



Terms and Conditions

1. Introduction

1.1 These terms and conditions constitute the entire terms and conditions upon which CER provides the Service and upon which the Customer agrees to contract for the use of the Service.

1.2 This Agreement supersedes any written or oral representations, statements, understandings or agreements, except where specifically varied by written agreement by CER

1.3 By placing an order for the Service, you, the Customer, confirm your acceptance of the terms of the Agreement.

1.4 In the event of any conflict between the Agreement and any other document, the Agreement shall prevail.

Definitions

In this Agreement:-

“**Agreement**” means these terms and conditions together with the Order Confirmation.

“**Success Related Fee**” means percentage payment agreed between both parties to be paid by the customer to CER post Drawdown.

“**Completion**” means the date when the Service shall be complete as defined in the Order Confirmation.

“**the Customer**” and “**You / Your**” means the company, firm, person, persons, corporation or public authority identified in the Order Confirmation as contracting for the Service and includes their successors or personal representatives.

“**the Contract Price**” means the price for the Service set out in the Order Confirmation.

“**the Order Confirmation**” means the email or letter sent to the Customer by CER which sets out details of the Service to be provided, price, completion date (if any) and such other specific contractual terms as may be appropriate.

“**the Service**” means the provision of, advisory and mediator services, including preparing and presenting financial proposals to the appropriate financial institutions, including all phone calls, letters, postage, emails and meetings attended; also the provision of introductions to CER’s business support network (together or individually known as “**Work**”), more fully described in the Order Confirmation.

“**Working Day**” means within the hours of 9.00am to 5.30pm, Monday to Friday only, not including bank holidays;

“**the Service Commencement Date**” shall be the date the Service is available as set out in the Order Confirmation.

“**CER**” or “**we/our/us**” means CER Business Finance Limited; a company registered in Scotland (Company Number SC313373) and with its registered office at 24 Sandyford Place, Glasgow, G3 7NG.

“**Customer information**” means the detailed personal and business Information required from a customer enabling CER to deliver the Service more fully described in the order confirmation.

“**Drawdown**” means the funds have been approved and notice given to the Customer to provide access to the same funds by the Lender.

“**Lender**” means a bank or financial institution that provides funding.

“**Writing**” includes any written paper document, any fax and any email correspondence.

2. Duration

2.1 The CER contract with you shall terminate upon Completion of the Service, although CER is available on an advisory basis only for up to 90 days post Drawdown unless otherwise stated on the Order Confirmation.

3. Service provision

3.1 CER will provide an Order Confirmation for all orders accepted but reserves the right to accept or reject any order.

3.2 CER will use all reasonable endeavours to provide the Service based on the information provided by the customer as described in the Order Confirmation.

3.3 CER may at any time amend the Service for any reason including, but not limited to, technical, legal or business reasons.

3.4 Any dates quoted for delivery of services are approximate only and we shall not be liable to you for any delay in delivery of services howsoever caused. Time for delivery shall not be of the essence unless stated on the Order Confirmation.

3.5 Due to the nature of the services provided, CER does not offer refunds post engagement.

3.6 CER reserves the right to act during this engagement for other customers whose interests may be adverse to yours. CER will notify you immediately should we become aware of any conflict of interest to which we are subject in relation to you.

3.7 CER will from time to time and as part of the CER Service recommend and/or introduce the Customer to other organisations that can assist the Customer, these introductions are subject to the following additional terms;

3.7.1 the customer will contract directly with any 3rd Party recommended.

3.7.2 any 3rd Party introduction resulting in paid work will not in any way impact upon CER's contractual relationship with the Customer and the CER contract will run concurrently with any other 3rd Party contract.

4. Customer Obligations

4.1 The Customer shall pay the charges for the Service in accordance with clauses 6, 7 and 8 below.

4.2 The Customer is responsible for providing a satisfactory level of cooperation and for providing all necessary personal and business information and facilities to enable CER to produce and deliver a quality service, including:-

4.2.1 Necessary instruction and authorisation to act on their behalf.

4.2.2. Permission to discuss the Customer's affairs with accountants and other professional advisers as and when appropriate.

4.2.3. Communication of correct information, for example, accurate personal and business information, access requirements, and all other relevant details to support the service provision.

4.3 Without prejudice to its rights in terms of Clause 9 hereof, CER is entitled to suspend or terminate the Customer's use of the Service if the Customer fails to comply with any of its obligations under this clause 4.

4.4 In the case of third party involvement including existing Customer suppliers or suppliers nominated by the Customer, the Customer agrees and undertakes to ensure that all necessary information is communicated to all parties involved in the Service to be carried out. CER is not responsible for briefing all parties unless stated in the Order Confirmation.

4.5 The customer is responsible for gaining permission to use Intellectual Property not owned by the customer. CER takes no responsibility for such undertakings.

4.6 CER will have no liability in respect of any delays, deficiencies or interruptions in the supply of the Service caused by a failure by the Customer to comply with any provision of this Clause 4.

5. Indemnification

5.1 The Customer shall indemnify CER and keep us indemnified against any liability to any third party arising out of or connected with the Customer's use of the Service.

5.2 The Customer hereby indemnifies and holds harmless CER against all claims, demands, losses, damages, costs or expenses howsoever arising incurred by CER in connection with the Agreement as a result of a breach by the Customer of any provision of this Agreement, law or regulation and/or as a result of any third party legal action or threatened action.

6. Service charges

6.1 Invoices will be issued by CER a minimum of 5 days prior to commencement of services. All services will only commence after payment is received in advance of Service commencement unless otherwise stated in the Order Confirmation.

6.2 Charges for all third party expenses, including but not limited to services required in connection with any Services shall be invoiced to the Customer prior to commencement of work. Payment for any such additional third party expenses must be received prior to the commencement of the related work.

6.3 CER will not be held responsible for any delay to the Service if initial payment is not received pursuant to clauses 6.1 or 6.2 hereof.

6.4 The Customer shall be liable for travelling expenses incurred by CER for travelling or journeys outside a two hour radius of the Glasgow area.

6.5 Should the Customer require a change in the nature, scope or timing of the Service or in or any other aspect of this Agreement, such change shall be requested in writing. CER shall advise the Customer of the effects including any increase in the Service charges which may result and the Agreement shall be modified to reflect such changes including to the Service charge and/or duration which may be agreed.

7. Payment terms

7.1 All payments for Services are to be made on the 1st of the month and every month thereafter for the duration of the Agreement as set out in the Order Confirmation. The first payment and payments thereafter shall be paid in advance of Service commencement.

7.2 Payment by the Customer shall be made by cheque, BACS or standing order, at the election of CER.

7.3 One months notice is required regards cancellation of Services.

7.4 Unless otherwise agreed, the 'Success Related Fee' due post Drawdown will be due within 30 days of the date of each invoice issued by us to you.

7.5 Where CER has agreed that the Customer may defer payment until the Customer has contracted to receive funding, the Customer irrevocably and

unconditionally agrees to pay CER the agreed Service Charges due under this Agreement in full no later than 12 months following termination of this Agreement for whatever reason.

8. Terms of Payment

8.1 With the exception of the Success Related fee Payments and subject to any special terms which we may agree with you in the Order Confirmation or otherwise in writing, payment by you to us will be made prior to commencement of services to you.

8.2 Time of payment shall be of the essence of the Agreement. You shall not be entitled to set off or withhold any payment for any reason whatsoever.

8.3 If you fail to make payment within the period specified in clause 8.1 then, without prejudice to any other right or remedy available to us, we shall be entitled to:-

8.3.1 Suspend any further service provision to you and/or suspend performance of the Services; and/or

8.3.2 cancel the Agreement; and/or

8.3.3 charge you interest on the amount unpaid, at the rate of 4 per cent per annum above the Royal Bank of Scotland plc base rate from time to time, until payment is made.

8.4. The Customer shall not be entitled by reason of any set-off, counter-claim, abatement, or other deduction to withhold payment of any amount due to CER.

8.5 If the Customer's cheque is returned by the bank as unpaid for any reason, CER reserves the right to levy a "returned cheque" charge.

8.6 If you are late in making a payment under this Agreement for 60 consecutive days or more, we reserve the right to factor your Customer Agreement with a reputable factoring agency or to commence the debt recovery process and you shall reimburse us on demand for all costs, expenses and losses associated therewith (including lost profit).

9. Termination

9.1 CER shall be entitled to suspend or to terminate the Service in accordance with clause 8.3 hereof.

9.2 Without prejudice to any other rights to which it may be entitled, CER or the Customer may terminate this Agreement by written notice if the other party commits any material breach of any of the terms of the Agreement and the breach remains un-remedied after thirty days of the defaulting party being notified by the other party of the breach and of the other party's intention to terminate unless the breach is remedied.

9.3 CER may terminate provision of the service immediately if the Customer takes or suffers any action on account of debt or is insolvent.

9.4 Ethical clause - CER will not tolerate duplicity, deceit or pretence regards the parties involved with the service provided, or in any way abusing the Service, reserving the right to terminate services as a result of such behaviour.

10. Disclaimer and Limitation of Liability

10.1 The Customer uses the Service at its own risk and in no event shall CER be liable to the Customer for any direct, consequential, incidental or special damage or loss of any kind (except personal injury or death resulting from CER's negligence) including, but not limited to, loss of profits, loss of contracts, future market conditions, financial state of customer business, business interruptions, loss of or corruption of data or the Customer's inability to use the Service, however caused and whether arising under contract or tort, including negligence or otherwise except as expressly provided herein.

10.2 If any exclusion, disclaimer or other provision contained in this Agreement is held to be invalid for any reason by a court of competent jurisdiction and CER becomes liable thereby for loss or damage that may lawfully be limited, such liability whether in contract, tort (including negligence) or otherwise, will not exceed the total charges paid by the Customer in the one month preceding such liability arising.

10.3 CER shall have no liability for delay in the provision of the Service or for any effect upon the quality of the Service caused by external activities, third party failures or problems suffered as a result of the Customer's internal communication or the lack of accessibility or the incorrect information provided or cooperation of the Customer.

10.4 CER cannot be held responsible for the lending policy of any Lender or financial institution during the period of engagement or guarantee funding for the customer and only acts on behalf for the Customer for the period stated on the order confirmation.

11. Force Majeure

11.1 CER shall not be liable to you or be deemed to be in breach of the Agreement by reason of delay in performing, or any failure to perform, any of our obligations in relation to the Service, if the delay or failure was beyond our reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond our reasonable control:

11.1.1 act of god, explosion, flood, tempest, fire or accident; weather.

11.1.2 war or threat of war, sabotage, pandemic flu or virus, insurrection, civil disturbance or requisition;

11.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures or any kind on the part of any governmental, parliamentary or local authority;

- 11.1.4 import or export regulations or embargoes;
- 11.1.5 strikes, lock-outs or other industrial actions, power cuts or trade disputes (whether involving our employees or of a third party); or
- 11.1.6 difficulties in obtaining the System, labour, fuel, parts or machinery.
- 11.1.7 technical problems, external circumstances preventing suppliers delivering against deadlines or preventing delivery of 3rd party against agreed commitments.

12. Confidentiality

12.1 Each party will keep confidential any Confidential Information disclosed to it by the other. Neither party will disclose any Confidential Information to any third party, save to its agents, subcontractors, advisers or to an employee who needs to have access to such Confidential Information in connection with the performance of any obligations under the Customer Agreement, PROVIDED THAT the disclosing party will be responsible for ensuring that any person to whom it makes any such disclosure complies with this Clause 12.

13. Intellectual Property rights and ownership

13.1 Unless otherwise agreed in writing, all intellectual property rights arising out of this Agreement shall vest in CER. The Customer is granted a non-exclusive, non-transferable, royalty-free licence to use that intellectual property for the purposes envisaged by the Agreement."

13.2 Nothing in this Agreement shall be taken to prevent us from using any expertise acquired or developed during the performance of this Agreement in the provision of services to other parties. CER retains the right to use IP content for marketing use.

14. Privacy

14.1 The parties acknowledge that information provided by the Customer or acquired by CER in connection with the Service may constitute personal data in terms of the Data Protection Act 1998 ("the Act"). In processing such personal data CER is a data processor in terms of the Act and such processing is at the behest of and under the direction of the Customer. The Customer hereby acknowledges its obligations as a data controller in terms of the Act and warrants and represents to CER that it has discharged and shall discharge its obligations in terms thereof and the Customer shall hold CER harmless from any claims by any third party relating thereto.

14.2 Any personal data (as defined in the Act) provided by you to us shall at all times remain your property and we shall take all reasonable precautions to preserve the integrity of such Personal Data and to prevent any corruption or loss, damage or destruction of such Personal Data, PROVIDED THAT we reserve the right to disclose to the police, the fire authorities, any other relevant authority, our insurance company and any of their representatives details of the records kept by us.

15. Disputes

15.1 Should any dispute arise in connection with this Agreement, the parties shall attempt to settle same by negotiation however should the dispute not be resolved within 30 days of the first intimation of the dispute then parties shall attempt to settle it by Mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

16. Assignment

16.1 Neither party shall assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of this agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.

17. Notices

17.1 Any notice, demand or other communication given or made under or in connection with the matters contemplated by this Agreement shall be deemed to have been duly given and received;

17.1.1 if personally delivered, upon delivery at the address of the relevant party;

17.1.2 if sent by first class post, two business days after the date of posting;

17.1.3 if by email, when sent; provided that if, in accordance with the above provision, any notice, demand or other communication would otherwise be deemed to be given or made after 1700 hours, it shall be deemed to be given or made at the start of the next business day.

17.2 Any notice personally delivered or sent by first class post shall be delivered to the address of the relevant party set out in the Order Confirmation.

18. General

18.1 Failure or delay by CER in enforcing any term of the Agreement shall not be construed as a waiver of any of its rights under it.

18.2 The illegality, invalidity or unenforceability of any part of this Agreement will not affect the legality, validity or enforceability of the remainder.

18.3 The construction, validity and performance of this Agreement shall be governed by Scots Law and the parties submit themselves to the non-exclusive jurisdiction of the Scottish Courts.

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