



M&J Bowers Ltd

Document Destruction & Recycling Services

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Agreed terms

1. Interpretation

1.1 Definitions:

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

Business Customer: a Customer who is not a Consumer Customer.

Charges: the charges payable by the Customer for the supply of the Services by the Supplier, as set out in the Contract Details.

Conditions: these terms and conditions set out in clause 1 (Interpretation) to clause 10 (General) (inclusive).

Consumer Customer: a Customer who is an individual who is not entering into the Contract for or in connection with business, trade, craft or professional purposes but instead for Services wholly or mainly for personal use.

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

Contract Details: the terms set out at the start of this services agreement and signed on behalf of each party.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

Services: the services to be provided by the Supplier pursuant to the Contract, as described in Schedule 1.

Services Start Date: the day on which the Supplier is to start provision of the Services, as set out in the Contract Details.

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

2. Commencement and term

The Contract shall commence on the date when it has been signed by both parties and shall continue, unless terminated earlier in accordance with its terms, until:

- 2.1 in the case of a single performance contract (as indicated by the Contract Term), delivery of the Services; or
- 2.2 in the case of ongoing contracts, either party gives to the other written notice to terminate, provided such notice is served with the requisite Notice Period and expiring at the end of the Contract Term. Where notice is not served and received with the requisite Notice Period, the Contract shall automatically renew for the same term as the Contract Term.
- 2.3 a Consumer Customer has the right to change its mind in accordance with the Consumer Contracts Regulations 2013 within 14 days of entry into the Contract and to receive a refund. This right cannot be exercised where the Services have been completed, even if the cancellation period is still running. Where the Services have commenced but not yet completed and the Consumer Customer wishes to cancel charges will apply according to the proportion of Services provided to point of cancellation, in comparison to the full coverage of the Contract.
- 2.4 a Consumer Customer may end the contract by contacting the Supplier on 01935 840308 or providing notice in writing in accordance with this Contract.
- 2.5 all refunds arising pursuant to cancellation in accordance with clause 2.3 and clause 2.4 shall be made within 14 days of the Consumer Customer's notification of a change of mind.

3. Supply of services

- 3.1 The Supplier shall supply the Services to the Customer from the Services Start Date in accordance with the Contract.
- 3.2 Subject always to clauses 5.2 and 5.3, any change or variation to the Services, including consequential changes to charges and/or timing, shall be agreed between the parties and confirmed by the Supplier in writing.
- 3.3 In supplying the Services, the Supplier shall:
- (a) perform the Services with reasonable care and skill;
 - (b) use reasonable endeavours to perform the Services in accordance with the service description and scheduled timings set out in Schedule 1;
 - (c) comply with all applicable laws, statutes, regulations and codes from time to time in force, provided that, the Supplier shall not be liable under the Contract if, as a result of such compliance, it is in breach of any of its obligations under the Contract;
 - (d) observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Customer's premises and have been communicated to the Supplier in writing, provided that the Supplier shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

4. Customer's obligations

- 4.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
 - (b) ensure that any person giving written instructions or signing any document on behalf of the Customer pursuant to this contract or the Services is fully authorised to do so on the Customer's behalf and the Supplier is entitled to assume that any such person signing on behalf of the Customer is authorised to do so, without the need to carry out further enquiry;
 - (c) provide, for the Supplier, its agents, subcontractors, consultants and employees, at agreed times and at no charge, access to the Customer's premises, office accommodation and other facilities as required by the Supplier to fulfil delivery of the Services;
 - (d) provide, in a timely manner, such information as the Supplier may reasonably require, and ensure that it is accurate and complete in all material respects;
 - (e) ensure that any materials to be collected and/or delivered to the Supplier pursuant to this Contract and the Services which contain personal data, where the Supplier is acting

as a data processor (as defined in clause 9.3) is only directed to the security shredding service and not to any other service performed by the Supplier;

- (f) ensure that confidential waste is only placed in confidential waste bins;
- (g) ensure the correct waste products are placed in the correct bins;
- (h) ensure that no hazardous substances are placed in the bins;
- (i) contact the Supplier promptly on 01935 840308 and, in any event, within 2 Business Days regarding any complaint in connection with delivery of the Services.

4.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, including the Customer providing contaminated materials for collection which do not form part of the Services and either cannot be recycled or must be sorted, the Supplier shall:

- (a) not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- (b) be entitled to payment of the Charges despite any such prevention or delay; and
- (c) be entitled to recover any additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.

5. Charges and payment

5.1 In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this clause 5.

5.2 In respect of ongoing Contracts, the Supplier may increase the Charges on an annual basis with effect from the anniversary of the date of this Contract in line with the percentage increase in the Retail Prices Index in the preceding 12 month period.

5.3 Further to clause 5.2, the Supplier may increase the Charges to cover changes to legislation, fuel, disposal costs or other costs variables outside of its control provided that the Customer's prior written consent shall be required where such price adjustment leads to a price increase of 7% or more against the then prevailing Charges.

5.4 All amounts payable by the Customer exclude amounts in respect of value added tax (**VAT**), which, if applicable, the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to receipt of a valid VAT invoice.

5.5 The Supplier shall submit invoices for the Charges plus VAT (if applicable) to the Customer in accordance with the Invoicing arrangements specified in the Contract Details.

- 5.6 The Customer shall pay each invoice due and submitted to it by the Supplier according to the Payment Terms set down in the Contract Details, to a bank account nominated in writing by the Supplier.
- 5.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 8_(Termination):
- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;
 - (b) the Supplier may suspend all Services until payment has been made in full; and
 - (c) the Customer shall be responsible for the Customer's reasonable costs of recovery which have been properly incurred.
- 5.8 All amounts due under the Contract from a Business Customer to the Supplier shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Limitation of liability – Consumer Customers

- 6.1 Nothing in this Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence of the Supplier or the negligence of its employees;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of legal rights in relation to supply of services with reasonable skill and care.
- 6.2 Subject to clause 6.1, the Supplier shall be liable for foreseeable loss and damage caused by it arising from failure to comply with this Contract, loss or damage suffered that is a foreseeable result of the Supplier breaking this Contract or failing to use reasonable care and skill, but the Supplier is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Contract was made, both parties knew it might happen.
- 6.3 The Supplier shall be liable for damage to the Consumer Customer's property if it is providing Services in that property and the Supplier shall make good any damage to such property caused while doing so. The Supplier is not responsible for the cost of repairing any pre-existing faults or damage to the property.

6.4 The Supplier supplies the Services to the Consumer Customer in its capacity as a consumer only in connection with domestic and private use. Where the Services are utilised for any commercial or business purpose the Supplier's liability shall be limited as set out in clause 7.

7. Limitation of liability – Business Customers

7.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

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

7.2 Except to the extent expressly stated in this Contract, all terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are excluded.

7.3 Subject to clause 7.1, the Supplier's total liability to the Business Customer shall not exceed £ [to be set for individual customers' needs]. The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

7.4 This clause 7.4 sets out specific heads of excluded loss and exceptions from them:

- (a) Subject to clause 7.1, the types of loss listed in clause 7.4(b) are wholly excluded by the parties, but the loss detailed in clause 7.4(c) is not excluded.
- (b) The following types of loss are wholly excluded:
 - (i) Loss of profits.
 - (ii) Loss of sales or business.
 - (iii) Loss of agreements or contracts.
 - (iv) Loss of anticipated savings.
 - (v) Loss of use or corruption of software, data or information.
 - (vi) Loss of or damage to goodwill.
 - (vii) Indirect or consequential loss.
- (c) Sums paid by the Business Customer to the Supplier pursuant to the Contract, in respect of any Services not provided in accordance with the Contract are not excluded under this clause 7.4.

7.5 The Supplier may not benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

8. Termination

- 8.1 Without affecting any other right or remedy available to it, either party to the Contract may terminate it with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its bankruptcy (if a Consumer Customer) and otherwise its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - (c) the other party (who is not a Consumer Customer) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that, in the terminating party's reasonable and informed, opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - (b) there is a change of control of the Business Customer.
- 8.3 On termination of the Contract for whatever reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
 - (b) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect; and
 - (c) termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

9. Data Protection

- 9.1 Where the Supplier is acting as the data controller under this agreement, any personal data supplied to the Supplier in the course of performing this agreement will be held, used and maintained in accordance with the Supplier's Privacy Policy, a copy of which is available at www.documentshreddingcompany.co.uk or upon request.
- 9.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 9, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 9.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). Schedule 2 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of Data Subject (as defined in the Data Protection Legislation, **Personal Data**).
- 9.4 Without prejudice to the generality of clause 9.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 9.5 Without prejudice to the generality of clause 9.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only in accordance with Schedule 2 unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data appropriate to the harm that might result from the unauthorised or unlawful processing and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

- (d) not transfer any Personal Data outside of the European Economic Area;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data breach; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 9.

9.6 The Customer consents to the Supplier using the services of third party processors of Personal Data in connection with this agreement and the Supplier confirms that it has entered or (as the case may be) will enter into a written agreement with any such third party processor incorporating terms which are substantially similar to those terms set out in this clause 9. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 9.6.

9.7 Either party may, at any time on not less than 30 days' notice, revise this clause 9 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

10. General

10.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

10.2 Assignment and other dealings.

- (a) The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the Supplier's prior written consent.
- (b) The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract.

10.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.3(b).
- (b) Each party may disclose the other party's confidential information:

- (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.

10.4 Entire agreement – Business Customers only.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

10.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or, where relevant, their authorised representatives).

10.6 Waiver.

- (a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

10.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

10.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its address as set out in the Contract Details; or
 - (ii) sent by email to the address specified in the Contract Details.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 10.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

10.9 Third party rights.

- (a) The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to vary the Contract are not subject to the consent of any other person.

10.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

10.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Schedule 1 Services

Schedule 1 will be setup with customers signing into any scheduled service for any contracted period.

Schedule 2 Processing, Personal Data and Data Subjects

1. Processing by the Supplier

1.1 Scope: Data provided to the Supplier by the Customer in performance of the Services

1.2 Nature: Collection, shredding and disposal of personal data as more precisely defined in the Contract

1.3 Business Purpose: Performance and delivery of the Contract

1.4 Duration of processing: In accordance with the Contract Term.

2. Types of Personal Data: all Personal Data collected by and disposed of by the Customer which would include (but not exclusively) personal data relating to the customers, clients, employees, sub-contractors, agents, suppliers or other identified or identifiable persons, such data including all categories of personal data, genetic data, biometric data, data concerning health and other sensitive personal data and may include the special categories of data (as defined in Article 9 GDPR).

3. Categories of data subject: any identifiable living individual which may include (but not exclusively) adults, minors, vulnerable individuals, customers, clients, employees, sub-contractors, agents and suppliers of the Customer.