

## Standard Terms and Conditions – Advertising Placement and related Advertising Services

### 1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

**Booking Order:** the order made by the Customer for the supply of Services by the Supplier.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 12.7.

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

**Customer:** the person or firm who purchases Services from the Supplier.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Services:** the advertising, or other related services, supplied by the Supplier to the Customer as set out in the Booking Order.

**Supplier:** Media Ventures International Limited a company registered in England & Wales registration number Number 11023400

In these Conditions, a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

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### 2. BASIS OF CONTRACT

2.1 The Booking Order and any addenda attached to the Booking Order and these Conditions constitute an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Booking Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Booking Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier, which is not set out in the Contract.

2.4 Any descriptions or illustrations regarding the Suppliers services contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the services described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 7 Business Days from its date of issue.

### **3. SUPPLY OF SERVICES**

- 3.1 The Supplier shall supply the Services to the Customer as set out in the Booking Order and any advertising or other related services purchased as part of the Services shall begin on the targeted start date as specified in the Booking Order.
- 3.2 The Supplier may, if requested by the Customer, provide advertising design services which shall be specified in the Booking Order.
- 3.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.4 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Booking Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.5 The Supplier shall have the right to make any changes to the Services, which are necessary to comply with any applicable laws.

### **4. CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer shall:
- (a) ensure that the terms of the Booking Order are complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Services and if designing its own advertisements, provide them at times required by the Supplier to enable Services to be provided;
  - (c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - (d) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
  - (e) unless otherwise specified by the Supplier deliver specifications for all creative work at least 72 hours before the start date of any campaign.
  - (f) Be responsible for the insurance of all artwork and other advertisement material delivered by the customer to the supplier in relation to the provision of the services.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default;
  - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure; and
  - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 4.3 The Customer warrants that all content and material that it provides to the Supplier will not violate any right or interest of any third party and further warrants that such content and material is legal, honest, decent and truthful and complies with the British Codes of Advertising and Sales Promotion and any other relevant codes of practice and legislation and will indemnify the Supplier in respect of all costs, damages or other charges incurred in connection with any actions or claims brought against the Supplier arising from a breach of these warranties.

### **5. CHARGES AND PAYMENT**

- 5.1 The Charges for the Services shall be set out in the Booking Order and/or shall be calculated in accordance with the Supplier's standard fee rates, as published from time to time.
- 5.2 All payments for advertising or other related services as specified in the Booking Order shall be paid in advance and prior to commencement of any advertising campaign conducted (or the service being provided) as part of the Service provided by the Supplier.

- 5.2 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred in connection with the provision of the Services including, the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 5.3 All charges other than those payable in advance shall be invoiced to the Customer monthly and shall be payable within 15 days of the date of the invoice and in full and in cleared funds, to a bank account nominated in writing by the Supplier.
- 5.4 All amounts payable by the Customer under the Contract are exclusive of value added tax.
- 5.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above Barclays's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 5.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1 All Intellectual Property Rights in or arising out of any artwork, designs, copy or other material created, reworked or contributed by the Supplier in connection with the Services shall be owned by the Supplier.
- 6.2 All Supplier materials are the exclusive property of the Supplier.
- 6.3 The Customer authorises the Supplier to record, reproduce, publish distribute and broadcast all advertisements (including but not limited to text, artwork and photographs) and to include and make them available in any information service, electronic or otherwise.
- 6.4 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 6.5 The Supplier may use the Customers trademarks, which are the exclusive property of the Customer, only for the purposes contemplated by this Contract.

## **7. CONFIDENTIALITY**

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive termination of the Contract.

## **8. LIMITATION OF LIABILITY**

### **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.2 Subject to clause 8.1:

- (a) the Supplier (nor any company within the Suppliers group or any company within Media Ventures International Limited group of companies) shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss or exemplary, special or consequential damages arising under or in connection with the Contract; and
- (b) the Supplier's (or any company within the Suppliers group or any company within Media Ventures International Limited group of companies) total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid by the Customer to the Supplier for the Services provided under this Contract in the 12 month period prior to the date of the claim made by the Customer.

8.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of the Contract.

8.5 The Customer acknowledges that, to the maximum extent permitted by law the Supplier expressly disclaims any and all warranties, conditions, guarantees or representations whether express or implied in relation to provision of the Services under this Contract and that the Supplier shall have no liability to the Customer resulting from any failure to perform any obligation hereunder or from any delay in the performance thereof due to causes beyond the Suppliers control.

## **9. TERMINATION AND CANCELLATION**

9.1 The Supplier reserves the right at its sole discretion to reject or discontinue any advertising or Services that are to be provided under this Contract at any time. In such event the Supplier shall refund to the Customer any Charges paid in advance in respect of such advertising or Services.

9.2 The Customer cannot stop or cancel the Booking Order within 30 days of the start date of any campaign. If the Customer so cancels or fails to provide copy by the copy deadline specified by the Supplier the Booking Order will be considered null and void save that the Charges will still be due and payable and if paid in advance shall not be refundable.

9.3 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2 (b) to clause 9.2 (e) (inclusive);

- (g) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (h) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.4 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so.

9.5 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.2 (b) to clause 9.2 (e), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

## 10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) each party shall return all of the other party's materials (if any) to the other. If the Customer fails to so act, the Supplier may enter the Customer's premises and take possession of its materials. Until any Supplier materials have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

## 11. FORCE MAJEURE

11.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

11.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

11.3 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 8 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

## 12. GENERAL

### 12.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

### 12.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of

business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); 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 fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**12.3 Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

12.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

12.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

12.8 **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

12.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

