

Equilibrium Debt Recovery Ltd

General terms & conditions of business

Between

Equilibrium Debt Recovery Limited

72 Leadenhall Market, London, EC3V 1LT

“Equilibrium”

And

.....

.....

.....

“The Client”

1. **Definitions**

1.1 **Ancillary Charges** means: the charges set out in the Price List, disbursements paid to third parties and costs and charges set out in paragraph 8.6 below.

1.2 **Client** means: the person, limited company or business instructing Equilibrium in relation to the Services.

1.3 **Debt** means: each sum owed to the Client which Equilibrium is instructed to collect.

1.4 **Debtor** means: the person, limited company or business instructed as owing monies to the Client.

1.5 **Minimum Commission** means: the sum of £90 where the commission earned would be less than that sum.

1.6 **Monies Recovered** means: monies paid in relation to a Debt or the amount set-off or reduced as a contra charge against the Debt or the value of goods, monies or any other pecuniary advantage received by the Client in payment of a Debt as a set-off or contra charge in relation to the Debt.

1.7 **Price List** means: Equilibrium's current price list setting out Equilibrium's charges, a copy of which is available on request.

1.8 **Equilibrium** means: Equilibrium Debt Recovery Limited (registered number 13437333) or any associated or subsidiary company.

1.9 **Services** means: collection of Debts from third parties and any other service ancillary or associated with this function.

2. **General**

2.1 Equilibrium only supplies its Services on these conditions which in the case of conflict shall override any terms or conditions sought to be imposed by the Client and can only be varied in writing by Equilibrium's duly authorised representative.

2.2 The Client's instruction to carry out the Services constitutes a binding contract incorporating these terms and conditions.

3. **Equilibrium's Obligations**

3.1 Equilibrium will endeavour to collect the Debt and perform the Services on behalf of the Client.

3.2 Equilibrium will act in a professional manner in compliance with industry standards and, where applicable, in accordance with FCA Regulations.

3.3 Equilibrium will maintain a separate general client account for all monies due to Clients received for payment of Debts subject to clauses 6.5 below.

3.4 Equilibrium will account to the Client at least once per calendar month and in any event will send all monies collected within 40 days of receipt subject always to clauses 6.5, 6.6 below. Equilibrium is not obliged to send any monies to any business, individual or limited company that is not the Client.

3.5 Where any Monies Recovered are less than £90 payment will be made within one calendar month of the accumulative total of £90 being collected, save where no further Monies Recovered are collected.

4. **Agency**

4.1 Equilibrium shall act as an agent for the Client and is authorised by the Client to do all acts necessary for carrying out the Services on behalf of the Client, including but not limited to corresponding with Debtors, third parties, solicitors and other interested parties on the Client's behalf, instructing solicitors, third parties, enforcement officers, enquiry agents or other third parties.

5. **The Client's Obligations**

5.1 The Client agrees that it will give to Equilibrium:

5.1.1 All necessary documents and correspondence (whether or not requested) to enable Equilibrium to properly carry out the Services.

5.1.2 All relevant information within the Client's knowledge, whether advantageous or not.

5.1.3 Copies of any further correspondence with the Debtor or its solicitors or agents after the commencement of the Services.

5.2 The Client shall forthwith notify Equilibrium of any payment made in relation to the Debt or any arrangement for payment entered into with the Debtor or any payment made during the period of this agreement within 4 months of the termination of this agreement.

5.3 The Client will not instruct any other agency in relation to the Debt until this agreement is terminated under the terms hereof.

5.4 The Client will respond to any request for documentation and information from Equilibrium and give instructions to Equilibrium or any solicitors instructed in a timely manner.

5.5 The Client will ensure that all information on the case listing and information forms required by Equilibrium is complete and accurate.

6. **Payment**

6.1 The Client will pay to Equilibrium the following:

6.1.1 Commission on Monies Recovered at a rate agreed between Equilibrium and the Client. If no such rate is agreed, commission shall be payable at a rate of 20% of the debt recovered if by means of credit control. Alternatively, the client will be billed 35% of the debt recovered in the event that it instructs Equilibrium to issue a claim.

6.2.2 The ancillary charges.

6.2 Equilibrium's costs and commission are payable;

6.2.1 from the time an instruction to collect a Debt is submitted or a case listing form is received by Equilibrium;

6.2.2 if the Client fails to notify Equilibrium of a payment in relation to the Debt, or does not respond to a request by Equilibrium for information in relation thereto within 21 days of the date of such payment or where a request has been made within 21 days of request on the full amount of the Debt;

6.2.3 where the Client withdraws its instructions other than by termination under this agreement as if the full amount of the Debt has been paid;

6.2.4 where the Client withdraws its instructions or the agreement is terminated and the Debt has been secured by way of charge, charging order or otherwise as if the amount so charged had been recovered.

6.25 on the amount of any payment made within 4 months of the termination of this agreement.

6.2.6 on the amount of any payment made in accordance with an agreement with the Debtor where such agreement was made prior to the date of termination or within 4 months thereafter

6.3 VAT will be charged at the prevailing rate.

6.4 Equilibrium may request the payment of charges and disbursements in advance based on the charges on the Price List.

6.5 Equilibrium may deduct any commission or Ancillary Charges from any monies held in connection with the payment of a Debt including a Debt recovered on behalf of a company that is a subsidiary of the Client or an associated company thereof.

6.6 Irrespective of any instructions to the contrary, Equilibrium can refuse to make any payment to the Client or accept any payment on the Client's behalf if they believe that by doing so they might break a law, regulation, code or other duty which applies to them or incur any liability to a third party. Furthermore, the Client agrees to indemnify Equilibrium and keep them indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit and all interest, penalties and legal costs, calculated on a full indemnity basis, and all other professional costs and expenses) suffered or incurred by Equilibrium in relation to claims by third parties against them or their employees arising out of or in connection with their performance of this agreement. This provision will apply whether or not Equilibrium have acted negligently. The Client agrees that Equilibrium can deduct any sums payable under this provision from any money which is held to the Client's account without requiring the Client's specific permission.

7. Terms of Payment

7.1 Where any invoice is not deducted from Monies Recovered in accordance with paragraph 6.5 hereof, invoices shall be payable within 7 days of the date of such invoice.

7.2 Interest shall be paid on any invoice that is outstanding for more than 7 days at a rate of 8% over base rate or the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998 or any Regulation connected therewith, whichever is the higher.

8. Legal and Insolvency Actions

8.1 Equilibrium does not give legal advice. Equilibrium may set out the options available for the collection of a Debt and may give information about the general effectiveness of any such method of collection but any advice is of a general nature and is not tailored to the specific requirements of the Client or in relation to the Debt. The Client must, where necessary, obtain its own independent legal advice.

8.2 Equilibrium may recommend a suitably experienced solicitor to advise and commence a claim or institute insolvency proceedings. The Client may choose its own solicitor but Equilibrium's costs, commission and Ancillary Costs remain payable hereunder.

8.3 Equilibrium may be paid a referral fee by the recommended solicitor. Full details of any referral fee paid will be provided by the solicitor or may be requested from Equilibrium.

8.4 Any advice given by a solicitor recommended by Equilibrium is done in accordance with their terms of business which will be provided directly by the solicitor to the Client. Equilibrium is independent from that solicitor and has no commercial arrangement other than the referral fee set out above.

8.5 The Client appoints Equilibrium as its agent to liaise with the appointed solicitor, convey the Client's instructions to the solicitor including instructions to compromise an action or accept or put forward any offer of settlement, pay fees and disbursements on behalf of the Client, collect Monies Recovered from the solicitor on the Client's behalf and provide the appointed solicitor with the Client's evidence and documentation.

8.6 Equilibrium will liaise with the appointed solicitor on the Client's behalf, act as a point of contact, assist in transmitting information from the solicitor, explain generally the court system and assist in marshalling the Client's documents. Equilibrium may charge a fee for such work in addition to the charges levied by the solicitor. Equilibrium's fees may not be recoverable as legal costs in the action depending on the Client's terms of business with its customers.

8.7 Equilibrium will collect court fees, disbursements and legal costs from the Client including monies for anticipated legal costs or disbursements. Equilibrium reserves the right to delay its instructions to commence legal action or other steps in the event that any invoice for such sums remains unpaid.

8.8 Any quoted fees for legal actions are not exhaustive as the costs of such action cannot be predicted at the outset.

9. Termination of Services

9.1 Either party may give the other 30 days written notice to terminate this agreement.

9.2 Equilibrium may terminate this agreement forthwith on giving written notice in the following circumstances.

9.2.2 The Client is insolvent, commits an act of bankruptcy, is adjudged to be bankrupt (if the Client is an individual) or a winding up petition is issued against a Client company.

9.2.3 The Client goes into administration, a receiver is appointed in relation to any of the Client's assets or an administration order is made.

9.2.4 The Client enters into a voluntary arrangement with his creditors.

9.2.5 The Client ceases or threatens to cease to carry on business.

9.2.6 The Client fails to make payment or is in breach of the terms of this agreement.

9.2.7 The Debtor is insolvent or the Debt is not worth perusing in the reasonable opinion of Equilibrium.

9.2.8 Equilibrium is asked to act in a manner that is a breach of its professional obligations or is illegal or immoral.

9.2.9 Where the Client fails to give instructions in a timely manner or Equilibrium or the nominated solicitors where any other party is instructed to collect the Debt.

9.3 In the event of termination commission and ancillary charges shall become immediately payable.

10. Indemnity

10.1 The Client will indemnify Equilibrium against all losses, damages, expenses and costs on a full indemnity basis and hold Equilibrium harmless in relation to.

10.1.1 Any breach of this agreement.

10.1.2 Any claim made by a third party against Equilibrium whilst carrying out the Services for the Client except any claim arising out of or relating to Equilibrium's negligence or breach of this agreement.

10.1.3 Any monies, costs or disbursements expended by Equilibrium on the Client's behalf.

10.1.4 Any monies paid to the Client by Equilibrium in connection with the collection of a Debt where such monies are recalled by a paying party or intermediary.

11. Limitation of Liability

11.1 Nothing in these terms and conditions shall exclude or restrict Equilibrium's liability for death or personal injury resulting from its negligence, liability for fraudulent misrepresentation or any other liability which cannot be limited or excluded under applicable law. Subject to this:

11.1.1 Equilibrium's total liability to the Client in contract or tort or otherwise howsoever arising in relation to this contract is limited to the amount of the Debt, or the sum of £1,000,000, whichever is the lower.

11.1.2 Equilibrium will not be liable to the Client for economic loss including loss of profits, business, contracts, revenues, goodwill and anticipated savings of any descriptions howsoever caused even if foreseeable by the Client.

11.1.3 Equilibrium will not be liable in relation to any instructions given by the Client as a consequence of its general advice on collection of the Debt.

11.1.4 Equilibrium is not liable for any monies remitted to a bank account which Equilibrium have been notified is the account of the Client whether or not the account is the Client's account or the notification has been given by a third-party purporting to be the Client.

All warranties, conditions and other terms implied by statute, common law or otherwise are hereby excluded from this contract to the fullest extent permitted by law.

12. GDPR

12.1 Equilibrium is the data processor of any personal data provided by the Client under this agreement (the personal data).

12.2 The nature and purpose of the personal data being processed are to enable Equilibrium to carry out the Services.

12.3 The Client's personal data will be stored on Equilibrium's computer system where it may be viewed by any employee of this office. A paper copy of personal data may be taken. Personal data may include information relating to the Debt, names, addresses, email addresses, national insurance numbers, dates of birth, financial information and identity documents.

12.4 Subject to obligations under Personal Data Legalisation the Client, by way of its retainer, provide Equilibrium with written authorisation to share this information with solicitors, agents,

advocates, insolvency practitioners, subcontractors, process servers, collection agents, IT consultants, and any third party necessary to enable Equilibrium to fulfil its obligations.

12.5 Equilibrium will ensure that any persons authorised to process your personal data have committed themselves to confidentiality or under an appropriate obligation of confidentiality and have taken the measures required by Article 32 of GDPR.

12.6 The Client has a right to request access to rectification or erasure of data and to object and request a restriction of processing and data portability subject to our professional and legal obligations.

12.7 A subject access request can be made to Equilibrium's registered office for the attention of the Data Controller.

12.8 If the Client is not satisfied with Equilibrium's response or believes Equilibrium are processing data unfairly or unlawfully the Client can complain to the Information Commissioner's Office.

13. **General**

13.1 This contract is subject to and should be interpreted in accordance with the laws of England & Wales and the Courts of England & Wales have exclusive jurisdiction of any dispute arising in connection hereunder.

13.2 No delay or failure by Equilibrium to enforce any provisions of these terms and conditions is a waiver of that provision or any other provision.

13.3 If any one of the provisions hereof are held by a competent tribunal or authority to be invalid or enforceable the rest of the provisions remain valid and enforceable.

13.4 This contract is the entire agreement between Equilibrium and the Client on the subject matter contained herein and supersedes any representations, communications and prior agreements between Equilibrium and the Client.

13.5 The Client acknowledges that it has relied solely on these terms and conditions of business and not on any other representation, warranty or statement of undertaking by Equilibrium, its employees, professional advisors, agents or solicitor.

13.6 Unless expressly provided under this contract no term of this contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

13.7 Telephone calls to and from Equilibrium may be recorded for quality and training purposes.

13.8 If any of the provisions of the Services is frustrated or cannot be performed because of events beyond the control of Equilibrium or the Client including but not limited to acts of God, terrorism accident, explosion, fire, transports, delays, strikes and other industrial disputes, and compliance with any laws, regulations or orders. In the circumstances the bridge of the service ends dramatically on the date when the Client has paid the costs incurred to that date.

Signed:

.....

.....

Mr Alan Mills

Print Name

Director

.....

For and on behalf of Equilibrium

For and on behalf of the Client

Dated

Dated

.....

.....