

# Integral Marketing Limited - Standard Terms & Conditions

## 1. GENERAL:

### A: In these terms and conditions:

- (i) "Broker" means Integral Marketing Limited;
- (ii) "User" means the person, firm or corporation with whom the Broker contracts;
- (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) "Material(s)" means the List(s), magnetic tapes, CD's or disks, labels, articles or things or any of them being the subject of the contract between the Broker and 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 Piece(s)" 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.

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 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 an 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 this form are available on request.

## 3. OWNERS 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 as an example 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 product or services in any Insert or Mailing Piece mailed or disseminated by the User or otherwise;
- (iii) to return or destroy all data supplied after use or to procure the return of the data to the Owner or its originating bureau after use.

## 4. LISTS:

A: Lists are compiled by the list owner 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 therefore.

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); and
- (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 5A 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 non-delivery arising out of the contents of the List.

B: Notwithstanding the provisions of Conditions 5A the total liability of the Broker and/or the Owner for, or in respect of any breach of its obligations under the contract of 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 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: No warranty is given by the Broker as to the successful outcome of any planning or forecasting undertaken on behalf of the User or as to the success of any mailing and accepts no liability in respect of any loss arising from any failure to meet expected response targets or failure to deliver mail.

E: Complaints regarding the List must be made within 60 days of the original Data supply. Complaints made after such time shall be considered invalid.

## 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 contacts, 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 on 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 Broker against any mis-use or loss of or damage to the materials by the User or its agents (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 Users 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 on the Order the Broker reserves the right to revoke the User's right to use the List and to request its return.

G: In any dealing 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 and any revisions made thereto from time to time.

## 8. USER'S INDEMNITY

The User undertakes to the Broker that Inserts and items to be mailed by and 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. QUALITY STANDARDS:

A: The User warrants to fully comply with the Data Protection Act 1998, the Telecommunications (Privacy and Data Protection) Regulations 1999 and any other Data Protection legislation and with the Direct Marketing Association Code of Practice and all other relevant industry-codes of practice.

B: Subject to and without prejudice to the generality of the foregoing the User will ensure that the obligations imposed on the User under the Contract are passed on to any third party with whom the User may contract and that in any event the User hereby warrants that any such third party will comply fully with the obligations attributed to the User herein and will indemnify and keep indemnified the Broker with regard to all costs, claims, damages and expenses that may arise for any breach thereof.

## 10. 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 on 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.

## 11. PRICES:

A: The contract price for Material supplied by the Broker shall consist of:

- (i) the rental charge for the one-time use of the List; or
- (ii) exchange charges; and
- (iii) the cost 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 time 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.

(iv) Nett names arrangements will only apply if stated on the Order and must be substantiated with computer documentation within 3 months of delivery of the Lists before a credit note will be issued to the User.

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 of any list;
- (ii) for any preliminary work undertaken by the Broker at the User's request
- (iii) in respect of any work undertaken by the Broker pursuant to condition 10B.

(iv) for more than one use of the List if such further use shall be agreed in accordance with conditions 7A and 7B.

D: Charges for all 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 as before any judgment) from the due date to the date of payment (both dates inclusive) at the rate of 3 1/2 per cent, above the base rate of Barclays Bank Plc from time to time in force.

## 12. PAYMENT:

Unless otherwise agreed by the Broker the contract price shall be tendered in full at the time of submission of the User's Order. All other charges shall be paid upon receipt of the invoice. At the discretion of the Broker special terms may be made available to the User subject to such conditions as the Broker may from time to time specify including, without limitation, the production of satisfactory references and/or the securing of third party guarantees satisfactory to the Broker.

## 13. TERMINATION:

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

- (i) 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.
- (ii) the User shall fail to give instructions for delivery of the Materials within a reasonable time after submitting an Order.

(iii) if the User shall be in breach of any of its obligations under the contract or 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;

(iv) 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 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 damage sustained or incurred by the Broker or the Owner as a consequence of such termination.

## 14. CANCELLATION:

The User may at the discretion of the Broker cancel the contract by notice in writing at any time after the 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.

## 15. FORCE MAJEURE:

The Broker shall not be liable for any loss or damage 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.

## 16. ASSIGNMENT:

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.

## 17. 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.

## 18. 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.

## 19. 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 or email 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 despatched or within one hour if by email.

## 20. HEADINGS:

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

## 21. JURISDICTION:

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

## Agreement to Terms:

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

*Please Print*

Job Title: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Please also provide the following information.....

Account Dept Tel No.: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Email: \_\_\_\_\_