

# Advertising Terms and Conditions

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## General Advertising – Terms and Conditions

These Terms and Conditions shall apply to all Advertisements submitted to the Publisher. An Advertisement submitted to the Publisher for publication shall not be deemed to have been accepted unless and until either confirmed in writing by the Publisher or the campaign commences and the first Advertisement appears in the relevant Publication. By submitting an Advertisement to the Publisher, the Customer agrees to be bound by these Terms and Conditions and the Rate Card, even if it is acting as agent or buyer for the actual advertiser. For the avoidance of doubt, the Customer's standard terms and conditions of purchase or any other standard terms and conditions shall not apply.

## 1. DEFINITIONS

In these terms and conditions the following definitions shall apply:

**“Actual Advertisement Placements”** means the actual number of placements of an Advertisement in any Publication in any 12 month period preceding any anniversary of the Publication Date;

**“Advertisement”** means an advertisement published, reproduced or inserted in or on any Journal, E-Mail Campaign or Digital Format pursuant to an Advertisement Order;

**“Advertisement Order”** means any order for an Advertisement submitted to the Publisher for the publication, reproduction or insertion of Material in or on any Publication;

**“Digital Format”** means any internet site, application or other digital format operated, owned or controlled by the Publisher or any third party partner of the Publisher comprising its partner network;

**“Expected Advertisement Placements”** means the expected number of placements of an Advertisement in any Publication used to calculate the rates (prior to the Publication Date) the Customer will pay the Publisher;

**“Customer”** means the person or legal entity who submits an Advertisement Order, whether such person or legal entity is the advertiser of the relevant product or service, the Advertiser's advertising agency, media buyer, or a recruiter representing a prospective employer;

**“E-Mail Campaign”** means any e-mail campaign undertaken by or on behalf of the Publisher;

**“Journal”** means any journal or other print publication published by or on behalf of the Publisher;

**“Material”** means any advertising material/copy, artwork, photographs or other material provided or to be provided by the Customer in connection with the Advertisement Order;

**“Publication”** means any Magazine, Digital Format or E-mail Campaign;

**“Publication Date”** means the date the Customer’s Advertisement is first published in a Publication;

**“Publisher”** means the contracting entity set out on the invoice(s) submitted to the Customer by the Publisher, being:

Forget-Me-Not Publications Limited (company number 5379112), registered in the United Kingdom whose registered office is at Suite 16, Fareham Enterprise Centre, Hackett Way, Fareham, PO14 1TH

**“Rate Card”** means the rate card of the Publisher as amended by the Publisher from time to time in accordance with clause 7.12;

**“Terms and Conditions”** means the terms and conditions set out on this page as amended by the Publisher from time to time in accordance with clause 7.12.

## **2. PUBLICATION OF ADVERTISEMENTS**

**2.1.** The Customer grants the Publisher an irrevocable, world-wide, royalty-free licence to reproduce, publish and republish the Advertisement within the relevant Publication (irrespective of the medium or platform in or on which it is published) in accordance with the provisions of the Advertisement Order.

**2.2.** The Publisher may reject, refuse, omit, postpone, cancel, or require changes to the whole or part of any Material, Advertisement Order or Advertisement submitted for insertion into a Publication at any time, whether or not it has accepted the Advertisement Order, including the dates for publication and positioning of the Advertisement, or to accept the Advertisement Order subject to additional conditions which will be notified by the Publisher to the Customer.

**2.3.** The Customer shall submit all Advertisements to the Publisher in accordance with the Publisher’s then current technical specifications (as may be updated from time to time), the current version of which is available on request;

**2.4.** Save to the extent caused by its negligence, the Publisher shall not be responsible for any error or omission in the insertion of any Advertisement, or for any damage or loss of any copy, electronic files, data, drawings or other materials supplied for the purpose of an Advertisement or any shrinkage or colour alteration that may occur during the normal course of production.

**2.5.** It is the Customer’s responsibility to ensure that all Advertisements are correct, accurate and not misleading. The Publisher accepts no responsibility for any errors in an Advertisement including (without limitation) any errors which arise as a result of any changes or alterations undertaken by the Publisher at the Customer’s request. The Publisher cannot be held responsible for any errors in advertisements once a Customer has approved their artwork. In respect of any Advertisement in a Magazine, in the event of an error in a published Advertisement as a result of a material typographical error caused by the Publisher,

the Publisher agrees to re-run the Advertisement free of charge in the next available edition of such Magazine.

### **3. WARRANTIES**

**3.1.** The Customer contracts with the Publisher as a principal and warrants and represents to the Publisher that:

**3.1.1.** it has full capacity and authority to enter into a binding contract with the Publisher on the provisions of these Terms and Conditions.

**3.1.2.** all information and Material supplied to the Publisher is true, accurate and not misleading, and nothing contained in it is liable to bring the Publisher or any Publication into disrepute;

**3.1.3.** the Material is not obscene, defamatory, fraudulent, misleading or libelous, and shall not give cause, whether directly or indirectly, for any action to be brought against the Publisher for libel, fraud or publication of a false or misleading statement;

**3.1.4.** the Material will not infringe the intellectual property rights or any other rights (including without limitation any right of privacy or confidence) whatsoever of any third party or unfairly prejudice the legitimate interest of any third party by implication or otherwise;

**3.1.5.** the Material complies with all applicable legislation, laws, regulations and codes of practice (or similar);

**3.1.6.** the Material complies with the requirements from time to time of English financial services legislation both as to content and authorisation (including but not limited to the Financial Services and Markets Act 2000);

**3.1.7.** the Material complies with the Committee of Advertising Practice's British Code of Advertising, Sales Promotion and Direct Marketing and all other codes under the general supervision of the Advertising Standards Authority or any successor body (as may be amended from time to time) and that without limitation all material included within an Advertisement is accurate, legal, decent, honest and truthful;

**3.1.8.** it shall not represent to any third party that the Publisher in any way endorses the Customer, the Advertisement and/or the Customer's products or services;

**3.1.9.** it shall ensure that all Advertisements submitted for publication are clearly recognisable as advertising and not designed to resemble editorial content. If an advert does resemble editorial content the Publisher will add wording to make this clear to readers (see 7.1). If a Customer has booked editorial or advertorial content, all the Publisher's Terms and Conditions applicable to Advertisements also fully apply to Advertisements resembling editorial content or advertorial published on the Customer's behalf.

**3.1.10.** where an Advertisement includes a competition, prize draw or similar promotion, the Material complies with, and the competition, prize draw or promotion shall be conducted by

the Customer, in accordance with all applicable laws and regulations, and the Customer shall be responsible for the provision of all prizes;

**3.1.11.** the Material shall not indicate an intention to discriminate on grounds of sex, race, religion or belief, disability, ethnic origin, age or sexual orientation (unless such an Advertisement is exempted from any statutory requirements relating to such forms of discrimination and the Customer notifies the Publisher of the applicability of such an exemption at the time when the Advertisement Order is submitted to the Publisher);

**3.1.12.** the Material shall not cause disruption to any computer, computer system, network or any Digital Format, and shall be free from viruses or malicious code;

**3.1.13.** the Material shall not be prejudicial or damaging to the reputation of the Publisher or the Publications;

**3.1.14.** it shall provide the Publisher with all necessary Material by the date notified by the Publisher to the Customer, such date being of the essence. If the Customer fails to provide such Material by such date, the Customer acknowledges and agrees that the Publisher may not be able to fulfil its obligations under the Advertisement Order or these Terms and Conditions and accepts that the Publisher will not be liable for any such failure to any extent or at all;

**3.1.15.** it shall not without the prior permission of the Publisher embed any tracking device, cookies, beacon, floodlight or other technological device in or as part of an Advertisement published on any Digital Format that enables the Customer to track or analyse the online behaviour of any user to which such Advertisement is served; and

**3.1.16.** it has all necessary rights, licences and consents (including where necessary regulatory consents and consents from persons or entities cited or quoted in the Material) needed to permit the Publisher to use, display, reproduce, insert or publish the Material pursuant to clause 2.1.

**3.2.** The Publisher warrants to the Customer that it shall use reasonable care and skill in carrying out its obligations under these Terms and Conditions. Except as otherwise expressly provided herein, all conditions, warranties, terms, prior representations, and undertakings express or implied, statutory or otherwise in respect of the services provided hereunder by the Publisher are to the fullest extent permitted by law expressly excluded.

**3.3.** Without limiting clause 3.2, the Customer agrees and acknowledges that the Publisher makes no representation or warranty:

**3.3.1.** that any publication of any Advertisement will be confined to persons resident in any particular legal jurisdiction(s);

**3.3.2.** as to the exact number of page impressions that will be delivered on specific dates during an online campaign;

**3.3.3.** as to the quality of reproduction of Advertisements in any of the Publications;

**3.3.4.** the exact layout and format of any Publications which shall be in the discretion of the Publisher;

**3.3.5.** as to the availability of any Digital Format,

and in each case the Publisher accepts no liability to the Customer in respect of the same.

#### **4. LIABILITY AND INDEMNITY**

**4.1.** Nothing in this clause 4 shall be construed as excluding or limiting the Publisher's liability for death or personal injury caused by its negligence or fraud.

**4.2.** Subject to clause 4.1, the Publisher shall not be liable to the Customer in contract, tort (including negligence) or otherwise for any indirect, consequential or special loss or any loss of Material, loss of profits, loss of business, loss of contracts, loss of orders, loss of revenue, loss of goodwill, loss of data or loss of anticipated savings.

**4.3.** Subject to clause 4.1, the liability of the Publisher in respect of any and all other claims (whether in contract or tort) arising out of or in connection with an Advertisement or Advertisement Order shall not exceed the amount the Customer has paid the Publisher in connection with that Advertisement or Advertisement Order.

**4.4.** The Customer agrees to on demand fully indemnify and keep fully indemnified the Publisher, its directors, agents and employees against any and all losses, liabilities, costs, claims, damages, demands, expenses and fees (including but without limitation legal and other professional fees) suffered or incurred by the Publisher arising out of or in connection with:

**4.4.1.** any other breach of these Terms and Conditions by the Customer; or

**4.4.2.** any actual or potential infringement of a third party's intellectual property rights;

**4.4.3.** the publication by the Publisher of an Advertisement in accordance with an Advertisement Order.

#### **5. PAYMENT**

**5.1.** The Customer shall pay the Publisher for all Advertisements submitted to the Publisher (and which are accepted by the Publisher) in accordance with this clause 5.

**5.2.** Bookings for Customer's leaflet distribution may be cancelled up to 14 days before published monthly deadline. After this date and before 7 days before published monthly deadline, 50% of total distribution cost will be payable. After this date all leaflet distribution booked must be paid for in full by the Customer, even if the Customer fails to supply leaflets for distribution to the Publisher.

**5.3.** Rates for Advertisements and Leaflet Print are specified in the Rate Card or as may otherwise be agreed and/or notified in writing to the Customer from time to time. All rates

are exclusive of VAT (or any other sales tax) which shall be due and payable by the Customer to the Publisher in addition.

**5.4.** Unless otherwise agreed by the Publisher in writing, the Publisher shall invoice the Customer for all amounts as they become due, which shall be after the date of first publication of the applicable Advertisement.

**5.5.** The Customer shall pay all invoices within 30 days of the date of the invoice (at the discretion of the Customer's Account Manager) with the exception of Payment for Leaflet Print which will be up front, in full, at time of agreement to the artwork proof or upon submission of artwork.

**5.6.** Without prejudice to any other rights or remedies that the Publisher may have, if the Customer fails to pay the Publisher on the due date for payment, the Publisher may:

**5.6.1.** claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the Customer shall pay the interest immediately on demand; and

**5.6.2.** remove any and all Advertisements the Publisher may have in any Publications until payment has been made in full.

**5.7.** If, on the anniversary of the Publication Date and where applicable:

**5.7.1.** the number of Actual Advertisement Placements is less than the number of Expected Advertisement Placements for the preceding 12 month period, the Customer shall not be entitled to a refund of any amount from the Publisher;

**5.7.2.** the number of Actual Advertisement Placements is greater than the number of Expected Advertisement Placements for the preceding 12 month period, the Publisher shall apply the relevant rate (as set out in the Rate Card) applicable to the number of Actual Advertisement Placements. In the event that the Customer still owes any amount to the Publisher (notwithstanding the application of a lower rate pursuant to the Rate Card), the Publisher may invoice the Customer for such amount which shall be payable by the Customer in accordance with clause 5.4

**5.8.** The Customer may terminate any Advertisement in accordance with clause 6.1. The Customer has no other rights of cancellation. In the event that the Customer cancels an Advertisement other than in accordance with clause 6, the Customer acknowledges and agrees that it shall remain fully liable to pay to the Publisher for the Advertisement.

**5.9.** The Publisher reserves the right to change the rates in the Rate Card at any time and to publish the amended rates. The then current prevailing Rate Card is available to the Customer on request from the Publisher advertising department.

## **6. CANCELLATION**

**6.1.** Once an Advertisement Order has been accepted by the Publisher, the Customer may only cancel or alter the Advertisement, the Materials or the Advertisement Order up to 2 weeks from the published deadline of the Advertisement in the relevant Publication. On the

expiry of this date, the written consent of the Publisher is required for any and all cancellation or alteration pursuant to this clause 6.1. If such consent is not granted then the Customer will be liable for all sums due to the Publisher pursuant to clause 5.7.

**6.2.** Without prejudice to any other rights or remedies which the Publisher may have, the Publisher may terminate the contract between it and the Customer (without any liability) immediately on giving notice to the Customer in the event that if:

**6.2.1.** the Customer fails to pay any amount due to the Publisher on or by the due date for payment; or

**6.2.2.** the Customer commits a material breach of any of the material Terms and Conditions; or

**6.2.3.** the Customer repeatedly breaches any of these Terms and Conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to these Terms and conditions; or

**6.2.4.** the Customer enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of a solvent amalgamation or reconstruction); becomes insolvent; ceases or threatens to cease to carry on business; compounds or makes any voluntary arrangement with its creditors; becomes subject to an administration order; is unable to pay its debts as they fall due; has an encumbrancer take possession of, or a receiver or administrative receiver appointed over, all or any part of its assets; takes or suffers any similar action due to debt; or if the equivalent of any of the above events under the law of any jurisdiction occurs in relation to the Buyer.

## **7. GENERAL**

**7.1.** The Publisher reserves the right to place the word “Advertisement” or “Advertising Feature” in any Advertisement containing Material which the Publisher considers, in its sole opinion, to too closely resemble editorial content.

**7.2.** With the exception of the Customer’s payment obligations, neither the Publisher nor the Customer shall be liable to each other for any failure to comply with the provisions of these Terms and Conditions as a result of any event beyond the reasonable control of either of them.

**7.3.** Any notice or correspondence required to be given under these Terms and Conditions may be delivered personally or sent by prepaid registered post to the other party at the addresses set out in the Advertisement Order, or such other address as may be notified in accordance to the other party from time to time. Any notice so sent shall be deemed to have been duly given upon delivery at the address of the relevant party.

**7.4.** If any provision of these Terms and Conditions is held for any reason to be ineffective or unenforceable (in whole or in part) this shall not affect the validity or enforceability of the other Terms and Conditions set out herein, which shall remain in full force and effect.

**7.5.** A waiver by the Publisher of any breach of these Terms and Conditions will not be treated as a waiver of any subsequent breach of the same or any other provision by the Customer.

**7.6.** No third party shall have any rights to enforce these Terms and Conditions against the Publisher.

**7.7.** These Terms and Conditions and the Rate Card (both as amended from time to time in accordance with clause 7.12) shall constitute the entire agreement between the parties with regard to its subject matter and shall supersede all prior understandings, commitments and undertakings that either party may have given.

**7.8.** The contract between the Customer and the Publisher is personal to the Customer. The Customer may not assign, sub-license, sub-contract, transfer or charge the contract or any part of it without the prior written consent of the Publisher.

**7.10.** Notwithstanding the provisions of clause 7.9 , for the Publisher's exclusive benefit and to the extent possible in the applicable jurisdiction, the Publisher retains the right to bring or enforce proceedings as to the substance of the matter in the courts of the country of the Customer's residence or, where these Terms are entered into in the course of the Customer's trade or profession, the country of the place of business in which these Terms were agreed to or (if different) the country of Customer's principal place of business.

**7.11.** The Publisher may from time to time modify these Terms and Conditions by publishing any changes online. The Customer should check online before placing an Advertisement Order since by placing an order for the insertion of an Advertisement, the Customer agrees to be bound by any updates to such Terms and Conditions.

**7.12.** No variation or addition to these Terms and Conditions without the prior written consent of the Publisher shall be effective unless agreed to in writing by the Publisher and any additional terms the Customer may seek to impose shall be void and/or unenforceable.

**7.13** The parties do and shall, in the performance of their respective obligations under these Terms and Conditions comply at all times with all relevant laws, statutes and regulations applicable to their activities, including in particular all applicable laws and regulations concerning the prohibition of bribery, corruption, improper gifts and payments, at all times.