

## 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:

All information of whatever nature relating to the Seller's business operations, financials and information of all business disclosed by Aldes to the buyer and all and any related operations of such businesses which is obtained by the buyer either in writing or verbally from or as a result of the negotiations with Aldes;

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

##### 1.2.1 At the time of disclosure are public information;

##### 1.2.2 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 of this agreement ;

#### 1.3 "the Agreement" means this document and any sale agreement or other agreements to be entered into by the Buyer, Aldes and the Seller for 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 Purchaser looking into the buying of assets and/or business of such business to be introduced by Aldes to the Purchaser in terms of which a Sale of business, Sale of Assets, Sale of Shares and/or Sale of Members Interest will be 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 above.

#### 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, but it shall be taken into account in interpreting 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*;

### 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) and realise that in the course of the Negotiations, the Parties will be required to disclose Confidential Information to one another 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 Parties to understand fully the structure of the Agreement for the proposed transaction and to satisfy themselves that no major problems exist which will influence the parties against entering into such Agreement.

### 3 PERIOD

Subject to **clause 4** below this agreement shall be taken to have commenced on the date of the first meeting or correspondence 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 exchange for the Private Information which will be communicated between the parties, Aldes hereby undertake not to disclose such information to any party other than those involved in the Negotiations.**

4.2 In exchange for the Confidential Information which the parties will disclose to one another, during the course of the Negotiations, the Parties hereby undertake that:

they will use the Confidential Information only 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 contrary to the interests of the other parties or of such Business or Businesses as listed on the Aldes data base

4.3 The Parties will, during the period of this agreement and thereafter:

4.3.1 keep all the Confidential Information which is disclosed to them (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;

4.3.3 they 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 Confidential Information for the purpose of the Negotiations, or to bringing about the Agreement, and the confidential nature of such information shall be explained to such employees and advisers;

4.3.4 they will use their best efforts to ensure that each of their employees, agents, servants and advisers to whom any Confidential Information will be disclosed individually, undertakes to be bound by the terms of this document, and each party shall be responsible for any breach of the provisions of this agreement by such employees, agents, servants or advisers;

4.3.5 they undertake not to publish or communicate 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 at all, they will not communicate the Confidential Information 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 immediately return to Aldes all documents and papers relating to the Confidential Information which has been disclosed to him by Aldes and/or the Seller.

5.2 Should the Agreement not come into effect, then, for 24 (twenty four) months, calculated from the termination date as stated in **clause 3**, the Purchaser and or its affiliates and/or representatives and/or its associates and/or the purchaser's employees, advisers or agents undertake in favour of Aldes and the Seller of such Businesses as are listed on the Aldes data base, that it and they will not commence negotiations with any party other than Aldes and/or the Seller, which are substantially the same as these Negotiations.

## **6 NO REPRESENTATIONS OR WARRANTIES**

The Purchaser agrees 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 by them in good faith.

## **7 CESSION**

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

## **8 LEGAL RIGHTS**

In addition to all other legal rights that it may be entitled to as a matter of law, each party shall be entitled to enforce this agreement.

## **9 NON-VARIATION**

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

## **10 DOMICILIUM**

The Purchaser chooses the address set out at the beginning 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 indulgence, latitude or extension of time which may be allowed by either party shall not under any circumstances be taken as preventing that party from exercising their rights contained in this agreement at the date of signing it.

- 11.2 The parties to this agreement undertake to treat all matters relating to this agreement as being confidential and, therefore, shall not, without the written approval of the other, disclose the provisions of this agreement to any third party.
- 11.3 This agreement contains 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 in this agreement.
- 11.4 All the transactions ,arrangements and agreements which may arise as a result of this agreement and The Negotiations will be taken together to be one transaction and will be incapable of being read separately from one another.

12 **ALDES NOT RESPONSIBLE**

**It is recorded in this agreement that Aldes in no way whatsoever have given business and/or financial advice to the Purchaser but merely acted as agent in providing information to the Purchaser received from the Seller and Aldes does not warrant the correctness or completeness of the information supplied by the Seller. The Purchaser shall be entitled to instruct auditors, financial advisors or attorneys to conduct full legal and financial checks and investigations into the affairs of the Business to be bought at his own time and cost.**