

Matrix247 Branded Agency Terms

Terms and Conditions Reference Matrix247001

1 Definitions and interpretation

1.1 Definitions

In these Terms:

Associate means the associate named in a Schedule

Business means the promotion and sale of the Products by the Associate and all matters related to the same;

Commissions means the commissions set out in the Schedule;

Commencement Date means the date set out in the Schedule;

Contract means a contract entered into by Matrix247 or a Matrix247 Company for a Product by a Customer or an Associate;

Conditions means the provisions contained in the Additional Conditions of the Schedule which shall be incorporated into this Agreement in their entirety;

Customer means a business entity introduced to Matrix247 by the Associate (either directly by Matrix247 entering a Contract with them or indirectly by Matrix247 providing a Product to them via the Associate) and who Matrix confirms is recognised as a customer for the Associate;

Intellectual Property means all or any of the following:

- (a) the **Trade Marks**, being the trade marks (whether registered or not) used by Matrix247 and/or a Matrix247 Company in the promotion of the Products or in any other manner or any other trade marks substituted for them under the provisions of this Agreement,
- (b) the **Trade Name[s]**, being Matrix, Matrix 247 and/or any under which Matrix or a Matrix Company sells the Products,
- (c) Know-How (trade secrets),
- (d) Copyright: being any and all copyright owned by or used by Matrix247 and/or a Matrix247 Company,

Matrix247 means Matrix Platinum Limited (Company No: 03875632)

Matrix Company means the companies associated with Matrix Platinum Limited or Matrix247

Notice Period means the notice period specified in the Schedule;

Payments means any payments due from the Associate for Products as set out in the Schedule;

Price means the price of Products in accordance with the applicable Matrix247 Company's current price list as the same may from time to time be amended OR as otherwise agreed by Matrix247;

Profit means the profit calculated by Matrix from the Price being the profit remaining from the Price when all costs, taxes and interest (other than the cost of any Commission) is deducted;

Products means the products and services described in the Schedule as the same may from time to time be amended by agreement between the parties;

Rights means the right to carry on the Business, to use the Intellectual Property (when set out in the Schedule) and to exclusivity of a Customer in accordance with the Contract;

Schedule means the Matrix247 Branded Agency Arrangement document or the Matrix 247Non-Branded Arrangements document signed by the Associate and Matrix;

Services means the services set out in the Schedule;

Support means the support provided by Matrix247 or a Matrix247 Company in selling or administering a Product for a Customer as set out in clause 3;

Term means the period starting on the Commencement Date and, unless earlier determined as provided in clause 5, continuing until determined by either of the parties by the relevant Notice Period.

1.2 **Interpretation**

In these Terms unless the context otherwise requires:

1.2.1 Headings contained in the Terms are for reference purposes only and shall not be incorporated into an Agreement and shall not be deemed to be any indication of the meaning of the clauses and sub-clauses to which they relate.

1.2.2 All agreements on the part of either of the parties which comprises more than one person or entity shall be joint and several and the neuter singular gender throughout these Terms shall include all genders and the plural and the successors in title to the parties.

2 **Grant**

2.1 Matrix247 grants to the Associate the Rights.

2.2 Matrix247 agrees where it has confirmed a Customer for the Associate not to appoint any other person to act as an authorised dealer in the Products on the same basis as set out in the confirmation during the Term other than in accordance with the provisions of the Agreement.

2.3 Without prejudice to the other provisions of the Agreement and the Conditions Matrix247 reserves the right:

2.3.1 to decline to accept any order received from or through the Associate or to terminate any Contract;

2.3.2 to continue to sell itself direct to customers to the extent they are not Customers or to Customers for any Product which the Associate is not appointed;

2.3.3 to vary the Price of the Products or to stop the provision of any Product;

2.3.4 to vary the Products as Matrix247 shall think fit or by the withdrawal of products which Matrix247 or a Matrix247 Company proposes to withdraw from its product range or by the addition to the Products;

2.3.5 to specify the terms of the Contracts as it requires; and

2.3.6 during the period of 6 months prior to the end of the Term or at any point a Customer is transferred to Matrix247 under the Agreement to appoint the Associate's successor (if any) and allow them to

make themselves known as Matrix247's distributor able to do business from the day after the expiration of the Term or the transfer of the Customer.

3 **Matrix247's obligations**

Matrix247 agrees with the Associate throughout the Term:

3.1 **Support and information**

To provide the Support set out in this clause 3.1 to the Associate in its efforts to promote the Business OR sales or other dealings in the Products:

3.1.1 to provide details of the Products as reasonably required to support sales;

3.1.2 to supply the Products where contracts for their provision are entered;

3.1.3 to provide reasonable training on the Products and Prices;

3.1.4 to supply user's manuals for the Products;

3.1.5 to provide and promptly update information about the Products;

3.1.6 to provide details on the terms of any Contract which a Customer would enter with Matrix247 or a Matrix247 Company

3.2 **Delivery of Products**

To supply to customers the Products in accordance with the Contracts.

3.3 **Additional Support**

Matrix shall provide additional Support to the Associate where agreed on a case by case basis. Where additional Support is provided the Commission, Price or Payments due in relation to the Customer where the additional Support is provided may be revised. Matrix247 shall notify You where any change is made to allow additional Support.

3.4 **Associate Products**

Where the Associate is providing services under an Own Branded Arrangements Schedule Matrix247 or the applicable Matrix247 Company shall provide the Product to the Associate who shall contract with the Customer to provide the Product to them. The terms on which Matrix or the applicable Matrix Company shall provide the Product shall be as specified in the Conditions. The Associate shall be responsible for the collection of all payments from the Customer unless otherwise agreed and a bureau billing and collection service is provided by Matrix 247 support desk (in which event Matrix247 may apply a monthly administration fee).

4 **Associate's obligations**

The Associate agrees with Matrix that it/they and any person or body engaged by them shall:

4.1 **Diligence**

At all times to work diligently to protect and promote the interests of Matrix247.

4.2 **Care of customers and information**

Keep all Customer details and information that relate to Matrix247 and/or any Matrix247 Company confidential and to take all reasonable precautions for their security and to make good to the satisfaction of Matrix247 any loss of or damage or deterioration to the Products from whatever cause.

4.3 **Services**

Provide the Services:

4.3.1 efficiently in accordance with Matrix247's reasonable requirements from time to time;

4.3.2 at all times during the term of the Agreement;

4.3.3 in line with the Conditions.

4.4 **Representations**

Not make any representation or give any warranty or guarantee or agree to any terms or waive any rights or make any accommodations or act in any way outside the specific authority given by Matrix247 whatever, whether expressly or by implication, in connection with Products or otherwise other than as agreed in writing by Matrix247.

4.5 **Records**

Keep proper and up-to-date books of account and records showing all transactions relating to the Associate and, in particular:

4.5.1 the sales of Products by the Associate;

4.5.2 service work carried out by the Associate on Products;

4.5.3 where the Associate enters into a contract with the Customer, the details of the contract.

4.6 **Access to records**

4.6.1 Make available to Matrix247 on request any books of account, records, reports, returns and other information relating to the Services as Matrix247 may reasonably require.

4.6.2 Allow the authorised officers and employees of Matrix247 to have access to any books and records of the kinds referred to in clause 4.6 and to take such copies of them as they may require.

4.7 **Assistance to Matrix247**

Inform Matrix247 forthwith of any trading in Products (or product similar to the products provided by Matrix247 or any Matrix247 company) which comes to the Associate's attention and which is carried on by a person not appointed by Matrix247 and to inform Matrix247 of any matter or occurrence relating to Products which comes to the attention of the Associate and which would or might reasonably be expected by the Associate to be detrimental to Matrix247's interests.

4.8 **No pledge of Matrix247's credit**

Not incur or purport to incur any liability on behalf of Matrix247 or any Matrix247 Company or in any way pledge or purport to pledge Matrix247's (or any Matrix247 Company's) credit or accept any order to make any contract binding upon Matrix247 (or any Matrix247 Company) without Matrix247 first approving in writing its terms.

4.9 **Protection of Intellectual Property**

4.9.1 Not cause or permit anything which may damage or endanger the Intellectual Property.

4.9.2 Notify Matrix247 of any suspected infringement of the Intellectual Property or other intellectual property of Matrix247 or a Matrix247 Company.

4.9.3 Take such reasonable action as Matrix247 may direct at the expense of Matrix247 in relation to such infringement.

4.9.4 Compensate Matrix247 for any use by the Associate of the Intellectual Property otherwise than in accordance with the Agreement.

4.9.5 Indemnify Matrix247 for any liability incurred to third parties for any use of the Intellectual Property otherwise than in accordance with the Agreement.

4.9.6 On the expiry or termination of the Agreement forthwith cease to use the Intellectual Property save as expressly authorised by Matrix247 in writing.

4.9.7 Not apply for registration of the Trade Name as a trade mark but to give Matrix247 at Matrix247's expense any assistance it may require in connection with the registration of the Trade Marks as trade marks in any part of the world and not to interfere with in any manner nor attempt to prohibit the use or registration of the Trade Marks or any similar name or designation by any other licensee of Matrix247.

4.9.8 Not use the Intellectual Property otherwise than as permitted by the Agreement.

4.9.9 Not use any name or mark similar to or capable of being confused with the Trade Name or the Trade Marks.

4.9.10 Not use the Intellectual Property except directly in the Business.

4.10 **Secrecy**

4.10.1 Not at any time during or after the Term to divulge or allow to be divulged to any person any confidential information relating to the goods, business or affairs of Matrix247 other than to persons who have signed a secrecy undertaking in the form approved by Matrix247.

4.10.2 Not permit any person to act or assist in the Business until such person has signed such undertaking.

4.11 **Notice**

Comply with the terms of any Default Notice as defined in clause 5.3 specifying a breach of the provisions of the Agreement and requiring the breach to be remedied so far as it may be but nothing in this clause is intended to require Matrix247 to serve notice of any breach before taking action in respect of it.

4.12 **Sub-associates**

4.12.1 Not appoint sub-associates other than as specified in the Services or with the express written consent of Matrix247.

4.12.2 Be responsible for the activities of any properly appointed sub-associates.

4.13 **Assignment**

4.13.1 Not assign charge or otherwise deal with the Agreement in any way without the consent of Matrix247.

4.13.2 Not to assign charge or otherwise deal with any right to Commission, or other right under the Agreement, in any way without the consent of Matrix247.

4.14 **Indemnity**

Indemnify and keep indemnified Matrix247 and/or any Matrix247 Company from and against any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by Matrix247 resulting from a breach of this Agreement by the Associate including any act neglect or default of the Associate's agents, employees, licensees or customers.

4.15 **Conditions**

4.15.1 Comply with the Conditions.

5 **Termination**

5.1 This Agreement shall terminate forthwith:

5.1.1 **Time:** on the expiry of the Term.

5.1.2 **Notice:** If either of the parties gives to the other not less than 30 days' prior notice expiring [at any time not earlier than one year after the Commencement Date.

5.1.3 **Insolvency:** If the Associate goes into bankruptcy, liquidation either compulsory or voluntary (save for the purpose of reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets or if the Associate makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things or any judgment is made against the Associate or any similar occurrence under any jurisdiction affects the Associate.

5.2 Matrix may terminate this Agreement forthwith by notice in writing served upon the Associate in which case the Agreement terminates when the Associate is deemed to have received the notice in accordance with clause 9.9:

5.2.1 **Fundamental breach:** On the occurrence of any of the following events which are to be treated as fundamental breaches of this Agreement:

- (a) fraud or theft (or any other activity which may amount to a criminal offence); or
- (b) poaching any client or referring any business which should be submitted to Matrix247 to any other company or trader; or
- (c) misdirecting any business or opportunity which could be submitted to Matrix247 to any other company or trader; or
- (d) any breach of confidence relating to Matrix247; or
- (e) any breach or failure to comply with a legal requirement of provision of these Conditions; or
- (f) any matter howsoever arising which may give rise to any damage to the reputation or goodwill of Matrix247; or

- (g) causing any damage to the good name and reputation of Matrix247; or
- (h) any matter similar in nature to the items set out in (a) to (g); or
- (b) failure by the Associate to comply with the terms of any Default Notice as defined in clause 5.3 within the time stipulated.

5.2.2 **Conduct prejudicial:** If the Associate engages in any conduct prejudicial to Matrix247, any Matrix247 Company, the Business or the marketing of the Products generally.

5.2.3 **Change of management or control:** If any material change occurs in the management or control of the Business.

5.3 In the event of a breach by the Associate of any of the provisions of this Agreement Matrix247 may serve notice requiring the breach to be remedied within the time stipulated in that notice (a **Default Notice**) but nothing in this clause shall require Matrix247 to serve notice of any breach before taking action in respect of it.

6 **Termination consequences**

6.1 **Procedure**

On the expiry or other termination of this Agreement the Associate undertakes:

- 6.1.1 to cease dealings with the Products;
- 6.1.2 to destroy all stationery used in the Business;
- 6.1.3 forthwith to cease to use the Intellectual Property (the Associate's licence to use which is terminated) and to sign such confirmation of cessation of use of the Intellectual Property as is required by Matrix247;
- 6.1.4 to return to Matrix247 all originals and copies of all documents and information in any form containing or covering in any way any part of the Intellectual Property; and

6.2 **No solicitation**

For a period of two years after expiry or termination of the Agreement or the end of any Contract the Associate (either themselves or in conjunction with any other party) undertakes not to damage the goodwill of Matrix247 or any Matrix247 Company and in particular:

- 6.2.1 not to solicit Customers or former Customers of the Business and/or Matrix247 and/or a Matrix247 Company with the intent of taking their custom; and
- 6.2.2 not to employ any employees or former employees who were employed by Matrix247 or any other representative of Matrix247, and (where the Associate is a company) to procure that all directors and shareholders of the Associate enter into direct covenants of a similar nature with Matrix247.

6.3 **Existing rights**

The expiry or termination of this Agreement shall be without prejudice to any rights which have already accrued to either of the parties under this Agreement.

7 **Customer Ownership**

7.1 The Associate shall notify Matrix247 before marketing or selling any Product to a potential customer. Where Matrix247 confirms that the potential customer is already a customer of Matrix247 or another Matrix247 Company the Associate shall not market or sell any Product (or any competing product) to the potential customer.

7.2 Where Matrix247 confirms a potential customer is not already a customer the Associate may market or sell Products (or any products similar to the Products) to that Customer. Matrix247 shall confirm the extent to which the Customer is recognised as such and to that extent Matrix247 shall not market or sell directly to the Customer or allow another associate to market or sell to the Customer during the Term (save where clause 7.4 applies).

7.3 The ownership of a Customer's relationship with Matrix247 or a Matrix247 Company (to the extent specified under clause 7.1) shall be with the Associate for the Term save where the Associate agrees to transfer the Customer to Matrix247. Where an associate agrees the transfer of a Customer to Matrix247 they shall not for a period of three years (or until 6 months after the next renewal if longer) have any dealings with that Customer in relation to a Product or otherwise save as expressly agreed in writing by Matrix247.

7.4 Matrix247 may end the Associates rights in relation to any Customer in the event that:

7.4.1 The Customer requests the Associate no longer provides support to it;

7.4.2 Matrix247 reasonably determines that the Associate is acting in a manner detrimental to Matrix247 or a Matrix247 Company with the Customer;

7.4.3 The Customer sells products of a competitor to the Customer or looks to replace the Products with products of a competitor.

In the event of Matrix247 ending the Associates rights in relation to a Customer no further Commission shall be payable for the Customer, clause 6.2.1 shall apply in relation to the Customer and Matrix247 has all rights in the Customer.

8 **Data Protection**

8.1 Both parties shall comply with the provisions of the Data Protection legislation and any rules and regulations concerning the same. Both parties shall be a data controller of any personal data relating to a Customer and the Associate shall ensure that Matrix247 is able to lawfully process such data provided by the Associate (including the recording of any consent or providing the details of any legitimate interest).

8.2 The Associate shall indemnify Matrix247 in relation to any losses, damages or fines which Matrix247 is liable for as a result of the Associate breaching clause 8.1.

9 **Miscellaneous**

9.1 **Warranty**

Each of the parties warrants its power to enter into this Agreement and has obtained all necessary approvals to do so.

9.2 **Reservation of rights**

Matrix247 reserves the right notwithstanding anything to the contrary contained in this Agreement:

9.2.1 to decline any order or to submit any quotation or tender on any inquiry transmitted to Matrix247 by the Associate.

9.3 **Force majeure**

Both parties will be released from their respective obligations in the event of national emergency war prohibitive governmental regulations or if any other cause beyond the reasonable control of the parties renders performance of the Agreement impossible whereupon. Provided that this clause shall only have effect at the discretion of Matrix247 except when such event renders performance impossible for a continuous period of 6 calendar months.

9.4 **Severance**

In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of Matrix247 it may be severed from this Agreement OR the remaining provisions of this Agreement shall remain in full force and effect unless Matrix247 in Matrix247's discretion decides that the effect of such declaration is to defeat the original intention of the parties in which event Matrix247 shall be entitled to terminate this Agreement by 30 days' notice to the Associate and the provisions of clause 6 shall apply accordingly.

9.5 **Whole agreement**

The Associate acknowledges that this Agreement contains the whole agreement between the parties and it has not relied upon any oral or written representations made to it by Matrix247 or its employees or agents and has made its own independent investigations into all matters relevant to the Business.

9.6 **Supersedes prior agreements**

This Agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the Commencement Date but without prejudice to any rights which have already accrued to either of the parties.

9.7 **Discretion**

No decision, exercise of discretion, judgment or opinion or approval of any matter mentioned in this Agreement or arising from it shall be deemed to have been made by Matrix247 except if in writing and shall be at its sole discretion unless otherwise expressly provided in this Agreement.

9.8 **Change of address**

Each of the parties shall give notice to the other of change or acquisition of any address or telephone telex or similar number as soon as practicable and in any event within 48 hours of such change or acquisition.

9.9 **Notices**

Any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post or by facsimile transmission or by email and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile or by email to the correct facsimile number (but only if a transmission report is generated by the sender's facsimile machine recording a message from the recipient's facsimile machine, confirming that the facsimile was sent to the number indicated above and confirming that all pages were successfully transmitted) or correct email address of the addressee.

9.10 **No partnership**

The parties are not partners or joint venturers nor is the Associate able to act as agent of Matrix247 save as authorised by this Agreement.

9.11 **Matrix247's right to assign**

This Agreement and all rights under it may be assigned or transferred by Matrix247.

9.12 **Proper law and jurisdiction**

9.12.1 This Agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.

9.12.2 Any proceedings arising out of or in connection with this Agreement may be brought in any court of competent jurisdiction in England.

9.12.3 The submission by the parties to such jurisdiction shall not limit the right of Matrix247 to commence any proceedings arising out of this Agreement in any other jurisdiction it may consider appropriate.

9.12.4 Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served on any party in accordance with clause 8.9.

9.13 **Rights cumulative**

All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under this Agreement shall restrict or prejudice the exercise of any other right granted or otherwise available to it.

9.14 **Survival of terms**

No term shall survive expiry or termination of this Agreement unless expressly provided.

9.15 **Waiver**

The failure by Matrix247 to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

9.16 **Costs**

Each of the parties shall pay the costs and expenses incurred by it in connection with this Agreement.

9.18 **Acceptance**

Orders shall be regarded as provisionally accepted to the extent notified in writing by Matrix247.

10 **Commissions**

10.1 **Payment**

Matrix 247 shall pay Commissions in accordance with the Schedule where the Associate remains in compliance with the Agreement.

10.2 **Set Off**

Matrix may set off any sums due to it from the Associate against any sums due to the Associate.

Signed

Name

Date