



Date: 28/07/2014
Ref: MG0101

Maxwell Grant Limited
Terms & Conditions

MAXWELL GRANT LIMITED

TERMS & CONDITIONS

This agreement between the Customer and Maxwell Grant Limited ("**MGL**") for the engagement of MGL's services, namely the provision of Advice, is governed by the terms and conditions set out below.

The Customer and MGL shall hereinafter be referred to as "**the Parties**".

The Customer's attention is particularly drawn to the provisions of Clause Error!
Reference source not found. **as set out below.**

1. Interpretation

In these Terms & Conditions unless the context otherwise requires the following expressions shall have the following meanings:

1.1	"Advice"	Means the advice provided by MGL to the Customer in respect of third party services including any associated written or verbal recommendations and/or quotations provided by MGL relating to third party service providers;
1.2	"Business Day"	Means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
1.3	"Commencement Date"	Has the meaning set out in Clause 2.1;
1.4	"Contract"	Means the contract between the Parties for the provision of the Advice as established in these Terms & Conditions;
1.5	"Customer"	Means the person or firm who receives the Advice from MGL;
1.6	"Intellectual Property Rights"	Means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
1.7	"MGL"	Means Maxwell Grant Limited, a company registered in England and Wales at Livery Hill Farm House, Livery Road, Winterslow, Salisbury, United Kingdom, SP5 1RJ with company registration number 04676982; and
1.8	"Terms & Conditions"	Means these terms and conditions as amended from time to time in accordance with Clause 11.8.

1.9 In these Terms & Conditions, the following rules apply:

- 1.9.1 A 'person' includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.9.2 A reference to a party includes its personal representatives, successors or permitted assigns;
- 1.9.3 Any phrase introduced by the terms 'including', 'include', 'in particular' or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.9.4 A reference to 'writing' or 'written' includes faxes and e-mails.

2. Basis Of Contract

- 2.1 The Contract shall come into existence on the date on which the Customer receives the Advice ("**Commencement Date**") and will continue in perpetuity until terminated in accordance with Clause 9.
- 2.2 The Contract constitutes the entire agreement between the Parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of MGL which is not set out in the Terms & Conditions.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by MGL, and any descriptions or illustrations contained in MGL's catalogues or brochures, or on MGL's website, are issued or published for the sole purpose of giving an approximate idea of the Advice described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Terms & Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Provision Of Advice

- 3.1 MGL shall provide the Advice to the Customer in writing or verbally, as agreed between the Parties from time to time.
- 3.2 Any performance dates specified by MGL in relation to the provision of the Advice shall be estimates only and time shall not be of the essence for the provision of the Advice.
- 3.3 MGL shall have the right to make any changes to the way in which the Advice is provided which are necessary to comply with any applicable law or requirement, or which do not materially affect the nature or quality of the Advice, and MGL shall notify the Customer in any such event.
- 3.4 For the avoidance of doubt, the Customer may be contacted by third party service providers during the provision of the Advice or subsequent to the provision of the Advice, but only in connection with the provision of the Advice or in connection with services offered by the third party service provider.

4. Customer's Obligations

- 4.1 The Customer shall:
 - 4.1.1 Ensure that the information it provides to MGL prior to the provision of the Advice is complete and accurate. For the avoidance of doubt, any information provided to

MGL in connection with the Contract may be shared with third party service providers in order for MGL to be able to provide the Advice to the Customer;

- 4.1.2 Co-operate with MGL in all matters relating to the provision of the Advice;
 - 4.1.3 Provide MGL with such information and materials as MGL may reasonably require in order to provide the Advice. For the avoidance of doubt the Customer shall ensure that such information is accurate in all respects; and
 - 4.1.4 Provide MGL, its employees, agents, consultants and sub-contractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by MGL.
- 4.2 If MGL's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 4.2.1 MGL shall without limiting its other rights or remedies have the right to suspend provision of the Advice until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays MGL's performance of any of its obligations;
 - 4.2.2 MGL shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from MGL's failure or delay to perform any of its obligations as set out in these Terms & Conditions; and
 - 4.2.3 The Customer shall reimburse MGL on written demand for any costs or losses sustained or incurred by MGL arising directly or indirectly from the Customer Default.

5. Charges & Payment

- 5.1 Where applicable and only in relation to Advice provided as part of ongoing consultancy services, the Charges for the provision of the Advice is as set out below:
 - 5.1.1 In the event that MGL is providing consultancy services as part of the Advice, the Charges shall be calculated on a case by case basis.
- 5.2 Where applicable, MGL shall be entitled to charge an additional fee where preparation work has been carried out by MGL on behalf of the Customer where the Customer does not engage MGL for the provision of the Advice. For the avoidance of doubt, the Customer shall receive notification of any such additional fees prior to such additional fees being incurred.
- 5.3 Where applicable and only in relation to Advice provided as part of ongoing consultancy services, MGL shall invoice the Customer on completion of the provision of the Advice.
- 5.4 Where applicable, the Customer shall pay each invoice submitted by MGL:
 - 5.4.1 Within twenty (20) Business Days of the date of the invoice; and
 - 5.4.2 In full and in cleared funds to a bank account nominated in writing by MGL; and
 - 5.4.3 Time for payment shall be of the essence of the Contract.

- 5.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by MGL to the Customer, the Customer shall, on receipt of a valid VAT invoice from MGL, pay to MGL such additional amounts in respect of VAT as are chargeable on the provision of the Advice at the same time as payment is due for the provision of the Advice.
- 5.6 Without limiting any other right or remedy of MGL, if the Customer fails to make any payment due to MGL under the Contract by the due date for payment ("**Due Date**"), MGL shall have the right to charge interest on the overdue amount at the rate of five per cent (5%) per annum above the then current Santander UK Plc's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against MGL in order to justify withholding payment of any such amount in whole or in part. MGL may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by MGL to the Customer.

6. Intellectual Property Rights

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the provision of the Advice shall be owned by MGL.

7. Confidentiality

- 7.1 A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and marked as confidential and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This Clause 7 shall survive termination of the Contract.

8. Limitation Of Liability

- 8.1 Nothing in these Terms & Conditions shall limit or exclude MGL's liability for:
- 8.1.1 Death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors; or
- 8.1.2 Fraud or fraudulent misrepresentation.
- 8.2 Subject to clause **Error! Reference source not found.**:
- 8.2.1 MGL shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract. For the avoidance of doubt, the Customer agrees that the Customer has entered into the Contract at the Customer's own risk, and that the Customer relies on the Advice at the Customer's own risk; and

- 8.2.2 MGL's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Contract; and
- 8.2.3 For the avoidance of doubt, in relation to Clause 8.2.1, MGL shall not be liable to the Customer in respect of any loss of profit, or any indirect or consequential loss arising out of or in connection with the Customer's use and/or engagement of the third party services recommended by MGL in the Advice, or in connection with the failure of any third party service provider's services.
- 8.3 Except as set out in these Terms & Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 This Clause 8 shall survive termination of the Contract.

9. Termination

- 9.1 Where applicable and only in relation to Advice provided as part of ongoing consultancy services, without limiting its other rights or remedies, each Party may terminate the Contract with immediate effect by giving written notice to the other Party if:
- 9.1.1 The other Party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within ten (10) Business Days of that Party being notified in writing of the breach;
- 9.1.2 The other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts;
- 9.1.3 The other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- 9.1.4 A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;
- 9.1.5 The other Party (being an individual) is the subject of a bankruptcy petition or order;
- 9.1.6 A person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- 9.1.7 The other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 9.1.8 The other Party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

- 9.2 Without limiting its other rights or remedies, MGL may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the Due Date for payment.
- 9.3 Where applicable and only in relation to Advice provided as part of ongoing consultancy services, without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party twenty (20) Business Days written notice.
- 9.4 Where applicable and only in relation to Advice provided as part of ongoing consultancy services, without limiting its other rights or remedies, MGL shall have the right to suspend provision of the Advice under the Contract if the Customer becomes subject to any of the events listed in Clause 9.1.2 to Clause 9.1.8, or MGL reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the Due Date for payment.

10. Consequences Of Termination

- 10.1 On termination of the Contract for any reason:
- 10.1.1 Where applicable and only in relation to Advice provided as part of ongoing consultancy services, the Customer shall immediately pay to MGL all of MGL's outstanding unpaid invoices and interest and, in respect of Advice provided but for which no invoice has been submitted, MGL shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 10.1.2 The accrued rights, remedies, obligations and liabilities of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- 10.1.3 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11. General

11.1 Force Majeure:

- 11.1.1 For the purposes of this Contract, "**Force Majeure Event**" means an event beyond the reasonable control of MGL including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of MGL or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 11.1.2 MGL shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 11.1.3 Where applicable and in relation to Advice provided as part of ongoing consultancy services, if the Force Majeure Event prevents MGL from providing the Advice for more than sixty (60) Business Days, MGL shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

11.2 Assignment & Sub-Contracting:

- 11.2.1 MGL may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights under the Contract and may sub-contract or

delegate in any manner any or all of its obligations under the Contract to any third party or agent.

11.2.2 The Customer shall not, without the prior written consent of MGL, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11.3 **Notices:**

11.3.1 Any notice or other communication required to be given to a Party under or in connection with this Contract shall be in writing and shall be delivered to the other Party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other Party's main fax number or sent by e-mail to the other Party's main e-mail address.

11.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission or if sent by e-mail on the date and at the time the e-mail is received.

11.3.3 This Clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action.

11.4 **Waiver:**

11.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a Party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

11.5 **Severance:**

11.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

11.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.6 **No Partnership:** Subject to any further agreement in writing between the Parties, nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the Parties, nor constitute any Party the agent of another Party for any purpose. Unless otherwise agreed in accordance with this Clause 11.6, no Party shall have authority to act as agent for, or to bind, the other Party in any way.

- 11.7 **Third Parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.8 **Variation:** Except as set out in these Terms & Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall be binding from the date of MGL's reasonable notice of variation to the Customer. For the avoidance of doubt, MGL may amend these Terms & Conditions from time to time.
- 11.9 **Governing Law & Jurisdiction:** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.