

## STANDARD TERMS AND CONDITIONS OF ENGAGEMENT

Your attention is drawn in particular to the provisions of clause 8

### 1 DEFINITIONS

"**Business Day**" means a day (not being a Saturday) on which banks are open for normal banking business in the City of London.

"**Contract**" means the contract between you and us for the provision of the Services that are detailed in and includes the Engagement Letter and which incorporates these Terms.

"**Client's Data**" means such data relating to you and/or your business as is reasonably required by us in relation to providing the Services (including but not limited to sales and purchase data, supplier details, product details, product portfolio, details of supply chain and end users), but excluding product or packaging weights obtained by us on your behalf

"**Engagement Letter**" means the Engagement Letter which is subject to these Terms between you and us that sets out the assignment together with the Services to be provided by us.

"**Fees**" means the fees for the assignment detailed in the Engagement Letter or as otherwise agreed in writing between the parties.

"**Intellectual Property Rights**" means all patents, design rights, trade marks, trading or business names, copyrights, database rights, whether registered or not and any applications to register or rights to apply for registration of these, rights in inventions, know-how, trade secrets and confidential information and all other intellectual property rights of a similar or corresponding character that subsist now or in the future in any part of the world.

"**Legislation**" means all statutes, enacting instruments, common law, delegated legislation, regulations, directives, bye-laws, codes of practice, circulars, guidance notes, decisions, recommendations and the like, including, without limitation the Data Protection Act 1998.

"**RPI**" means the UK's retail price index (all items) as published by the office of National Statistics (or by any government department or other body on which duties in connection with such index devolve or such other index replaces such index).

"**Services**" mean the services detailed in the Engagement Letter.

"**Terms**" means these standard terms and conditions of engagement.

"**Valpak**", "**we**", "**us**" and "**our**" means Valpak Limited

"**you**" and "**your**" means the client to whom we provide the Services in accordance with the Engagement Letter.

### 2 TERMS

2. Except in respect of any terms that are detailed in the Engagement Letter, which in the case of conflict with these Terms, shall take precedence over these Terms, these Terms shall apply to the exclusion of all other terms and conditions including any terms which you may purport

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to apply under any confirmation of instruction or similar document. These Terms shall continue to apply to all Services provided by us to you under the Contract until expressly excluded in writing.

### **3 PROVISION OF THE SERVICES**

3.1 We agree to provide the Services in accordance with the Engagement Letter and these Terms.

3.2 You agree to cooperate with us in the performance of the Services, including by promptly responding to any requests reasonably made by us to you, and to give us such support, facilities and information as we may reasonably require.

### **4 CHARGES AND PAYMENTS**

4.1 You agree to pay the Fees and any other expenses payable in accordance with the provisions of the Engagement Letter.

4.2 All sums payable by you to us shall be paid in full without any deduction, withholding; counterclaim or set off within 30 days of the date of our relevant invoice.

4.3 If any sum payable by you to us under the Contract remains unpaid for more than 30 days from the date of the invoice, we may charge you interest on such sum (after as well as before judgment) at the rate of 4% (four per cent) per annum (or such other percentage rate as we shall from time to time decide and notify to you, such revised rate to come into effect 10 (ten) Business Days after the date of the notice) above Barclays Bank Plc's base rate from time to time, such interest to be calculated on a daily basis from the date upon which such sum became due to be compounded with quarterly rests and to be payable on demand.

4.4 You agree that we may review and increase the rates (if applicable) referred to in the Engagement Letter, provided that such charges cannot be increased more than once in any 12 month period and provided that such increase shall be by no more than percentage increase in RPI in the 12 month period prior to such date of increase. We will give you no less than 30 days prior written notice of any such increase.

4.5 Any estimate of Fees detailed in the Engagement Letter is based on the assumption that the information we require from you to provide the Services is made available to us in accordance with agreed timetables. If delays or unanticipated problems which are beyond our control occur this may result in additional fees for which invoices will be raised, including where we need to carry out substantial further work due to changes in law or regulations affecting the Service.

4.6 During any period in which payments from you are overdue, we may suspend our provision of the Services.

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4.7 All sums payable in accordance the Contract are exclusive of value added tax and any other sales or similar taxes, which shall be added to such sum to the extent applicable from time to time.

## **5 CONFIDENTIALITY**

5. Each party undertakes to the other that it shall not without the other party's prior written consent (and shall procure so far as it is able that each of its directors, officers and employees and group companies shall not) at any time (whether before or after the termination for whatever reason of the Contract) divulge or communicate to any person other than as is reasonably necessary for the purpose of conducting its business any secret or confidential information concerning the business, financial or contractual arrangements or other dealings or affairs of the other party or any of their customers or clients except to the extent to which:

- (a) such information shall (other than through any unauthorised disclosure by it or any of its directors, officers or employees) come within the public domain on a non-confidential basis; or
- (b) it is required by law or by any court or tribunal of competent jurisdiction or other applicable regulatory body to divulge or communicate such information; or
- (c) (in our case only) we are required to divulge or communicate such information to any sub-contractors in relation to provision of the Services and where such sub-contractors have signed an appropriate confidentiality undertaking or to others where you have expressly or impliedly consented to the disclosure.

5.2 The provisions of this clause 5 shall continue in force notwithstanding termination of the agreement howsoever caused.

## **6 DELEGATION**

6.1 We shall have discretion as to which of our employees are assigned to perform the Services but shall consult with you concerning any significant changes.

## **7 INTELLECTUAL PROPERTY**

7.1 You are and shall remain the owner of all Intellectual Property Rights in the Client's Data. You grant to us such rights in the Client's Data as are required by us to provide the Services and/or as may be agreed in writing from time to time.

7.2 (Subject to clause 7.1) you acknowledge and agrees that we are and shall remain the owner of all Intellectual Property Rights in, arising from or created under, or as a result of us providing the Services and that nothing in these Terms shall confer on you any ownership or other rights in these or any other Intellectual Property Rights except such rights as are expressly set out in these Terms or are agreed in writing by us from time to time.

7.3 You hereby grant to us a non-exclusive, perpetual, irrevocable, royalty free licence (with the right to grant sub-licences) whilst we provide the Services and after completion of the Services to retain and use the Client's Data as required by Legislation and/or for such other purposes as we may consider appropriate (acting reasonably), provided that our use of the Client's Data after completion of the Services shall be on an anonymised basis..

7.4 The provisions of this clause 7 shall continue in force notwithstanding completion of the Services and/or termination the Contract howsoever caused.

## **8 LIABILITY**

8. We are a limited liability company and have a legal responsibility to you for the work we, our employees and consultants carry out on our behalf. None of our individual employees or consultants contract with you personally or has any legal liability to you personally whether in contract, tort (to the extent permitted by law) or otherwise in respect of work permitted on our behalf. No claim may be brought by you against any of our existing individual employees or consultants. All communications sent to you in the course of providing the Services are sent on our behalf, even if signed or sent by an individual employee or consultant.
- 8.2 We shall not be liable to you for loss or damage to your property unless due to our negligence or other failure to perform our obligations under the Contract or the general law.
- 8.3 We shall have no liability to you for any indirect, special or consequential loss to you arising out of or in connection with the provision of the Services pursuant to the Contract (except in respect of death or personal injury resulting from negligence) and our total liability for any other loss you suffer arising pursuant to the Contract in respect of any one event or series of events shall not exceed the indemnity cover (if any) detailed in the Engagement Letter or if no such cover is referred to, the Fees payable by you in respect of Services provided by us in accordance with the Contract.

## **9 TERMINATION FOR BREACH**

9.1 The following obligations are conditions of the Contract and any breach of them shall entitle the party not in breach to terminate the Contract by immediate written notice and the rights and liabilities of the parties shall then be determined in accordance with clause 10:

- (a) failure on your part to make punctual payment of all sums due to us under the Contract;
- (b) failure by us to remedy any breach of our obligations under the Contract within a reasonable time following written notice from you which: refers to this clause; specifies the breach with full particulars; indicates how the breach is to be remedied and specifies your opinion of a reasonable time for remedy;
- (c) the levying of distress or execution against you or the making by you of any composition or arrangement with creditors or the presentation of a petition for your liquidation or bankruptcy or administration or the appointment of a receiver over any part of your assets;
- (d) the doing or permitting of any act by which our rights in any intellectual property may be prejudiced or put in jeopardy;
- (e) any serious or persistent breach by you of your obligations under the Contract;

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- (f) failure on your part to respond in a satisfactory manner to requests reasonably made by us to you as part of our provision of the Services within [28] days of the date the request is made.

## **10 TERMINATION AND CONSEQUENCES**

- 10.1 If the Contract is terminated whether by effluxion of time, notice, breach or otherwise and without prejudice to any other remedy available to us, you shall immediately pay to us

any sums due under the terms of the Contract.

## **11 RECRUITMENT OF THE CONSULTANT'S STAFF**

- 11.1 You undertake that you (including for this purpose any subsidiary or associated company) or any person connected to you will not directly or indirectly recruit as an employee or engage as an independent contractor any person employed or so engaged by us in connection with the Services for a period of 12 months after such person last provided Services to you.
- 11.2 In the event that you are in breach of the undertaking in clause 11.1, we and you agree and you will pay liquidated damages of a sum equal to 50% of the annual remuneration or payment and any other benefits payable to the relevant individual by us at the rate payable during the week or month (as applicable) immediately prior to such individual ceasing to provide services to us.

## **12 VALPAK'S OUTPUTS, MATERIALS AND INFORMATION**

- 12.1 All Intellectual Property Rights including copyright which are capable of existing in any documents, computer software or information or (without limit) other materials created or provided pursuant to the Contract by us shall be and remain our property.
- 12.2 You undertake to keep all materials, documents and information provided to you by us confidential to you and your employees and not to distribute the same to any third party without our prior written consent.
- 12.3 Any materials produced or supplied to you by us which Intellectual Property Rights are capable of subsisting shall be licensed to you for internal use only in connection with the purposes detailed in the Engagement Letter and such licence shall immediately terminate if notice is given by us terminating the Contract pursuant to clause 9.
- 12.4 The parties undertake with each other not to, during the course of the Contract, infringe the Intellectual Property Rights of any third party.
- 12.5 We shall not be in breach of the Contract or otherwise liable to you by reason of any delay in performance, non-performance and/or mis-performance of our obligations under the Contract or the consequences of any such delay in performance, non-performance and/or mis-performance due to any circumstances outside our reasonable control.

## **13 PUBLICITY**

- 13.1 Neither party shall make or release any statements or announcements regarding the conclusion of, terms of or termination of the Contract, unless such statements or announcements have been approved by the other party.

## **14 FORCE MAJEURE**

- 14.1 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 results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations provided that if the period of delay or non-performance continues for 6 weeks or such other period as detailed in the Engagement letter, the

party not affected may terminate this agreement by giving 14 days' written notice to other party.

## **15 WHOLE AGREEMENT**

- 15.1 In entering into the Contract you agree and acknowledge that you do not rely on any agreement, understanding, arrangement, representation, warranty, collateral contract or other assurance, made by us or on our behalf that is not expressly set out in the Contract and you waive all rights and remedies which, but for this clause 15.1, might otherwise be available to you in respect of any such agreement, understanding, arrangement, representation, warranty, collateral contract or other assurance provided that nothing in the Contract shall limit or exclude any liability for fraud.
- 15.2 The Contract and any other document specified as constituting part of the Contract sets out the entire understanding and agreement between the parties relating to the provisions of the Services and supersedes all prior written or oral agreements, understandings and/or arrangements made between the parties relating to the provision of the Services.

## **16 GENERAL**

- 16.1 Each party warrants its power to enter into the Contract and has obtained all necessary approvals to do so.
- 16.2 The provisions of the Contract shall be binding on and inure to the benefit of the successors and personal representatives of each party hereto and, subject to clause 16.12, neither party may assign or transfer or may agree to assign or transfer any of its rights or obligations under the Contract.
- 16.3 Each party irrevocably and unconditionally waives any right which it may have to claim damages and/or to rescind the Contract for any misrepresentation whether or not contained in the Contract or for any breach of any warranty not contained in the Contract unless such misrepresentation or warranty was made fraudulently.
- 16.4 No failure or delay by either party in exercising any right, power or privilege under the Contract shall operate as a waiver of such right, power or privilege nor shall any single or partial exercise by either party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.
- 16.5 Except as otherwise expressly provided the rights and remedies provided in the Contract are cumulative and not exclusive of any other rights and remedies provided by law.
- 16.6 No variation of the Contract shall be valid unless it is in writing and validly signed by or on behalf of both parties.
- 16.7 Each provision of the Contract is severable and distinct from every other provision. If any provision of the Contract is found by any competent court or administrative body to be illegal, invalid or unenforceable, this shall not affect the other provisions of the Contract or remainder of the affected provision, which shall remain in full force and effect.
- 16.8 A waiver of any term, provision or condition of the Contract shall be effective only if given in writing and validly signed by the waiving party.
- 16.9 Nothing in the Contract and no action taken by either party pursuant to the Contract shall constitute, or be deemed to constitute, a partnership, association, joint venture, agency or any other co-operative entity.

- 16.10 No term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Contract.
- 16.11 We are an independent contractor and not your employee. We shall not be subject to directions from you as to the manner in which we shall perform our work.
- 16.12 We shall be entitled to sub-contract any of our rights or duties under the Contract.

## **17 NOTICES AND COMMUNICATIONS**

- 17.1 Any notice to be given to or by any person under the Contract must be in writing. Any notice or document may be served by a party on the other party either personally or by leaving it and/or by sending it through the post in a prepaid letter addressed to the relevant party at its registered address. We may also send a notice or document by electronic communication to an address notified to us by you.
- 17.2 Any notice or other document, if served by post or by electronic communication shall be deemed to have been served at the expiration of 48 hours after the envelope containing it was posted and in the case of a notice contained in an electronic communication at the expiration of 48 hours after the time it is sent. In proving postal service it shall be sufficient to prove that the letter containing the notice or document was properly addressed, stamped and posted, and in the case of proving electronic communication it shall be sufficient to show that it was sent in accordance with the guidance issued by the Institute of Chartered Secretaries and Administrators.
- 17.3 For the purpose of clause 17.1 our address, fax, email and website address are:
- (a) Stratford Business Park, Banbury Road, Stratford-upon-Avon CV37 7GW
  - (b) Fax Valpak on 03450 682 532
  - (c) Website address [www.valpak.co.uk](http://www.valpak.co.uk) or email address [info@valpak.co.uk](mailto:info@valpak.co.uk)

## **18 MEDIATION**

In the event of any dispute arising between the parties in connection with the Contract, the parties will in good faith seek to resolve that dispute through mediation. The mediator shall be agreed upon within 7 (seven) days of one party requesting mediation, failing which the mediator shall be appointed by the then Professional Standards Manager of the Institute of Management Consultancy. Unless otherwise agreed, the parties shall share equally the costs of the mediation. If the dispute is not resolved within 30 (thirty) days or one of the parties refuses to participate in mediation, the dispute shall be resolved by way of litigation. Nothing in this clause shall prevent either party seeking a preliminary injunction or other judicial relief at any time if in its judgment such action is necessary or shall we be precluded from issuing proceedings or taking any other step in relation to the non-payment of monies due.



18.1 The Contract shall be governed by and construed in all respects in accordance with English law. The parties agree to submit to the non-exclusive jurisdiction of the English courts as regards any claim or matter arising in relation to the Contract.

18.2 In the event that you are resident outside England, your address for service in England shall be the address for such service nominated in the Contract and any time limits in any proceedings shall not be extended by virtue only of your foreign residence.

## **19 IN CONCLUSION**

We look forward to a mutually satisfying relationship with you. If you have any questions about these Terms please contact your main contact with us so that we can try to address your concerns.