

## **TERMS AND CONDITIONS**

Licensor agrees to supply access to its Services on these Terms and Conditions.

### **1 DEFINITIONS**

In these Terms and Conditions, the following terms shall have the following meanings:

#### **1.1 Affiliate**

An entity that controls, is controlled by, or is under common control with a party. An entity will be deemed to control another entity if it holds a majority of the voting corporate capital and/or has the power to direct or cause the direction of the management or policies of such entity through the ownership of voting capital and/or securities.

#### **1.2 Authorised User**

An employee or Contractor of Licensee or its Affiliates, as identified on the Order Form, who:

- (a) either has been issued with a password or other authentication or has provided Licensor with the IP address of each terminal from which access to the Services will be gained; and
- (b) physically reports to and works at a Site or works at a Remote Location via a Secure Network.

#### **1.3 Content**

Information comprised in the Services other than a précis of such information.

#### **1.4 Contract**

The entire agreement as between Licensor and Licensee as constituted by the Order Form together with these Terms and Conditions.

#### **1.5 Contractor**

An independent contractor engaged by Licensee who:

- (a) is approved in writing by Licensor prior to accessing the Services;
- (b) is subject to obligations of confidentiality no less stringent than the confidentiality obligations of Licensee under the Contract; and
- (c) exclusively uses the Services on behalf of, and while providing services to, Licensee.

#### 1.6 **Dataset**

Information or data from a database Service primarily devoted to market sizing by market segment and country, derived from a single market segment and country.

#### 1.7 **Fee**

The fees set out in the Order Form.

#### 1.8 **Licensee**

The customer identified in the Order Form.

#### 1.9 **Licensor**

The services provider identified in the Order Form.

#### 1.10 **Order Form**

The form by which Licensee orders the Services and accepts the Contract and which specifies, among other things, the Fee, format and level of Services, Authorised Users, Sites and the dates for the Subscription Period.

#### 1.11 **Remote Location**

A particular physical location, other than a Site, where a single Authorized User is located but who does not work amongst other Authorized Users or employees of Licensee.

#### 1.12 **Secure Network**

A private network (whether a standalone network or a virtual network within the internet) operated and regulated by Licensee which is accessible only to Authorised Users with the prior approval of Licensee, requiring identity to be authenticated at the time of login and periodically thereafter consistent with current best practice.

#### 1.13 **Services**

Data, research, and product retrieval services, as more particularly specified on the Order Form, including, without limitation, marketing intelligence, analysis, and editorial reports and databases published from time to time by Licensor or its licensors, the contents of which relate to a variety of market sectors, product categories, and territories. The Services may include compilations of marketing material, including images of marketing material distributed by Licensee and third parties, all supplied by Licensor as part of a news reporting function together with accompanying analysis and commentary.

#### 1.14 **Site**

A particular physical location of Licensee as defined on the Order Form.

### 1.15 Website

Websites belonging to the Mintel group (including www.mintel.com and www.gnpd.com) and other websites as may be advised by Licensor from time to time.

## 2 SUBSCRIPTION PERIOD AND PAYMENT

- 2.1 Unless terminated early pursuant to Article 6 of these Terms and Conditions, the Contract will commence and end as specified on the Order Form, then automatically renew for consecutive twelve (12) month periods (each a “Subscription Period”).
- 2.2 Unless indicated otherwise in the Order Form, Licensee will pay the Fee to Licensor within thirty (30) days of receipt of Licensor’s invoice. For each year of a multiple year Subscription Period and for any subsequent Subscription Period, Licensor will invoice the Fee year by year. Licensor may issue any invoice in electronic or print format. A fee for late payments will be assessed equal to two per cent. (2%) of the amount due, together with interest at the rate of one per cent. (1%) per month.

## 3 PERMITTED USES

- 3.1 Subject to these Terms and Conditions, Licensor grants to Licensee a limited, non-exclusive and non-transferable right and license during the Subscription Period for Authorized Users: (a) to access and use the Services on the Website via a Secure Network; and (b) to reproduce, prepare derivative works of, distribute and display the Content in electronic and print format.
- 3.2 Authorised Users may use the Services only as follows:
  - 3.2.1 For internal business purposes:
    - 3.2.1.1 view, retrieve and display the Content;
    - 3.2.1.2 electronically save the Content, but in no event (a) save any Content beyond the Subscription Period; or (b) save any Content at any time which exceeds: (i) ten thousand (10,000) records per personal profile per month from database Services; or (ii) ten thousand (10,000) Datasets per personal profile per month;
    - 3.2.1.3 distribute one-off selections of the Content, limited to up to three hundred (300) words from a single report, five (5) records, charts, or images from a database, and five (5) Datasets, in printed format to current employees of Licensee (but not to employees of Affiliates which are not licensees in their own right), with the source clearly identified;
    - 3.2.1.4 distribute Content in printed or electronic format to other Authorised Users; and

- 3.2.1.5 précis, summarise and analyse the Content and distribute internally to employees of Licensee within the Site(s) and save indefinitely the resulting derivative work, provided that the source is clearly acknowledged.
- 3.2.2 For external business purposes:
  - 3.2.2.1 distil, précis, digest and analyse the Content and include the resulting derivative work in a presentation, the sole purpose for which is to secure new business (“Pitch”), subject to the following limitations per Pitch:
    - (a) for any direct extract from a single report from the Services, the lesser of: (i) two point five per cent. (2.5%) of such report; and (ii) twenty-five per cent. (25%) of a section within such report (such percentages to exclude indexes and contents pages and infographic overviews);
    - (b) for database services, up to five (5) records, charts, or images;
    - (c) up to five (5) Datasets;
    - (d) for Content in PowerPoint format, up to two (2) pages; and
    - (e) the source must be clearly acknowledged in each Pitch; and
  - 3.2.2.2 distil, précis, digest and analyse the Content and include the resulting derivative work in an advertisement and marketing campaign, subject to prior written consent from Licensor’s corporate secretary to do so, which Licensor may withhold in its absolute discretion.

#### **4 PROHIBITED USES**

- 4.1 Except as otherwise expressly permitted under Article 3 of these Terms and Conditions, the following are prohibited:
  - 4.1.1 to remove or alter Licensor’s copyright notices or other means of identification or disclaimers as they appear on the Services, on the Website, or on any hard copies thereof;
  - 4.1.2 to systematically make copies, electronic or otherwise, of multiple extracts of the Content for any purpose; and
  - 4.1.3 to distribute the Content other than to Authorized Users.

- 4.2 Licensee will not create or operate, directly or indirectly, services competitive or potentially competitive to the Services, provided that this prohibition does not apply to Licensee's use of services competitive to the Services.
- 4.3 The purchase or use of any Content containing Information Resources, Inc. ("IRI") Infoscan data by (or disclosure to) a Non-Participating Retailer or its employees (or agents or professional advisors working on its account) is prohibited. Accordingly, Licensee will not knowingly disclose any Content containing Infoscan data to a Non-Participating Retailer. For purposes of this Article 4.3, "Non-Participating Retailer" means a retailer and its subsidiaries, each as defined by IRI, where retailer, or one of its associated companies, has declined to participate in IRI's Infoscan information service by not providing its data to IRI. A current written list of Non-Participating Retailers and subsidiaries (as notified to Licensor by IRI) is available from Licensor at any time, or as linked at the Website. As of the commencement of Services, Non-Participating Retailers are Aldi, Amazon, Costco, Dollar Tree, Lidl, Trader Joe's and Whole Foods.

## **5 UNDERTAKINGS AND WARRANTIES**

- 5.1 Licensor shall indemnify and hold harmless Licensee from and against any direct loss, damage, cost, liability or expense (including reasonable legal and professional fees) arising out of any third party legal action (together, "Claims") taken against Licensee claiming infringement of intellectual property rights in connection with the Services. This indemnity shall not apply to the extent Licensee has used the Content in breach of the Contract.
- 5.2 Licensor shall make the Services available via the Website.
- 5.3 Licensor shall also:
  - 5.3.1 use all reasonable endeavours to ensure that its server has adequate capacity and bandwidth to support the usage of Licensee at a level commensurate with the standards of availability for information services of similar scope operating via the world wide web, as such standards evolve from time to time during the Subscription Period; and
  - 5.3.2 use all reasonable endeavours to make the Services available to Licensee at all times, save for routine maintenance, and promptly to restore access to the Services in the event of an interruption of the Services.
- 5.4 Licensee hereby acknowledges publishing schedules for the Services are subject to modification from time to time, in common with standard industry practice.
- 5.5 Licensor shall provide usage information for Licensee's internal use only.
- 5.6 Licensor will use all reasonable endeavours to ensure that the Services will perform in accordance with any Licensor user guide that is available to Licensee. If the Services fail to perform correctly in all material respects, then Licensor's obligation shall be

limited to using its reasonable efforts to remedy any deficiencies in the affected Services, or at its option, to cancelling, crediting, or refunding the Fee due from Licensee in respect of any period in excess of five (5) business days during the Subscription Period. Neither Licensor nor Licensee shall be liable for any consequential, economic or other direct or indirect loss or damage (including, but not limited to, any damages payable to a third party, loss of profits or wasted resources) suffered by the other party, provided that the maximum aggregate liability of either party shall not exceed the total Fees payable by Licensee for the preceding period of twelve (12) months. The foregoing exclusions and limitations of liability shall not apply in the case of death or personal injury or to violations of Article 4 of these Terms and Conditions and the indemnity provided in Article 5.1.

- 5.7 Except as provided in Article 5.6 of these Terms and Conditions, the Services are provided “as is.” Licensor specifically disclaims any other warranty, express or implied or statutory, including any warranty of merchantability or fitness for a particular purpose. Licensor makes no representation or warranty with respect to the accuracy, completeness, or currentness of the Content or its suitability for investment activities and analysis. In no event will Licensor be liable for the results of Licensee’s use of the Services or Licensee’s inability or failure to conduct its business.
- 5.8 Licensee acknowledges Licensor’s intellectual property rights in relation to the Services and accordingly shall:
- 5.8.1 ensure that Authorised Users are made aware of and agree to abide by these Terms and Conditions;
  - 5.8.2 to the extent practicable, monitor compliance by Authorized Users with these Terms and Conditions and immediately on becoming aware of any breach of them, notify Licensor and take all appropriate steps to desist from such activity and to prevent any recurrence;
  - 5.8.3 to the extent practicable, provide Licensor with the IP addresses, or range of IP addresses, of Licensee’s computers or networks from which the Services may be accessed to allow Licensor to restrict access to such IP addresses;
  - 5.8.4 where Licensee does not provide IP addresses pursuant to Article 5.8.3 above, issue passwords or other access information only to Authorised Users and ensure that Authorised Users do not divulge their passwords or other access information to any third party, provided that if any such password or other access information constitutes an email address, then Licensee will permit Authorized Users to use only Licensee-issued email addresses that employ address nomenclature customarily used by Licensee; and
  - 5.8.5 investigate immediately upon notice by Licensor the occurrence of any unusual downloading activity by any Authorised User.

- 5.9 If the Services contain hosted information, then Licensor is authorized to share usage, pricing and other relevant information regarding Licensee with the supplier of such hosted information in order to account to the supplier and calculate any commission or royalty, provided that the supplier is subject to obligations of confidentiality regarding such information no less stringent than such obligations under this Contract.
- 5.10 Licensee acknowledges that the current and then continuing supply of the Services is for the benefit of all licensees of the Services. Accordingly, a condition of the licence granted herein is that Licensee will take no action, directly or indirectly, to prevent Licensor from providing the Services, except for the protection of its own Confidential Information (as defined in Article 7.1 below).
- 5.11 Licensor may include Licensee's name as a customer in Licensor's sales and marketing literature, but shall not use such fact to imply that Licensee endorses the Services in particular or Licensor in general.
- 5.12 Licensee neither will encourage financial reliance by third parties upon, nor invite investment from others based upon, the Content without first obtaining the written consent of Licensor to do so, which Licensor may withhold in its absolute discretion. In the absence of such consent, Licensee will defend, indemnify, and hold harmless Licensor against any Claims made against Licensor based upon such encouragement or invitation.

## **6 TERMINATION**

- 6.1 Either party may terminate the Contract as of the end of the then current Subscription Period by serving notice at least sixty (60) days before the end of such Subscription Period.
- 6.2 In the absence of timely notice under Article 6.1 above, unless otherwise agreed, the Fee shall be the price prevailing at the date of renewal for the Services licensed in the previous Subscription Period (or their nearest equivalent).
- 6.3 The Contract may be terminated if the non-defaulting or solvent party notifies the other in the following circumstances:
  - 6.3.1 either party commits a material or persistent breach of the Contract and fails to remedy the breach within fourteen (14) days of notice by the other party; or
  - 6.3.2 either party becomes insolvent or becomes subject to liquidation, judicial or extra-judicial recovery or any similar bankruptcy procedure.
- 6.4 Licensor may terminate, suspend its performance under, and/or accelerate the terms of payment of the Fee under the Contract: (a) immediately upon breach of Article 4 of these Terms and Conditions; or (b) upon ten (10) days' prior notice to Licensee based on Licensee's failure timely to pay any Fee.

- 6.5 Upon termination, Licensee shall: (a) pay all Fees that are due and payable; and (b) ensure that Authorised Users delete all Content that has been saved other than in accordance with Articles 3.2.1.5 or 3.2.2 above.
- 6.6 On termination of the Contract due to a material and substantiated breach by Licensor, Licensor shall forthwith repay to Licensee a pro rata refund of the Fee for the unexpired portion of the Subscription Period.
- 6.7 Upon notice to Licensee, Licensor may withdraw from Licensee either the entire Services, or any media channel, section, or data contained in the Services. If such a withdrawal from the Services is for a reason other than those covered elsewhere in this Contract, and if the amount of material so withdrawn comprises ten per cent. (10%) or more of the Content, then Licensor promptly shall make a pro rata refund of any fully paid Fee for that portion of the Services, as stated on the Order Form, taking into account the amount of material withdrawn, the length of time such material was unavailable to Licensee and the remaining unexpired portion of the Subscription Period.
- 6.8 Licensor will in all cases delete all annotations upon the termination of this Contract.
- 6.9 If, during the month prior to termination, Licensee downloads data from the Services, notwithstanding Article 3.2.1.2 above and, regardless of whether such activity constitutes a breach of Article 4 above, such that the data downloaded: (a) is twice that of Licensee's monthly downloading average in the preceding period of six (6) months; or (b) constitutes over five per cent. (5%) of the Content, then Licensee will pay to Licensor, in full upon termination, an excess fee equivalent to the Fee payable for the next sequential Subscription Period.
- 6.10 Licensor's right to receive and Licensee's obligation to pay all amounts due hereunder, as well as the obligations under Articles 2.2, 3.2.1.5, 3.2.2, 4.3, 5.1, 5.6-5.7, 5.9-5.12, 6.5, 7 and 8 of these Terms and Conditions, will survive the termination of this Contract.

## **7 CONFIDENTIALITY**

- 7.1 Except as permitted in Article 7.2 below, each party undertakes to keep confidential, and not to disclose to any third party or to use itself, directly or indirectly, any confidential or secret information in any form, including any annotations by Authorized Users appended to the Services, belonging or relating to the other party, its Affiliates, or its or their business affairs, disclosed to or received by the other party during the Subscription Period (collectively, "Confidential Information").
- 7.2 Each party undertakes to disclose Confidential Information of the other party only to those of its officers, employees, agents and contractors on a need to know basis for the purposes contemplated under the Contract, and each such party agrees to take appropriate measures to ensure compliance by such officers, employees, agents and contractors with the terms of this Article 7.



- 7.3 The above obligations of confidentiality and non-use shall not apply to information or material that:
- 7.3.1 is known by the receiving party prior to receipt as evidenced by documents in the possession of the receiving party at the time of disclosure;
  - 7.3.2 after receipt from the disclosing party, is disclosed to the receiving party by a third party having the legal right to do so;
  - 7.3.3 is available to the public at the time of receipt;
  - 7.3.4 becomes available to the public after receipt from the disclosing party through no fault of the receiving party;
  - 7.3.5 is independently developed by the receiving party without a breach of this Contract; or
  - 7.3.6 is disclosed as required by a government body or court of law, provided that the receiving party provides reasonable advance notice to the disclosing party so that the disclosing party may contest the disclosure or seek a protective order.
- 7.4 Each party acknowledges that injury from improper disclosure of Confidential Information may be irreparable. Accordingly, the injured party is entitled to seek specific performance, including a temporary restraining order and a preliminary injunction, in addition to all other remedies.

## **8 GENERAL**

- 8.1 The Contract may not be assigned by either party to any other person or organisation without the prior written consent of the other party, which consent shall not unreasonably be withheld or delayed. For the avoidance of doubt, Licensee shall have no right to sub-license any of its rights granted hereunder.
- 8.2 Variations to these Terms and Conditions are only valid and binding if they are recorded in writing and signed by both parties, provided that: (a) in the event of a conflict between an Order Form and these Terms and Conditions, the Order Form will prevail; and (b) no purchase order issued by Licensee will modify or amend this Contract, even where the purchase order is signed by Licensor.
- 8.3 Any notices or other communications provided for or permitted herein will be made in writing and will be by personal delivery, commercial courier service, facsimile or prepaid recorded delivery to each party's respective address, facsimile number, or email address identified in the Order Form or to such other address, facsimile number, or email address as one party notifies to the other party from time to time. All such notices and communications will be deemed to have been duly given when delivered, if delivered in person or by commercial courier service; when receipt is mechanically

acknowledged, if sent via facsimile; when receipt is acknowledged by the recipient, if sent via email, and five (5) business days after being deposited with the post, if posted.

- 8.4 Neither party shall be liable in any way for failure or delay in performing its obligations under these Terms and Conditions if the failure or delay is due to causes outside the reasonable control of the party in default.
- 8.5 Upon having served reasonable notice on Licensee in this regard, Licensor shall have access to, and the right to examine, during normal business hours, Licensee's records pertinent to the Contract.
- 8.6 If Licensee acquires or merges with a business entity which is also a licensee of Licensor, then both agreements with Licensor shall run to the end of their respective subscription periods, and the agreement that expires first shall renew automatically until the later expiration date of the other agreement, and the Fees payable under such renewed agreement, on a pro rata basis, shall be increased by five per cent. (5%) over the then-applicable Fees.
- 8.7 The failure of any party to enforce any provision on any one occasion shall not affect its right to enforce another provision or the same provision on another occasion.
- 8.8 Except for Licensor's violation of Article 7 above, Licensee's only remedy in respect of a breach of this Contract is in damages.
- 8.9 In the event that any provision of the Contract is held to be invalid, the remainder of the provisions shall continue in full force and effect.
- 8.10 The Contract shall be governed by and construed in accordance with the laws of the Federative Republic of Brazil and the parties agree to submit to the exclusive jurisdiction of the courts of the District of the Capital of São Paulo, to the exclusion of all others however privileged they may be.