

TNS Standard Terms and Conditions

TNS NIPO (the "Company")

Definitions

"Acceptance" means written acceptance by a Client of a Proposal by the Company for the Service.

"Client" means the party to whom the Company provides the Service as set out in the Proposal.

"Confidential Information" means in respect of the Service all information, data or material of whatsoever nature in any form, which either party, discloses to the other pursuant to this Contract including the Proposal and anything the receiving party creates which is derived from or based upon the information, data or materials disclosed to it by the disclosing party. It shall not include any information or materials which: (a) is in or enters into the public domain (other than as a result of disclosure by the receiving party or any third party to whom the receiving party disclosed such information); (b) were already in the lawful possession of the receiving party prior to the disclosure by the disclosing party; (c) are subsequently obtained by the receiving party from a third party who is free to disclose them to the receiving party; or (d) are required to be disclosed by law or regulatory authority.

"Contract" means these terms and conditions together with the Proposal, which constitute the entire agreement between the parties. In the event of conflict these terms and conditions prevail over those in the Proposal, unless the parties have agreed in writing that specific terms in the Proposal prevail over those in these terms and conditions.

"Custom Research Service" means the bespoke research studies designed specifically for the Client which are carried out on a case-by-case basis by the Company.

"Deliverables" means survey results, reports, data, summaries, comments, discussion, and/or analysis provided by the Company to Client pursuant to the Contract.

"Fee" means the fee(s) to be charged by the Company for the provision of the Services to the Client set out in the Proposal.

"Intellectual Property Rights" means copyright, database rights, trademarks, trade or business names, service marks, registered and unregistered designs, patents and/or know how (including any work methods), rights in confidential information and any other intellectual property rights whatsoever irrespective of whether such intellectual property rights have been registered or not which may subsist in any part of the world.

"Multi-customer Service" means the non-Custom Research Service or non-bespoke continuous market research service provided by the Company to one or more clients, including without limitation, any syndicated service.

"Proposal" means the written final proposal and/or quotation (exclusive of VAT or any appropriate local sales tax or any other applicable taxes, including withholding taxes unless otherwise stated, which in each case shall be chargeable at the then current rate to the Client in the relevant currency) provided by the Company to the Client.

"Service" means the Custom Research Service and/or Multi-customer Service (as the case may be) as specified in the Proposal or other document agreed between the parties.

"Tax" means all forms of tax, charge, duty, withholding, deduction, rate, levy and governmental charge (whether national or local) in the nature of tax whatsoever and whenever created, enacted or imposed by any governmental, state, federal, local municipal or other body, together with all related fines, penalties, interest, charges and surcharges.

"TNS Group Companies" means WPP plc and any parent undertaking of WPP plc, and any undertaking which, in relation to WPP plc and/or any parent undertaking of WPP plc, is a subsidiary undertaking from time to time.

In these terms and conditions a reference to the singular includes plural and vice versa (unless the context otherwise requires).

1. The Contract

- 1.1. The Client appoints the Company and the Company accepts such appointment to provide the Services and Deliverables upon these terms and conditions, which may only be changed by the written agreement of both parties.
- 1.2. The Client shall be deemed to have accepted the Proposal by either: (i) notifying the Company in writing (which may be by email) that it has accepted the Proposal; or (ii) otherwise notifying the Company in writing (which may be by email) that it wishes the Company to commence provision of the Service (including, without limitation, by issuing a purchase order in respect of the Service or any part thereof).
- 1.3. If the Client has not accepted the Proposal within two (2) calendar months then the Proposal (including the Company's Fee quotation set out in the Proposal) will expire, unless an authorised representative of the Company has agreed to extend this period in advance in writing. The Company reserves the right to amend or withdraw the Proposal (including the Fee quotation set out in the Proposal) at any time until it is formally accepted by the Client.
- 1.4. Unless otherwise agreed in writing this Contract shall apply to all Services and Deliverables provided by the Company to the Client.

2. Payment of Fees

- 2.1. Unless otherwise agreed in writing, payment of the Fees shall be one-half on the Acceptance date and the balance on delivery of the Deliverables. If a Service is to be carried out in stages, with interim Deliverables, final invoices for each stage will be raised on delivery of relevant interim Deliverables.
- 2.2. All invoices shall be due on the invoice date and shall be subject to payment within 30 days. Any payment after this 30 day period shall entitle Company to charge statutory commercial interest from the invoice date to the date when the Company receives full payment. Client shall pay the interest promptly on demand.
- 2.3. The Company shall be entitled to recover re-imbursable expenses incurred pursuant to the provision of the Services, unless such expenses have been included in the Fees.
- 2.4. If the Fee has been based upon information provided by the Client which is subsequently shown to be incomplete or incorrect, the Company shall be entitled to increase the Fee to take account of any resulting additional time involved in providing the Services (or additional services) and any necessary additional costs incurred by the Company.
- 2.5. For Services carried out wholly or in part outside The Netherlands if through any currency fluctuation the Euro equivalent of the cost to the Company of any obligations incurred in respect of overseas work for the Client exceeds the cost shown in the Proposal, the Company shall be entitled to charge for such obligations at the exchange rate which is in operation at the time the payment is made abroad. Where prices quoted in the Proposal refer to currency other than the Euro the applicable currency: euro exchange rate shall be fixed at the spot rate for exchange of ABN AMRO Bank for the purchase of the relevant currency in The Netherlands on the Acceptance date.
- 2.6. If any amount payable to the Company (or its nominee) pursuant to this Contract is subject to Tax, that amount shall be increased so as to ensure that the net amount received by the Company (or its nominee) shall, after Tax, be equal to that which would have been received had the payment and any increased payment not been subject to Tax.

3. Termination

- 3.1. The Contract will expire if the assignment is brought to a close or by expiration for the period it has been entered into as specified in the Proposal. Either party may terminate the Contract for convenience at any time by given thirty (30) days' prior written notice to the other party.
- 3.2. Either party may terminate this Contract immediately (a) for a material breach by the other which is incapable of remedy or, if capable of remedy, is not remedied within 30 days of written notice being given to the defaulting party or (b) if the other party becomes bankrupt or goes into liquidation (whether voluntary or compulsory), is dissolved, or has a receiver or administrator appointed over the whole or any part of its assets or a petition is presented, or a meeting is convened for the purpose of considering a resolution for the winding-up, bankruptcy or dissolution of the other party or the other party suffers any similar process under the law of its domicile or place of its jurisdiction.
- 3.3. For Multi-customer Services if (a) the number of Client subscribers falls below an acceptable level to the Company or (b) the Company is unable to or finds it impracticable to continue the Service or any part of it, the Company shall be entitled to terminate this Contract by serving 1 month's notice at any time. The

Company will use its reasonable endeavours to complete any Deliverable in progress and the Company will remain entitled to payment for completion of that Deliverable.

4. Change, Delay or Cancellation

- 4.1. If the Client requests changes to the Service (including timing) the Company reserves the right to revise the Proposal (including, without limitation, adjusting the Fees accordingly).
- 4.2. If a Service is shortened, delayed, cancelled or terminated early by the Client, the final invoice will include the balance of the Fees for providing the Service plus any reasonable costs and expenses incurred by the Company due to the Client's acts or omissions together with all non-cancellable third party costs the Company has committed to. For example, the Client shall be liable for the costs and expenses incurred by the Company for pre-booked fieldwork, which is delayed, not used or not fully used by reason of the Client's acts or omissions. A minimum cancellation fee of 25 per cent of the difference between the total amount invoiced above and the full project price shall also be charged.
- 4.3. The Client is responsible for the prompt delivery to the Company of all material reasonably required by the Company to provide the Services and Deliverables. If the Client fails to comply with this clause the Client shall be liable for the consequential delays and reasonable additional costs and expenses incurred by the Company in providing the Service.

5. Subcontracting

- 5.1. The Company shall be entitled to assign its rights and obligations under this Contract to any TNS Group Company without requiring the Client's prior written consent.
- 5.2. Save as set out above, neither party may assign all or any part of the Contract without the prior written consent of the other party, which shall not be unreasonably withheld.
- 5.3. To assist the Company in providing the Service the Company shall have the right to subcontract any part of the Service and Deliverables to any TNS Group Company or to appropriate third parties, agencies or fieldworkers. The Company is only responsible for the quality of the service provided by subcontractors if those subcontractors have been selected and paid for directly by the Company. If the Client designates a specific subcontractor, then the Company shall not be responsible for the accuracy, completeness or quality of the work of that subcontractor.

6. Company's Obligations

- 6.1. The Company shall use reasonable skill and care in providing the Service and Deliverables. However, the Client acknowledges and accepts that (a) the response rates to surveys/questionnaires cannot be predicted and are not guaranteed by the Company (b) all figures contained in Deliverables will be estimates derived from sample surveys and subject to the limits of statistical errors/rounding up or down and (c) in translating a Deliverable from the controlled test environment to the real market place it is possible that some of the assumptions on which a Deliverable is based will not remain constant and any subsequent change in market conditions or to the test product itself could impact on the initial performance predictions including possible invalidation of a Deliverable.
- 6.2. The Company disclaims all other obligations warranties, either express or implied, including warranties for merchantability, and fitness for a particular purpose.
- 6.3. Both parties agree to use reasonable endeavours to comply with the ESOMAR Code of Conduct.
- 6.4. The Company will use all reasonable endeavours to provide the Services, and to deliver any Deliverables, in accordance with the estimated timings set out in the applicable Proposal. However, the Company shall not be liable for any failure to adhere to the quoted timings or for any loss or damage suffered by the Client resulting from any delay caused directly or indirectly by any act or omission by the Client and/or by any third party for whom the Company is not contractually responsible hereunder.
- 6.5. Where the Company agrees to supply a Deliverable to the Client in electronic format, both parties shall use their best endeavours to comply with any security specifications which may be issued by the Company to the Client from time to time.

7. Intellectual Property Rights and Public Statements

- 7.1. The Intellectual Property Rights in any Proposal issued by the Company are and shall remain the exclusive property of the Company.

- 7.2. For Multi-customer Services the Intellectual Property Rights in the Deliverables vest in the Company at all times. The Client will be entitled on the completion of the Service and after payment of all Fees due to the Company to use the Deliverables for its bona fide and proper internal business purposes or other purposes specified in the Proposal, but shall not grant licenses to others.
- 7.3. For Custom Research Services, the Intellectual Property Rights in the Deliverables vest in the Client subject to payment of all Fees due to the Company in respect of such Deliverables.
- 7.4. It is agreed that the Company shall be entitled, both during and after the termination or expiry of this Contract, to use all Deliverables and other findings and records resulting from the Services for its own internal purposes, as part of its own databases and for purposes connected with its business under the conditions as set out in this article, including in connection with any relevant legal dispute.
- 7.5. Notwithstanding Clause 7.3 above, at all times all know-how and any Intellectual Property Rights of whatsoever nature in and to any techniques, principles and formats and in all proprietary materials, software, programs, macros, algorithms, modules, methodologies and anything else used by or created by the Company in putting together a Proposal or carrying out the Services which are of a generic nature or otherwise not produced exclusively for the Client shall at all times remain the exclusive property of the Company and the Client confirms that it will not use or otherwise infringe such Intellectual Property Rights.
- 7.6. The Deliverables provided by the Company are normally only for the Client's internal use. The Client undertakes to inform the Company of any intended wider publication of any Deliverable or any results (whether wholly or in part) supplied by the Company prior to release. The Client shall not disclose any Deliverable publicly in any manner that exaggerates, distorts or misrepresents the findings of or data supplied by the Company or is likely to harm the Company's or any TNS Group Company's reputation or business.
- 7.7. The Client understands and agrees that it must inform the Company in writing prior to the commencement of any work if it intends to make any advertising, public statement, marketing material, press releases or the like ("public statement") that contain the whole or any part of the Deliverables or any part of the Services. The Client shall not make any such public statement based on any Deliverable or on any part of the Services without the prior written consent of the Company.
- 7.8. Each party shall be entitled to list the other as its service provider or client in marketing/promotional material in a subordinate manner as a source reference; except for this right the Client shall have no right to use the Company's name, trade mark, logo, or slogans without the prior written consent of the Company.
- 7.9. In the event of violation of any of the obligations ensuing from Article 7.8, the Client forfeits an immediate payable penalty of EUR 15,000 per event and a daily penalty of EUR 5,000 for each day that such violation continues, without prejudice to the Company's right to claim specific performance and to claim its actual damage to the extent that such damage exceeds the penalty.

8. Confidentiality

- 8.1. The receiving party agrees that it shall (a) use the Confidential Information only to fulfil its obligations pursuant to this Contract; (b) treat all Confidential Information of the disclosing party as secret and confidential and shall not copy or disclose any such Confidential Information to any third party; (c) not, without the express written consent of the disclosing party, disclose the Confidential Information or any part of it to any person except to the receiving party's directors, employees, parent company, subsidiaries or agreed subcontractors, who need access to such Confidential Information for use in connection with the Services and who are bound by appropriate confidentiality and non-use obligations; and (d) comply promptly with any written request from the disclosing party to destroy or return any of the disclosing party's Confidential Information (and all copies, summaries and extracts of such Confidential Information) then in the receiving party's power or possession.
- 8.2. Without limiting the generality of Clause 8.1 above, Proposals issued by the Company contain confidential information about the Company and the Client shall keep secret and not disclose the content of any Proposal or any information or ideas, in whatever form, disclosed during or in connection with any pitching or briefing process, to any third party or otherwise make use of or derive other material from it, without the prior written consent of the Company or use any Proposal other than for the purposes of considering its contents with a view to appointing the Company to provide the Services set out therein.

9. Data Protection and Data Ownership and Storage

- 9.1. In the event that the Service and/or Deliverables involve the supply to the other party of individual's names and/or other personal data for the purpose of controlling or processing such data, the disclosing party shall

obtain the necessary consent from the relevant individuals or ensure that it otherwise has the right under the relevant local data protection laws and regulations to provide such data.

- 9.2. In connection with personal data supplied by the Client to the Company, the Company shall:(a) process such data only for the purposes of providing the Services; (b) take such technical and organisational security measures against unauthorised and unlawful processing of, accidental loss of, destruction of or damage to personal data as may be required, having regard to the state of technological development and the cost of any measures, to ensure a level of security appropriate to the harm that might result from such processing, loss, destruction or damage and the nature of the data to be protected; and (c) answer the Client's reasonable enquires to enable the Client to monitor the Company's compliance with this clause. The Client undertakes to comply with the relevant local data protection laws and regulations and keep personal data supplied by the Company secure and only use such data in accordance with such local data protection laws and regulations. Subject to prior consent from an individual the Company reserves the right to re-contact an individual for participation in further surveys.
- 9.3. Completed questionnaires, audio and visual tapes and computer records prepared by or on behalf of the Company during the course of providing the Services shall remain the property of the Company and shall be retained, stored and destroyed/erased in accordance with applicable laws, regulations and the Company's internal policies.
- 9.4. Provided the same are still held by the Company pursuant to Clause 9.3, the Client may, on request and at its own expense, be supplied with copies of the survey records which have been used to prepare a Deliverable, subject to the requirements of the ESOMAR Code of Conduct to respect the anonymity of respondents. For the avoidance of doubt, the Company shall not be required to provide copies of survey records to the Client if, in the Company's sole opinion, to do so would be in breach of the ESOMAR Code of Conduct and/or applicable data protection laws and regulations. The Client warrants that it shall store and use any survey records provided by the Company strictly in compliance with all applicable data protection laws and regulations and that it shall fully indemnify the Company against any and all claims relating to its breach of the same.

10. Limits and Exclusions of Liability

- 10.1. Unless otherwise agreed by a letter or fax which is executed by both parties, the Company's total aggregate liability for any claims, demands, damages, costs (including legal costs and any obligation to repay any Fees) and expenses resulting from any tortious act or omission, and/or breach of the terms and conditions set out in the Contract is strictly limited to the lesser of (i) the total amount of Fees received by the Company from the Client in the twelve (12) months preceding the claim or (ii) the amount of any Fees receivable by the Company in respect of the specific Deliverable which is the subject of the potential claim. The Client's right to bring a claim against the Company shall lapse after one year from the date of the completion of the Service or Deliverable or the termination or expiry of this Contract, whichever is the earlier.
- 10.2. The Company shall not be liable for the Client's loss of profits, loss of turnover, loss of data, loss of business opportunities, or consequential loss. Liability is not excluded for (a) fraudulent misrepresentations, and/or (b) death or personal injury caused by the negligence of either party and/or (c) damages resulting from the wilful misconduct or gross negligence by the Company's executive management. The Client acknowledges that the Proposal has been put together on the basis that if the Client requires additional protection or cover, the Client should take out its own insurance.
- 10.3. If conclusions and/or recommendations are required of the Company as part of the Services, such conclusions and/or recommendations are solely and exclusively an opinion of the Company and are based on variable assumptions used in the field of market research and forecasting and based on a controlled test environment. Whilst they are the result of careful analysis and thorough work procedures, they constitute a single factor among many to be taken into account by the Client. In no event shall the Company be liable to the Client for any loss or damage whatsoever with respect to any conclusions or recommendations made by the Company in relation to the Services and contained in the Deliverables or to reliance thereupon by the Client. The Client hereby acknowledges that it shall be solely responsible for the consequences of any action taken by it based on the Deliverables or pursuant to its interpretation of the Deliverables.

11. Product Testing

- 11.1. Notwithstanding anything to the contrary in this Contract, where the Service involves testing or using the Client's products, samples or test materials (including prototypes) and/or third party products supplied by Client, the Client warrants, represents and undertakes that (i) any content, packaging or labelling shall comply with all relevant laws in all relevant territories; and (ii) it shall be responsible for either providing any respondent disclaimer/waiver or approving any draft respondent disclaimer/waiver prepared by the Company

which may be required for the products, samples or test materials in question. The Client shall indemnify the Company and TNS Group Companies from and against any losses, third party claims, demands, damages, costs, charges, expenses or liabilities (or actions, investigations or other proceedings in respect thereof) which the Company and TNS Group Companies may suffer or incur relating to or arising directly or indirectly out of or in connection with testing or using such products, samples or test materials. If required by the Company, the Client shall produce evidence of sufficient product liability or other indemnity insurance as determined by the Company.

11.2. The Company shall not be liable in any circumstances for the use of, loss of or damage to any such products, samples or test materials, once they have been supplied to respondents.

12. Miscellaneous

12.1. The obligations in this Contract which by their nature survive termination or expiry of this Contract shall so survive.

12.2. Any notice given hereunder shall be by post or facsimile. In the case of the notice to the Company, notices shall also be copied to the Company's Managing Director. Email notification is not sufficient.

12.3. The Company shall not be liable for failure to perform its obligations hereunder due to, fires, storms, riots, strikes, disease, shortages of materials, lock-outs, wars, floods, civil disturbances, terrorism, Governmental control, restriction or prohibition whether local or national.

12.4. The parties agree that they have not entered into this Contract in reliance upon any statement, representation, covenant, warranty, undertaking or understanding (whether negligently or innocently made) of any person (whether party to this Contract or not) except as expressly set out in this Contract. Nothing in this clause, however, shall exclude any liability on the part of either the Client or the Company for fraud or fraudulent misrepresentation.

12.5. If any provision of this Contract is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair: (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Contract; or (ii) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Contract.

12.6. No term of this Contract shall be enforceable by a third party.

12.7. The laws of the Netherlands govern this Contract and in the event of a dispute the parties agree to submit to the jurisdiction of the Amsterdam courts, which shall be exclusive, save in respect of the enforcement of any judgment, where it shall be non-exclusive.

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TNS NIPO B.V., Grote Bickersstraat 74, 1013 KS Amsterdam, tel +31 20 522 54 44, fax +31 20 522 53 33
Email: info@tns-nipo.com, Website: www.tns-nipo.com.