

## Terms and Conditions

These terms and Conditions shall be adopted in full by all companies or persons retaining the services of David Swift herein referred to as "the consultant". "The client" herein refers to all directors, partners and sole traders severally and jointly. The consultant does not act as principal at law, and does not accept liability incurred on his client's behalf. Any agreement to commission the consultant expressly includes these terms and conditions as exclusive terms to any contract between the parties involved.

1. The consultancy is on a retained basis for a minimum period of 12 months, requiring 12 months notice of termination on a rolling basis. The consultancy is offered for administration of CRM, database marketing, direct mail, list procurement and sell through, advertising, creative input, copywriting, art direction, media planning/buying, website design/functionality/search engine ranking, HTML emails, brand launch and management, exhibitions, product design, press and public relations, sponsorship, contribution management, catalogue pagination production and distribution, photography, location planning, set propping, product placement, display stands, literature production, call centres/in-bound & out-bound telemarketing, bulk mailings, response handling, and many related functions.

2. The consultant's daily charge fee is £1000 per day, plus disbursement, costs and expenses. A day being 7 hours of the consultant's time and includes travelling to/from the clients premises together with all travelling to third party locations. The fee will be reviewed each calendar year by the consultant. The client agrees to pay the fee in full for the number of days retained agreed per calendar month. The minimum number of days will be agreed between the parties and confirmed in writing at the outset of the agreement. Once agreed by both parties, and documented, regardless of whether the extra time has yet been implemented or not, this may only be reduced subsequently by the client giving the consultant 12 months notice. The consultant reserves the right to impose a limit on the number of days available to each specific client, for the security of all other clients. Any work commissioned by the client in addition to the retainer number of days will be charged at the same hourly rate, which shall be called "project work" and is not transferable with the retainer. The client assumes prior knowledge of this by requesting this time and no further notice will be expected from the consultant. Expenses charged include all travelling costs, hotel accommodation, subsistence and any other out of pocket expenses incurred by the consultant in the direct execution of duties for the client. The client further agreed to accommodate reasonable personal expenses for the consultant while away from home, i.e. phone calls home while staying away. Payment is required by direct

debit or standing order, although may be acceptable by BACS transfer, internet transfer or cheque only if agreed by the consultant in advance. In addition the consultant charges 17.65% of the cost of purchases made on behalf of the client.

3. Report Writing. In most cases the client will require written confirmation of the consultant's visits and subsequent deliberations. This time as long as it is conducted within the time specified by the client is included as part of the retainer. Should this report writing require additional time in excess of the visit, it will be charged at the same rate. Phone calls and additional request which uses time taken by the consultant of behalf of the client, or required through due process of the development of the work being undertaken by the consultant, i.e. work with outside suppliers; will also be charged in addition to the retainer. It is the client's responsibility to specify in advance should the report not be required. If the report is prepared but not required and no notice of such is appreciated by the consultant then the client agrees to honour the account incurred.

4. The consultant will not knowingly undertake work which is in direct conflict of interest to another client retaining his services. Direct conflict will only be deemed to have occurred when two clients advertise more than 10% of the identical product range in the same ABC audited media. In the event this happens the consultant will choose which client he gives notice to. In the event that client's services have changed to deliberately make the consultant liable under this clause the client causing this conflict will reimburse any and all of the consultant's subsequent losses for early termination of contract and the consultant will not be in breach of this contract. The consultant will assume non conflict occurs until such time as it is brought to his attention by the client.

5. Where it is deemed appropriate the consultant will agree a non disclosure agreement (NDA). An NDA is not included in these terms and conditions and constitutes a wholly separate contract. No express or implied agreement to contracts sight-unseen is offered by the consultant.

6. Credit references may be required prior to issuing a credit account. Normal credit is limited to net monthly account, tendered at the end of each month payable strictly within 45 days. The client may not assume that this facility is offered or indeed implied unless agreed in writing. When the facility is agreed, it is understood this will be on a strict net monthly basis. Failure to pay on time will result in withdrawal of services and / or reduction of credit facilities. Failure to pay due debts in excess of 90

days shall be construed as constructive dismissal, thereby necessitating automatically payment of the full 12 months notice for all days retainer agreed. This also applies to clients offered an early termination option.

7. In the event of non payment of an account by the due date the client agrees to assume responsibility for any loss incurred by the consultant as a consequence of this action i.e. bank charges etc. Interest may be charged at the consultant's discretion on overdue accounts at 5% gross monthly of the outstanding balance, calculated on the last day of each month, accrued monthly from the tax point date.

8. Work undertaken by the consultant may be conducted both at the client's premises or elsewhere as deemed necessary usually by prior arrangement. The client will ensure that suitable facilities, working conditions and equipment are provided. These shall include car parking facility, table and chairs, heat, light, ventilation, toilet and hand washing, tea/ coffee facilities, telephone, computer and appropriate up to date software, and liability insurance under which the consultant is covered personally and professionally. Should it be necessary the client will also be responsible for the privacy of the information. If due to exceptional circumstances the temperature or humidity is unbearable to the consultant, then the consultant reserves the right to choose to move to a different location on that day. i.e. a local hotel or the consultant's premises. Likewise if travelling is considered potentially dangerous, i.e. when it has been snowing, then the clients agrees to allow alternative dates or arrangements to be made.

9. It is the client's responsibility to indicate the day(s) that the consultancy is preferred to attend, which should be agreed by both parties in advance and mutually convenient. In the event of late or no notice the consultant reserves the right to charge in full for that day regardless of whether he has been able to attend. The client may not carry over days from one month to another. The consultant may carry days over in exceptional circumstances, to a maximum of 3 times the monthly number of days the consultant is retained.

10. Holidays will be taken periodically by the consultant, and wherever possible reasonable notice will be given. The consultant is obliged to undertake alternative days in lieu. The client agrees to abide with whatever dates the consultant prefers, providing this is reasonable, and which must be taken within 3 months of the date of those originally planned. i.e. doing two days in a subsequent

month instead on one in each month. Failing to agree a suitably convenient alternate date for the consultant to attend renders the day forfeited by the client.

11. Termination:

i. Termination can only be accepted when in writing and the last day of the month following the date of receipt of that notice is deemed to have been the day from which notice is given. Verified by recorded delivery. In the event that no proof of delivery is available then no termination of contract will be deemed to have been received. Email and fax are not acceptable proofs of notice.

ii. From the time the consultant has received notice he make seek to mitigate his losses by seeking consultancy among competitors of the client, without passing off this sum to the client, or necessity to further honour any non conflict of interest agreement from then on. Any agreed NDA will be honoured.

iii. The client may pay off the consultant in full for the period of notice without necessity for the consultant to undertake further work on the client behalf should the client so prefer.

iv. If the consultant deems it to be an untenable situation to continue working for the client once termination notice has been received then the consultant will be paid in full for the period of notice without need to further conduct work or fulfil further monthly visits. Circumstances under which this may be applied include foul or abusive language or behaviour toward the consultant, or placing the consultant in a situation in which he is made to feel uncomfortable, agitated or aggravated.

12. Where the client requests the consultant to act on his behalf whether verbally or in writing, the consultant is deemed to be authorised to act for the client and the client will honour any and all debts incurred directly. The client will assume all liability for the consultant's instructions and orders to all third parties made on the client's behalf.

13. All accounts for work commissioned by the consultant with third parties on behalf of the client will be directed to the client's at the appropriate address. Authorisation for the consultant to commission work required must have been documented. Approval of plans and preparatory work will be acceptable authority to place work.

14. There are no guarantees given or implied by the consultant for the work undertaken or advice offered. Neither will the consultant expect reimbursement beyond the retainer in the event of exceptionally good results. Where the consultant has offered to commute part of retainer fees against a pre-set target, then this fall due on the exact date that target is reached and no credit period or accounting delay will be made by the client beyond 7 calendar days.

15. Force Majeure. The consultant is not responsible for any loss incurred by the client for accidents, sickness, war, social unrest, terrorist act, criminal act, strike, lock-out, fire, embargo, military intervention or natural catastrophe or act of god.

16. In the event of any dispute between the parties it is agreed that this will be under English law and as such conducted under the jurisdiction of the law of the land in existence in England.

17. The consultant reserves the right to change, alter or otherwise amend these terms and conditions. The client agrees this as is incorporated as an on-going integral development of the existing contract between the two parties, provided the amended terms are published on the consultant's website and the client shall honour the changes 28 days after they have been posted. No notice of any changes will be made by the consultant. Date of changes will be taken as FTP uploads recorded dates retained by the host of the consultant's website.

18. The consultant will use all of his efforts, powers and experience to achieve the very best possible results for the client. The client agrees to give the consultant every assistance regarding information and as much detail as possible to help and assist the consultant in the execution of his duties. The client agrees to conduct all aspects of business lawfully and abide by the agreements and terms and conditions of respective suppliers. Failure to do so renders the client personally liable for any and all costs incurred by the consultant together with the due debts liable under this contract. the client agrees to ensure that all information provided to the consultant and subsequent acknowledgement to publish is legal, decent, honest and true.

19. Receipt of these terms and conditions will be deemed to be agreement to them and agreement to abide by them. In the event of any disagreement between the parties then solution will be resolved under English law, and if necessary in a court of law in England.

[www.swiftcrm.net](http://www.swiftcrm.net)

The Marketing Consultant for those selling multiple products direct to the consumer

Please print and retain a copy for your files:

Print Name..... Date...../...../.....

Signature.....