



## STANDARD TERMS AND CONDITIONS

### 1. DEFINITIONS

1.1 In these terms and conditions ("the Conditions") the following expressions shall have the following meanings:

"Charges"	means the charges shown in the Schedule of Charges relating to the Services;
"CLA"	means The Copyright Licensing Agency, Saffron House, 6-10 Kirby Street, London, EC1N8TS ( <a href="http://www.cla.co.uk">www.cla.co.uk</a> );
"CLA Licence"	means the licence granted to Durrants by the CLA to enable Durrants to scan certain print publications, monitor them and electronically copy and distribute the contents thereof;
"Client"	means the person or persons named as the client in the Order Confirmation for whom Durrants has agreed to provide the Services in accordance with these Conditions;
"Confidential Information"	means any information of a confidential nature which is disclosed by one of the parties hereto to the other pursuant to or in connection with the Contract (whether orally or in writing and whether or not such information is expressly stated to be confidential or marked as such). For the avoidance of doubt, the Information does not comprise any Confidential Information;
"Contract"	means the contract for the provision of the Services, being the Order, the Order Confirmation and these Conditions;
"Copy"	means a hard copy, faxed, emailed or web delivered version of a cutting;
"Copyright Body"	means either the NLA or the CLA;
"Cutting"	means an article from the printed press or other news source;
"Durrants"	means Durrants Limited (company number 874637);
"E-Fax"	means delivery from a fax machine to a computer desktop in the form of an electronic file;
"Force Majeure"	means in relation to either of the parties hereto any circumstances beyond the reasonable control of that party (including without limitation any strike, lock out or other form of industrial action);

"Global Media Database"	means the database of contacts and outlets from PR Newswire licensed by Durrants and sub-licensed to Clients who subscribe to the media planning service, Durrants PLAN;
"Information"	means all press cuttings, press summary translations, print publications, articles and/or other content, services or information (whether in hard or soft copy form) that is provided by Durrants to the Client in connection with the Services, as referred to in these Conditions;
"Media List"	means the Durrants Media List, a copy of which is available at <a href="http://www.Durrants.co.uk">www.Durrants.co.uk</a> , that is a guide to the print publications, stations, programmes, newswires, internet sources and/or other media monitored by Durrants, part or all of which may be covered by the Services;
"NLA"	means The Newspaper Licensing Agency of 7 - 9 Church Road, Wellington Gate, Tunbridge Wells TN1 1NL ( <a href="http://www.nla.co.uk">www.nla.co.uk</a> );
"NLA Licence"	means the licence granted to Durrants by the NLA to enable Durrants to scan certain print and web publications, monitor them and electronically copy and distribute the contents thereof;
"Order"	means the Client's order (whether written or oral) detailing the products and/or services required to be provided by Durrants to the Client (or as it may direct) hereunder;
"Order Confirmation"	means the written or oral confirmation from Durrants to the Client, following the receipt by Durrants of the Order, confirming the products and/or services that are to be provided by Durrants to the Client (or as it may direct) hereunder and containing the Schedule of Charges in respect of those products and/or services together with any Special Terms, as the same may be varied, if appropriate, pursuant to the provisions of clause 2.5;
"Permitted User"	means an individual employee of the Client or an individual performing the function of an employee on a temporary basis, independent contractor or consultant for as long as they are contracted to the Client and who are authorised by the Client to receive or access conventional or electronic Copies;
"Plan"	Means the service created by Durrants that includes a Media database and functionality to build journalist lists, log activities and distribute press releases;

"Rights Restricted Material"	means material in respect of which a newspaper publisher does not own copyright or a newspaper publisher has not mandated the NLA to grant a licence or the NLA does not grant licences from time to time;
"Schedule of Charges"	means the details of those sums that are to be paid to Durrants by the Client in consideration for the provision of the Services, as agreed between Durrants and the Client prior to the commencement of the Services and as set out in the Order Confirmation;
"Services"	means the supply to the Client of the Information by such means of transmission as shall be agreed between Durrants and the Client, as more particularly described in the Order Confirmation;
"Special Terms"	means any special terms and conditions identified in the Order Confirmation;
"Term"	means the period during which this Contract shall subsist.

1.2 The headings in these Conditions are for convenience only and shall not affect its interpretation.

1.3 Any reference to a party includes reference to any of its employees, subcontractors, representatives or other third party under its control.

1.4 References to persons in these Conditions shall include bodies corporate.

## **2. SUPPLY OF THE SERVICES**

2.1 Durrants shall provide the Services to the Client, subject to these Conditions and the Order Confirmation.

2.2 The Client acknowledges that it has read and fully understood the Order Confirmation and these Conditions prior to confirming the order.

2.3 In the event of any conflict between the terms of the Order Confirmation and the terms of these Conditions, these terms shall prevail including any Special Terms identified in the Order Confirmation.

2.4 Durrants agrees to perform the Services with all reasonable care and skill and to comply with the reasonable instructions of the Client from time to time in the performance of these obligations.

2.5 Any changes or additions to the Services or the Contract should be agreed in writing between Durrants and the Client i.e. any letter, email, fax or other, however, the parties acknowledge that, due to the nature of the

Services, the Client and/or Durrants may be unable to confirm in writing in each case any verbal changes or additions to the Services. In the event of any dispute between the parties as to the Services required to be performed by Durrants hereunder, those Services (as amended, if appropriate) that have been agreed to in writing by Durrants shall be conclusive and binding upon the parties

accordingly. Durrants reserves the right to determine whether or not such changes are included within the Schedule of Charges. If not included, Durrants shall not be required to carry out the change to the Services until the Client and Durrants have agreed the additional charges in writing. If and when agreed, such varied and/or additional services (as appropriate) shall be deemed to be included in the Services for the purposes of these Conditions.

2.6 Durrants shall supply and transmit to the Client, in whatever format as shall be specified in the Order Confirmation, the Information.

2.7 Whilst Durrants shall use its reasonable endeavours to accurately maintain the Media List, it reserves the right to vary the media that is covered by the Services at any time and without notice.

2.8 Durrants shall be entitled to assume that individuals employed by the Client have authority to request changes or additions to the Services or the Contract unless advised in writing to the contrary by the Client.

### **3. CLIENT SUPPORT/COMPLAINTS AND FAULT RECTIFICATION**

All of the Client's complaints and queries should be directed to the Client's relevant account manager within 7 working days of the provision of the services to the client, The account manager shall use his or her reasonable endeavours to rectify the error and/or cause for complaint and/or query as soon as is reasonably practicable thereafter.

### **4. CHARGES**

4.1 In consideration of Durrants providing the Services and subject to any Special Terms the Client shall pay to Durrants the Charges as specified in the Schedule of Charges, and any additional sums that are agreed in writing between Durrants and the Client for the provision of the Services.

4.2 All charges quoted to the Client for the provision of the Services are exclusive of any value added tax or applicable local sales tax for which the Client shall be additionally liable at the applicable rate from time to time.

4.3 The Charges and any additional sums payable shall be paid by the Client (together with any applicable value added tax or applicable local sales tax and without any set off or other deduction or withholding) within 30 days of the date of Durrants' invoice.

4.4 Where the Client requests that the Services are provided to and/or invoiced to a third party, the Client shall remain liable for the payment of any Charges that relate to these Services

4.5 Where the Charges comprise a fixed monthly fee that is levied by Durrants as a service fee, this will be charged by Durrants for each calendar month or part thereof that the Services are provided to the Client and shall be payable no later than 30 days following Durrants invoice date.

4.6 In the event that the Client fails to pay the Charges in full following the due date for payment as referred to in clause 4.3, Durrants shall be entitled (without prejudice to any other rights that it may

have hereunder) forthwith to cease the performance of the Services (to the extent that they remain outstanding) and to refuse to accept any further Orders from the Client for additional Services to be provided.

4.7 Durrants shall be entitled to charge the Client interest on any sum due at the rate of 8% per annum from time to time, from the date of Durrants invoice.

4.8 Durrants shall have the right to vary all Charges upon giving to the Client not less than 1 calendar month's prior written notice. In the event that such notice is given, it will be sent to the named recipient of the Client's invoices or to the primary contact of the Client, as Durrants shall elect. Durrants shall clearly show any such revised Charges on the subsequent relevant invoices.

## **5. ASSIGNMENT/SUBCONTRACTING**

5.1 This Agreement is personal to the Client and, consequently, the Client may not assign, mortgage, charge or otherwise dispose of its rights or obligations under this Contract without Durrants' prior written approval.

5.2 Nothing in this Agreement shall prevent Durrants from being able to transfer, assign, delegate, mortgage, charge, sub-contract or otherwise dispose of any of its rights and/or obligations under this Contract to any third party whatsoever.

5.3 Nothing in this Contract shall prevent Durrants from carrying out the Services or any similar services for any other person, firm or company.

## **6. WARRANTIES**

6.1 Durrants warrants to the Client that the Services will be provided using reasonable care and skill in accordance with the Order Confirmation, and at the intervals and within the times referred to in the Order Confirmation.

6.2 Whilst Durrants will use its reasonable endeavours to provide the Client with a reasonably acceptable level of accuracy and timeliness in performing the Services, and will apply such time, attention, resources, trained personnel and skill as may be reasonably necessary or appropriate for the due and proper performance of the Services hereunder, the Client acknowledges and accepts that, having due regard to the manner in which the Information is monitored and collected, and the fact that Durrants is often relying upon third party suppliers when performing the Services, no warranty, guarantee or representation is made by Durrants that all of the Information will be complete, accurate and/or fit for the purpose. Accordingly, neither Durrants- nor any third party supplier shall be liable to the Client for any failure of the Information to be so complete, accurate, timely and/or fit for the purpose in all respects, which failure shall not be regarded as a breach by Durrants of its obligations under these Conditions and shall be disregarded in determining whether Durrants has achieved a reasonably acceptable level of accuracy in the

performance of the Services. Notwithstanding this provision and without prejudice to any rights accruing hereunder, Durrants will credit the Client in respect of such of the charges as may be due on any cuttings that is returned to Durrants within 7 days of its original provision where the reason for the return of the cutting is a genuine fault on the part of Durrants.

6.3 Durrants gives no guarantee that the Services will achieve any intended or desired result unless otherwise as stated in the Order Confirmation.

## **7. COPYRIGHT**

7.1 Durrants is licensed by the CLA, the NLA, other copyright owners or publishers (including the Financial Times) to scan print publications and/or digital content, electronically copy and distribute articles found.

7.2 The NLA reserves the right to prevent Press Cuttings Agencies from distributing Rights Restricted Material to Clients. The Client acknowledges that Durrants is unable to supply such material to the Client.

7.3 Unless licensed by the relevant Copyright Body or copyright owner the Client shall not:

7.3.1 further reproduce, copy (including electronically), distribute, display, sell, publish, broadcast, circulate, delivery or transmit Copies (whether in electronic or hard copy) either internally or to any third party (with the exception of licensed Public Relations Consultancies and/or Trade/Professional Associations) so as to infringe the intellectual property rights vested in the relevant Copyright Body.

7.3.2 use E-Fax software and/or equipment to receive Copies.

7.4 The Client will destroy all Copies in respect of which the Client has been notified directly or indirectly by the relevant Copyright Body as potentially or actually causing legal liability to third parties. The Client will treat such notices as confidential.

7.5 To the extent that the Client requires an electronic service then the Client must:

7.5.1 limit the access to Copies for its own use to Permitted Users only;

7.5.2 obtain an NLA Licence if the service relates to print or digital content for which the NLA has responsibility, and produce such to Durrants on demand unless the Client only has one Permitted User who accesses the service.

7.5.3. obtain a CLA Licence if the service relates to print or digital content for which the CLA has responsibility, where client accesses any individual Digital Cutting more than once (whether by the access of multiple users or one user making multiple accesses or otherwise);

7.5.4 not remove, conceal or alter any copyright notices contained on the Copies as delivered;

7.5.5 not store Copies in electronic form as part of any library or archive of information;

7.5.6 provide a statement at Durrants' request setting out the number of Permitted Users and confirming that Copies supplied have not been dealt with or used other than by Permitted Users.

7.6 The Client hereby acknowledges that Durrants is required under the terms of the licences that it has signed with the NLA, the CLA or other copyright owner or Publisher (including the Financial Times) to provide the relevant organisation with the contact details and certain additional information in respect of any Client to whom the Information is supplied electronically. Accordingly, the Client hereby consents to the provision by Durrants to the relevant Copyright Body or other copyright owner or publisher the Client's name, address and any other necessary information including, but not limited to, the date on which delivery started, a description of the service (electronic or hard copy), and details of cuttings supplied. In the case of electronic delivery the average number of Permitted Users and the number of times each cutting was viewed by Permitted Users will also be reported. The Copyright Bodies or applicable copyright owner or publisher may contact the Client directly using the information supplied in these circumstances.

7.7 All Copies, transcripts, recorded material, article summaries and translations are supplied for the private use of the Client and shall not be reproduced, circulated, resold or copied (whether in whole or in part) without the Client obtaining the prior written approval where relevant of the copyright holder or broadcast authority (as the case may be).

7.9 For the avoidance of doubt, Durrants shall not be responsible for obtaining any of the consents for the Client referred to in this clause 7.

7.10 A Client subscribing to "Durrants PLAN", the media planning service from Durrants, is granted a non-exclusive, non-transferable licence to use PR Newswire's Global Media Database as part of Durrants PLAN within the UK and Eire. Should Durrants cease to license the Global Media Database then this sub-licence shall terminate automatically. The Client's use of the data is for its internal business use only and the Client does not have the right to reproduce, use, sell or otherwise deal in the Global Media Database, in whole or in part, in any other way or grant any further sub-licence in relation to the Global Media Database. The Client accepts full responsibility for data their users add to Durrants PLAN and for web press releases or emails created or distributed by their users through Durrants PLAN.

7.10 A Client receiving content from any Financial Times publication (including ft.com) acknowledges their awareness of and compliance with the FT Terms and Conditions to be found at <http://www.ft.com/servicestools/help/terms>.

## **8. LIMITATION OF LIABILITY**

8.1 Durrants shall only be liable to the Client for direct loss caused by the negligence wilful misconduct or wilful default of Durrants or its employees, officers and/or directors. Durrants shall not in any event be liable to the Client under or in connection with this Contract in contract, tort, negligence, pre-

contract or in respect of any representation (other than fraudulent or negligent misrepresentation or as expressly stated in this Contract) or otherwise, for any loss of business, contracts, profits or anticipated savings or for any other indirect, special, incidental, consequential or economic loss whatsoever.

8.2 Durrants shall not be liable or held responsible for any claims or proceedings brought against the Client by any publisher of copyrighted material or by any other copyright holder that results from the Client's use of the Information without the consent of the relevant copyright holder (where required), or from the Client's breach of any applicable copyright laws generally. Durrants does not warrant and accepts no liability whatsoever that any information or advice it may provide regarding copyright is either complete or accurate. The Client will indemnify Durrants, and keep Durrants indemnified, against all claims, liabilities, costs, expenses and damages that arise in connection with any failure by the Client to obtain the necessary consent from the relevant copyright holder to the Client's use of the Information, or that arise in connection with any other breach by the Client of any applicable copyright laws.

8.3 Durrants does not seek (and nothing in these Conditions shall be deemed) to limit or exclude its liability for death or personal injuries caused by its negligence or that of its employees.

8.4 Except as set out in this Contract, Durrants hereby excludes all conditions, terms, representations (other than fraudulent or negligent representations) and warranties relating to the Services, whether express or implied and whether imposed by statute or by operation of law or otherwise, that are not expressly stated herein, including without limitation, the implied warranties of satisfactory quality and fitness for a particular purpose.

8.5 Durrants' entire liability to the Client for damages in relation to performance or non-performance by Durrants, or in any way related to the subject matter of this Contract, and regardless of whether the claim for damages is based in contract or tort shall not exceed the amount of the Charges paid annually by the Client to Durrants.

## **9. CONFIDENTIALITY**

9.1 The parties shall each at all times during the continuance of this Contract and after its termination:

9.1.1 use all reasonable endeavours to keep all Confidential Information confidential and not disclose any Confidential Information to any other person except to its officers, employees, representatives and professional advisers and those of members of its group of companies from time to time, or as required by law, regulation or request of any governmental or regulatory authority, copyright holder or licensing body;

9.1.2 not use any Confidential Information for any purpose other than the performance of its obligations under this Contract. 9.2 Upon receipt of a written request, the parties undertake to return immediately to the other all copies of the Confidential Information and to expunge all Confidential Information from any device containing it.

9.3 The Client agrees that at all times during the continuance of this Contract and after its termination the Information may only be used by the Client or its authorised designated advertising agency/agencies and may not be disclosed to any other third party without the prior written consent of Durrants.

## **10. FORCE MAJEURE**

Neither Durrants nor the Client shall be deemed to be in breach of this Contract or otherwise be liable to the other by reason of any delay in performance or non-performance by any of its obligations hereunder to the extent that such delay or non-performance is due to any Force Majeure, and the time for performance of that obligation shall be extended accordingly. In the event that such delay or non-performance continues for a period of 14 days, the Client shall be entitled to terminate the Contract forthwith by written notice to Durrants.

## **11. DURATION AND TERMINATION**

11.1 Subject to the conditions of clauses 10 and 11.2, the Contract shall continue for the designated period (if any) specified in the Order Confirmation unless and until terminated by either party giving to the other not less than one month's notice in writing.

11.2 Either Durrants or the Client shall be entitled forthwith to terminate this Contract by written notice to the other if:

11.2.1 that other party commits any material breach of any of the provisions of this Contract, and in the case of a breach capable of remedy, fails to remedy the same within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied ; or

11.2.2 an encumbrance takes possession or a receiver is appointed over any of the property or assets of that other party; or

11.2.3 that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order; or

11.2.4 that other party goes into liquidation (except for the purposes of amalgamation or reconstruction).

11.2.5 any invoice remaining unpaid for 45 days after it has been sent to the client after invoice date.

11.3 On termination of this Contract the following shall operate:

11.3.1 Durrants shall cease to be required to perform the Services and the Client shall cease to be required to pay the Charges (save in respect of those Services performed by Durrants prior to the relevant date of termination);

11.3.2 Any termination of this Contract shall be without prejudice to the right or remedy of either party that has already accrued to that party prior to the relevant date of termination (including, without limitation, the right of Durrants to receive and recover all outstanding Charges from the Client).

11.3.3 Clauses 9, 11 and 13 to 16 (inclusive) will survive termination of this Agreement for an indefinite period (except for clause 9 which will survive for a year following termination only).

## **12. WAIVER**

No failure or delay by either party in exercising any of its rights under these Conditions shall be deemed to be a waiver of that right, and no waiver by either party of any breach of these Conditions by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

## **13. ENTIRE AGREEMENT**

These Conditions, the Order Confirmation and the Schedule of Charges are the complete and exclusive statement of the agreement between the parties relating to the subject matter of these Conditions and supersede all previous communications, terms, conditions, agreements and other arrangements, written or oral. In the event of any subsequent terms agreed between the parties which appear to conflict with this Agreement then this Agreement shall take precedence unless the subsequent agreement expressly varies this Agreement.

## **14. NATURE OF AGREEMENT**

14.1 Nothing in these Conditions shall create or be deemed to create a partnership or the relationship of principal and agent or employer and employee between the parties.

14.2 Each party acknowledges that in entering into this Contract it does not do so on the basis of and does not rely on any representations warranty or other provision except as expressly provided herein and all conditions warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law

14.3 If any provision of these Conditions is held by any court or other competent authority to be void or unenforceable in whole or part this Contract shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

14.4 Save as otherwise provided herein, none of the parties shall have the right to bind the other to any agreement with any third party or to incur any obligation or liability on behalf of the other party

14.5 Each of the parties hereto shall exercise all such powers as are available to it and do all such acts and things and sign, execute and deliver all such documents and instruments as may be necessary or reasonably required to give full effect to the provisions of these Conditions.

14.6 Each of the parties hereto hereby warrants for the benefit of the other parties hereto that it is empowered and has obtained (and will maintain) all necessary authorisations to enter into this Contract and to enter into all instruments required or contemplated pursuant to the provisions of this Contract and (subject to the provisions of this Contract) lawfully to give effect to each and all of its obligations undertaken or to be undertaken in or pursuant to this Contract or in or pursuant to such instruments as aforesaid.

14.7 Other than in respect of the rights granted to the CLA pursuant to the terms of Durrants' CLA License and unless otherwise expressly stated, nothing in these Conditions will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **15. PROPER LAW**

These Conditions shall be governed by and construed in all respects in accordance with the Laws of England and each party hereby submits to the non-exclusive jurisdiction of the English Courts. Each of the parties hereby irrevocably consents to the service of any and all process in such action or proceeding by the mailing thereof to the address indicated at the beginning of this Contract; and agrees that a final judgement in any such action or proceeding shall be conclusive and enforceable in any other court of competent jurisdiction.

## **16. NOTICES AND SERVICE**

16.1 Any notice or other information required or authorised by these Conditions to be given by any party to the other may be given by hand or sent (by first class pre-paid post, facsimile transmission, e-mail or comparable means of communication) to the other party at the address referred to in herein or as notified in writing from time to time.

16.2 Any notice or other information given by post which is not returned to the sender as undelivered shall be deemed to have been given on the third day after the envelope containing the same was so posted; and proof that the envelope containing any such notice or information was properly addressed pre-paid registered and posted and that it has not been so returned to the sender shall be sufficient evidence that such notice or information has been duly given.

16.3 Any notice or other information sent by facsimile transmission, e-mail or comparable means of communication shall be deemed to have been duly sent on the date of posting or transmission.

16.4 Failure to return the copy of these Standard Terms and Conditions or any Special Terms and Conditions annexed hereto by the client, does not render them void or voidable.

**17.**

Durrants has the right, at its entire discretion to revise and/or amend these Terms and Conditions. Save where such new terms are incompatible with the existing Terms, such existing Terms shall continue to apply. Notice of any such new Terms will be given by Durrants to the client as soon as practicable. Further the provision of copy of the new Terms shall not entitle the client to determine the contract