



TERMS AND CONDITIONS - LISTS AND INSERTS – USER

1. GENERAL

- (a) In these terms and conditions:
- (i) "Broker" means UNI-MARKETING LIMITED;
- (ii) "User" means the individual firm, limited company or other party specified in the Contract that is acquiring the right to use the Materials direct from the Broker either for its own use or by the Client it represents;
- (iii) "List Owner" means the person, firm or corporation being the Owner or duly authorised supplier of any List and on whom an Order for the supply of a List is placed;
- (iv) "Materials" means the lists, magnetic tapes or disks, labels, articles or things or any of them the subject of the contract between the Broker and the User for the list rental;
- (v) "Medium Owner" means the person, firm or corporation who or which publishes, produces or supplies the publication or product into which the Inserts are to be placed;
- (vi) "Insert(s)" means the promotional item(s), article(s) or other thing(s) which the User wishes to place in the publication or product published, produced or supplied by the Medium Owner;
- (vii) "Mailing Pieces" means the promotional item(s), article(s) or other thing(s) to be mailed by the User to addresses on the List(s);
- (viii) "Owner" means the Medium Owner or the List Owner as the case may be.
- (ix) "Contract" means the contract between the User and the broker for the right to use the Materials and which is made subject to these Conditions.
- (x) "Processor" means any third party specified in the Contract responsible to the User to assist the User in the use of the Materials.
- (xi) "Conditions" means the standard terms and conditions set out in this document and (unless the context otherwise requires) include the Special Conditions.
- (xii) "Special Conditions" means the special terms and conditions agreed in writing between the Broker and the User.
- (xiii) "Net names arrangement" means the percentage of the total number of names and addresses included in the List or Lists supplied to the User as specified in the Special Conditions.
- (b) Unless otherwise agreed in writing by the Broker, these terms and conditions shall apply to and govern any contract between the Broker on the Owner's behalf and the User to the entire exclusion of any terms or conditions emanating from or stipulated or referred to by the User whether orally or in writing which shall be of no effect.
- (c) The Broker has no authority on behalf of the Owner to agree any variation, waiver of or addition to these terms and conditions except as expressly agreed by the Owner and the Broker in writing.
- (d) The User acknowledges that the Broker is contracting as agent for and on behalf of the Owner and the Broker is not personally liable under this contract.

2. ACCEPTANCE OF ORDERS

- (a) The Broker shall be under no obligation to accept any Order from the User or to give any reason for refusing to do so.
- (b) It is a condition of acceptance by the Broker of any Order that the User shall have first delivered to the Broker a copy of the Broker's List User Warranty Form duly signed on behalf of the User. Copies of the List User Warranty Form are available from the Broker on request.
- (c) Any typographical clerical or other error or omission in any literature quotation price list acceptance of offer invoice or other document or information issued by Uni-Marketing shall be subject to correction without any liability on the part of Uni-Marketing.
- (d) No order which has been accepted by Uni-Marketing may be cancelled by the User except with the agreement in writing of Uni-Marketing and on terms that the User shall indemnify Uni-Marketing and the List Owner in full against all loss (including loss of profit) costs, damages, charges and expenses incurred by Uni-Marketing and the List Owner as a result of cancellation and in all cases shall be subject to a minimum charge of 25% of the total order value.

3. OWNER'S APPROVAL

- (a) The User shall supply to the Broker two examples of each Insert or Mailing Piece intended to be mailed by the User which the Broker shall submit to the Owner for approval. Acceptance of the User's Order is conditional upon the Owner approving the example and acceptance shall not be deemed to have taken place unless and until the Broker has received confirmation from the Owner that the example is approved.
- (b) The User undertakes with the Broker:
- (i) That only material which has been approved by the List Owner will be mailed or disseminated by the User;
- (ii) Not to mention or refer to the Owner or the Owner's products or services in any Insert or Mailing Piece mailed or disseminated by the User or otherwise;
- (iii) To return or delete all data supplied immediately after agreed usage date.
- (iv) To inform the List Broker of any goneaways found as a result of their mailing and to act promptly following requests for suppression.
- (v) The User shall store or otherwise keep the Materials in such a way as clearly to indicate at all times that the Materials is owned by the List Owner and shall not remove or delete any mark placed on the Materials by the List Owner, which may enable the Materials to be identified.

4. LISTS

- (a) Lists are compiled by the List Owners and while the Broker endeavours to supply accurate information about each list the Broker relies upon the List Owner's description of that List. Each List is up-dated regularly by the List Owner but no warranty or guarantee is given by the Broker as to the accuracy of the contents of any List or as to the results of any mailing by the User based on the contents and the Broker shall not be liable to the User therefor.
- (b) Where the number of names and addresses included in any List is stated by the Broker either orally or in a quotation, list specification, order acknowledgement or other document that number is to be treated as an estimate only which shall not be binding on the Broker and is therefore not warranted by the Broker to be accurate.
- (c) Where the User requests all available names and addresses on a List the User will take and pay for all names and addresses actually supplied.
- (d) A small number of "seed" names and addresses (usually less than 0.1 % of the total number supplied for any Order) will be included in all Lists to enable the List Owner to monitor their use.

5. LIMITATION OF LIABILITY

- (a) Where a List Owner makes an allowance to users of a List, the contents of any part of which have resulted in a mailing being undeliverable, then, subject to the User observing these terms and conditions, the User shall be entitled to a pro-rata rebate in respect of the invoiced rental charge provided that:
- (i) More than 5% of the total number of addresses on the list are incorrect;
- (ii) The returned addressed Mailing Pieces are delivered by the User within 60 days of the agreed mailing date directly to the List Owner (and not to the Broker unless otherwise agreed);
- (iii) Details of the number of returned addressed Mailing Pieces are given to the Broker within 60 days of the agreed mailing date.

Save as provided in this Condition 5(a) no liability is accepted by the Broker or the List Owner for any loss or damage whatsoever or howsoever caused or suffered by the User as a result of a non-delivery arising out of the contents of the List.

- (b) Notwithstanding the provisions of Condition 5(a), the total liability of the Broker and or the Owner for or in respect of and breach of its obligations under the contract or these terms and conditions or in tort or otherwise shall not (save in the case of death or personal injury caused by the negligence of the Broker and or the

- (c) Owner) exceed in aggregate an amount equal to the contract price or such part thereof as shall have been paid by the User.
- (c) The Broker shall not be liable for the accuracy of any information concerning postal regulations which may be given by the Broker to the User.
- (d) Uni-Marketing does not accept any liability for loss resulting from non-delivery of mail to names and addresses included in any Materials supplied.
- (e) Uni-Marketing shall not be liable for any delay in delivery of the Materials howsoever caused.

6. CONSEQUENTIAL LOSS

Notwithstanding anything else contained in these terms and conditions, in no circumstances shall the Broker or the Owner be liable to the User for any indirect or consequential loss including without limitation any loss of contracts, business or profits and any costs incurred by the User in connection with the production of Inserts or Mailing Pieces.

7. LIST USAGE

- (a) Unless otherwise agreed in writing by the Broker and subject to the prior consent of the List Owner, the User shall be entitled to use the Materials once only and only for the purpose and on the date specified by the User in the Order.
- (b) The User shall not keep, copy or re-use in any way any List without the prior written consent of the Broker and the List Owner having been obtained.
- (c) The User shall not disclose or make available any List either in whole or in part or any information therein to any third party without the prior written consent of the Broker.
- (d) Copyright in all lists, labels, envelopes, data and other matter comprised in the Materials shall at all times belong to the List Owner.
- (e) The User shall be responsible for and will indemnify the Owner and the Broker against any mis-use or loss of or damage to the Materials by the User or its agent (including without limitation its mailing house or computer bureau) and, without prejudice to the foregoing, a List shall be deemed to have been mis-used if it is used for any purpose other than that specified in the User's Order as accepted by the Broker.
- (f) Unless otherwise agreed in writing by the Broker, if the User does not use any List on the date specified in the Order the Broker reserves the right to revoke the User's right to use the List and to request its return. And unless a new agreement is reached, a list must not be kept for longer than 3 months after the original use and no more than 6 months after the list was supplied.
- (g) In any dealings which the User may have with any third party regarding the subject matter of the contract between the User and the Broker the User shall ensure that these terms and conditions govern any such dealings mutatis mutandis and the User undertakes to procure that such third party will comply fully with the User's obligations hereunder and the User will indemnify and keep indemnified the Broker against all actions, claims, proceedings, costs, damages, losses, liabilities and expenses arising out of any breach thereof by such third party.
- (h) The User will adhere to any relevant codes of practice recommended or adopted by Direct Marketing Association (UK) Limited, the British Code of Advertising Practice and the Data Protection Act 1998 and any revisions made thereto from time to time.
- (i) The Client shall not communicate with any name and address contained in any List supplied in any way other than through the Royal Mail or other similar distribution or delivery medium

8. USER'S INDEMNITY

The User undertakes to the Broker that Inserts and items to be mailed by or on behalf of the User shall contain nothing which infringes the copyright of any third party or which is defamatory, obscene, indecent, offensive or otherwise illegal or unlawful and the User will indemnify and keep indemnified the Broker and the Owner against all actions, claims, proceedings, demands, losses, damages, costs, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that such items infringe copyright or are defamatory, obscene, indecent, offensive, or otherwise illegal or unlawful.

9. DELIVERY

- (a) While the Broker will use all reasonable endeavours to deliver the Materials or make them available for collection by the User on the

date specified in the User's Order, all such specified delivery dates are estimates only and the Broker shall not be liable to the User for any delay in delivery.

- (b) If the User requests delivery at a time earlier than that specified in the Order, the Broker will endeavour but shall not be obliged to comply with the earlier requested delivery time and the Broker shall be entitled to charge the User for any additional costs and expenses incurred by the Broker in connection therewith.
- (c) Delivery to the User shall be deemed to have taken place when the Materials are put into the post or delivered into the custody of the carrier or other person appointed by the Broker or the User or its agent.
- (d) The User must inspect the Materials upon delivery and must notify the Broker in writing within 7 days of delivery of any damage or shortage to the Materials supplied. If no such notification is given it shall be conclusively presumed that the Materials are complete and in good order and condition and fit for which that are required and in every way satisfactory to the User.

10. PRICES

- (a) The contract price for Materials supplied by the Broker shall consist of:
- (i) the rental charge for one-time use of the List; or
- (ii) exchange charges; and
- (iii) the costs of the media on which the List is supplied; as stated in the Broker's charging rates published by the Broker from time to time, and the Broker reserves the right to alter the published rates at any times. Notwithstanding that the Broker shall have accepted the User's Order, if the List Owner increases the rental charge for the List after such acceptance but prior to the implementation of the Order, the Broker shall be entitled to increase the price by the amount of the increase imposed by the List Owner.
- (b) The cost of delivery of the Materials to the User or its agent shall be borne by the User.
- (c) Additional charges shall be payable by the User:
- (i) for limited or additional selections from any List;
- (ii) for any preliminary work undertaken by the Broker at the User's request;
- (iii) in respect of any additional work undertaken by the Broker pursuant to Condition 9(b);
- (iv) for more than one use of the List if such further use shall be agreed in accordance with Conditions 7(a) and 7(b).
- (d) Charges for small Orders shall be at the rate for such Orders published by the Broker from time to time.
- (e) The contract price for placement of Inserts shall be calculated by reference to the total number of Inserts placed.
- (f) Contract prices are exclusive of Value Added Tax which shall be payable in addition by the User at the rate and in the manner for the time being prescribed by law.
- (g) If any sum payable by the User under the contract is not paid on the due date then (without prejudice to the Broker's other rights and remedies) the Broker reserves the right to charge interest on a day-to-day basis (as well after as before any judgement) from the due date to the date of payment (both dates inclusive) at the rate of 3.5 per cent above the base rate of Lloyds Bank PLC from time to time in force.

11. PAYMENT

- (a) Subject to any Special Conditions agreed in writing between Uni-Marketing and the User, the Broker shall be entitled to invoice the User for the price of the Materials on or at any time after delivery of the Materials unless the Materials are to be collected by the User or the User wrongfully fails to take delivery of the Materials in which event the Broker shall be entitled to invoice the User for the price at any time after the Broker has notified the User that the Materials are ready for collection or (as the case may be) the broker has tendered delivery of the Materials.
- (b) The User shall pay the price of the Materials within 30 days of the date of the Broker's invoice and the Broker shall be entitled to recover the price notwithstanding that delivery may not have taken place.
- (c) The time of payment of the price shall be of the essence of the Contract.
- (d) If the client fails to make payment on the due date then without prejudice to any other right or remedy available to the Broker, the Broker shall be entitled to:
- (i) terminate the contract;

- (ii) charge the User interest (both before and after any judgement) on the amount unpaid at the rate of 3.5 per cent above the base rate of HSBC plc from time to time in force until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest);
- (iii) require the immediate return of the Materials;
- (iv) set off against the price of the Materials any sums owed by the Broker to the User under any contract between the Broker and the User.
- (e) If the Net names arrangement is less than 100 per cent the User shall be entitled to claim a discount in the form of a credit note only provided that:
 - (i) the client claims the discount within three months of the invoice date (time being the essence); and
 - (ii) when claiming the discount the User provides the Broker with such evidence satisfactory to the Broker that the User is in fact entitled to a discount; and
 - (iii) in any case the maximum discount to which the User shall be entitled shall be calculated according to the Net Name Arrangement and if the evidence provided by the User under clause 11e (ii) of these conditions shows a percentage of names and addresses actually used by the User is more than the Net Name Arrangement then this percentage figure shall be used to calculate the discount and not the Net Names Arrangement.

12. TERMINATION

The Broker shall be entitled to terminate the contract by notice in writing to the User if:

- (a) the User shall fail to make any payment due to the Broker under the contract or any other contract between the Broker and the User;
- (b) the User shall fail to give instructions for delivery of the Materials within a reasonable time after submitting an Order;
- (c) if the User shall be in breach of any of its obligations under the contract of these conditions and shall fail to remedy the same (if capable of remedy) within 7 days of receipt of a notice from the Broker specifying the breach and requiring it to be remedied;
- (d) if the User shall have a receiver or an administration receiver appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the User shall become subject to an administration order or shall enter into a voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

Upon termination of the contract by the Broker pursuant to the foregoing provisions, the Broker and the Owner shall be discharged from any liability for the further performance of its obligations under the contract and without prejudice to any other right or remedy available to it, shall be entitled to recover forthwith from the User and the User will indemnify the Broker and the Owner against all loss or damaged sustained or incurred by the Broker or the Owner as a consequence of such termination.

13. CANCELLATION

The User may at the discretion of the Broker cancel the contract by notice in writing at any time after acceptance by the Broker of the User's Order provided that the User shall be responsible for and will indemnify the Broker and the Owner against all losses, damages, costs, charges and expenses the Broker and/or the Owner shall sustain or incur by reason of such cancellation.

14. FORCE MAJEURE

The Broker shall not be liable for any loss or damaged suffered by the User as a result of any delay in or failure to perform any of the Broker's obligations under the contract where such delay or failure is caused by circumstances beyond the Broker's reasonable control including, without limitation, act of God, war, riot, civil, commotion, strike, lock-out, fire, flood, delay in production or in transit, or postal delay and acts or omissions of the Owner or the User and in the case of delay the Broker shall be entitled to an extension of time for performance equal to the period of delay and to terminate the contract if the period of delay continues beyond a reasonable time.

15. ASSIGNMENT

- (a) The User shall not assign or otherwise transfer the contract or any of its rights or obligations thereunder in whole or in part without the prior written consent of the Broker.

- (b) The Broker shall be entitled to assign, sub-contract or sub-let its obligations under the Contract or any part of it.
- (c) The Broker shall be entitled to refer to the User and/or the Processor and outline the nature of the work performed for the User for the purpose of publicising the Broker to any third party.

16. ENFORCEABILITY

If at any time any one or more of the provisions of these terms and conditions becomes invalid, illegal or unenforceable under any law or is held by a Court to be so, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

17. WAIVER

The rights of the Broker shall not be prejudiced or restricted by any indulgence or forbearance extended by the Broker to the User and no waiver by the Broker in respect of any breach shall operate as a waiver of any subsequent breach.

18. NOTICES

All notices which are required to be given under the contract shall be in writing and shall be sent to the last known address or place of business of the recipient or such other address as the recipient may designate by notice in writing given in accordance with that condition. Any notice may be delivered personally or by first-class post or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first-class post 48 hours after posting and if by facsimile 12 hours after dispatch.

19. HEADINGS

The headings to these terms and conditions are for ease of reference only and shall not affect their construction.

20. JURISDICTION

These terms and conditions and any contract in which they are incorporated shall be governed by and construed in accordance with the laws of England and the parties hereby agree to submit to the jurisdiction of the English courts.

21. CONFIDENTIALITY AND NON-SOLICITATION

- (a) The User agrees to maintain secret and confidential all information obtained from the Broker or the List Owner pursuant to the provisions of the Contract and all other information that it may acquire from the Broker or the List Owner in relation to either or both the Broker and the List Owner in the course of the Contract.
- (b) The User shall procure that all its employees who have access to any information to which the obligations of clause 3 of these Conditions apply shall be made aware of and subject to these obligations.
- (c) The obligations as to the confidentiality in this clause shall remain in full force and effect notwithstanding any termination of the Contract.

NAME OF COMPANY: _____

ADDRESS: _____

SIGNED: _____

NAME: _____

TITLE: _____

DATE: _____

LIST WARRANTY REGISTRATION: _____

