

UCAS MEDIA STANDARD TERMS AND CONDITIONS

1. Definitions

1.1 "The Customer" shall mean the recipient of goods or services from UCAS Media.

1.2 "UCAS Media" shall mean the supplier of the goods or services.

1.3 "Confidential information" means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, intellectual property rights, know-how, personnel and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

1.4 "Intellectual Property" means patents, registered designs, trade marks and service marks (whether registered or not), domain names, copyright, database right, moral right, design right and all similar property rights including those subsisting (in any part of the world) in inventions, designs, drawings, computer programs, confidential information, business names, goodwill and in applications for protection of the above rights.

1.5 "Campaign" shall mean any mailing, web advertising service, printed advert or any other such service undertaken by UCAS Media for The Customer.

1.6 Unless the context otherwise requires:

1.6.1 Reference to a gender will include references to the masculine, feminine and neuter genders.

1.6.2 Reference to any enactment shall be deemed to include reference to such enactment as reenacted, amended, extended or replaced from time to time.

2. Applicability of Clauses 9 to 13

2.1 Individually these clauses only apply if the specific action described in section (a), applies to the contract.

3. Conditions

3.1 These conditions shall form the basis of the contract between the Customer and UCAS Media, notwithstanding anything to the contrary in the Customers standard conditions or in any purchase order or any other document issued or sent by the Customer. These conditions shall apply except insofar as expressly agreed in writing by both parties. No servant or agent of the Customer has power to vary these conditions orally. If the Customer shall not previously have accepted these conditions, then acceptance of delivery by him shall constitute such acceptance. These general conditions might be subject to such further special conditions as may be prescribed in writing by UCAS Media. In the event of any conflict, or apparent conflict, between the special conditions and the general conditions, the special conditions shall prevail.

3.2 No provision of the contract is intended to or will confer any benefit pursuant to the Contract (Rights of Third Parties) Act 1999 or be enforceable by any person who is not a party to this contract.

4. Prices

4.1 VAT (or any similar tax), where applicable, shall be identified as a separate item of account failing which the price shall be deemed to include VAT (or any similar tax).

5. Payment

5.1 UCAS Media shall be entitled to invoice the Customer upon delivery of goods or services. Payment shall be made by the Customer strictly within 30 days from date of invoice.

5.2 If the Customer fails to pay UCAS Media within 30 days as outlined within Clause 5.1, UCAS Media will be entitled to charge interest on the invoiced amount, interest to be dictated by the rate outlined by the Bank of England.

6. Guarantee

6.1 The Customer accepts that all goods and services supplied by UCAS Media are supplied as is. UCAS Media do not warrant that they shall be fit for any particular purpose.

7. Cancellation policy

7.1 If the customer cancels a campaign before the commencement date, UCAS Media will charge the following of the overall booked price, exclusive of VAT:

0-60 days – 100%

61-90 days – 50%

91-120 days – 15%

8. Passing of property and risk

8.1 The property in the goods shall pass to the Customer on payment.

8.2 Risk in the goods shall remain with UCAS Media until they are received by the Customer at the point specified for delivery in the contract.

9. Supply of creatives, images and logos

In the event of the Customer supplying creative images or logos, this includes Solus mailings:

9.1 The Customer shall supply all creatives, images or logos to UCAS Media a minimum of one working week prior where UCAS Media have agreed to the provision of services requiring creatives, images or logos unless otherwise stipulated in writing and agreed by both parties.

9.1.1 Provision of an additional three working days must be made available for both parties to review and sign-off all creatives, images or logos prior to the agreed date of supply.

9.1.2 UCAS Media reserves the right to refuse to accept, or to request amendment of, any creative, image or logo without stating any reason beyond the fact that the creative, image or logo does not, in the sole opinion of UCAS Media, comply with the UCAS Media advertising policy or which do not adhere to the specifications provided by UCAS Media to the Customer relating to the service being provided.

9.1.3 UCAS Media will not be liable for any cost incurred by the Customer for any creatives, images or logos which are not used as a result of Clause 9.1.2

9.2 If the delivery of creatives, images or logos by the Customer is delayed or suspended in any event UCAS Media reserve the right to charge, either in-full or in-part, for all services which would have been provided to the Customer.

10. Supply of printed materials

In the event of the Customer supplying printed materials:

10.1 The Customer shall supply all printed materials to UCAS Media a minimum of one working week prior where UCAS Media have agreed to the provision of services requiring printed materials unless otherwise stipulated in writing and agreed by both parties.

10.1.1 Provision of an additional three working days must be made available for both parties to review and sign-off all printed materials prior to the agreed date of supply.

10.1.2 UCAS Media reserves the right to refuse to accept, or to request amendment of, any printed materials without stating any reason beyond the fact that the printed material does not, in the sole opinion of UCAS Media, comply with the UCAS Media advertising policy or which does not adhere to the specifications provided by UCAS Media to the Customer relating to the service being provided.

10.1.3 The Customer will ensure that all printed materials meet the standard specification for sending in UCAS C5 sized envelopes.

10.1.4 UCAS Media will not be liable for any cost incurred by the Customer for any printed materials which are not used as a result of Clause 10.1.2 or 10.1.3.

10.2 If the delivery of printed materials by the Customer is delayed or suspended in any event UCAS Media reserve the right to charge, either in-full or in-part, for all services which would have been provided to the Customer.

11. Web services

In the event of web services being used:

11.1 During the Clearing period the UCAS website will be offline for the first and second day of Clearing, and replaced by the Clearing website in relation to such any web booking made for the month of August will only last for 29 days.

11.2 UCAS Media hosts and serves all web advertising and performance statistics can be provided on request.

11.3 In any event UCAS Media does not guarantee the accuracy of performance statistics.

11.4 UCAS Media is able to accommodate third party performance tracking by prior arrangement.

11.5 UCAS Media does not support third party tagging under any circumstances.

12. Pre-applicant data (PAD) Services

In the event that the service relates to PAD:

12.1 PAD provided in CD or electronic form may not be assigned, licensed, sold or transferred to any third party by any physical or electronic means.

12.2 PAD is for single use only. Multiple uses or production of multiple copies of this data are strictly forbidden.

13. Core mailings

In the event that the service is a core mailing:

13.1 Any materials supplied by the Customer will not exceed a weight of ten grams per booked slot unless otherwise stipulated in writing and agreed by both parties.

13.2 UCAS Media will, wherever possible, ensure that each insert is sector exclusive with a maximum of six inserts per core mailing. Sector exclusivity is only applicable to the core mailing the Customer has purchased a slot within. UCAS Media does not guarantee sector exclusivity across the full set of core mailings.

14. Confidentiality

14.1 Both parties (and its staff, agents or sub-contractors) to the contract undertake, except as provided below, to treat as confidential and keep secret all information marked 'confidential' or which may reasonably be supposed to be confidential with the same degree of care that it employs with regard to its own confidential information of a like nature and in any event in accordance with best current commercial security practices. Such confidential information shall not be disclosed by the receiving party to others for any purpose without the prior written consent of the disclosing party.

14.2 The provisions in Clause 14.1 shall not extend to any confidential information which:

14.2.1 Is in or becomes a part of the public domain (otherwise than by breach of this contract);

14.2.2 Was in the lawful possession of the receiving party prior to the disclosure under this contract and was not unlawfully obtained directly and indirectly, or

14.2.3 Is required to be disclosed by law.

14.3 Nothing in this condition shall prevent either party to the contract from using any techniques, ideas or know-how gained during the performance of the contract in the furtherance of its business, to the extent that this does not result in a disclosure or use of Confidential Information or an infringement of intellectual property rights or in any way constitute a breach of this contract.

15. Data protection

15.1 Any collection or processing of data, by both parties, shall be in accordance with the Data Protection Act, 1998. To the extent that the contract requires the processing of personal data, a separate schedule shall be drawn up:

15.1.1 identifying any personal data likely to be processed in the course of the contract.

15.1.2 limiting the purposes for which the personal data may be used.

15.1.3 specifying how instructions for the processing of the data will be authorised and transmitted.

15.1.4 setting out security arrangements for the handling of personal data by UCAS Media and its transmission between UCAS Media and the Customer.

15.2 Both parties shall take reasonable steps to ensure the reliability of its own employees who have access to the personal data.

16. Intellectual property rights

16.1 Where the manufacture of goods or provision of services include the creation or development of intellectual property rights by UCAS Media for the Customer, all such intellectual property rights shall remain with UCAS Media, unless agreed in writing by both parties.

16.2 UCAS Media warrants that the manufacture of the goods or the provision of know-how to the Customer under the Agreement does not infringe the IPRs of any third party and that UCAS Media shall ensure that it has the right to provide such know-how and is not disclosing the same in breach of confidence.

16.3 With reference to Clause all intellectual property rights belongs to the Customer.

17. Termination

17.1 If either party shall be in material breach or non-observance of any of his obligations under the contract, the non-offending party shall be entitled to give the offending part notice in writing to forthwith remedy such breach or non-observance.

17.2 If the offending shall fail to comply with such notice within 30 calendar days of its receipt the non-offending party shall be entitled forthwith to give written notice terminating the contract with immediate effect.

17.3 If either party shall become bankrupt or insolvent, or have a receiving order made against him, or compound with his creditors, or, being a corporation, commence to be wound up, not being a member's voluntary winding up for the purpose reconstruction or amalgamation, or carry on its business under a receiver for the benefit of its creditors or any of them, then either party shall be at liberty either:

17.3.1 to terminate the contract forthwith by notice in writing to the other party, or to the receiver or liquidator, or to any person in whom the contract may become vested; or

17.3.2 to give such receiver, liquidator or other person the option of carrying out the contract subject to his providing a guarantee for the due and faithful performance of the contract.

18. Indemnity

18.1 Both parties shall keep the other party fully and effectively indemnified against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid as a result of or in connection with any claims for infringement of any intellectual property rights by reason of the use or sale of the goods supplied or services provided and against all costs and damages which either party may incur in any action for such infringement or for which either party may become liable in such action.

19. Limitation of liability

19.1 Nothing in these conditions shall exclude or restrict the liability of either party to the other for fraud or fraudulent misrepresentation, death or personal injury caused by negligence, or any breach of any obligations implied by Section 12 of the Sale of Goods Act, 1979 or Section 2 of the Supply of Goods and Services Act, 1982.

19.2 Subject to Clause 19.1:

19.2.1 The liability of UCAS Media shall in no event exceed the value of the contract.

19.2.2 In no event shall either party be liable to the other for any indirect or consequential loss or whether for loss of profits, loss of business, revenue, depletion of goodwill or anticipated savings, howsoever caused, whether or not such losses were foreseeable at the time of entering into this contract. For the purposes of this Clause, the term 'loss' includes a partial loss or reduction in value as well as a complete or total loss.

19.2.3 UCAS Media will not be liable for any unforeseen rendering of electronic or printed materials which results in electronic or printed materials provided by the Customer to appear not as originally intended by the Customer.

19.2.4 UCAS Media will not be liable for the performance of a campaign.

20. Force majeure

20.1 If the delivery of the contract by UCAS Media is delayed or prevented because of circumstances beyond the control of UCAS Media the contract shall be suspended.

20.2 If the goods or services cannot be delivered within a reasonable time after the due date, the contract may be terminated by either party by giving a notice in writing to the other party.

21. Law

21.1 This contract and all matters arising from it and any arbitration proceedings shall be governed by and construed in accordance with English law.

21.2 All disputes between the parties shall be resolved by arbitration by an arbitrator to be agreed by the parties, or, in default of agreement, to be appointed by the President of the Chartered Institute of Arbitrators.

21.3 If any of the provisions in the above conditions is held to be unlawful, void or unenforceable, in whole or in part, by any competent authority, the provision shall, to the extent required, be severed from the contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract, and shall not in any way affect in any other circumstances of or the validity or enforcement of this Contract