

ALDES

ORION

BUSINESS BROKERS

TERMS AND CONDITIONS

1 DEFINITIONS

In this agreement, unless the context clearly indicates otherwise, the under mentioned terms shall have the meanings assigned to them hereunder:

1.1 "Private Information" shall include without being limited to :

All the information of private nature relating to the Purchaser and specifically includes his Identity number and matters relating to his financial position

1.2 "The Confidential Information" shall include without being limited to:

1.2.1 All information of whatever nature relating to the operations, financials and information of all business disclosed by Aldes Business Brokers to the buyer and all and any ancillary operations of such businesses which is obtained by the buyer either in writing or orally from or pursuant to the negotiations with Aldes;

1.2.2 The contents of this agreement; but shall exclude any matters referred to in this Clause 1.2, which:

1.2.3 At the time of disclosure are within the public domain otherwise than by reason of a breach of this agreement;

1.2.4 Are within the possession of either party, provided that the source of such information was not subject to any agreement or other duty relating to confidentiality in respect thereof;

1.3 "the Agreement" means the sale agreement to be entered into by and between the Buyer, Aldes and the Seller of any business introduced by Aldes to the buyer.

1.4 "the Negotiations" means discussions entered into by Aldes and the purchaser in respect of the acquisition by the purchaser of assets and/or business of such business to be introduced by Aldes to be purchaser in terms of which a Sale of business, Sale of Assets, Sale of Shares and/or Sale of Members Interest is entered into between the parties.

1.5 "Aldes" means Aldes Business Brokers, any of its subsidiaries or associated entities or franchise businesses.

1.6 "the Purchaser/Buyer" means the potential purchaser of a business identified by Aldes as set out herein below.

1.7 "Business" means such business or businesses introduced by Aldes to the purchaser as listed on the Aldes data base.

- 1.8 any headings in this agreement shall be for information purposes only and shall not be taken into account in construing this agreement;
- 1.9 words in the singular shall include the plural and *vice versa*, words in the masculine gender shall include the feminine and neuter gender and vice versa, and a reference to natural persons shall include created entities (corporate and unincorporated) and *vice versa*;
- 1.10 the headings appearing in this agreement have been used for reference purposes only and shall not affect its interpretation.

2 BACKGROUND

- 2.1 The parties record that they are presently undertaking the Negotiations with a view to enter into a Sale of Assets/Business agreement and/or a Sale of Shares and/or Sale of Members Interest Agreement (and if applicable a Sale of Immovable Property Agreement) to realise that in the course of the Negotiations, Aldes will be required to disclose Confidential Information to the Purchaser for the purposes of determining whether or not to proceed with the transaction and Sale of Assets/Business agreement or other related Agreements.
- 2.2 The purpose of any disclosures of Confidential Information during the course of Negotiations is to enable the Purchaser to achieve the optimum structure of the Agreement for the proposed transaction and to satisfy themselves that no substantial problems exist which will militate against the parties entering into the Agreement.

3 PERIOD

Subject to **clause 4** below this agreement shall be deemed to have commenced on the date of the first meeting between representatives of the parties, and shall continue until:

- 3.1 the Negotiations have been terminated by the mutual agreement of the parties, in which case they shall enter into a written agreement recording such termination; or
- 3.2 the parties enter into the Agreement, provided that the parties may, if they so choose, make the terms of this Confidentiality Agreement applicable to the Agreement.

4 UNDERTAKING BY THE PARTIES

- 4.1 **In consideration of the Private Information which was provided to Aldes by the Purchaser, Aldes hereby undertakes not disclose such information to any third party other than the Seller.**

- 4.2 In consideration of the Confidential Information which will be made available to the Purchaser during the course of the Negotiations, the Purchaser hereby undertakes to Aldes that:

he will use the Confidential Information solely for the purposes referred to in **clause 2** above and will not use the Confidential Information in any way directly or indirectly in a manner which is hostile to or contrary to the interests of Aldes and/or the Seller of such Businesses or Businesses as listed on the Aldes data base

- 4.3 he will, during the period of this agreement and thereafter:

- 4.3.1 keep all the Confidential Information which is disclosed to him (whether orally, in written form or in any other matter) strictly confidential;
- 4.3.2 ensure that no part of the Confidential Information shall be reproduced, stored in a retrievable system or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior written permission of Aldes;
- 4.4 he will not at any time, without the prior written consent of Aldes, disclose or reveal the Confidential Information or any part thereof to any person other than to employees and advisers of the party who are required in the course of their duty to receive and consider the same for the purpose of the Negotiations or bringing about the Agreement and who shall be informed by the parties of the confidential nature of the information;
- 4.5 he will use its best endeavours to procure that each of its employees, agents, servants and advisers to whom any Confidential Information will be disclosed individually undertakes to be bound by the terms hereof, and it shall be responsible for any breach of the provisions of this agreement by such employees, agents, servants or advisers;
- 4.6 he will undertake not to publish to any person any information concerning the Agreement either before or after that event or in the event of the Agreement failing for any reason whatsoever without the prior consent of the other party.

5 FAILURE OF THE NEGOTIATIONS

- 5.1 The Purchaser hereby undertakes that, in the event of the Agreement not being implemented for any reason whatsoever, he shall forthwith return to Aldes all documents and paper relating to the Confidential Information which has been disclosed to him by Aldes and/or the Seller.
- 5.2 Should the Agreement not be implemented, then, for 24 (twenty four) months commencing on the termination date as contemplated in **clause 3**, the Purchaser and or its affiliates and/or representatives and/or its associates undertake in favour of Aldes and the Seller of such Businesses as listed on the Aldes data base that it and he will not commence negotiations with any party other than Aldes and/or the Seller, which are substantially the same as the Negotiations.

6 NO REPRESENTATIONS OR WARRANTIES

The Purchaser agrees and acknowledges that Aldes has not made and does not make any representation or warranty as to the accuracy or the completeness of the Confidential Information supplied in good faith to them.

7 CESSION

Each party's respective rights pursuant to this agreement are personal to it and may be not be ceded without the prior written consent of the other party concerned.

8 REMEDIES

In addition to all other remedies that it may be entitled to as a matter of law, each party shall be entitled to enforce specific performance and any other form of equitable or monetary relief to enforce the provisions of this agreement.

9 NON-VARIATION

No alteration or variation to, or consensual cancellation of, this agreement shall be of any force or effect unless it is recorded in writing and signed by both parties to this agreement.

10 DOMICILIUM

The Purchaser chooses such address as set out in the preamble of this Agreement as the address at which all notices and other communications must be delivered for the purposes of this Agreement:

11 GENERAL

- 11.1 Any latitude or extension of time which may be allowed by either party shall not under any circumstances whatsoever act as an estoppel or be a waiver of that party's rights hereunder.
- 11.2 The parties to this agreement undertake to treat all matters relating to this agreement hereto as being confidential and, therefore, shall not, without the written approval of the other, disclose the provisions hereof to any third party.
- 11.3 This agreement constitutes the entire contract between the parties and no conditions, warranties, guarantees and representations shall be of any force or effect other than those which are included herein.
- 11.4 All the transactions and arrangements contemplated in this agreement constitute on indivisible transaction.
- 11.5 **It is recorded in this agreement that Aldes in no way whatsoever have given business and/or financial advice but merely acted as agent in providing information to the Purchaser received from the Seller, whilst Aldes does not warrant the correctness of the information supplied by the Seller. The Purchaser shall be entitled to instruct such auditor, financial advisor or attorney to conduct a full legal and financial due diligence investigation into the affairs of the Business to be acquired at its own time and cost.**