

TMDS Watching Services Terms and Conditions



1. In this Agreement:-
 - (i) **"Agreement"** shall mean these terms and conditions and the Order Acknowledgement;
 - (ii) **"Customer"** means the person, firm or company submitting an order for the TMDS Services;
 - (iii) **"Subscription Fee"** means the annual subscription fee included on the Order Acknowledgement, as amended in accordance with these Terms and Conditions;
 - (iv) **"Order Acknowledgement"** means an order acknowledgement setting out details of the Customers order for the TMDS Services, the Subscription Fee and any Additional Fee or other charges payable in respect of the provision of the TMDS Services;
 - (v) **"TMDS"** means Trade Mark Directory Service of 1 Oliver's Yard, London, EC1Y 1DT, UK;
 - (vi) **"TMDS Services"** has the meaning set out in Clause 4.
2. By placing an order for the TMDS Services, the Customer shall be deemed to have accepted the terms and conditions of this Agreement, which shall apply to the exclusion of any other terms and conditions. An order for the TMDS Services constitutes an offer by the Customer to purchase the TMDS Services and no binding contract shall be formed until TMDS has indicated its acceptance of the Customer's order by issuing an Order Acknowledgement to the Customer. TMDS reserves the right in its absolute discretion to refuse to accept any order.
3. The Customer shall include in any order for the TMDS Services:-
 - (i) a list of each trade mark (the **"Marks"**), trade mark class, or classes (**"Classes"**) and the country, countries or geographical regions (**"Coverage Area"**) in respect of which the Customer wishes the TMDS Services to be provided;
 - (ii) the details of any publications or sources of information (in addition to those referred to in Clause 4) which the Customer wishes TMDS to use in the course of the provision of the TMDS Services (**"Additional Publications and Sources"**). The Customer acknowledges that the provision of TMDS Services using Additional Publications and Sources is subject to an additional fee to be agreed with TMDS (the **"Additional Fee"**).
TMDS shall be entitled to rely on the accuracy of the information provided by the Customer in its order for the TMDS Services and shall have no liability for any inaccuracy in such information.
4. The TMDS Services shall consist of the following:-
 - (i) TMDS shall compare the Marks against trade mark applications / registrations in the Classes published in official (statutory) publications such as trade mark journals, patent office bulletins, government gazettes and national newspapers published in and received by TMDS in respect of the Coverage Area;
 - (ii) TMDS shall use its reasonable endeavours to notify the Customer in writing of the details of any similar trade mark application / registration in any of the Classes published in any official (statutory) publication referred to in Clause 4(i) as soon as reasonably practicable and shall use reasonable endeavours to ensure such notification is sent to the Customer prior to any opposition deadline applicable in the Coverage Area;
 - (iii) TMDS shall provide details of any opposition deadlines in the Coverage Area, however the Customer acknowledges and agrees that the information is provided for information purposes only and does not and should not be relied upon in substitution for legal advice on opposition deadlines in the jurisdictions concerned. Accordingly, TMDS excludes any and all liability for the accuracy of such information.
 - (iv) Where the Order Acknowledgement includes Additional Publications and Sources, TMDS shall compare the Marks against the details set out in such Additional Publications and Sources in accordance with this Clause 4.
5. Subject to earlier termination in accordance with this Agreement, the TMDS Services shall be provided for successive periods of 12 months commencing on the date on which TMDS notifies the Customer that the Marks, Classes, Coverage Area and any Additional Publications and Sources are entered onto TMDS' database (which shall be a date not earlier than one month after the date of the Order Acknowledgement) (the **"Commencement Date"**). Each period of 12 months shall be referred to as a **"Subscription Period"**. No later than 2 months prior to the expiry of a Subscription Period TMDS shall submit a written renewal notice to the Customer setting out the details on the TMDS database relating to the Marks together with the Subscription Fees and any Additional Fees payable for the forthcoming Subscription Period (**"Renewal Notice"**). In the absence of TMDS receiving notice from the Customer that the Customer does not wish to renew the Agreement, the Agreement will automatically be renewed for a further Subscription Period (and the Renewal Notice shall be deemed to be the Order Acknowledgement for this purpose).
6. The Subscription Fee and any Additional Fee shall be paid by the Customer, in respect of each Subscription Period, annually in advance. TMDS will invoice the Customer no later than the Commencement Date and on each anniversary thereafter. Payment shall be made by the Customer, in full within 30 days of the date of invoice. If the Customer is overdue with any payments hereunder, then without prejudice to TMDS' other rights and remedies, the Customer shall be liable to pay interest on the overdue amount at an annual rate of 4% above the prevailing base rate of Lloyds TSB Bank plc, which interest shall accrue on a daily basis from the date payment becomes due until TMDS has received payment of the overdue amount together with all interest. Any failure by the Customer to pay any invoice within 60 days of the date of the invoice shall be deemed to be a material breach of this Agreement incapable of remedy and, without prejudice to any of its other rights and remedies, TMDS shall have the right to terminate this Agreement immediately. All fees and charges are exclusive of VAT and any other applicable purchase tax, import and all other duties. The Subscription Fees and any Additional Fees shall be paid in pounds sterling, Euro or US Dollars.
7. TMDS warrants that the TMDS Services will be provided with reasonable care and skill. The Customer acknowledges and agrees that provision of the TMDS Services is dependent upon data, information or services supplied to TMDS by third parties, including without limitation any trade mark registry, and no warranty or other assurance is given in respect of such data, information or services nor will TMDS be liable in respect of any errors in such data, information or services or any loss or damage arising from any delay in receiving or failure to receive such data, information or services.
8. The Customer may at any time during the term of this Agreement request the addition or deletion of Marks and/or Classes and changes to the Coverage Area, or Additional Publications and Sources (**"Changes"**). Where the Customer requests Changes to the TMDS Services which would result in a reduction in the Subscription Fee and/or Additional Fee during any Subscription Period (but not termination of this Agreement), TMDS shall make such Changes to the TMDS Services but, save where such Changes are notified to TMDS in writing by the Customer within one month of the date of the Renewal Notice for the Subscription Period in which such Changes are requested (in which case, TMDS shall issue a replacement Renewal Notice to the Customer incorporating the Changes and the revised Subscription Fee and or Additional Fee for the following Subscription Period), there shall be no reduction in the Subscription Fee or Additional Fee. Where the Customer requests Changes which would result in an increase in the Subscription Fee or an increase in or imposition of an Additional Fee, provided that TMDS accepts such Changes in writing, TMDS shall incorporate such Changes into the TMDS Services with effect from the date notified by TMDS to the Customer, and shall invoice the Customer, and the Customer shall pay on the terms set out in this Agreement, any additional Subscription Fee or Additional Fee in respect of such Changes, pro-rated for the remaining part of the Subscription Period.
9. Nothing in this Agreement shall exclude or limit TMDS' liability for fraud or for death or personal injury resulting from its negligence or any other liability to the extent it cannot be excluded or limited as a matter of law. However, TMDS shall not otherwise be liable to the Customer under or in connection with this Agreement, whether for breach of contract, tort (including negligence) or otherwise for any loss of profits, loss of revenue, loss of data, loss of anticipated savings, wasted back-office or management time or for any indirect or consequential loss or damage of any kind howsoever arising. TMDS' maximum aggregate liability under or in connection with this Agreement shall not exceed 10 times the aggregate of the Subscription Fee and Additional Fees paid or payable by the Customer in the Subscription Period in which the cause of action arises.
10. The Customer acknowledges and agrees that any personal data collected by TMDS in the course of the provision of the TMDS Services may be transferred to and stored at a destination outside the European Economic Area. By submitting any personal data the Customer agrees to this transfer. TMDS will take all steps reasonably necessary to ensure that the Customer's data is treated securely in accordance with this Agreement. TMDS may disclose any personal information received by the Customer to any member of its group (which means its subsidiaries, its ultimate holding company and any subsidiaries of that holding company (as defined in Section 736 of the Companies Act 1985 (as amended from time to time)) and any partnerships in respect of which TMDS, its subsidiaries, its ultimate holding company and the subsidiaries of its ultimate holding company are a partner. Personal data received from the Customer may be used in order to ensure that the TMDS Services are provided in an effective manner and to provide the Customer with information, products or services that it requests from TMDS or which TMDS feels may interest the Customer, such as changes to the TMDS Services, new services or changes to existing services and special offers.
11. Either party may terminate this Agreement immediately upon written notice to the other party in the event of:
 - (i) any material breach of this Agreement by the other party which breach is not remediable, or if remediable, is not remedied within 30 days after the service of written notice requiring the same; or
 - (ii) the other party becoming insolvent, entering into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passing a resolution for its winding up, having a receiver or administrator appointed over the whole or any part of its assets, making any composition or arrangement with its creditors or taking or suffering any similar action in consequence of its debt.
12. The Customer may terminate this Agreement with effect from the expiry of any Subscription Period on prior written notice to TMDS no less than 1 month prior to expiry or within 1 month of the Renewal Notice whichever is the later. TMDS may terminate this Agreement with effect from the expiry of any Subscription Period on no less than 2 months' prior written notice to the Customer.
13. TMDS shall not be liable for any failure to perform or delay in performance of any of its obligations under this Agreement caused by a force majeure event. For the purpose of these Terms and Conditions a "force majeure event" means any act, event, non-happening, omission or accident beyond the reasonable control of TMDS.
14. TMDS may amend these Terms and Conditions at any time on written notice to the Customer. Save as permitted by this Clause 14 and Clause 8, any changes to this Agreement require the written consent of the parties to this Agreement.
15. All notices and other communication required or permitted to be served or given hereunder shall be in writing and sent by first class post, courier or facsimile to such address as either party may notify to the other from time to time for such purpose. Notices shall be deemed to be served 5 days after the date of the notice.
16. The Customer may not transfer or assign this Agreement or any of its rights or obligations under it without the prior written consent of TMDS. TMDS reserves the right to sub-contract all or part of its obligations under this Agreement.
17. The failure of either party to enforce any term or right arising under this Agreement does not constitute a waiver of such terms or right and shall in no way affect that party's right later to enforce or exercise the term or right.
18. The invalidity or unenforceability of any term or right arising under this Agreement shall not adversely affect the validity or enforceability of the remaining terms and rights.
19. A party that is not a party to any contract to this Agreement shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
20. This Agreement constitutes the entire agreement and understanding between the parties with respect to the provision of the TMDS Services and supersedes any prior agreement and understanding between the parties whether oral or in writing. Neither party shall have any remedy in respect of any untrue statement made to it upon which it has relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that party's only remedy shall be for breach of contract as provided in this Agreement.
21. This Agreement shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England.