Investment Heads of Terms

About this document

* This is a basic set of heads of terms intended to be issued by a company seeking investment to its proposed investors. Heads of terms are also sometimes referred to as “term sheets”.
* The heads of terms normally set out the indicative terms on which the company is prepared to accept investment, with the terms to be formally documented in the investment agreement and articles of association of the company at a later stage. So the heads of terms are not legally binding unless there is specific wording to say that they are.
* While using heads of terms can tend to “front-load” the costs of a transaction if lawyers are involved at this stage, they can be a useful tool to flush out any deal breakers at an early stage of the investment process.
* These heads of terms are intended to present a reasonable, middle-ground position for a large seed or series A funding round primarily made up of angel investors. Venture capital investors tend to have their own precedent heads of terms and other documentation for use on their investments.
* In these heads of terms, the only legally binding provisions are contained in **paragraphs 1 to 5**.

Using this document

* To use this document, you will need to:
	+ complete the relevant sections as regards the parties on page 1 and page 4 and the details of the investment required in the fourth box on page 1; and
	+ consider carefully the other items in square brackets as to whether they are appropriate in the circumstances of a particular investment sought.
* The heads of terms should be signed and dated on behalf of the parties where indicated at the end of the document.

What this document does not include

These heads of terms include only the core investment terms to be documented in the company’s articles of association and investment agreement. They are prepared in order to flush out any key areas of conflict at the outset of the investment process. They are not intended to be exhaustive and should be tailored to fit the situation, depending on, for example:

* the stage of development of the company;
* the amount being raised;
* the type of investor (eg, business angel, angel network, venture capital fund);
* the class of share being offered, etc.

The level of detail required in the heads of terms will vary depending on how familiar the management team of the company and the investors are with the process. For example, if the investor is issuing the heads of terms, he or she may leave out a particular provision from the heads of terms because it always follows an industry standard. However, if the company is not aware of what is industry standard, this can cause issues later in the investment process when the investment documents themselves are negotiated.

While it is common for heads of terms to be issued by investor(s), it is not unusual for a company to prepare a set of heads of terms to be signed by its proposed investors, or to prepare multiple copies of the same heads of terms with one copy to be signed by each investor. Where the investor is intending to issue heads of terms to the company, the indicative terms on which the investor is prepared to make the proposed investment may differ considerably from these heads of terms.

Regulatory requirements

There are a number of regulatory requirements for UK companies looking to raise funding. The most stringent requirements relate to public companies. However, some of the rules also apply to private limited companies. The general rule under the Companies Act 2006 is that a private company cannot offer its shares to the public (or a section of the public). In addition, the Financial Services and Markets Act 2000 contains rules relating to the communication, in the course of business, of an invitation or inducement to engage in investment activity (ie, a "financial promotion") and who these communications can come from/be made to.

An offer to an investor to invest in a UK company would be a financial promotion. The general rule is that a financial promotion can only be made by:

1. a Financial Conduct Authority (FCA) authorised person, such as an investment bank or corporate broker, or
2. another person provided the communication has been approved by an FCA authorised person.

It is a criminal offence to breach this general rule. However, there are certain exemptions to this rule depending on who the communication is made to and how that communication is made (for example, if the recipient is a self-certified high net worth individual or a self-certified sophisticated investor).

If you are in any doubt it is sensible to take specific legal advice on your situation before approaching any prospective investors or entering into any heads of terms or term sheet for an investment.

Please do contact us if you would like to discuss these or any other heads of terms.

**[to be printed on letterhead of the company]**

**Strictly Private and Confidential**

*[name of Investor]*

[address]

[date]

**Heads of Terms**

|  |  |
| --- | --- |
| **Company:** | [name of company] |
| **Investors:** | [type and number of investors required] |
| **Founders:** | [list founders] |
| **Investment:** | [eg, details of required investment amount, valuation, number and class of shares, price per share, percentage shareholding on a fully diluted basis, any tranches and milestones etc]*[consider attaching pre- and post-completion share capitalisation tables]* |
| **Use of proceeds:** | [consider including details as to what subscription monies will be used for eg, to meet the working capital requirements of the company] |
| **Conditions precedent:** | The investment is conditional on negotiation of definitive legal documents, satisfactory completion of due diligence by investors and approval by our board.[*any other conditions precedent? eg, new service agreements for the Founders, key man and other insurances, EIS criteria etc*]The investment must comply with the money laundering regulations and rules of the Financial Conduct Authority. |
| **Articles of Association** |
| **Rights attaching to the shares:** | Each [ordinary / A ordinary / preference etc] share will entitle the holder to one vote.[*other specific rights, eg, dividends, conversion rights, anti-dilution rights, preferential rights on a liquidation, share sale, asset sale or listing etc. Consider the impact of these rights on any tax reliefs (eg, EIS/SEIS)*] |
| **Restrictions:** | [consider *any restrictions on the shares eg, prohibiting shareholders from charging shares, ensuring transferees enter into a deed of adherence etc*] |
| **Right to participate pro rata in future rounds:** | Shareholders’ usual pre-emption rights on an allotment of shares.[These rights will also apply on the issue of convertible debt and other convertible securities.] |
| **Transfer of shares:** | Shareholders’ usual pre-emption rights on a transfer of shares.[*other matters, eg, categories of permitted transfers*] |
| **Leaver provisions:** | The Articles shall include market standard good/bad leaver provisions in respect of all shareholders who are also directors, employees or consultants of the Company.*[consider adding further detail eg, how such provisions may apply, leaver provisions not applying to certain founder shares etc]* |
| **Tag along rights:** | On a sale of a controlling interest in the Company, the minority shareholders will have the right to also sell their shares to the same buyer. |
| **Drag along rights:** | If the holders of more than [75]% of the shares wish to sell their shares, they will have the right to require minority shareholders to also sell their shares to the same buyer. |
| **Directors[/observers]:** | [name of investor] will be entitled to appoint one person as [a non-executive investor director] [and] [or] [a non-voting investor observer] for so long as he [(together with his permitted transferees)] hold[s] not less than [ ]% of the issued share capital of the Company. |
| **Investment Agreement** |
| **Information rights:** | All shareholders will receive the unaudited annual report and accounts of the Company and any group company; All directors (including investor director[s]) will receive:1. [quarterly management accounts];
2. [budget for the next financial year;] [and]
3. [minutes of all board meetings.]
 |
| **Warranties:** | Standard reasonable warranties will be given [jointly and] severally by the Company [and the Founders] to cover certain aspects of the business [including [list areas to be covered by warranties (ie, status of the company, business plan, accounts etc)]. [The Founders will also be required to give warranties in relation to their own circumstances.]The warranties will be subject to customary exceptions and limitations.*[other matters, eg, individual limits on liability, aggregate limit on liability (often the amount* invested*) etc]* |
| **Consent matters:** | Certain operational matters will require the consent of [the investor director] [a majority in number of the investor directors] [the holders of at least 50% of the issued shares] and certain fundamental matters will require the consent of the holders of at least [75%] of the shares.*[consider* attaching *list of expected consent matters.]* |
| **Board matters:** | Board meetings will be held at a minimum of quarterly intervals.[Reasonable][At least [5] days’] written notice is required for all board meetings. Agendas and any other board papers will be circulated to all directors at the same time as the notice.[*consider further details eg, quorum requirements, chairman casting vote* *etc*] |
| **Option pool:** | [*eg, what’s the* maximum *number of shares over which options may be granted, how can this figure be increased etc?*] |
| **[*Committees*:]** | [*will any* committees *be created eg, a remuneration committee or an audit committee? Who will sit on any such committees and, what will the committees be responsible for etc*] |
| **Restrictive covenants:** | The investment agreement will include non-compete and non-solicitation provisions for each Founder [and key employees] whilst a shareholder/director/employee/consultant and for a period of [6] months thereafter. |
| **Fees:** | Each party shall be responsible for its own costs and expenses. |
| **Law** | The agreements will be governed by the laws of England and Wales. |
| **Anticipated completion date:** | [insert date] |

1. Confidentiality

These Heads of Terms are written on the basis that their contents and existence are confidential and will not (except with the agreement in writing of the Company or in order to comply with any statutory or stock exchange or other regulatory requirements) be revealed by the investor(s) to any third party (other than their employees, professional advisors and directors to whom the disclosure of such information is essential and who, in each case, are informed of, and agree to be bound by, the confidential nature of the contents of these Heads of Terms) or be the subject of any announcement.

The investor(s) agree(s) not to use any information in these Heads of Terms for any purpose other than to consider whether to make an investment in the Company

1. Applicable law

This letter (and any dispute or claim relating to it or its subject matter (including non-contractual claims)) is governed by the law of England and Wales and on acceptance the parties submit to the exclusive jurisdiction of the courts of England and Wales.

1. Expiry date

The investor(s) is/are requested to confirm their acceptance of the terms of our proposal within 14 days of the date of this letter, failing which our proposal will lapse.

1. No intention to create legal relations

Except for the provisions of each of paragraphs 1 to 5 (inclusive), which are intended to create legally binding obligations between the parties, these Heads of Terms set out indicative investment terms which we would be prepared to offer to investors and will not give rise to any contract between us.

1. Exclusion of representations and warranties

By accepting this proposal you acknowledge that you have not relied on any representation or warranty on our part [or entered into any other agreement with us in connection with the provision of funding to the Company].

To confirm your acceptance of the terms of this proposal please sign and date the duplicate copy of the Heads of Terms and return it to us.

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**For and on behalf of [name of Company]**

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**Founder**

Date:

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**Founder**

Date:

[On the copy]

**To:** [name of Company]

We hereby acknowledge and agree to invest in the Company on the terms of the above Heads of Terms.

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**For and on behalf of [name of investor]**

Date: