

Standard Terms of Business for The Debt Recovery Bureau LLP

DRB LLP

TERMS AND CONDITIONS OF BUSINESS. Version 4.3 October 2018.

1. DEFINITIONS

"**Agent**" or "**Agents**" means any solicitor, bailiff, sheriffs, or other person instructed by DRB LLP to act on behalf of the Client in respect of the Services;

"the **Client**" means the individual, business or corporation to whom the Services are supplied ;

"the **Contract**" is the contract for the provision of the Services;

"the **Debt**" or "**Debts**" means any debt owing to the Client arising from the supply of goods and/or services for which the Client would be entitled to issue an invoice in the ordinary course of business;

"**Debt Recovery Activities**" means the recovery or attempted recovery of Debt, or any other action or matter arising as a result of such recovery or attempted recovery, on behalf of the Client but excluding for the avoidance of doubt any counterclaims or actions which are not connected with the initial Debt as placed with DRB LLP;

"**DRB LLP**" means Debt Recovery Bureau Limited Liability Partnership trading as DRB LLP;

"the **Services**" means all the work and services performed by, or at the direction of, DRB LLP, its associates, servants and agents in relation to the Debt Recovery Activities, as further described under Clause 2;

2. THE SERVICES

2.1 DRB LLP's quotation shall be deemed to be an invitation to the Client to make an offer to contract DRB LLP's services subject to these terms and such offer by the Client shall not constitute a valid Contract until accepted by DRB LLP's authorised representative, which acceptance shall be conveyed to the Client either by **receipt of a written confirmation by DRB LLP of the Client's offer**, or by the commencement of the provision of Services by DRB LLP, whichever shall be the earlier.

2.2 The Services shall be provided by DRB LLP through its own resources or, in the sole discretion of DRB LLP, through Agents.

2.3 DRB LLP shall, in its sole discretion, determine the most appropriate method and steps to be taken for the provision of the Services, including (without limitation) the giving of instructions on behalf of the Client to Agents.

2.4 DRB LLP reserves the right to refuse to accept any Debt, or refuse to instruct its associates servants or Agents to perform any Services in relation to any Debt placed by the Client at DRB LLP's discretion, and shall be indemnified in full by the Client against all costs, claims and expenses incurred by DRB LLP, its associates, servants and Agents, in the performance of any Services which are found to be ineligible.

3. OBLIGATIONS OF THE CLIENT

3.1 The Client undertakes to provide DRB LLP with all documents and information relating in any way to the Debt **and** notify DRB LLP promptly of any material change to the documents and information provided, including any new information of any kind, affecting directly or indirectly the Debt.

3.2 The Client undertakes that it will not make an arrangement for repayment of the debt without prior agreement with DRB LLP.

3.3 The Client shall notify DRB LLP and any Solicitor of any payment made to the Client in or towards the satisfaction of the Debt.

3.4 The Client undertakes to pay to DRB LLP a collection fee for any monies paid directly to the client after acceptance by DRB LLP to act on the client's behalf in the recovery of any monies due upon request.

3.5 The client undertakes to pay to DRB LLP a collection fee for any monies recovered by solicitors after a case has been referred to solicitors at the client's request.

3.6 All information provided by DRB LLP to the Client shall be held by the Client in the strictest confidence and shall not be disclosed to, nor relied upon, by any other person, firm or company without the consent of DRB LLP.

3.7 The Client undertakes to cooperate at all times with DRB LLP and the Agents.

3.8 The Client shall not instruct any other person, firm or company in respect of the Debt or the Services without the prior written approval of DRB LLP.

3.9 The Client shall provide all information and comply with the obligations specified under Clauses 3.1, 3.2 and 3.3 without delay. Any delay or information prejudicing DRB LLP's or the Agent's performance of the Services shall entitle DRB LLP to terminate the Services immediately.

3.10 The Client acknowledges its liability to meet in full all costs, claims, expenses and awards made against it by any court of competent jurisdiction as a result of the Debt Recovery Activities or the Services.

4. FEES AND EXPENSES

4.1 The fees shall be paid by the Client in accordance with the relevant standard DRB LLP scale of fees in force at the time when the Debt is placed with DRB LLP.

4.2 All fees are subject to VAT at the rate charged by the UK Government at the time at which the fees are invoiced.

4.3 Subject to DRB LLP providing the Client with reasonable notice prior to any change, DRB LLP reserves the right to vary its scale of fees at any time.

4.4 Payment is due no later than seven days after the date of any invoice. Failure to pay in full on the due date will entitle DRB LLP to;

4.4.1 receive interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2013

a calculated (on a daily basis) from the date of invoice until payment;

b compounded on the first day of each month; and

c before and after any judgment (unless a court orders otherwise);

4.4.2 claim compensation from the Client under s.5A of that Act to cover reasonable credit control overhead costs plus a fixed sum;

4.4.3 recover (under clause 4.6) the cost of taking legal action to make the Client pay.

4.5 If DRB LLP has provided the Client with credit facilities, then DRB LLP reserves the right to withdraw or to reduce such credit facilities, or to bring forward the date for payment at any time.

4.6 On the due date for payment the Client shall pay to DRB LLP the balance due for payment, without any right of set-off, deduction, retention or withholding whatsoever.

4.7 The Client shall fully and effectively indemnify DRB LLP against the total expense to DRB LLP arising out of the Client's breach or breaches of these terms. Such expense shall include, without limitation, all expenses incurred by DRB LLP in recovering overdue fees, all court fees, all amounts payable to DRB LLP's professional advisers (payable on an indemnity basis) in pursuing claims against the Client for breaches of the terms and for enforcing any judgment(s) and/or orders, all amounts payable to DRB LLP's debt recovery agents. The Client further agrees to so indemnify DRB LLP in the event that any instructions given to DRB LLP by the Client, its officers, contractors or its employees are not authorised by the Client, or if any information given to DRB LLP proves to be inaccurate, incomplete or misleading.

4.8 Other fees and expenses payable to Agents shall be payable by the Client in addition to the fees and shall be paid irrespective of the extent of any recovery achieved by DRB LLP hereunder (if any). Unbilled or outstanding fees and expenses of Agents shall become immediately due and payable in the event of the termination of the Services for any reason.

4.9 Cheques received by the DRB LLP from a debtor which are subsequently not honoured will be subject to an administration fee payable by the Client.

5. RECOVERY PAYMENTS

5.1 Any monies received by DRB LLP in performance of the Services will be paid into a general DRB LLP collection account and any fees, or part thereof, together with other fees and expenses of any Agent shall be either:

5.1.1 discharged out of monies held in that account; in which case DRB LLP will account to the Client upon receipt of the monies recovered by the Agents, in excess of fees, other fees and expenses due and payable; or

5.1.2 invoiced to the Client separately, in which case DRB LLP will account to the Client in full upon receipt of the monies recovered by the Agents, without deduction of fees, other fees and charges due and payable.

5.2 DRB LLP shall:

5.2.1 decide which of the two options set out in clause 5.1 shall apply, and

5.2.2 be at liberty to vary the option selected, upon reasonable notice, at any time each in its sole and final discretion.

5.3 No interest is payable on monies held in the DRB LLP collection account.

5.4 In the event that the Client does not honour in full any request for fees and any other expenses and charges, DRB LLP reserves the right to either deduct from any other monies recovered by the Agents for the Client, or to reclaim from the Client, at the Client's cost, sufficient monies to meet such fees, expenses and charges.

6. TERMINATION OF SERVICES

6.1 The Client may give written notice at any time to DRB LLP to terminate the Services. The Client shall be responsible for all fees, expenses and costs incurred to date and accruing and shall forthwith pay those fees, expenses and costs to DRB LLP and any solicitor, as appropriate. The Client shall also be responsible for any debt collection fees that DRB LLP could have reasonably expected to have earned from accounts it commenced collection action upon.

6.2 DRB LLP may terminate the contract, by written notice if the Client:

6.2.1 fails to pay DRB LLP any money when due;

6.2.2 becomes insolvent as defined in clause 8;

6.2.3 fails to honour their obligations under these terms.

6.3 The right of termination given by Clause 6.2 shall be without prejudice to any other right or remedy of either party in respect of any breach committed under the Terms and Conditions.

7. LIMITATION OF LIABILITY

7.1 Neither DRB LLP, its servants or agents represent that any information or advice given is accurate or that any statement made by DRB LLP, its servants or agents amounts to an undertaking, term, condition, representation or warranty capable of incorporation into the terms or any collateral agreement hereto. In addition, DRB LLP will not be held liable for the Client's reliance on any unauthorised representations, whether oral or in writing, made by DRB LLP's servants or agents, unless such representations are confirmed in writing by a director of DRB LLP.

7.2 Neither DRB LLP, its servants or agents shall be liable for any direct or indirect losses or damages of the Client whether pure economic loss, consequential loss, or otherwise, arising from the services.

7.3 Subject to the provisions of the Unfair Contract Terms Act 1977, all warranties, conditions, representations whether written or oral, or other terms implied by statute or common law are excluded to the fullest extent permissible by law.

7.4 To the extent that the law does not permit the liabilities concerned to be excluded and save as otherwise expressly provided, DRB LLP's entire aggregate liability for all claims arising out of these terms shall be limited to an amount equal to the fee payable by the Client to DRB LLP in respect of the Debt in relation to which the liability has arisen.

8. INSOLVENCY

8.1 DRB LLP may treat the Client as insolvent if:

8.1.1 they are unable to pay their debts as they fall due; or

8.1.2 they become the subject of:

a. any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (including a moratorium) or bankruptcy);

b. any application or proposal for any formal insolvency procedure; or

c. any application, procedure or proposal overseas with similar effect or purpose.

9. NOTICE

Either DRB LLP or the client may serve notice upon the other by pre-paid first class post at the registered office or normal place of business of the other party. Post is deemed to have been received the next working day after the day of posting.

10. FORCE MAJEURE

The provision of the Services shall automatically terminate subject to payment by the Client of fees and expenses incurred to that date, in the event that such provision of Services is frustrated or incapable of performance, through any cause beyond the control of DRB LLP or the Client, including but not limited to acts of God, accident, explosion, fire, transport delays, strikes and other industrial disputes, and compliance with any government laws, regulations or orders.

11. DATA PROTECTION

11.1 DRB LLP is committed to *processing personal data* (as each term is defined in the Data Protection Act 2018 ("GDPR"))("data") in accordance with the

provisions of the Data Protection Act 2018. Where data is given to DRB LLP, it will be received on the premise that the Client is authorised to process such data in compliance with its obligations imposed by the Data Protection Act 2018 or similar legislation. DRB LLP is a Data Processor under the terms of the Data Protection Act 2018 and the Client is the Data Controller. DRB LLP accepts no responsibility or liability for any action or claim brought by an individual or the Office of the Information Commissioner where the Client is found to be in, or has been in, contravention of the provisions and principles of the Data Protection Act 2018 or similar legislation. The Client agrees to indemnify DRB LLP for any losses DRB LLP may sustain in responding to any such action or claim on the Client's behalf.

11.2 The data will be used by DRB LLP in the provision of its Debt Recovery Activities, Services and general collection and credit management activities, and it may be necessary for DRB LLP to share the data with others. For example, the data will be passed to legal advisers, debt recovery agents, tracing agents or a credit reference agency all of which may be located both within or outside the Economic European Area.

11.3 If the Client shall at any stage become a *data processor* (as defined in the Data Protection Act 2018) in respect of any data provided to and by DRB LLP, it will follow the sole instructions of DRB LLP in connection with such processing and shall indemnify DRB LLP, and take appropriate measures, against unauthorised or unlawful processing of such data and against accidental loss or destruction of, or damage to, such data.

11.4 The Client may write to the Data Protection Officer of the DRB LLP at 415 The Greenhouse, Custard Factory, Gibb Street, Birmingham. B9 4DP for information as it relates to the Services, otherwise the Client should seek legal advice for general data protection enquiries.

12. GENERAL

12.1 These terms apply to the Services and no variations shall be effective unless made in writing, signed by the DRB LLP and the Client, and expressing an intention to vary these terms.

12.2 These terms shall be between DRB LLP, its servants or Agents, and the Client and shall not be capable of assignment or transfer in whole or in part by the Client without the prior written consent of DRB LLP.

12.3 English Law is applicable to any contract under these terms. The English and Welsh courts have non-exclusive jurisdiction.

12.4 No delay or failure by DRB LLP in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by DRB LLP of any breach by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by DRB LLP shall be effective unless in writing.

12.5 If any provision of the terms is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the terms and the remainder of the provision in question shall not be affected.

12.6 These terms (together with any documents referred to in them) constitute the whole agreement between the DRB LLP and the Client relating to its subject matter and supersede any prior agreements or understandings.

12.7 Nothing in these terms affects or limits the liability of DRB LLP for fraudulent misrepresentation.

12.8 Nothing in these terms shall confer on any third party any benefit or the right to enforce any provisions of these Terms and Conditions.