

# Terms and Conditions (Debt collection by Assignment)

**1: DEFINITIONS** The Service Agreement constitutes the entire Agreement between the parties as to the subject matter hereof and supersedes all prior understandings, representations, transactions or communications, whether written or oral, as to the subject matter of this Service Agreement. Each party warrants to the other that it has not relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set forth or referred to in this Service Agreement. No provision contained in this clause or elsewhere in this Service Agreement shall operate so as to exclude any liability of one of the parties in respect of fraudulent misrepresentation made by that party to the other or restrict or exclude any remedy which the other party may have in respect of the misrepresentation. No variation of or waiver of or amendment to the Service Agreement shall be binding on "ACP" unless agreed in writing by a Director on its behalf. Conditions of Commercial and domestic debt collection

**2: THESE TERMS AND CONDITIONS** apply in respect of each and every set of instructions received by "ACP Online" ("the Agency") from their client ("the Client") in respect of the collection of a debt from a particular third party ("the Debtor") under these terms and conditions the exclusion of any inconsistent terms or conditions contained or referred to in the client's instructions or elsewhere or implied by trade or custom of practice or cause of dealing unless specifically agreed in writing by a director or the Agency. Under this agreement the client does assign the debt to the Agency, the agency will add late payment compensation costs and interest to the debt to be paid by the client's customer in accordance with The Late Payment of Commercial Debts (Interest) Act 1998. The Agency's fees will be the amount of the late payment compensation costs and interest plus any other commission agreed with the Client.

**3: BOUND MY CONDITIONS:** the client and agent will be bound by these Terms and Conditions throughout the entirety of its relationship with the Agency.

**4. THE AGENCY WILL:** act on the Client's behalf in attempting to recover debts from third parties who owe money to the assignee of the debt (the agent) who in turn will pay the client on receipt from the debtor.

**5. SUMMS RECOVERED:** will be paid to the Client within 7 days of cleared funds or cash having been received or being deemed to have been received by the Agency subject to the provisions of these Terms and Conditions. Fourteen days will be allowed from the banking of a cheque before cleared funds.

**6. WITHHOLDING INFORMATION:** If the Client receives any information which has or may have any bearing on the debtor's ability to pay, the Client shall pass such information on to the Agency immediately together with any instructions for further action the Client wishes the Agency to take.

**7. CESSING COLLECTION:** The Agency will have sole discretion in ceasing to continue or otherwise, proceedings against the debtor for the recovery of costs and/or interest.

**8: REPORTING ON PROGRESS:** The Agency will provide regular reports in relation to each matter on which the client has instructed them.

**9: ALL INSTRUCTIONS:** from the client are to be delivered in writing. Such instructions may take the form of a letter or be sent by facsimile transmission or be sent by email or by any other agreed electronic means to the Agency. Instructions may at the sole discretion of the Agency be accepted by the Agency over the telephone in case of urgency but no responsibility will be accepted by the Agency for faults, mistakes or misunderstandings arising from those instructions. All instructions must be confirmed in writing by the Client as soon as possible. The Client is solely responsible for the fullness and accuracy of the instructions.

**10: WITHOUT PREJUDICE:** to clause 17 below, instructions shall be deemed to be accepted as soon as the Agency is instructed in accordance with paragraph 9 above. All instructions are accepted by the Agency subject to these Terms and Conditions unless otherwise agreed in writing.

**11: RESERVES THE RIGHT** the right to amend or vary these Terms and Conditions, and in particular the fee rates from time to time but any such amendments/variations shall only have effect upon notification to the Client in writing.

**12: ADVERTISING LITERATURE:** or correspondence shall be deemed to be a variation of these Terms and Conditions. In the event of there being any inconsistency between these Terms and Conditions and any other document produced by the Agency these Terms and Conditions shall prevail.

**13: WARRENTY OF AUTHORITY:** Any employee, agent or representative of the Client who gives instructions to the Agency shall be deemed to have full authority to do so and shall be deemed to be duly authorised by the Client notwithstanding any actual defect in or want of authority.

**14: THE CLIENT AGREES** that any of its employees, agents or representatives who CONTACT the Agency shall have authority to give instructions to the Agency.

**15: INABILITY TO RECOVER DEBTS:** The Agency will use its reasonable endeavours to recover debts on behalf of the Client by normal commercial lawful means. However, the Agency does not guarantee that recovery will be made. There can be many reasons why recovery is not possible; The Agency will have no liability to the Client in any of the following circumstances. A. inability to trace debtor; b. Debtor absconding; c. debtor having insufficient assets to satisfy any judgment; d. Insolvency of debtor; e. insufficient evidence to prove the debt; f. Debtors estate having insufficient assets.

**16: TERMINATION OF CONTRACT :** In any of the above circumstances the Agency will take no further action in relation to a particular debt but will report to the Client for further instructions with full details of all costs incurred by the Agency which have not been recovered from the debtor and which shall be payable by the Client. On payment of the agents invoice the debt will be assigned back to the client.

**17: RESERVATION AND LIMITATION OF LIABILITY :** The Agency shall not be liable in anyway whatsoever whether in contract, in tort, in misrepresentation or otherwise for consequential or other loss, damage or injury however caused which may arise out of or in connection with the supply of debt collection services. The Agency shall not be liable for any loss of liability arising directly or indirectly out of its acts or omissions or those of its agents or arising by reason of any delay in collection of debts, in accounting to the Client for sums received, or for any loss arising out of or related to the recovery of debts either in a foreign currency or from a foreign debtor due to variations in exchange rates, due to circumstances beyond the Agency's reasonable control.

**18: THE AGENCY RESERVES** the right to decline any instructions received from a prospective or previous client of the Agency and may within its absolute discretion terminate any existing agreement immediately upon notice in writing being given by the Agency to the Client. Notwithstanding the termination of its agreement by the Agency, the Client shall be and remain liable for all costs, fees, disbursements, agent's fees and other charges incurred or payable by the Agency in connection with any instructions received from the Client as at the date of the said notice in writing. In the above circumstances or in the event of termination of this agreement at any stage by the Client the latter will be liable to pay to the Agency such sum which represents the fees or commission due to the Agency or such sum representing the fees as commission that the Agency would have received upon the conclusion of the matter being dealt with by the Agency. In the event that the Client fails to provide to the Agency such information as it reasonably requires in order to recover monies due under The Late Payment of Commercial Debts (Interest) Act 1998, and in the event that monies are not so recovered, the

**21: LIABILITY OF LOSS:** The Agency shall not under any circumstances be liable for any consequential loss or loss of profits or income on the part of the Client or any third party.

**22: LIABILITY OF LOSS TO CLIENT:** The Agency shall have no liability to the Client for any loss, delay or costs relating to or arising out of incomplete or inaccurate instructions.

**23: CHARGES** The Agency shall be entitled to receive fees calculated in accordance with any schedule or fee structure or service rate chart provided by the Agency to the Client. There is a minimum charge of £12.00 plus Vat in certain circumstances.

**24: INDEMNIFY THE AGENCY:** The Client shall be responsible for and shall indemnify the Agency against all costs and fees incurred by the Agency on its behalf from the time it receives the Client's instructions until such time as it is either notified by the client that no further action is required, the debt is recovered, the debt becomes irrecoverable or the instructions are terminated. Any such notification from the client must be made in writing.

**25: RECEIPT OF FUNDS BY CLIENT:** If a debt is paid directly to the Client in whole or in part or if the Client accepts goods or services in lieu of the debt after the Agency has accepted instructions the Client:

a. Shall inform the Agency immediately and confirm the position in writing to prevent the Agency incurring any further costs or fees on the Client's behalf;

b. Shall be responsible for all costs and fees incurred by the Agency until it receives such notification;

c. Shall be responsible in any event for the Agency's fees calculated in accordance with paragraph 2

**26. VAT:** All Agency fees charges and other costs and expenses incurred on the 'Client's' behalf are exclusive of VAT which shall be payable at the prevailing rate from time to time in force.

**27: PAYMENT:** All invoices, bills and other fees and expenses invoiced by the Agency to the Client shall be paid promptly and in any event no later than 7 days from their respective dates. If payment is not made within this period the Agency may refuse to take further action either on a particular matter or generally and the Agency shall be entitled to charge interest and compensation costs on all overdue accounts from the end of such 7 day period under the terms of the Late Payment of Commercial Debts (Interest) Act 1998. If the Client has a query with any invoice raised by the Agency, notification of such query must be detailed in writing by facsimile or e-mail to the Agency within 7 days from the date of the invoice. If no query is received within that time then the invoice will be deemed payable.

**28 : NON PAYMENT OF AGENCY INVOICE :** In the event that it becomes necessary to commence legal proceedings for the recovery of the Agency's or a third party's outstanding costs a further administration fee of up to £100 plus VAT will become immediately due and payable from the Client to the Agency. This fee may be waived at the sole discretion of the Agency in writing.

**29: AGENCY INVOICE:** The Agency will be entitled to submit an invoice for its fees and/or cost dependent of clause no.16. a. upon recovery of the debt by payment in whole or in part to either the Agency or the Client; b. upon the Agency advising the Client that in its view the debt should no longer be pursued or cannot reasonably be recovered; c. Upon the Client agreeing to Solicitors being instructed; d. Upon termination of the instructions in accordance with these Terms and Conditions.

**30: DEDUCTION OF FEES/COST:** The Agency shall be entitled to deduct from all sums received on behalf of the Client by the Agency or its agents all costs, fees, and other properly incurred expenses due and owing from the Client to the Agency relating to that particular matter and or generally. Any remaining balance will be dispatched to the Client at the earliest opportunity in accordance with these Terms and Conditions together with a statement showing the total amount received and giving full details of all deductions. In the circumstances of termination by the Client before an individual instruction has reached natural conclusion the Agency shall be entitled to submit charges to the Client for the commission sum that would be due upon full recovery and successful conclusion of the instruction.

**31: DISBURSEMENTS:** All Court and warrant fees are to be paid by the Client in advance of the same being incurred by the Agency. Such fees in the absence of agreement to the contrary shall be paid by the Client to the Agency upon demand. The agency may at its sole discretion offer to issue proceedings on behalf of the client so as to ensure that no delays are experienced when issuing proceedings. The client agrees that any such outlays will be reimbursed to the Agency by return.

**32: COSTS:** The fees of Solicitors/ Investigation Agents and of all other agents or persons engaged by the Agency on behalf of the Client are the sole responsibility of the Client and are payable on demand regardless of the outcome of the matter as and when required by the Agency without prejudice to later accounts rendered by the Agency to the Client.

**33. ENGAGEMENT OF THIRD PARTIES** The Agency shall, with the written or verbal consent of the Client, instruct Solicitors on behalf of the Client whenever the Agency considers it necessary or desirable to do so. It will liaise with the Solicitors on the Client's behalf. The Client may be required to provide a letter authorising the Solicitor to represent the Client.

**34: 3<sup>RD</sup> PARTY :** The Agency may, with the written or verbal consent of the Client, engage a tracing service or other third party to carry out specific tasks on behalf of the Client whenever circumstances are such that the services of such a third party are considered necessary or desirable by the Agency. This will be chargeable to the client. If there are any queries with regards to tasks carried out by a third party, these must be detailed in writing to the agency within two weeks of the client receiving the information and may be subject to a fee in accordance with Clause 21 of these terms and conditions .

**35: BANK CHARGES** All monies recovered on behalf of the Client will be paid into a separate bank account namely the Agencies Clients or Number Two bank account. Any bank charges levied against the agency i.e. bank charges arising from dishonoured cheques or any bank charges arising out of foreign currency transactions may be chargeable by the Agency to the client.

**36. CONFIDENTIALITY** All papers, documents, correspondence, trade secrets or other confidential information imparted to the Agency by the Client in the course of instruction or whilst the Agency provides Debt Recovery Services under the terms of this agreement shall remain confidential to the Client except where it is necessary to disclose the same to a Solicitor or other parties engaged by the Agency on behalf of the Client or except as otherwise provided for by these Terms and Conditions or where the Agency is bound to disclose the same under compulsion of law.

**37: LIEN** Upon the failure by the Client to pay fees when due, the Agency shall be entitled to withhold all documents, papers and correspondence it holds in connection with the Client's business pending the payment by the Client of all sums due.

**38: TERMINATION** Without prejudice to clause 19 above, the relationship between the Agency and the Client may be terminated forthwith by the Agency at any time by notice in writing to the Client but in particular on the occurrence of any of the following events:

a. Upon the Client becoming insolvent, having an administrator or receiver appointed in respect of its affairs or a bankruptcy order issued or if the Client makes any composition or arrangement with its creditors.

b. Upon the Client failing to discharge any outstanding account owed to the Agency.

c. Upon the Client failing to respond within a reasonable time to a request on the part of the Agency for further information or instructions.

D. In the event of a breach of any of these Terms and Conditions by the client.

e. If the Client uses a medium other than the Agency to collect a debt in

Client will be liable to pay to the Agency such sum as is equivalent to the monies that the Agency would have recovered under the said Act.

**19: OTHERWISE SPECIFICALLY AGREED :** in writing by the Agency, this agreement contains all terms agreed between the Agency and the Client, and supersedes any prior written or oral agreement between them and the parties confirm they have not entered into this agreement on the basis of any representations that are not expressly incorporated in this agreement. All representations, warranties or other terms implied by common law statute or otherwise are expressly excluded to the fullest extent permitted by law.

**20: STORAGE OF DOCUMENTS:** the Agency has only limited storage facilities. Accordingly, upon the conclusion of any matter the Agency reserves the right to destroy all records and documents, whether the property of the Client or not after a period of six months from the file being closed. The Agency will have no liability for any loss arising out of any such destruction. At any time before the expiry of this six month period the Agency will, upon receipt of a written request from the Client return the Client's documents at the Client's expense.

respect of which the Agency has been instructed.

**39. TERMINATE INSTRUCTIONS:** on either a particular matter or generally at any time upon giving to the Agency 14 day's notice in writing. Upon termination the Agency shall be entitled to invoice the Client for all outstanding amounts calculated in accordance with these Terms and Conditions and such amounts together with any amounts due to third parties will be immediately due and payable.

**40: SEVERANCE** If any provision of this agreement is prohibited by law or judged by the Court to be unlawful, void or unenforceable, then the relevant provision shall, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of the agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this agreement.

**41: HEADINGS** The headings used for these Terms and Conditions are for convenience only and shall not affect the construction of this Agreement.

**42: LAW** This Agreement shall be governed by the Laws of England to the exclusive jurisdiction of whose Courts the parties hereby submit.