

SUPPLY CHAIN SOLUTION LTD TERMS OF REFERRAL

1. Interpretation

The definitions and rules of interpretation in this clause apply in these Conditions.

1.1 Definitions

“Business Day”	a day other than a Saturday or Sunday or public holiday in England when banks in London are open for business;
“Client”	means a Prospect who subsequently receives services from the Supplier at any time after that Prospect is first Introduced to the Supplier by SCS;
“Conditions”	means these terms of referral;
“Contract”	these Conditions and the Referral Form;
“Existing Customer”	means a person, company or other organisation which the Supplier has provided services to in the 12 months immediately preceding SCS first Introducing that person, company or other organisation to the Supplier;
“Group Company”	means any Company which is a subsidiary of the Supplier (whether a wholly or partly owned subsidiary) or which is a parent company of the Supplier (whether an immediate parent company, an intermediate parent company or the ultimate parent company) or any other company in which the Supplier or the Supplier’s shareholders own (directly or indirectly) 25% or more of the issued share capital;
“Introduce”	(including all derivations thereof including introduces, introducing and introduced) means SCS notifying the Supplier in any way that a person, company or other organisation which is in any way known to SCS requires or may require services of the kind which the Supplier provides and a meeting is arranged with the person, company or other organisation introduced (whether attended by SCS and the Supplier or either of them) or the Supplier supplies a quote and/or any services to that person, company or organisation.
“Prospect”	means a person, company or other body or organisation which SCS Introduces to the Supplier;
“Referral Fee”	the referral fee calculated in accordance with clause 2;
“Referral Form”	means the SCS referral form signed by a supplier confirming that such supplier wishes SCS to provide details of persons, companies or other organisations that may require services from such supplier;
“Referral Percentage”	means the referral percentage set out in the Referral Form;
“SCS”	Supply Chain Solution Ltd (Registered in England and Wales with Company Number 06075296);
“Services”	means any services provided by the Supplier to a Client;
“Supplier”	the party named as the supplier on the Referral Form.

1.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.3 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.4 A reference to **writing** or **written** includes email but not fax.

1.5 Clause headings shall not affect the interpretation of these Conditions.

1.6 References to clauses are to the clauses of these Conditions.

2. Referral Fee

2.1 In consideration of SCS Introducing Prospects to the Supplier, the Supplier will pay SCS a Referral Fee in accordance with this clause 2. No Referral Fee shall be payable by the Supplier in respect of a Client which is an Existing Customer.

2.2 Unless expressly stated otherwise in the Referral Form (in which case the Referral Fee will be as so stated) the Referral Fee shall be the amount equal to the Referral Percentage of all sums (exclusive of VAT) invoiced by the Supplier to a Client for so long as that Client remains a client of the Supplier.

2.3 The Supplier will continue to pay the Referral Fee to SCS notwithstanding termination of the Contract.

2.4 Nothing in these Conditions obliges SCS to make referrals to the Supplier. All referrals are at SCS’s sole discretion. Nothing in these Conditions shall prevent SCS referring its contacts who may require services of the kind provided by the Supplier to a third party at any time including but not limited to after a Prospect has been Introduced to the Supplier and after a Prospect has become a Client.

2.5 SCS shall be entitled at any time (including after a Prospect has been Introduced to the Supplier) to provide services of the kind provided by the Supplier directly to any Prospect which SCS Introduces to the Supplier if it elects to do so.

- 2.6 The Supplier is entitled to accept referrals from third parties save that where a Prospect which has already been Introduced to the Supplier by SCS is subsequently referred to the Supplier by a third party the terms of these Conditions will continue to apply as regards that Prospect.
- 2.7 Where SCS Introduces a Prospect to the Supplier and that Prospect has already been introduced to the Supplier by a third party but is not an Existing Customer at the time of the Introduction by SCS, the terms of these Conditions will apply as regards such a Prospect
- 2.8 The Supplier will provide SCS with a report once each month, setting out the following information:
- 2.8.1 the name of all Prospects referred;
 - 2.8.2 whether each Prospect on the report has become a Client;
 - 2.8.3 the amounts invoiced to each Client listed;
 - 2.8.4 a calculation of the Referral Fee payable to SCS in respect of each Client, calculated in accordance with these Conditions; and
 - 2.8.5 such other information as SCS reasonably requires for the purpose of determining the Referral Fee (or whether such a fee is payable).
- 2.9 Based on the report provided by the Supplier under clause 2.8, SCS will produce a valid VAT invoice to the Supplier for the appropriate Referral Fee at such intervals as SCS considers appropriate though not more than monthly. SCS's invoice will be payable within 30 days of the date of invoice. The Referral Fee is exclusive of any applicable VAT, which will be added where appropriate.
- 2.10 SCS's invoices in respect of Referral Fees shall be paid without deduction or set-off.
- 2.11 SCS shall be entitled, at its own expense, to review, analyse and/or audit the Supplier's records for the purpose of checking the accuracy of the information provided by the Supplier under clause 2.8 and generally to ensure the Supplier's compliance with the terms of these Conditions. The Supplier shall co-operate with all reasonable requests for information by SCS pursuant to this clause 2.11 and shall permit SCS to have access to its premises and records during normal office hours for this purpose. SCS shall be entitled to have the records referred to in this clause analysed by an independent third party of its choosing and if SCS elects to do so the Supplier will co-operate with and permit such access to its premises and records to that third party as it would be obliged to provide to SCS.
- 2.12 In the event of a dispute as to whether a Referral Fee is due or the amount of such fee either party may refer the dispute to an independent accountant for resolution. The parties will endeavour to agree the identity of such independent accountant but in default of agreement after a period of two weeks from the date that the referring party indicated its intention to make the referral, either party shall be entitled to invite the President of the Institute of Chartered Accountants of England and Wales to appoint an independent accountant for the purpose of determining the dispute. The independent accountant shall act as expert, not arbitrator. The independent accountant's decision shall be binding in the absence of manifest error. The independent accountant shall be entitled to determine the procedure to be adopted for resolving the dispute. Each party shall bear 50% of the independent expert's costs.

3. Supplier Obligations

- 3.1 The Supplier shall use its best endeavours to secure contracts to provide services to all Prospects Introduced to it by SCS (including but not limited to providing Services on subsequent occasions to such Prospects beyond the initial services for which the Prospect was originally referred).
- 3.2 The Supplier will comply with the requirements of all applicable data protection legislation, including the Data Protection Act 1988, in relation to the protection and disclosure of information provided to it in relation to Prospects.
- 3.3 The Supplier must make it clear to any Prospect that if the Prospect decides to engage the Supplier to provide the Services then the provision of those Services will be by the Supplier entirely independently of SCS and that SCS will not be responsible or in any way liable for the provision of the Services to the Client. The Supplier will not without the prior written agreement of SCS provide or purport to provide any Services in SCS's name, nor will the Supplier suggest any connection between the Supplier and SCS.
- 3.4 The Supplier shall at SCS's request supply promotional literature regarding the Services to SCS for distribution to Prospects. All intellectual property rights attaching to such literature remain the property of the Supplier subject to SCS's entitlement to use the same for the purposes of the Contract.
- 3.5 All Services for Clients carried out by the Supplier will be entered in the Supplier's records with the prefix "SCS".

4. Quality of Services

- 4.1 The Supplier shall:
- 4.1.1 provide the Services to the Client in a professional, timely and efficient manner;
 - 4.1.2 allocate sufficient resources to the provision of the Services to enable it to comply with its obligations under its contract with the Client;
 - 4.1.3 co-operate with SCS and the Client in all matters relating to the Services;
 - 4.1.4 comply with all reasonable instructions from the Client as regards the provision of the Services;
 - 4.1.5 use reasonable skill and care in the performance of the Services and perform the Services in accordance with all applicable legislation and in accordance with and to the standard of best practice in the relevant field.

- 4.2 The Supplier confirms that it has all relevant skills and expertise required for the purpose of providing the Services.
- 4.3 The Supplier shall not provide the Services in any way which damages or may damage SCS's reputation.

5. Confidentiality

- 5.1 Both during the duration of the Contract and indefinitely thereafter (however the Contract comes to an end including if it is terminated in circumstances which amount to a repudiatory breach of the Contract by either party) each party shall keep in strict confidence information regarding the business of the other party ("**Confidential Information**") except to the extent that such information is in the public domain other than as a result of a breach of the Contract. Nothing in the Contract shall prevent the disclosure of Confidential Information to professional advisers for the purpose of seeking advice in relation to the Contract or matters arising out of it or disclosure as required by law. In particular, the Supplier shall keep in strict confidence and shall not use or disclose (other than as required in complying with the Contract or providing the Services) all information, documents and data relating to all Prospects and Clients (including lists of the same, names, addresses, e-mail addresses and contact numbers) which the Supplier may obtain (whether from the Company or otherwise).
- 5.2 All information (including that detailed in clause 5.1) supplied by SCS to the Supplier ("**the Information**") shall, at all times, be and remain (as between SCS and the Supplier) the exclusive property of SCS. Such Information shall not be disposed of or used other than in accordance with the Contract. The Information and all copies thereof (whether hard copies or electronic copies) shall be returned to SCS immediately upon termination of the Contract for any reason or, at SCS's sole discretion, destroyed.
- 5.3 For the avoidance of doubt, the Supplier will not disclose any Confidential Information or any Information (other than as permitted by clauses 5.1 and/or 5.2) to any third party (including but not limited to a Group Company) which acquires or expresses an interest in acquiring the business and/or assets of the Supplier or any part thereof with a view to carrying on the business or part thereof previously carried on by the Supplier.

6. Insurance

The Supplier shall, whilst providing any Services to a Client and for a period of 6 years thereafter, maintain in force with a reputable insurance company such insurance as is sufficient to cover any claims by Clients pursuant to the provision of the Services and shall, at SCS's request, produce both the insurance certificate giving details of cover and the receipt in respect of the current year's premium.

7. Non-Competition

- 7.1 In this clause 7 the following phrases shall have the meaning set out next to them.
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| "Restricted Services" | any of the services offered by SCS or which are provided to SCS's contacts by third parties introduced to those contacts by SCS and which the Supplier provides in the course of its business at the date of:
(i) Termination; or
(ii) any breach by the Supplier of any relevant provision of clause 7.2. |
| "Restricted Person" | anyone employed or otherwise engaged by SCS in the 12 months prior to date of Termination and who (other than in a purely administrative capacity) has contact with SCS's contacts. |
| "Termination" | the termination of the Contract howsoever caused (including if it is terminated in circumstances which amount to a repudiatory breach of the Contract by either party). |
- 7.2 The Supplier acknowledges that there is substantial goodwill attached to SCS's business and SCS's contacts and ability to generate further contacts who may require services of the kind provided by the Supplier and that in consideration of having been afforded the opportunity to provide the Services it is reasonable for the Supplier to undertake not to compete with SCS and to agree that all Prospects Introduced by SCS pursuant to the Contract (other than Existing Customers) remain, as between SCS and the Supplier, clients or contacts of SCS. The Supplier therefore covenants with SCS that it will not (and that it will procure that its employees, agents and subcontractors will not) for 12 months following Termination without the prior written consent of SCS:
- 7.2.1 solicit or endeavour to entice away from SCS the business or custom of a Prospect (other than an Existing Customer) with a view to providing Restricted Services to that Prospect; or
 - 7.2.2 solicit or endeavour to entice away from SCS the business or customer of a Client (other than an Existing Customer) with a view to providing Restricted Services to that Client; or
 - 7.2.3 provide any Restricted Services to any Prospect (other than an Existing Customer); or
 - 7.2.4 provide any Restricted Services to any Client (other than an Existing Customer); or
 - 7.2.5 in the course of any business concern which offers or is in competition with any Restricted Services, offer to employ or engage or otherwise endeavour to entice away from SCS any Restricted Person.
- 7.3 For any prior written agreement of SCS to be valid in accordance with clause 7.2 it must be signed by a director of SCS and specify the relevant services, client/prospect and period for which the restrictions in this clause 7 shall not apply. SCS reserves the right to withdraw its agreement at any time, upon which the restrictions in this

clause 7 shall continue to apply to the Supplier. Any consent given by SCS shall be without prejudice to its entitlement to Referral Fees in relation to Clients.

- 7.4 The restrictions imposed on the Supplier by clause 7.2 apply to it acting:
- 7.4.1 directly or indirectly; and
 - 7.4.2 on its own behalf or on behalf of, or in conjunction with, any other firm, company or person.
- 7.5 Each of the restrictions in each of the sub clauses of clause 7.2 is intended to be separate and severable. If any of the restrictions shall be held to be void but would be valid if part of their wording were deleted, such restrictions shall apply with such deletion as may be necessary to make it valid or effective.
- 7.6 In the event that SCS itself elects to provide to the Client or Prospect services of the kind provided by the Supplier to any Client, or a Client or Prospect wishes to have such services provided by a third party for any reason, the Supplier agrees that SCS or a third party shall be entitled to offer such services to any Client or Prospect without liability to the Supplier. The Supplier agrees that if a Client wishes SCS or a third party to provide those services to that Client in the future it will release the Client without liability from any remaining term of any contract with, or any liability that the Client has or may have to, the Supplier (other than sums payable for the Services which have already been provided) in order that SCS or a third party can commence providing those services to the Client immediately.

8. Termination

- 8.1 Save as otherwise provided in the Contract, the Contract will continue until terminated by either party giving to the other three months' prior notice in writing.
- 8.2 Either party may terminate the Contract with immediate effect by giving notice in writing to the other in the event that the other party is subject to any formal insolvency procedure or in the event that the other party is in material breach of the Contract and where the breach is capable of being remedied and fails to remedy such breach within 14 days of being notified of the existence of the breach and required to remedy it in writing by the party not in breach.
- 8.3 SCS shall be entitled to terminate the Contract without liability in the event that 25% or more of the voting rights or other control of the Supplier become beneficially owned or controlled by a party that SCS regards as a competitor in relation to its services.
- 8.4 If the Contract is terminated for any reason, such termination shall not affect SCS's entitlement to receive Referral Fees in relation to Clients. SCS shall continue to be entitled to receive all Referral Fees in relation to all Clients Introduced to the Supplier by SCS for so long as they receive Services from SCS.
- 8.5 Any terms of the Contract which are expressly stated to survive termination or which by implication are intended to have effect beyond termination shall continue to apply notwithstanding termination of the Contract however such termination occurs.

9. Group Companies and Third Parties

- 9.1 Where SCS Introduces Prospects to a Group Company (or, without prejudice to clause 9.4, the Supplier provides details of Prospects to any Group Company) the Supplier will procure that any such Group Company enters an agreement with SCS on the same terms as the Contract. If any Group Company fails to enter such an agreement with SCS the Supplier will procure that the Group Company nonetheless complies with the terms of the Contract. In any event, the Supplier will be liable to pay SCS a Referral Fee in respect of all sums invoiced to a Client whether by the Supplier as an individual entity or by any other Group Company.
- 9.2 The Supplier as an individual entity, confirms that it is authorised by the Group Companies to agree to the terms of the Contract on their behalf.
- 9.3 The Supplier will not transfer the whole or any part of its business or assets to a third party (including but not limited to a Group Company) with a view to that third party carrying on the business or part thereof previously carried on by the Supplier without first ensuring that, to the extent that SCS is willing to do so, the third party first enters a contract with SCS on the same terms as the Contract.
- 9.4 The Supplier will not (and shall procure that no Group Company shall) introduce any Client or Prospect (other than Existing Customers) or provide details of any Client or Prospect (other than Existing Customers) to any third party for the purposes, or with the intention, of a third party providing any services to a Client without the prior written consent of SCS. The Supplier acknowledges that SCS will not consent to such introduction or provision of details unless the relevant third party who it is proposed provides services to the Client or Prospect (other than Existing Customers) enters into an agreement with SCS on the same terms as the Contract.

10. Miscellaneous

- 10.1
- 10.1.1 Any notice to be given under or in connection with the Contract shall be in writing, addressed to the party at the address or email address set out in the Referral Form or such other address or email address as such party may have specified to the other in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service or commercial courier or email.
 - 10.1.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 10.1.1; if sent by pre-paid first class post or other next working day delivery

service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

- 10.1.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 10.2 Nothing in the Contract constitutes or should be deemed to constitute a partnership between the parties, nor shall it constitute one party agent for the other for any purpose.
- 10.3 The Contract may only be amended in writing signed by both parties.
- 10.4 The Supplier shall not assign the benefit of the Contract without SCS's prior written consent. SCS may, upon giving notice to the Supplier, assign the benefit of the Contract.
- 10.5 The Contract and any disputes in connection with it shall be governed by English law and any disputes arising in connection with the Contract or its subject matter shall be subject to the exclusive jurisdiction of the Courts of England and Wales.
- 10.6 The Contract constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract.
- 10.7 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty of any person, whether a party to the Contract or not, other than those that are expressly part of the Contract. Each party agrees that the only remedy available to it arising out of or in connection with a representation shall be for breach of contract. Nothing in this clause shall limit or exclude any liability for fraud.
- 10.8 If any provision of these Conditions (or part of any provision) is found by any Court or any other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed not to form part of the Contract and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 10.9 If a provision of these Conditions (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with a minimum modification to make it legal, valid and enforceable.
- 10.10 A person who is not party to the Contract shall not have any rights under or in connection with it.