

# OJEU Finder Standard Terms of Business

## TERMS AND CONDITIONS

### 1 DEFINITIONS

1.1 The following words herein shall have the following meanings except where the context otherwise requires:

"the Annual Fee" means the annual fee payable by the Client for the OJEU data as set out in the Company's price list at the time of receipt of order and thereafter at the time of receipt of any renewal of such order;

"the Company" means OJEU Finder and includes its successors and assigns;

"the Contract" means these terms and conditions together with the relevant Order Form;

"OJEU data" means the OJEU database products or OJEU database extracts supplied by electronic transmission;

"OJEU database products" means the Official Journal of the European Union S Supplement also known as TED, Tenders Electronic Daily;

"electronic transmission" means receipt by a nominated e-mail address or collection by file transfer protocol;

"intellectual property rights" means patents, registered designs, trade marks and service marks (whether registered or not), copyright, design rights, and all other intellectual property or proprietary rights of whatever nature, including those subsisting (in any part of the world) in inventions, designs, drawings or processes and in applications for protection thereof;

"the relevant Order Form" means the Company's Standard Order Form completed by the Client or the Client's purchase order or other written order completed by the Client;

"the Client" means the person who enters into the Contract with the Company.

### 2 THE SERVICE

2.1 In consideration of the payment by the Client to the Company or its agent of the Annual Fee the Company hereby agrees to supply to the Client by electronic transmission during the term of the Contract as specified by the Client on the Order Form and at the intervals specified therein. The Company takes no responsibility for delay or failure of electronic transmission and the Client shall have no recourse or right to a refund of the Annual Fee in the event of such delay or failure.

### 3 PROPERTY IN THE ELECTRONIC TRANSMISSION

3.1 The property in the electronic transmission on which OJEU data is supplied shall pass to the Client when the Annual Fee has been paid by the Client to the Company.

### 4 PROPERTY IN OJEU DATA

4.1 The information contained in the OJEU data is the proprietary information of the Company and of those persons, bodies or entities who (whether or not attributed) are sources of the information comprised in the OJEU data. No title to or rights of ownership, copyright or other intellectual property in the OJEU data is transferred to the Client. The Client shall only use the OJEU data, and the information contained therein, for its own internal business purposes.

4.2 The Client shall not:

(a) assign, transfer, distribute, sell, lease, rent, sublicense, charge, disseminate or otherwise deal in or encumber the information comprised in the OJEU data nor use on behalf of or make available the same to any third party;

(b) copy by any means (whether electronic or otherwise) all or any part of the information comprised in the OJEU data other than as strictly necessary for its internal business purposes or, in the case of individuals, personal back-up purposes and in any event only one back-up copy of each OJEU data shall be permitted;

(c) engage in any promotion or marketing of the information comprised in the OJEU data.

4.3 The Client will indemnify the Company against any loss or damage incurred by the Company as a result of the failure of the Client to comply with any of its obligations under this Contract. The Client will promptly notify the Company if it becomes aware of any breach of confidentiality or infringement of any of the rights of the Company or its sources of the information comprised in the OJEU data. The provisions of this clause 4.3 will survive expiry or termination of this Contract howsoever arising.

## **5 LIABILITY**

5.1 Subject to the provisions of clauses 5.2 to 5.6 (inclusive) the Company warrants that it has the right power and authority to supply the OJEU data and permit the use of the information contained therein on the terms and conditions of this Contract.

5.2 The Company shall not be liable for any loss, injury, claim, liability or damage of any kind resulting in any way from any errors, inaccuracies or omissions from the information comprised in the OJEU data. In the event that any electronic transmission on which OJEU data is supplied is defective the Client's sole remedy will be the replacement of such defective electronic transmission.

5.3 The Subscriber agrees that the Company will not in any event be liable for any indirect special or consequential loss howsoever arising including (without limit) loss of profit or loss of opportunity.

5.4 The Company's aggregate liability to the Client in respect of all claims under or in respect of the Contract will not exceed the Annual Fee paid by the Client.

5.5 The Client shall give the Company prompt written notice in reasonable detail of any circumstances giving rise to a potential liability of the Company under this Clause 5 and shall allow the Company full participation in the defence of any third party claim and the conduct of any proceedings relating thereto. The Client shall not make any compromise or settlement in relation to any such third party claim without the Company's prior written consent.

5.6 Save for the express provisions in this Clause 5 all conditions, warranties, terms and undertakings express or implied statutory or otherwise (including without limitation as to fitness for purpose or satisfactory quality) and all liability in tort (including negligence) in respect of the quality or condition of OJEU data or electronic transmission on which OJEU data is provided or the information comprised therein are hereby excluded.

## **6 PUBLICATION AND REPORTING DATES**

6.1 All publication and reporting dates are estimates only and the time of publication and reporting shall not be of the essence of the contract. The Company makes every effort to give a reliable estimate of publication and reporting dates but the Company cannot accept any liability in respect thereof and if for any reason whatsoever the Company fails to publish or report OJEU data on time or at all the Client shall not have any claim for damages or otherwise against the Company but shall as its sole remedy be entitled to a proportionate refund of the Annual Fee in respect of any OJEU data not published.

## **7 PAYMENT**

7.1 Unless otherwise agreed by the Company the Annual Fee shall be payable in advance at the time the relevant Order Form is received by the Company.

## **8 INTELLECTUAL PROPERTY**

8.1 Nothing in this Contract shall operate to vest in the Client any intellectual property rights in the electronic transmission or OJEU data or the information contained therein or any processes or technology relating thereto.

8.2 The Company shall have no liability to the Client in respect of an intellectual property infringement if the same results from any breach of the Client's obligations under this Contract.

## **9 DURATION AND TERMINATION**

9.1 This Contract shall continue until December 31st from the date of receipt of the Order Form and, subject to this clause 9, shall be renewable on a yearly basis in accordance with the terms of the Order Form.

9.2 Either party may by notice in writing terminate this Contract forthwith at any time if the other commits any breach of any of the terms or conditions of this Contract or becomes bankrupt or makes any composition for the benefit of creditors or suffers any levy of execution or distress for rent or being a company become insolvent or compounds or makes any arrangements with its creditors generally or if it has a receiver or manager or administrative receiver or administrator appointed to the whole or any part of its assets or if an order is made or resolution passed for its winding up or if any event analogous to any of the foregoing occurs in any jurisdiction in which either party is resident or carries on business.

9.3 The Company may terminate this Contract in respect of the provision of OJEU data forthwith at any time by notice if:

(a) the Company's licences from its sources to use or supply the information comprised in such OJEU data is revoked or terminated; or

(b) the Company's ownership changes and the successor offers to supply an OJEU data reporting service under a new Contract.

9.4 In the event that the Company terminates this Contract under clause 9.3 above, the Client shall be entitled to a proportionate refund of the Annual Fee from the Company for any issues of OJEU data that the Client has paid for but which have not been published by the Company on the date of such termination.

b) Should Client be a first time subscriber and wish to terminate this contract under clause 9.4 they will be subject to a minimum fee of £80 to cover the basic costs of setting up the Client account.

9.5 The expiry or termination of this Contract howsoever occasioned shall:

(a) be without prejudice to any other rights or remedies either party may be entitled to hereunder or at law; and

(b) not affect any accrued claims or rights of action of either party nor the continuance in force of any provision hereof which is expressly or by implication intended to continue in force after such expiry or termination.

## **10 WAIVER**

10.1 The waiver by either party of a breach or default of any of the provisions of this Contract by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall delay or omission on the part of either party to exercise any right that it has or may have hereunder operate as a waiver of any breach or default by the other party.

## **11 INVALIDITY AND SEVERABILITY**

11.1 If any provision of this Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the validity or unenforceability of such provision and shall not effect the other provisions of this Contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

## **12 NOTICES**

12.1 Any notice request instruction or other document to be given hereunder shall be sent by e-mail or first class post (such e-mail notice to be confirmed by letter posted within 12 hours) to the address of the other party set out in this Contract (or such other address as may have been notified) and any such notice or other document shall be deemed to have been received upon the expiration of 48 hours after posting.

## **13 ENTIRE AGREEMENT**

13.1 This Contract contains the entire agreement between the parties with respect to the subject matter hereof and there are no statements, representations, promises, terms or conditions oral or written expressed or implied other than those contained herein.

## **14 ASSIGNMENT**

14.1 The Client shall not assign any of its rights under this Contract without the consent in writing of the Company.

## **15 FORCE MAJEURE**

15.1 If and to the extent the Company is hindered or prevented by circumstances not now reasonably foreseeable and not within its reasonable ability to control from performing any of its obligations under this Contract and so notifies the Client then the Company shall be relieved of liability to the Client for failure to perform such obligations, but shall nevertheless use its reasonable endeavours to resume full performance thereof.

## **16 APPLICABLE LAW**

16.1 This Contract shall be governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.