

## Terms and Conditions

The following terms and conditions apply to a contract between the Client and the Company. The future request for the provision of Services, Data and Leads received by the Company from the clients at regular time intervals is decided in written format. The communication or a request by the Client to the Company for the supply of Services, Data and/or

Leads shall amount to the Client's acceptance of these terms and conditions. These terms shall take precedence over any terms and conditions of the Client, whether attached to, enclosed with or referred to in any purchase order of the Client or elsewhere. They may not be varied except by written agreement between the Company and the Client. The Company will use its reasonable care and skill in the supply to the Client of the Services/Data or Leads and any other requirements as discussed. In these Terms and Conditions and the Confirmation of Order save where the context otherwise requires the words and phrases below shall have the following meaning:

Definitions of the following given in this clause:

- **'Company'** means Pemlix Technology Solutions Pvt Ltd.
- **'Client'/'Buyer'** means the person, firm or company in contract with Pemlix Technology Solutions Pvt Ltd. It is the purchaser of data or service.
- **'Contract'** or **'Confirmation of order'** means the contract herein signed by the Client and returning it to the Company for delivery of the Services or Data as required.
- **'Survey'** The polling of consumers' survey to be compiled and executed by or in conjunction with the Company which will contain the core and product-based questions.
- **'The Product questions'** The Question(s) to be included in the Survey in relation to the Buyer's product category and/or sub-category and/or question criteria specified in the Sales Order.
- **'The Core Questions'** The lifestyle questions to be formulated by The Company and included in the Survey, details of which are available on request.
- **'Responses'** means one data record provided (or to be provided) by The Company to the Buyer containing one person's answer(s) to the Product Questions, and that person's name, postal address and/or telephone number and/or other information as specified on the Sales Order.
- **'Services or Leads'** means data from Pemlix Technology Solutions Pvt Ltd proprietary databases and collected from survey activity (Offline or Online) as more particularly described in the Order Confirmation. One copy of the responses to the Product Questions and the Core Questions that are maintained by The Company or on its behalf provided to the Buyer either in paper, printed or other documentary form or in other digital form (or additionally, alternatively stored on The Company's computer or that of its bureau at an additional rate to be agreed).

- **'Data type'** "First Usage" means the responses to the Product Questions not sold by the Company before. "Second Usage" means data meeting the Buyer's Question Criteria not sold more than once by the Company. "List Rental" means data meeting the Buyers Question Criteria that may have been sold multiple times before.
- **'Delivery Date'** The date on which the Data is or will be delivered to the Buyer in whole or as installments.
- **'Order quantity'** The estimate by The Company of the number of responses to the product questions which will constitute the Data.
- **'Rights'** means all copyright and related rights, patents, rights in trademarks, database rights and any other intellectual property rights in or relating to the Services or Leads Generation.
- **'Output'** means delivery of Services or Leads as outlined in the Order Confirmation.
- **'End User'** means the company/entity that will actually use the Data for sales and/or marketing purposes. "Reseller" means the Buyer is purchasing the Data to sell to an End User.
- **'Fee'** The fee payable by the Buyer to The Company for the service and data to be provided by The Company hereunder and calculated in accordance with below clauses.

## 1. Agreement

This is the entire agreement between the parties on the subject matter contained herein and supersedes all representations, communications and prior agreements between the parties in that regard. Each party acknowledges that it has accepted this Contract/Order Confirmation in reliance only on the representations, warranties, promises and terms contained or expressly referred to in these terms and conditions and save as expressly set out in these terms and conditions, neither party shall have any liability in respect of any other representation, warranty or promise unless it was made fraudulently.

## 2. Company's Status

The Company acts in this Contract/Order Confirmation as principal and not as an agent for the Client and will enter all related Contract/Order Confirmation as a principal. No party shall divulge any confidential information which is supplied to it about the other party during this Contract or any pre-contract discussions, other than information forming part of the public domain otherwise this would lead to breach of this clause or any other obligation of confidence.

Signing of the Order Confirmation, the Client agrees to be bound by the terms of this Agreement regardless of whether the output Data is used by the client or not.

### **3. Proprietary and Intellectual Property Rights**

**3.1** The property, the copyright and database rights (and all other intellectual property rights) in the Data, the Survey and the Product Questions shall at all times remain reserved or vested in The Company and The Company reserves the right to grant license in respect of the Data and supply the same to any other party.

**3.2** In the event of the Buyer being aware of any unauthorized use of any part of the Data, Buyer must notify The Company in writing forthwith.

### **4. License**

**4.1** The term of this license shall commence on the effective date and shall continue until notice is given; either party has to give the other party no less than 2 days prior written notice of termination. The agreement can get dissolved if (i) contract/order is completed and accepted (ii) one (1) year from the date of the Agreement or (iii) either party is or becomes incapacitated, bankrupt, insolvent, guilty of a felony or crime of similar gravity.

**4.2** The license Terms for use of Landline Telephone or Mobile Telephone Contact Channels permit a single contact to be made by End User through telephone/email to everyone whose contact details are provided. The data protection terms for our services are covered under the GDPR Regulations. For more details, read our privacy policies. It is to state that the processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.

**4.3** The End User License is terminated immediately once the Data has been used to the extent hereby licensed, the client accepts that the data is being licensed (rental) for 30 days maximum or one-time use. The Client accepts that data may contain deceased's or wrong numbers, bounced back email/sms and minute inaccuracies.

**4.4** Subject to clauses 3.1 and 8, in consideration of the Fee, The Company hereby grants to the Buyer the License upon and subject to these terms and conditions.

**4.5** The Buyer, as an End User, shall have the right to use, but not copy, alter, manipulate, adapt or license others to use, that part of the Data which is derived from responses to the Product Questions and/or the Core Questions in accordance with The Confirmation of Order on one specific direct marketing campaign for a maximum period of twenty weeks. In the case of the Buyer being a Reseller, the Buyer may license a maximum of one End User to use the Data as per these terms and conditions. For the benefit of doubt, the Buyer can resell the Data to a maximum of one End User where Buyer warrants that the End User shall have the right to use, but not copy, alter, manipulate, adapt or license others to use, that part of the Data which is derived from responses to the Product Questions and or the Core Questions in accordance with The Confirmation of Order on one specific direct marketing campaign for a maximum period of twenty weeks.

**4.6** The Company shall have the right to analyse that part of the Data which is derived from responses to the Product Questions and to formulate conclusions from such analysis and extract information from such part of the Data and shall be entitled to use such information (including information comprising such conclusions) at its sole discretion by way of the grant of licenses to third parties or otherwise provided that nothing herein shall permit The Company to reveal to any third party the replies to any Product Questions that related exclusively to the business of the Buyer.

**4.7** The Buyer's right to use that part of the Data which is derived from responses to the Product Questions shall be non-exclusive. The Company will deliver the data as per the Data Delivery instructions listed on the Confirmation of Order.

## **5. Company Obligations**

**5.1** The Company will deliver the Data to the Buyer at the address specified in accordance with the Confirmation of Order.

**5.2** The Company reserves the right to supply the Data in installments ("Deliveries") on varying dates ("Delivery Dates").

**5.3** The Company will only be obliged to supply replacement data for invalid records proven to equal or exceed 10% of the volume of the Data supplied.

**5.4** In the event of any complaints or disputes concerning the Data supplied, The Company shall replace elements of Data only where the same is not in accordance with The Confirmation of Order, subject to the following:

**5.4.1.1** In respect of 'First Usage' Data collected via telephonic surveys, the Buyer shall return all disputed data for investigation to the Company within 14 days of the Delivery Date or as otherwise stated on The Confirmation of Order.

**5.4.1.2** The Company has the right to provide replacement Data until a dispute be validated in accordance with its internal procedures and compliance criteria.

**5.4.1.3** Where a dispute concerns the conduct or content of a Survey for First Usage data, in the event the Buyer requires call recordings thereof, the Buyer must pay for those recordings in advance at a cost of £5 plus VAT per recording, the recording(s) provided will only contain information relevant to the Buyer's Product Questions. For the benefit of doubt, voice files are only available for First Usage data up to 6 months after delivery.

**5.5** The Company shall use reasonable endeavors to keep confidential that part of the Data which consists of the Product Questions.

**5.6** The company will not be obliged to offer refunds on non-delivery of the product- due to some mailing issues of your e-mail provider or your own mail server you might not receive a delivery e-mail from us. In this case, we recommend contacting us for assistance. Claims for non-delivery must be submitted to our Billing department in writing within 7 days from the order placing date.

## **6. Buyer Obligations**

**6.1** The Buyer undertakes to The Company that it will use the Data solely for the internal business purpose of the End User, and for the purpose only of use as a source of reference for its circulation by mail or by telephone or if applicable electronic mail to some of or all of the individuals listed in the Data.

**6.2** The Buyer agrees with and warrants to The Company that any documents or other items mailed by or on behalf of the Buyer as a result of or following its use of Data will at all times comply with the current British Code of Advertising Practice, the British Code of Sales Promotion Practice and the ICSTIS Code and will contain nothing which infringes copyright or any other right of any third party or is defamatory, obscene, indecent or otherwise illegal or unlawful whether or not such a claim is justified or upheld. The Buyer further agrees and warrants that it will upon request by The Company forthwith supply to The Company copies of any such documents or other items.

**6.3** In the event that any recipient of any documents or other items mailed by the Buyer objects to such mailing or requests that it ceases or asks for his or its name to be removed from any list the Buyer shall procure that such mailing ceases forthwith and shall inform The Company and provide The Company on a quarterly basis with particulars of any documents and other items mailed to that recipient and of the name and address to which they were sent.

**6.4** The Buyer hereby undertakes to The Company that it will deliver to The Company any notice or other communication in respect of the Data received from the Data Protection Registrar on its receipt thereof.

**6.5** The Buyer undertakes to The Company that it will at all times comply with the provisions of the Data Protection Act 1984 in respect of its use and storage of the data.

**6.6** The Buyer warrants that the Question Criteria supplied is correct and complete.

**6.7** The Buyer must supply the Question Criteria to the Company at least 7 days prior to the proposed delivery date and in the event of the Buyer failing to do this the Company reserves the right to recover from the Buyer any additional costs incurred.

**6.8** The Buyer shall allow the Company to include in the Data a small percentage of seed and dummy data subject details for control purposes.

**6.9** The Buyer and its servants and agents shall keep confidential all information concerning the business of the Company that it has obtained or received as a result of the performance of this Agreement; and

**6.10** The Buyer must comply with the provisions of clause 5.4 above in relation to any complaints or disputes arising concerning Data supplied.

**6.11** The Buyer undertakes to provide the Company with any notices it receives relating to any breach of the provisions of this clause 6 and the Buyer agrees to indemnify and hold the Company harmless in respect of any losses and costs (including reasonable legal costs) it might sustain as a result thereof.

**6.12** In the case of regulated and/or licensed market sectors, Buyer confirms that Buyer is covered by and adheres to regulations and licenses set out for said market sectors and therefore allows and covers The Company as a legal representative of Buyer to perform the duties as set out in The Confirmation of Order. In the case of any financial loss to The Company resulting from performing the duties as set out within The Confirmation of Order in a regulated and or licensed market sector, Buyer agrees to fully indemnify and pay all such losses in full to The Company.

**6.13** The end user accepts they will use any data/leads purchased appropriately for direct marketing either by Telephone, Postal, SMS or Email unless otherwise agreed on the order confirmation on a single use basis unless otherwise agreed on the order confirmation. All data provided by the Company will have full consent to be contacted either by Telephone, Postal, SMS or Email under "Legitimate Interest".

**6.14** The client accepts and understands that this data is to be NEVER sold to such parties whom the Company has never given consent, as we place seeds in our data to prevent this from happening; if proven to have been collecting & re-selling Pemlix Technology Solutions Pvt Ltd' data/lead lists, then you will be liable to pay compensation up to £15,000 and the company will also report to the ICO.

**6.15** The Buyer agrees that The Company may change age groups given in the survey to fit the Buyer's specific age groups where necessary.

## **7. Delivery**

**7.1** The Client shall inspect and check the Data and/or Leads immediately on delivery and shall give the Company a notice in writing by or email within 2 working days after the day of delivery as to any alleged defect together with details of the alleged defect.

**7.2** Failing such notice, the goods shall be deemed fit and in accordance with the Order Confirmation/Contract. The Company will allow 'Returns' on a weekly batch of Service/Data and/or Leads in accordance with the Order Confirmation as agreed by the Company.

## **8. Payment and Compensation**

**8.1** In return for the Company's supply of the Services/Data and Leads, the Client shall pay the Cost in accordance with their demand as per contract.

**8.2** The payment should be exclusive of VAT which will be charged at the prevailing rate.

**8.3** The payment will be calculated by reference to the quantity of Data supplied and will be charged in bands at the rate set out in The Confirmation of Order or as a fixed fee as referred to in The Confirmation of Order.

**8.4** In the event that the Fee shall be a fixed fee:

**8.4.1** The Company shall demand payment based on delivered order quantity as agreed in the Confirmation of order.

**8.4.2** The Company shall be entitled to offer to the Buyer at a pro rata rate and calculated by reference to the Order Quantity and the flat fee on all additional Data.

**8.4.3** The Company shall offer to its customers any additional Data which the Buyer shall decline to accept on such terms as the Company may determine.

**8.5** In the event that the Company agrees to supply the Data for the purpose of duplication against other data held by the Buyer and on the basis that the Buyer shall only pay a proportion of the price reflecting the net names actually used ("Net Names Agreement") any claim for credit for the unused proportion of Data:

**8.5.1** Must be made within a period not exceeding 14 days from the date of delivery unless otherwise agreed in writing by the Company; and

**8.5.2** Must be supported by a written duplication report or certificate from a recognized data processing bureau or other independent agency approved in writing by the Company.

**8.6** The Company reserves the right to charge interest on any sum not paid on a due date for payment at the rate of 5% per month above the base rate of Bank from time to time accruing daily and compounded annually on every invoice overdue for payment calculated from the date of the invoice until the date of payment whether before or after judgments and may suspend all of its obligations here under until payment has been made in full. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act, 1998. Failure to pay will not result in future batches being stopped unless timely notice has been given. These future

batches will still be payable within 14 days. The Company reserves the right to take legal action to recover the payments for future batches as they fail due.

## **9. Rejection or Cancellation**

**9.1** Once the Order Confirmation is approved and data has been being supplied to the Buyer as provided in these terms and conditions, any subsequent cancellation by the Buyer will result in the Client being liable for the full Cost of the Data to be paid.

**9.2** Any Leads/Data that the Client wishes to return must be returned within the allocated time of the return request with an agreement that it has not been sent to any End users.

## **10. Warranty and Limitation of Liability>Returns**

**10.1** Save as specifically set out herein, the Company shall not be liable whatsoever (however arising) in relation to any loss suffered by the Buyer or any third party arising from the supply of the Data.

**10.2** The Buyer acknowledges:

**10.2.1** That the Company has no responsibility for and gives no warranty or representation as to the performance of the Data or the rate at which it converts into actual or eventual sales or payment activity; The Company also takes no liability for loss of profits, business, contracts, revenues, goodwill, client reputation and anticipated savings of any description;

**10.2.2** Any data description including the words "first", "second" or "third" etc. usage data relates to the number of times the Company has sold the data. It cannot denote the preclusion of any other or prior distribution of the same or similar data by the data subject itself over which the Company has and can have no control.

**10.2.3** The Company does not warrant that the Data is accurate or complete or that any information contained therein is accurate or complete and the Buyer shall not be entitled to refuse to pay any part of the Fee by reason of any error or admission which the Buyer may suffer as a result and any claim which the Buyer may have shall not exceed the Fee.

**10.2.4** The employees and agents of the Company are not authorized to make oral or written representations concerning any Data Sales Order.

**10.2.5** The Company shall not be liable for any damages or costs of whatever nature either in terms of loss of profits or consequential or otherwise which may arise as a result of any breach of these Terms and Conditions or The Confirmation of Order or if the Data quantity is less than the Order Quantity or any failure by the Company to perform any obligation hereunder due to causes beyond its reasonable control or any other circumstances which the Company could not reasonably foresee and provide against.



**10.2.6** The Company shall not be liable in any way in respect of any failure, delay or defect in the supply or use of the Services/Data and/or Leads caused by the supply or specification by the Client of unsuitable material or content or by the duplication of the Services/Data and/or Leads by a third-party

**10.2.7** The Buyer shall not institute proceedings for damages for breach of these Terms and Conditions or arising from The Confirmation of Order.

## **11. Termination**

**11.1** The Company may terminate this Agreement and License forthwith on giving written notice to the Buyer if:

**11.1.1** The Buyer commits a serious breach of these Terms and Conditions and in the event of the breach being capable of being remedied shall have failed to remedy the breach within fourteen days after the receipt of a request in writing from the Company to do so; or

**11.1.2** At any time prior to supply of the Data or the execution of the Survey, the Company serves written notice to the Buyer of its intention to terminate the contract without incurring any liability other than liability which may not by applicable law be excluded or limited in which event no part of the Fee shall be payable by the Buyer. All future 'Outputs' that fall due between the termination notice being given and the termination date will be sent as agreed and payment will be expected within 14 days; or

**11.1.3** The Buyer shall fail to make any payment due under their Contract within 14 days after the due date. If the Contract is terminated due to a failure to pay, the Company will give notice that it wishes to terminate the order. The Company reserves the right to seek legal action to recover these payments if not paid within the set payment terms.

**11.2** The Company is not liable for any breach of this Contract caused by matters beyond its reasonable control including acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (if involving the Company's employees, whether of exceptional severity, unavoidable hardware or software failures, or acts of local or central Government or other authorities)

**11.3** In the event of any termination of this Agreement and License (irrespective of the reasons) the Buyer shall forthwith return the Data together (including all copies) with all other information which the Buyer might hold on or have received from the Company and confirm in writing that the Buyer has done so. Termination of this Agreement and License for whatever reason shall not affect the accrued rights or liabilities of either party.

## **12. Severance**

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part of the validity of any other provisions of these Conditions, the remainder of the provision in question shall not be affected thereby.

### **13. Waiver**

The rights of the Company shall not be prejudiced or restricted by any indulgence or forbearance extended by the Company to the Buyer and no waiver by the Company in respect of any breach shall operate as a waiver in respect of any subsequent breach.

### **14. Notices**

Any written notice required by this Contract should be sent to the address of the intended recipient shown or via email to the relevant account manager/contact person.

### **15. Governing Law and Jurisdiction**

Any dispute or claim arising out of or in connection with it or its subject matter in contract shall be governed by and construed in accordance with Indian law and each of the parties irrevocable submits to the non-exclusive jurisdiction in the courts of India. The foregoing terms and conditions are agreed to and accepted in relation to the attached Contract/Order Confirmation.

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Our