

TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1. In these Conditions:

- (a) **Commission** has the meaning set out in section 3.3;
- (b) **Conditions** means our terms and conditions of supply as set out in this document;
- (c) **Confidential Information** means information in relation to the Debt, the Debtor, any Recovery and any other information you have disclosed to us that has been identified as confidential;
- (d) **Contact** means our contacting of the Debtor by any means other than by way of a Visit;
- (e) **Contract** means the agreement between you and us for our services, incorporating and constituted by these Conditions and the Instruction Form;
- (f) **Debt** means the unpaid sum of money that is subject to a Visit as set out in the Instruction Form;
- (g) **Debtor** means the business that owes the Debt as set out in the Instruction Form;
- (h) **Fee** has the meaning set out in section 3.1;
- (i) **Force Majeure Event** means an event or sequence of events beyond our reasonable control that prevents or delays us from performing our obligations under the Contract;
- (j) **Instruction Form** means our written instruction form preceding these Conditions which you complete to detail the details of the Debt and details of the Debtor in order for us to make Contact and carry out a Visit;
- (k) **party** means either you or us, and **parties** means both you and us together;
- (l) **Premises** means the business premises of the Debtor that is subject to a Visit as set out in the Instruction Form;
- (m) **Recovery** means payment or other form of satisfaction, in full or in part and directly or indirectly, of the Debt;
- (n) **Visit** means attendance by us at the Premises with the aim of achieving payment of the Debt by the Debtor;
- (o) **we, us** and **our** means Diary of a Debt Collector, incorporated in England and Wales under company number 15256255 and registered at Fortress House, 301 High Road, Benfleet, SS7 5HA and whose email address is info@diaryofadebtcollector.co.uk; and
- (p) **you and your** means the client named and detailed in the Instruction Form.

1.2. In these Conditions:

- (a) a reference to a 'section' is to a numbered section of these Conditions;
- (b) a reference to a 'third party' is to any individual or business that is not a party; and
- (c) a reference to 'writing' or 'written' includes email.

2. Application

- 2.1. These Conditions supersede any previously issued terms and conditions of purchase or supply.
- 2.2. No terms or conditions contained in or delivered with the Instruction Form (other than these Conditions), any other document or any communication from you or on your behalf will form part of the Contract.
- 2.3. No variation of these Conditions or to an Instruction Form will be binding unless we agree in writing.
- 2.4. Your completion of the Instruction Form is an offer to purchase our services subject to these Conditions.
- 2.5. We may accept or reject an Instruction Form at our discretion. An Instruction Form will not be accepted until our written acceptance of it or our performance of the services.

3. Fees and Payment

- 3.1. We charge a flat fee for Contact and to carry out a Visit, the amount of such fee as notified to you in writing before the Instruction Form is agreed or as otherwise agreed from time to time (the **Fee**).

- 3.2. We will issue an invoice for the Fee following your completion of the Instruction Form, such invoice to be payable immediately on receipt (unless we otherwise advise) and in any case in advance of any Contact or a Visit taking place.
- 3.3. We charge a rate of commission calculated as a percentage of any Recovery, the rate of such commission as notified to you in writing before the Instruction Form is agreed or as otherwise agreed from time to time (the **Commission**).
- 3.4. Commission is payable on any Recovery that is agreed with a Debtor within 30 working days of the date of the Instruction Form and is payable on any Recovery that is received (in full or in part including on any instalment payment) in respect of such agreement.
- 3.5. We will issue an invoice for the Commission at any time following us becoming aware of a Recovery, payable within 7 days of the date of such invoice (unless we otherwise advise).
- 3.6. The Fee and the Commission is exclusive of VAT. Where applicable, VAT will be payable by you on receipt of a VAT invoice.
- 3.7. Neither the Fee nor the Commission is refundable under any circumstances.
- 3.8. You will pay all invoices in full without deduction or set-off to the bank account we nominate.
- 3.9. Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
 - (a) interest will accrue daily, from the due date for payment until actual payment in full, at the rate of 3% a year above the Bank of England base rate in force from time to time; and
 - (b) we may not start to perform, or we may suspend performance of, any of our services (including a Visit) until payment in full of all outstanding sums.
- 3.10. If you are in breach of section 6.3, we will be entitled to charge interest on Commission in accordance with section 3.9(a) from the actual date of Recovery until payment of Commission.

4. Contact and Visit

- 4.1. Within two working days of receipt of payment of the Fee in full, we will commence our services and attempt to Contact the Debtor. If we are unable to Contact the Debtor or unable to achieve a commitment to a Recovery via such Contact, we will carry out a Visit.
- 4.2. We may attempt to Contact the Debtor at any time, whether before or after a Visit.
- 4.3. We will carry out a Visit at the Premises and in respect of the Debtor only.
- 4.4. We will be under no obligation to carry out any more than one Visit in respect of the Debt.
- 4.5. We will use our reasonable endeavours to meet any specific dates for a Visit, but any such dates are indicative only.
- 4.6. We will use our reasonable endeavours to obtain a Recovery, or a commitment to a Recovery, from the Debtor, such Recovery to be made either at the time of Contact or a Visit or following such Contact or Visit.
- 4.7. We will not accept direct receipt of any Recovery.
- 4.8. We will not use force, threatening or abusive behaviour or language, or otherwise act in any manner that is intimidatory, unprofessional, illegal or unethical. If you request us to do so, we may terminate the Contract immediately without liability.
- 4.9. We will not be liable for any delay in or failure of performance caused by:
 - (a) your breach of section 6.1 or any other provision of these Conditions; or
 - (b) a Force Majeure Event.

5. Warranty

- 5.1. We warrant that we will carry out a Visit with reasonable care and skill within the meaning of s.13 of the Supply of Goods and Services Act 1982.

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- 5.2. As your sole and exclusive remedy, we will, at our option, re-perform a Visit or refund the Fee for any Visit that does not comply with section 5.1.
- 5.3. These Conditions will apply to any Visit that is re-performed.
- 5.4. Except as set out in this section 5, we give no warranties and make no representations in relation to any Visit or in relation to the success, or chance of success, of any Recovery.
- 6. Your Obligations**
- 6.1. You will provide us with full and accurate instructions, documentation and materials we require relating to the Debt, the Debtor, or otherwise relating to Contact or a Visit.
- 6.2. You will ensure you are available for direct contact whilst a Visit is taking place.
- 6.3. You will notify us immediately upon receipt of a Recovery of any kind and provide full and accurate details as to the terms of any such Recovery, including any instalments dates and amounts.
- 7. Limitation of Liability**
- 7.1. Nothing in the Contract operates or seeks to exclude or limit liability for any losses that cannot be excluded or limited by law, including for death or personal injury resulting from negligence, and all exclusions and limitations of liability in the Contract will be subject always to this section 7.1.
- 7.2. We will not be liable for any consequential, indirect or special losses.
- 7.3. We will not be liable for any of the following (whether direct or indirect):
- (a) loss of profit;
 - (b) loss of revenue;
 - (c) loss arising from or due to property damage;
 - (d) loss or corruption of software or systems;
 - (e) loss of contract;
 - (f) loss of business opportunity;
 - (g) loss of savings or rebate (whether actual or anticipated); and
 - (h) harm to reputation or goodwill.
- 7.4. Our total liability to you, whether arising in contract, tort or negligence, will not exceed a sum equal to 100% of any part of the Fee that has been paid to us.
- 8. Confidentiality**
- 8.1. We will keep confidential all Confidential Information and will only use the same as required to perform the Contract.
- 8.2. This section 8 will not apply to:
- (a) any information in the public domain other than as a consequence of any breach by us of this section 8; and
 - (b) any disclosure required by law, regulation, court or other competent authority.
- 8.3. To the extent any Confidential Information is personal data we receive from you under the Contract, such Confidential Information may be disclosed or used only to the extent such disclosure or use complies with and does not conflict with any of section 9.
- 9. Data Protection**
- 9.1. In this section 9, **Data Protection Law** means the Data Protection Act 2018 and Assimilated Regulation (EU) 2016/679, UK GDPR. The terms 'controller', 'data subject', 'personal data', 'personal data breach', 'processing' and related terms, 'processor' and 'sub-processor' will all have the meanings given to them in Data Protection Law.
- 9.2. You are a controller and we are a processor for the purposes of processing personal data we receive from you under the Contract. You will comply with all Data Protection Law in connection with the processing of personal data under the Contract. You will ensure all instructions given to us in respect of personal data will be in accordance with all Data Protection Law.
- 9.3. We will process personal data in compliance with the obligations placed on us under Data Protection Law.
- 9.4. We will only process personal data in accordance with the Contract and your instructions, subject to section 9.3.
- 9.5. We will implement and maintain adequate technical and organisational measures to protect personal data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 9.6. We will not permit any processing of personal data by any sub-processor without your prior written consent.
- 9.7. We will not process or transfer, or otherwise directly or indirectly disclose, any personal data in or to any country or territory outside the United Kingdom without your prior written consent.
- 9.8. We will refer to you all requests we receive for exercising any data subjects' rights under Data Protection Law which relate to any personal data. It will be your responsibility to reply to all requests as required by Data Protection Law.
- 10. Force Majeure**
- 10.1. We will not have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from a Force Majeure Event.
- 10.2. We will notify you in writing when a Force Majeure Event causes a delay or failure in performance and to what extent, and we will notify you in writing when it ceases to do so.
- 10.3. If a Force Majeure Event delays or prevents us from performing the Contract for 30 days or more, we may terminate the Contract on reasonable notice in writing.
- 11. Termination**
- 11.1. We may terminate the Contract at any time on written notice if you:
- (a) commit a material breach of the Contract that cannot be remedied;
 - (b) fail to remedy a material breach within 7 days of us notifying you of such breach;
 - (c) have failed to pay any amount due under the Contract on the due date; or
 - (d) do or say anything that we reasonably believe could bring us into disrepute.
- 11.2. Termination or expiry of the Contract will not affect any accrued rights and liabilities of either party at any time up to the date of termination.
- 12. Notices**
- 12.1. Any notice given by a party under the Contract will be:
- (a) in writing and in English; and
 - (b) sent to or given to the other party at the address or email address set out in the Contract or as otherwise communicated by the other party at any time.
- 12.2. This section 12 will not apply to notices given in legal proceedings or arbitration.
- 13. General**
- 13.1. **Entire Agreement:** The Contract constitutes the entire agreement between the parties.
- 13.2. **Assignment:** You may not assign, subcontract or transfer any right or obligation under the Contract, in whole or in part, without our prior written consent.
- 13.3. **Severance:** If any term of the Contract is or becomes illegal, it will not affect the legality of any other term of the Contract.
- 13.4. **Waiver:** No failure or delay by us to exercise any right under the Contract will operate as a waiver of that right, nor will it prevent or restrict us from exercising that right in future.
- 13.5. **Third-Party Rights:** No third party will have any right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any of the terms of the Contract.
- 13.6. **Governing Law and Jurisdiction:** The Contract and any dispute arising in connection with it will be governed by the law of England and Wales. The courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising in connection with the Contract.