depend on the particular circumstances in which it is to be used by you (of which we might not be aware) and should be viewed accordingly. In relation to any particular transaction, specific advice should always be sought and all material information provided to us. Our advice is provided for the purposes of each Engagement and we disclaim any responsibility for the use of our advice for a different purpose or in a different context.
- 4.5 Timescales for the provision of our Services are indicative only and although we will use our best endeavours to meet any agreed timescales, we shall not be liable in the event that these cannot be met.

- 4.6 We may rely on any instructions or requests made or notices given or information supplied, whether orally or in writing, by any person whom we know to be or reasonably believe to be authorised by you to communicate with us for such purposes.
- 4.7 We may communicate with you by electronic mail or other electronic media on the basis that in consenting to this method you accept that we cannot guarantee its security or confidentiality nor that transmissions will be free from infection or viruses
- 4.8 We may retain a record of all documents relating to you and the Services and unless you instruct us otherwise we retain the right to destroy these records within 12 months from the date that the final invoice was submitted in relation to that Engagement.
- 4.9 Where at your request we make any referrals or introductions to you of other professionals contacts or organisations who may be able to assist with providing you with various products or services we are not in any way recommending that you purchase such products or services. Where you decide to purchase such products or services we will not be liable for any loss which you may suffer as a result.
- 4.10 We are not authorised to provide you with any advice which is regulated by the Financial Services Authority ("FSA"). No responsibility or liability can be accepted by us for advice or services which are regulated by the FSA.

5. YOUR RESPONSIBILITIES

- 5.1 You shall remain responsible and accountable for:
- 5.1.1 the management, conduct and operation of your business and your affairs;
- 5.1.2 deciding on your use of, choosing what extent you wish to rely on, or implementing any advice, recommendations, valuations or other product of the Services supplied by us; and
- 5.1.3 making any commercial decisions affecting the Services, any products of the Services, your interest or your affairs, having regard to the restrictions on our scope of work and to the large number of other factors you and your other advisors should be aware of.
- 5.2 To enable us to perform the Services you shall:
- 5.2.1 supply promptly all information and assistance and all access to documentation which relates to the Services;
- 5.2.2 inform us immediately of any information or developments or change in your circumstances which may come to your notice and which might affect or have a bearing on the Services;
- 5.2.3 where appropriate, providing our employees and agents access to your premises during all reasonable hours to enable us to carry out the Services and ensuring your employees co-operate with us fully.
- 5.3 You represent and warrant that all information provided to us will be as complete and accurate as possible and to the fullest extent permitted in law, we shall not be liable to you for any loss or damage suffered by you arising from fraud, misrepresentation, information or materials whether supplied by you or by a third party on your behalf.
- 5.4 You acknowledge that any information or advice or any other product of the Services supplied by us is for your use only and not for the use of any third party
- 5.5 You shall not directly or indirectly solicit the employment of any of our directors or employees involved in performing the Services while the Services are being performed or for a period of 12 months following their completion or the termination of the Agreement without our prior written consent.
- 5.6 You accept that any valuation or other documents prepared by us are subject to the limitations provided in those documents. Once any such document is accepted by you we shall not be liable for the content of these except in the case or our manifest error.

6. CHANGES TO THE SERVICE

- 6.1 Where due to circumstances beyond our control it appears the provision of our Services will be delayed; or where you make a written request for a change in the Services to be provided; or where you request additional Services, then these will be treated as a change request.
- 6.2 Where a change request occurs or is accepted by us, we will provide you with details of the expected time of performance and the adjusted or additional costs to you in providing the revised or new services.

7. CONFIDENTIALITY

- 7.1 We confirm that where you give us confidential information we shall at all times endeavour to keep it confidential and you agree that it will be sufficient compliance with our duty of confidence for us to take such steps as we reasonably think fit to preserve confidential information from misuse both during and following termination of this Agreement.
- 7.2 The reports, analyses, letters, information and other advice we provide during the course of providing the Services to you are given in confidence solely for the purposes for which they have been provided and are provided on the condition that you undertake not to disclose these, or any other information made available to you by us during the course of our work, to

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- any third party (being a party other than those to whom the report, analysis, letter, information or advice is addressed) without our prior written consent.
- 7.3 Where it is envisaged that reports, analyses, letters, information or advice given by us to you will be provided to or used by a third party, you will inform us so that we can stipulate terms regarding such provision or require the third party to enter into a direct relationship with us before any report, analysis, letter, information or advice is provided to that third party. Unless the third party agrees appropriate terms with us, no copy of any information or use of that information can be made.
- 7.4 Neither we nor you will be prevented from disclosing confidential information which:
- 7.4.1 is or becomes public knowledge other than by a breach of an obligation of confidentiality;
- 7.4.2 is or becomes known from other sources without restriction on disclosure;
- 7.4.3 is required to be disclosed by law or any professional or regulatory obligation to the extent that such disclosure is necessary; or
- 7.4.4 is known to the receiver of the information prior to the disclosure of the information.
- 7.5 Without in any way detracting from the duty of confidentiality which we owe you and unless we have agreed otherwise in writing we reserve the right to act for your market or field competitors or any other third party
- 7.6 We may wish to disclose that we have performed work and Services for you for the purpose of promoting or marketing our Services and unless you instruct us otherwise we may identify you by name and indicate only the general nature of such work and Services and any details which have properly entered the public domain.
- 7.7 If we are provided with custody of any documents belonging to you those documents will be retained for so long as we require these in providing our Services (unless their return is requested), at the end of which they will be returned to you unless separate arrangements have been made.
- 8. COPYRIGHT**
Unless otherwise specified in the Engagement Letter, copyright and all other intellectual property rights in all documentation and materials (in whatever medium) produced for you shall vest and remain vested in us. Your use of the documentation and materials is restricted to the purpose for which it was prepared.
- 9. FORCE MAJEURE**
9.1 Neither you nor we shall be liable for any failure or delay in meeting any of our obligations under the Agreement (other than your obligations as to payment of our charges in accordance with clause 3 above) which are due to causes beyond our reasonable control including but without limitation, inclement weather, acts of God, acts of terrorism, war, riot, malicious acts of damage, civil commotion, strike, lockout, industrial disputes, refusal of licence, power failure, fire or lack of availability of materials.
- 9.2 If performance of the Services is substantially prevented for a continuous period of 6 months or more by virtue of the aforesaid events then either of us may terminate this Agreement by written notice to the other and neither party shall incur liability to the other in respect of such termination.
- 10. LIMITATION OF LIABILITY**
10.1 We shall not be liable to you by reason of any representation or any implied warranty, condition or other term, any duty at common law or under the express terms of the Agreement for any indirect special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever arising directly or indirectly from or in connection with the Services even if such loss was reasonably foreseeable or we had been advised of the possibility of you incurring the same.
- 10.2 You accept that all advice received by you during the course of an Engagement is provided by us not any individual employed or engaged by us and your sole recourse is against us and not the individual who may have advised you during the Engagement. For the purposes of this clause 10 any employee or consultant of ours will be entitled to exercise his or her rights to enforce the terms of this clause under the Contracts (Rights of Third Parties) Act 1999.
- 10.3 Our liability to you for each Engagement accepted by us shall in no circumstances exceed a sum equivalent to the Charges or the sum of £100,000 in respect of a single event or series of connected events in aggregate, whichever is the lower.
- 10.4 You shall indemnify:
- 10.4.1 us in respect of any claims for loss, damage, injury or expense by any third party arising directly or indirectly from this Agreement; and
- 10.4.2 us, our employees, directors, successors and assigns fully against any and all claims, damages, liabilities, costs and expenses (including but not limited to legal costs) arising out of any breach by you of your obligations under this Agreement.
- 10.4.3 Any claim made by you under this Agreement for an alleged breach of this Agreement must be made not later than 12 months from the date of completion of the Services or termination of this Agreement.
- 10.4.4 Nothing in these Terms shall be construed as excluding or limited our liability to you for death or personal injury resulting from our negligence.
- 11. TERMINATION**
11.1 Either you or we can terminate the Agreement by giving not less than 14 days' notice in writing to the other at any time.
- 11.2 Either you or we can terminate the Agreement on giving to the other written notice if any of the following events occurs in relation to the other:
- 11.2.1 that the other is in breach of their obligations under the Agreement and where the breach is capable of remedy fails to remedy such breach on being given 14 days' notice requiring such notice to be remedied; or
- 11.2.2 the other makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a limited liability company or partnership) becomes subject to any administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the other; or the other ceases or threatens to cease to carry on business.
- 11.3 In the event of termination without prejudice to any other remedy available to us:-
- 11.3.1 any unpaid Charges due to us will become immediately due and payable together with accrued but unbilled Charges;
- 11.3.2 any Charges which may subsequently become due under the terms of the Engagement Letter will remain unaffected by termination and shall on these arising become immediately due and payable;
- 11.3.3 you shall pay all Charges within 7 days of receiving an invoice for the same;
- 11.3.4 we shall retain any documents and papers you have provided to us until you have paid the Charges in full whereupon we shall on your request return any original documents and papers to you.
- 11.4 Clauses 7, 8, 10, 11, 12 and 13 and the obligations contained therein shall survive expiry or termination of this Agreement.
- 12. DATA PROTECTION**
12.1 Each of us shall ensure that we shall at all times comply with the provisions of and the obligations imposed by the Data Protection Act 1998 in relation to data held about the other (together with any subsequent amendment or re-enactment thereof that does not substantively change the original enactment).
- 12.2 Each of us acknowledges that performance of a duty imposed by the Act shall not constitute a breach of any obligation of confidentiality that may be owed to the other.
- 13. GENERAL**
13.1 This Agreement constitutes the entire agreement between you and us and supersedes any previous agreements or understandings, whether oral or written. Any changes to the Agreement must be agreed in writing and signed by both parties. All other terms and conditions express or implied by statute are excluded to the fullest extent permitted by law.
- 13.2 Any notice required or permitted to be given by either party to the other under this Agreement shall be in writing and delivered by pre-paid first class post (or pre-paid overseas equivalent) to our respective addresses appearing in the Engagement Letter (or such other address as may be notified in writing) and any such notice shall be deemed to have arrived on the third day following posting where posted from and to addresses in the UK and on the twelfth day following posting where posted from or to addresses overseas.
- 13.3 No failure or delay in either party in exercising or enforcing any rights conferred by the Agreement shall be deemed to be a waiver of any such rights and no waiver by either party of any breach of the Agreement shall be considered a waiver of any subsequent breach of the same or any other condition.
- 13.4 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions in the Agreement and the remainder of the provision in question shall not be affected.
- 13.5 You will not be entitled to assign or transfer any rights under the Agreement without our prior written consent (such consent not to be unreasonably withheld or delayed).
- 13.6 Any person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely on or enforce any provision of this Agreement.
- 13.7 In the event of any dispute arising out of or in connection with this Agreement the dispute shall be referred to CEDR (or such other organisation experienced in the process of alternative dispute resolution) in order to resolve the dispute by way of mediation.
- 13.8 This Agreement shall be governed by and construed in all respects in accordance with English law and the parties hereto submit to the exclusive jurisdiction of the English Courts.