

DATED

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TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5.

**Commencement Date:** has the meaning set out in clause 2.3.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 11.8.

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

**Customer:** the person or firm who purchases Services from the Supplier.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** the Customer's order for Services as set out in the Customer's Registration Form or other written communication to the Supplier.

**Registration Form:** the registration form on which the Customer should set out name, address, contact and other details and the Services required.

**E-Tender Services:** the internet based services, supplied by the Supplier to the Customer as described in Schedule A.

**E-Tender Plus Services:** the services, supplied by the Supplier to the Customer as described in Schedule B

**Services:** The E-Tender or E-Tender Plus services provided by the Supplier to the Customer pursuant to the Contract.

**Supplier:** P&D Online Ltd registered in England and Wales with company number 07721737.

**Supplier Materials:** internet based web-site technology which provides the Services or part of the Services.

**Website:** the website of P & D Online Ltd at URL: [www.panddonline.co.uk](http://www.panddonline.co.uk)

- 1.2 Construction. In these Conditions, the following rules apply:
- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - (b) a reference to a party includes its personal representatives, successors or permitted assigns;
  - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
  - (d) any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
  - (e) a reference to writing or written includes e-mails.
  - (f) The words “you” and “your” refers to the Customer. Words such as “us”, “we” and “our” refer to the Supplier

## 2. BASIS OF CONTRACT AND YOUR RIGHT TO CANCEL

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 You have a right to cancel this contract within 7 working days of making payment. However, once you have started to use the Services such right to cancel will be lost if use commences prior to the end of the usual seven working days.
- 2.3 The Order shall only be deemed to be accepted when the Supplier makes the Services available to Customer at which point and on which date the Contract for a 12 month licence to use the Service and Supplier Materials shall come into existence (Commencement Date).
- 2.4 In consideration for use of the Services the Customer shall comply with these terms during any trial period of the Services.
- 2.5 The Customer shall not be entitled to a free trial of the Services for any more than 15 days.
- 2.6 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.7 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's web-site (other than these terms and the terms of Web-site use), are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.8 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### 3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Customer in accordance with the description of the Services in Schedule A where the Customer purchases "E-Tender" services and in accordance with the description in Schedule B where the customer purchases "E-Tender Plus" services.

3.2 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable legal requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.3 The Services will be provided using reasonable care and skill. However, the outputs provided by the Supplier Materials depend on the information input by the Customer. Therefore, whilst guidance is provided for use of the Supplier Materials the Service is not intended to amount to advice on which reliance should be placed.

3.4 Any services such as surveying services or services advertised on the Website other than E-Tender or E-Tender Plus Services are subject to terms and conditions subject to separate enquiry.

### 4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- (a) ensure that the terms of the Registration Form are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (d) not copy the Supplier Materials; and
- (e) comply with the [Terms of Website](#)

- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## 5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be:
- (a) £199.00 per annum plus Vat for E-Tender Services
  - (b) £449.00 per annum plus Vat for E-Tender Plus Services
- 5.2 The Supplier reserves the right to increase its Charges on 2 January each year, provided that such charges cannot be increased more than once in any 12 month period.
- 5.3 The Supplier shall invoice the Customer annually in advance of or on the Commencement Date and payment of Charges shall be due from the Customer on the Commencement Date or anniversary thereof.
- 5.4 The Customer shall not be entitled to use the Services until the Customer has paid the Charges for 12 months' use in advance.
- 5.5 The Customer will be liable to pay additional charges for payment by credit and debit cards of 3% of the cost of each transaction.
- 5.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

6.2 The Supplier is the owner or licensee of all Supplier Materials and all Intellectual Property Rights in or arising out of or in connection with the Services.

7. CONFIDENTIALITY

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 7 shall survive termination of the Contract.

8. LIMITATION OF LIABILITY:

8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.2 Subject to clause 8.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges.

8.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of the Contract.

## 9. TERMINATION

9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

- (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(b) to clause 9.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

## 10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 11. GENERAL

### 11.1 Force majeure:

- (a) For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or the internet service or network or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.



- (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

11.2 Assignment and subcontracting:

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by email or prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax or e mail, on the next Business Day after transmission.
- (c) This clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall include e-mails.

11.4 Waiver:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

11.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
  - (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 11.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 11.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.
- 11.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

## SCHEDULE A – E TENDER SERVICES

E-TENDER SERVICES INCLUDE:

ACCESS TO PAINTER AND DECORATOR TENDER SUPPLIER MATERIALS WHICH CARRY OUT THE FOLLOWING FUNCTIONS:

## SCHEDULE B – E TENDER PLUS SERVICES

E-TENDER PLUS SERVICES INCLUDE:

E-TENDER SERVICES AS DESCRIBED IN SCHEDULE A

PLUS:

A REVIEW OF THE CUSTOMERS HEALTH AND SAFETY POLICY WITH AMENDMENTS IF NEEDED

ACCESS TO QUALIFIED HEALTH AND SAFETY ADVISER

FOR FURTHER INFORMATION PLEASE SEND AN E MAIL TO:

[INFO@PANDDONLINE.CO.UK](mailto:INFO@PANDDONLINE.CO.UK)

OR TELEPHONE THE FOLLOWING NUMBER: 01782 835764