

Mintel Standard Terms and Conditions for Consultancy Projects: v 111117 Consultancy (“the Conditions”)

The Consultant is Mintel Group Ltd. ("Mintel") whose registered office address is at 11 Pilgrim Street, London, EC4V 6RN and you the “Client”.

1. CONSULTANCY PROJECT

These terms are for a consumer research project ("the Project") set out in the Proposal, the research will be designed to produce an independent report to meet agreed objectives as far as possible, although the actual findings of the research cannot be predicted in advance or guaranteed to agree with any set objectives. The information and report provided by the Project is referred to as “material”, “intellectual property”, “report” and “data”, within these conditions. All contracts for Consultancy Projects between Mintel and the Client are governed by these terms and conditions.

2. OWNERSHIP OF INTELLECTUAL PROPERTY

- (i) The Client acknowledges that:
 - (a) all Intellectual Property Rights (IPR) (including all patents, copyrights, rights in software, design rights, trade marks, service marks, trade secrets, know-how, database rights, domain names, and all other intellectual or industrial property rights (whether registered or unregistered)) and all applications for the same, anywhere in the world) in the Project, the information contained therein, in all documentation, training materials and related matter, and in all parts thereof, are owned by Mintel or third parties;
 - (b) that it does not have any IPR nor any other proprietary interests in the Project, or in any data or material contained in it; and
 - (c) except as expressly permitted in these Conditions, nothing herein shall be taken as conferring by implication, estoppel or otherwise any licence or right to use any IPR in the Services without the prior written approval of Mintel or third parties who may own such IPR.

3. USE OF THE DATA PROVIDED BY THE PROJECT

- (i) The Client undertakes that it will not copy, reproduce, print or store in any manner, extract or transmit in any form or otherwise deal with in any way, the whole or part of the data, materials or information provided by the Project except as provided in sub-clause 3 (iii) below.
- (ii) Unless otherwise agreed in writing in advance by Mintel, the material (in whole or in part) may not be sold, nor passed on, communicated or disseminated in any form, nor access granted to it, to any third party (including but not limited to clients/potential clients/suppliers/agents/partners in other ventures/ brokers/licensees).
- (iii) The Client may only use the data provided by the Project as follows:
 - (a) for its own internal business use.
 - (b) in dealings with its professional advisors

- (c) extracts of the data may be provided to clients and potential clients, an extract being defined as not more than 10% of the data provided by the project.
- (iv) The Client will not place financial reliance upon any figure, statement or inference contained within the Data provide by the Project, or invite investment from others, without first obtaining the written consent of the Intel's Company Secretary so to do.
- (v) The Project carried out for the Client is for the sole use of the Client and any Data provided by the Project should not be relied upon by any third party.

4. PAYMENT

The Client will be invoiced for 50% of the Project cost on the signing of this agreement, the Initial Invoice and the balance of the Project cost on the delivery of the report. The Client shall settle all invoices issued by Intel in respect of the Project within 30 days of receipt, or in full in advance if no account facility has been set up with Intel prior to ordering. Intel reserves the right to cease work on the Project if the Client fails to settle the Initial Invoice in full within 30 days from issue. Failure to settle in full on these terms may lead to the imposition of interest charges upon the Client at such rate as Intel shall reasonably specify from time to time, but in the absence of notification to the contrary, at 3% above LIBOR.

5. LIMITATION ON LIABILITY

- (i) Except as provided in Clause 5(ii), all conditions and warranties whether express or implied by statute or otherwise (including but not limited to those as to description, merchantability or fitness for purpose) are excluded from this agreement. In particular whilst Intel aims to ensure that material contained within the Project is accurate and complete, Intel gives no warranty, express or implied, that the material supplied as part of the Project is suitable for any particular purpose, nor that it is complete, correct, or up to date.
- (ii) Intel will use all reasonable efforts to ensure that the Project is completed to agreed timescales. In the event that it proves impossible to complete a project within the agreed timescales, Intel's obligation shall be limited to using its reasonable efforts to complete the project within timescales that it considers reasonable, or at its option, to canceling, crediting or refunding all charges due from the Client. The obligation to correct defects or cancel, credit or refund a proportionate part of the charges described above shall constitute the full extent of Intel's liability in respect of any loss or damage sustained by the Client whether caused by breach of this Agreement, misrepresentation, negligence of Intel (or its employees or agents) or from any other cause, and in particular, Intel shall not be liable for any consequential, economic or other direct or indirect loss (including but not limited to any damages payable to a third party, loss of profits or wasted resources) suffered by the Client, provided that if for any reason this provision is invalid or unenforceable, the maximum aggregate liability of Intel shall not exceed the total charges payable by the Client for the Projects. The foregoing exclusions and limitations of liability shall not apply in the case of death or personal injury.

6. TERMINATION

This agreement shall terminate on the completion of the Project. Mintel may terminate this Agreement with immediate effect, without notice, in the event that the Client has defaulted in the performance of any material provision contained in this agreement and (where capable of remedy) such default has not been remedied within 30 days after written notice thereof shall have been given to the defaulting party. Termination of this Agreement for any reason shall not affect Mintel's right to recover any monies due at the time of termination or to recover damages for any breach of contract before termination.

7. CONFIDENTIALITY

Both parties to this Agreement undertake to keep confidential and not to disclose to any third party or to use itself, any confidential or secret information in any form directly or indirectly belonging to or relating to the other party, its affiliates, its or their business affairs, disclosed by or received by either party to this Agreement pursuant to or in the course of this Agreement (“Confidential Information”).

Both parties to this Agreement undertake to disclose Confidential Information of the other party only to those of its officers, employees, agents and contractors to whom and to the extent to which disclosure is necessary for the purposes contemplated under this Agreement.

The above obligations of confidentiality and non-use shall not apply to information or material:

- (a) which is named prior to receipt by the receiving party as evidenced by documents in the possession of the receiving party at the time of disclosure;
- (b) which, after receipt, is disclosed to the receiving party by a third party having the legal right to do so;
- (c) which is available to the public at the time of receipt; or
- (d) which becomes available to the public after receipt through no fault of the receiving party.

This clause shall survive the termination of this agreement.

8. FORCE MAJEURE

No party shall be liable to the other for the delay or non-performance of its obligations under this Agreement arising from any cause or causes beyond its reasonable control including without limitation, any of the following: act of God, government act, war, fire, flood, explosion or civil commotion.

9. WAIVER

No forbearance or delay by Mintel in enforcing its rights will prejudice or restrict the rights of Mintel, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

10. NO ASSIGNMENT

The benefit of this Agreement may not be assigned in whole or in part by the Client without the prior written consent of Mintel.

11. ENTIRE AGREEMENT

This Agreement constitutes the whole Agreement between Mintel and the Client relating to the Project and supersedes and replaces all prior Agreements and arrangements of whatever nature relating thereto. This Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by both parties. No purchase order issued by Client will modify or amend this Agreement, even where the purchase order is signed by Mintel. For the avoidance of doubt, subscriptions to any of Mintel's published information services are governed by an entirely separate agreement.

12. INVALIDITY

If any party of this Agreement shall be held unenforceable the rest of the Agreement shall nevertheless remain in full force and effect.

13. NOTICE

Any notice or other communication given or made under or in connection with this Agreement shall be in writing and shall be deemed to have been received at the time of delivery or at the expiration of three days after posting as appropriate and in proving service it shall be sufficient to prove that delivery was made or that the envelope containing such notice or document was properly addressed and posted as a prepaid first class registered letter.

14. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of England.

15. LONGEVITY

The license for supply of Mintel products and services delivered through Survey Manager, or other proprietary delivery mechanisms, shall commence on the date of signing the order form and, subject to provisions relating to early termination, continue for a minimum of 12 months, unless otherwise specified. Upon completion of the 12 month period, if the client decides not to renew their access to Mintel products and services, client access to any information through Survey Manager, or other proprietary delivery mechanisms, shall cease immediately unless an ongoing access only or maintenance contract has been agreed and paid for in advance of the contract completion.