

**ALEX MERLIN CONSULTANCY TELEMARKETING
TERMS AND CONDITIONS OF BUSINESS**

1. Definitions

In these terms and conditions the following words have the following meanings unless the context requires otherwise:

“Client Data” means any and all information, documentation, records and/or other data which is specified in the Statement of Work and/or otherwise required to be provided by You to enable Us to perform the Services. “Client Personal Data” shall also be included within any reference to Client Data where such personal data has been supplied by you;

“Client Personal Data” means any and all personal data relating to a living individual who can be identified from the data or from information which is in, or is likely to come into, the possession of either party and which is used in the course of the Services (whether supplied by You to Us and/or gathered and/or collated by Us on Your behalf as part of the Services);

“Confidential Information” means any and all information acquired by either party about the other party’s business and/or given by one party to the other party and/or generated by either party from the other party’s Confidential Information;

“Contract” means any contract between You and Us incorporating these terms and conditions for the provision of the Services;

“Deliverables” means any and all information, documentation and/or other tangible items which We agree to provide to You as part of the Services and as detailed in the relevant Statement of Work;

“DPA” means the Data Protection Act 1998 as may be amended, extended, re-enacted or consolidated and all subordinate legislation made pursuant to it and including all similar legislation in any other jurisdiction in which the Services are performed;

“Intellectual Property Rights” means any patent, copyright, database right, design right (whether registered or unregistered), trade mark (whether registered or unregistered), semi conductor topography rights or other industrial or intellectual property right subsisting anywhere in the world and all rights to apply for the same;

“Key Contact” means Your point of contact at Our company in respect of the Services as detailed in the Statement of Work and/or as notified to You in writing from time to time;

“Liability” means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs, demands, fines, loss of profits, loss of reputation and any other losses (including without limitation any direct or indirect consequential losses) and/or liabilities;

“Processing” means obtaining, recording, holding the Client Personal Data or carrying out any operation on the Client Personal Data, including but not limited to organising, adapting, altering, retrieving, consulting, using, disclosing or destroying the Client Personal Data and “Process” shall have a corresponding meaning;

“Services” means the services and/or work to be performed by Us for You as set out in a Statement of Work;

“Statement of Work” means a statement of work entered into by the parties which sets out the scope of the Services and any contract variables such as price, payment terms, timescales for performance and deliverables;

“We, Us, Our” means Alex Merlin Consultancy; and

“You, Your, Yourself” means the person/organisation to whom We supply the Services.

2. Basis Of Contract

2.1 These terms and conditions shall govern the agreement between You and

Us to the exclusion of any other terms and conditions except those set out in the Statement of Work. If there is any conflict between the Statement of Work and these terms and conditions, the Statement of Work shall prevail.

2.2 Any request for Services placed by You leading to a contract which is not expressed to be subject to these terms and conditions shall still be subject to them.

2.3 These terms and conditions supersede all previous terms and conditions and shall replace any terms and conditions previously notified to You.

2.4 No variation to these terms and conditions shall be binding on Us unless contained in Our Statement of Work as special conditions or otherwise agreed in writing between You and one of Our authorised representatives, making reference to an amendment to these terms and conditions.

3. Orders And Contract

3.1 Any quotations for Services we may issue are not binding or capable of acceptance and are estimates only. Quotations may be withdrawn by Us at any time by oral or written notice.

3.2 We shall have the right to refuse to accept any orders placed for Services.

3.3 You shall be responsible for the accuracy of an order and for giving Us any Client Data necessary for Us to perform the Contract.

3.4 The Contract between You and Us shall come into effect on Our acceptance of Your order. No order for Services shall be deemed accepted by Us until confirmed in writing by Our authorised representative in a Statement of Work.

3.5 If You cancel the Contract for any reason You shall have no further recourse against Us under the Contract.

4. Performance

4.1 Dates for performance of the Services (including but not limited to the delivery of the Deliverables) as set out in the relevant Statement of Work are estimates only and are not guaranteed. Time is not of the essence in relation to such dates. They are also subject to any matter beyond Our reasonable control. We will use Our reasonable commercial endeavours to ensure performance on or by the dates specified in the Statement of Work.

4.2 You shall have no right to reject Services and shall have no right to rescind the Contract for late performance unless the due date for performance has passed and You have served on Us written notice requiring the Contract to be performed, giving Us not less than 14 days in which to do so and the notice has not been complied with.

4.3 If You refuse to allow performance of the Services then We shall be entitled to withhold performance of any other Services and to treat the Contract as repudiated by You and We shall have the right to rescind the Contract.

4.4 If You are required to provide any Client Data to enable Us to perform the Services, You undertake to provide that Client Data (in a format to be agreed) by any date set out in the Statement of Work. In any event, You undertake to provide Us with the Client Data with sufficient time to allow Us to perform the Services within any timescales set out in the Statement of Work. If You fail to comply with this obligation and, as a result of Your failure You prevent Us from performing the Services, We shall have no Liability to You for the resulting delays. Any timescales imposed on Us for the performance of the Services shall be extended by a reasonable period of time to accommodate the delay to the Services caused by Your actions.

4.5 You warrant that, as at the date of delivery to Us, the Client Data is accurate and up to date and that We may use it in order to perform the Services.

4.6 We warrant that the Services:

4.6.1 will be performed by suitably qualified and experienced personnel; and

4.6.2 will be performed with all reasonable skill, care and due diligence.

4.7 We will provide You with the Deliverables (in a format agreed between Us) on or by any dates set out in the Statement of Work and, in any event, on completion of the Services.

5. Data Protection

5.1 In order to perform the Services, We will need to Process Client Personal Data.

5.2 When Processing the Client Personal Data, we agree to comply with our obligations as a data processor under the DPA.

5.3 We agree to:

5.3.1 maintain technical and organisational security measures sufficient to comply with the obligations imposed on Us by the DPA as a data processor;

5.3.2 only Process the Client Personal Data for the purposes of performing the Services and in accordance with Your instructions from time to time;

5.3.3 not transfer the Client Personal Data outside the EEA without Your prior written consent; and

5.4 In performing the Services, we may compile databases and records of client/potential client information for You. In respect of any personal data collected by Us in the course of the Services, You are the data controller for the purposes of the DPA. It is Your responsibility to tell Us for what You intend to use such data and to whom it may be passed so that We can inform the individuals of the potential uses of their personal data at the time of data capture. Please note that this is an obligation imposed on You as a data controller under the DPA and We do not accept any responsibility for ensuring Your compliance with the DPA.

6. Fee

6.1 The fee for the Services shall be as set out in the Statement of Work.

6.2 We may increase Our fees where the increase is to take account of increases in costs, expenses and/or materials suffered by Us and/or any changes of instruction from You. Fees will also be revised if We both agree a revision to the scope of the Services.

6.3 You may cancel without Liability any Contract in relation to which the fee is to be increased provided that the notice of cancellation is received by Us before the increase becomes effective. However, if You do cancel the Contract You will be required to pay for any Services performed up to the point of cancellation.

6.4 Our prices are exclusive of any applicable VAT and/or other sales tax applicable in any jurisdiction for which You shall additionally be liable.

6.5 Our terms of payment are net cash within 14 days of invoice unless otherwise set out in the Statement of Work. Time for payment shall be of the essence. We reserve the right to invoice for the Services at regular intervals if no set invoicing dates are listed in the Statement of Work.

6.6 If You fail to make any payments by the due date We may, without prejudice to any other rights or remedies We may have, charge interest (both before and after judgment) on the amount unpaid at whichever is the greater of the rate of 4% above base rate from time to time of Our bank, compounded with monthly rests, or the rate of interest prescribed by law.

6.7 You shall pay all sums due to Us without any set-off, deduction, counterclaim and/or any other withholding of monies. If We have more than one contract with You, We may set off any monies You owe to Us against any monies We may owe to You under any contract You may have with Us.

6.8 Payment shall not be deemed to be made until We have received either cash or cleared funds in respect of the full amount outstanding.

6.9 If payment in full is not made to Us when due then We may withhold or suspend future or current performance of the Services under any Contract.

6.10 If any Services are cancelled or the Contract terminated or performance is suspended before completion of the Services We shall be entitled to be paid on a quantum meruit basis for that part of the Services performed. We may invoice You accordingly and such monies shall be immediately due for payment.

7. Cancellation

7.1 You may cancel performance of the Services at any time up to 14 days before the due start date for performance on condition that We shall have no Liability to You in relation to any Contract cancelled in accordance with this clause.

7.2 If You purport to cancel this Contract later than the above time limits and/or refuse to accept performance of ordered Services You will indemnify and keep Us indemnified against any and all Liability suffered by Us as a result.

7.3 Any cancellation of services at any time within 7 working days prior to the contracted working day will incur a fee of £120 + VAT.

8. Specification

8.1 The description and/or specification for the Services shall be that set out in the Statement of Work.

8.2 You are responsible for checking the Statement of Work and satisfying Yourself that any specification/description given is accurate and adequate for the Services You require.

8.3 If during the course of the Services We consider that the method of performing the Services and/or the scope of the Services could/should be amended We will discuss any changes which may be required to the Statement of Work with You.

9. Intellectual Property Rights And Confidentiality

9.1 On condition that We are paid in full for the Services We perform, all Intellectual Property Rights in the Deliverables shall be owned by You absolutely.

9.2 We agree that, at Your cost, We will do all acts and/or things and execute all documents and/or deeds which are necessary or desirable to give effect to clause 9.1 above and/or to assist You in the application, registration, renewal and/or protection of such Intellectual Property Rights.

9.3 We shall be free to utilise for the benefit of Our other clients any and all skill and/or know-how that We may develop or acquire in the performance of the Services.

9.4 Each party agrees with the other that it will keep all Confidential Information of the other party confidential and not disclose or use such Confidential Information which may be disclosed to it or which it may learn except where it is public knowledge or is required to be disclosed by law by the recipient.

10. Default

10.1 If You:-

10.1.1 fail to make any payment to Us when due;

10.1.2 breach the terms of the Contract and, if the breach is capable of remedy, have not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;

10.1.3 persistently breach any one or more terms of the Contract;

10.1.4 cease or threaten to cease business, are declared or become insolvent or bankrupt, have a moratorium declared in respect of any of Your indebtedness, enter into administration, receivership, administrative receivership or liquidation or threaten to do any of these things, take or suffer any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by You or by any other person in respect of any of these circumstances;

10.1.5 appear to Us due to Your credit rating to be financially inadequate to meet Your obligations under the Contract; and/or

10.1.6 appear reasonably to Us to be about to suffer any of the above events;

then We shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 11.2 below.

10.2 If any of the events set out in clause 11.1 above occurs in relation to You then, at Our sole option:-

10.2.1 We may withhold the performance of any Services and cease any Services in progress;

10.2.2 We may cancel, terminate and/or suspend without Liability to You any Contract We may have with You; and/or

10.2.3 all monies owed by You to Us shall immediately become due and payable.

10.3 On termination of the Contract:

10.3.1 We will each return to other party's Confidential Information to them;

10.3.2 We will provide You with a copy of any database and/or other record We may have containing Client Personal Data and return to You any Client Data; and

10.3.3 provided that You have paid for the Services performed, We will provide You with the Deliverables in whatever state they are in as at the date of termination and assign to You any Intellectual Property Rights in the same. We however give no warranties in respect of such Deliverables and clause 13 shall not apply.

11. Guarantee

11.1 We give no guarantees and/or warranties in respect of the Services other than as set out in these terms and conditions and/or in the Statement of Work.

11.2 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.

12. Limitations On Liability

12.1 We shall have no Liability for defective Deliverables and/or non-compliant Services where the defect/non-compliance has been caused or contributed by You to the extent so contributed.

12.2 We shall have no Liability to You for defective/non-compliant Services/Deliverables, unless notified to Us within the appropriate time limit set out in the Contract.

12.3 We shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by Your continued use of defective Deliverables/non-compliant Services after a defect/non-compliance has become apparent or suspected or should reasonably have become apparent to You.

12.4 You shall give Us a reasonable opportunity to remedy any matter for which We are liable before You incur any costs and/or expenses in remedying the matter Yourself. If You do not do so We shall have no Liability to You.

12.5 We shall have no Liability for any matters which are outside Our reasonable control.

12.6 We shall have no Liability to You for any:-

12.6.1 consequential and/or indirect losses;

12.6.2 loss of profits and/or damage to goodwill;

12.6.3 pure economic and/or other similar losses;

12.6.4 special damages;

12.6.5 aggravated, punitive and/or exemplary damages;

12.6.6 loss of and/or corruption of data; and/or

12.6.7 business interruption, loss of business, contracts, opportunity and/or production.

12.7 Our total aggregate Liability to You shall not exceed £1 million in relation to any damage to property we may cause and the value of the Contract in respect of all other Liability. To the extent that any of Our Liability to You would be met by any insurance of Ours then Our Liability shall be extended to the extent that such Liability is met by such insurance.

12.8 Each of the limitations and/or exclusions shall be deemed to be repeated and apply as a separate provision for each of:

12.8.1 Liability for breach of contract (including material and/or fundamental breach);

12.8.2 Liability in tort (including negligence);

12.8.3 Liability for breach of statutory duty; and

12.8.4 Liability for breach of Common Law.

except the financial caps above which shall apply once only in respect of all the said types of Liability.

12.9 Nothing shall exclude or limit Our Liability for death or personal injury due to Our negligence or any Liability which is due to Our fraud or any other liability which it is not permitted to exclude or limit as a matter of law.

13. General

13.1 You agree to indemnify and keep indemnified Us against any and all Liability suffered by Us and arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by You.

13.2 You agree to indemnify and keep Us indemnified against any and all Liability arising out of Our use of any Client Data.

13.3 No waiver by Us of any breach of the Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.

13.4 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.

13.5 We shall have no Liability to You for any delay in performance of the Contract to the extent that such delay is due to any events outside Our reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, subcontractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. If We are affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.

13.6 You shall not assign Your interest in the Contract (or any part) without Our written consent. We may assign, sub-contract and/or otherwise transfer Our rights, obligations and/or interests under the Contract without Your consent. If We use a sub-contractor to perform any of the Services, We will be responsible for their acts and/or omissions.

13.7 All third party rights are excluded and no third party shall have any right to enforce the Contract. Any right of a third party to enforce the Contract may be varied and/or extinguished by agreement between the parties to the Contract without the consent of such third party.

13.8 The Contract is governed by and interpreted in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.