

**FOCAL POINT ADVERTISING LTD**

**GENERAL TERMS AND CONDITIONS OF CONTRACT**

**With effect from 18 January 2013**

The Customer's attention is particularly drawn to the provisions of clause 10.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

**Advertising Copy:** posters and any other advertising material intended for display by the Supplier including without limitation electrical or electronic format and physical copy.

**Artwork:** design and content of the advertisement.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**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 13.8.

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

**Contractor:** the owner or occupier of a site at which advertising space is sold;

**Customer:** the person or firm or company who gives an Order to purchase Services from the Supplier. For the avoidance of doubt, where the Supplier deals with a party that is acting as agent, the principal shall have the same contractual rights and responsibilities as if a party to the contract.

**In Charge Date:** the date from which the display shall commence as specified in the Order or Order Confirmation.

**Intellectual Property Rights:** all copyright and related rights, trade marks, , rights in goodwill or to sue for passing off, unfair competition rights, rights in artwork and designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Order:** an order given by the Customer or Customer's agent and accepted by the Supplier for the display of Advertisement Copy, which incorporates these Conditions.

**Order Confirmation:** written confirmation by the Supplier of an Order.

**Production:** production of Advertising Copy.

**Services:** the services supplied by the Supplier to the Customer as set out in the Specification and confirmed in the Order Confirmation.

**Specification:** the description or specification of the Services provided in writing by the Supplier to the Customer, usually in the Order Confirmation.

**Supplier:** Focal Point Advertising Ltd, registered in England and Wales with company number 5092990

1.2 Construction. In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) 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;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

## 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier receives signed copy of the Order (Order Confirmation) from the Customer, 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 or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising material, including but not limited to Advertising Copy, issued by the Supplier, and any descriptions or illustrations 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 20 Business Days from its date of issue.

### **3. DISPLAY OF ADVERTISEMENTS**

3.1 All Advertising Copy shall be delivered to the address specified by the Supplier in the Order Confirmation or by email and by the date specified in the Order Confirmation and in all cases providing the Supplier with reasonable time to provide the Services.

3.2 In the case of 'production inclusive' Orders, where the Supplier is responsible for poster production, artwork must be delivered an agreed number of days prior to commencement of the campaign: as stipulated by the Supplier in the Order Confirmation or by email.

3.3 If it is responsible for its Production, the Customer shall supply the Supplier with adequate posters or Artwork to enable the Supplier or Contractor (as the case may be) to complete the initial display plus an additional amount so as to enable the Supplier or Contractor to maintain the display in a good condition. This additional number of posters shall be ordinarily 10% of the total number of posters or such other number of posters as agreed between the Supplier and Customer in writing.

### **4. SUPPLY OF SERVICES**

4.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.

4.2 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

4.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

### **5. CUSTOMER'S OBLIGATIONS**

5.1 The Customer warrants and undertakes that:

- (a) the terms of the Order and any information provided to it by the Supplier in the Specification or Order Confirmation are complete and accurate;
- (b) it will co-operate with the Supplier in all matters relating to the Services;
- (c) it will 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) all Advertisement Copy will comply with all statutory and other legal requirements and provisions of the British Code of Advertising Practice;

- (e) no Advertisement Copy will breach the copyright or other rights or be defamatory of any third party; and
- (f) it will keep the Supplier indemnified against all actions, proceedings, costs, damages, expenses, penalties, claims, demands and liabilities arising from any breach of the above warranties or in any manner whatsoever in consequence of the use of any Advertisement Copy or matter supplied by or displayed for the Customer.

5.2 The Contractor shall have the right to see details of Advertisement Copy prior to commitment of display and of refusing to display or continuing to display any advertisement copy for any reason including Advertisement Copy which does not comply in all respects with the Customer's warranties and undertakings detailed above, or which differs in any material respect from the Advertisement Copy specified in the Order at the time of booking or subsequently changed without the approval of the Supplier. If the Customer applies to the Supplier for approval for change, such approval shall not be unreasonably withheld and no claim on the part of the Customer for damages for breach of contract shall arise and any payment due under the Contract shall be paid for in full notwithstanding that the posters have not been displayed.

5.3 The Supplier shall have no liability whatsoever in respect of Advertising Copy which is not displayed or is removed during the In Charge period in the event that the Advertising Copy is in breach of the Customer's warranties and indemnities as set out in clause 5.1. If provided with replacement and compliant Advertising Copy which is not in breach of the above, the Supplier will use its reasonable endeavours to replace the Advertising Copy within a reasonable period of time. For the avoidance of doubt, the Customer shall be responsible to pay the total gross contract price for the full advertising campaign period irrespective of whether or not Advertising Copy is displayed for the full advertising campaign period.

5.4 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, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (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 or delay to perform any of its obligations as set out in this clause 5.4; 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.

**6. CANCELLATION**

6.1 The Customer understands that where the Supplier is responsible for some or all of the Artwork and/or the production of the Advertisement and that the Supplier will incur significant expenditure at the outset of the Contract. Therefore if the Customer cancels the Order in accordance with clause 6.2 below, the Customer will be liable to the Supplier for the amount of any expenditure incurred by the Supplier (supported by invoices) and, if applicable, the Supplier's reasonable charges for time spent on artwork, in addition to any charges payable under clause 6.2 below.

6.2 Subject to clause 6.3 below, Orders and subsequent contracts may be cancelled by either party by 3 months written notice given at any time. In the event of notice being given after the start of the third month before the In Charge Date the contract shall then be cancellable at corresponding monthly intervals. In all cases where the 3 months notice is given by the Customer after the start of the third month before the In Charge Date the Customer shall pay the rate applicable to the period of display, provided always that in the event of the Customer giving notice to cancel a display out of time the Supplier will accept such a notice on payment of the following percentages of the total gross contract price, namely:

15% if less than 90 days but 75 or more days notice is given

30% if less than 75 days but 60 or more days notice is given

40% if less than 60 days but 45 or more days notice is given

70% if less than 45 days but 30 or more days notice is given

90% if less than 30 days notice is given

6.3 The Supplier reserves the right to require a "penalty free" cancellation period longer than 3 months in the event that its cancellation period with the Contractor is longer than 3 months, provided always that such notice period shall be reasonable taking into account the notice period required by the Contractor.

6.4 In all circumstances and on all occasions where Orders have been cancelled for whatever reason the Supplier reserves the right in its sole discretion to accept an Order for the same advertising space for Advertising Copy to any Customer without preference to any party.

**7. CHARGES AND PAYMENT**

7.1 Invoices shall be sent to the Customer where no Agent has been appointed by the Customer. Where an Agent has been appointed by the Customer invoices shall be sent to the Agent. The invoices shall state the name of the Customer sent care of the Agents address.

- 7.2 The time at which the Supplier shall invoice the Customer will be set out in the Order Confirmation.
- 7.3 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
  - (c) time for payment shall be of the essence of the Contract.
- 7.4 Notwithstanding clause 7.3 above, where so stipulated by the Supplier in the Order Confirmation invoices shall be paid not later than 15 working days before the In Charge Date. In default of payment the Supplier shall be entitled without prejudice to its other remedies for breach of contract to cancel any order in respect thereof with the Contractor provided that due notice has been given to the Customer.
- 7.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.6 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 7.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, 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.
- 8. INTELLECTUAL PROPERTY RIGHTS**
- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 8.2 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.

8.3 All Supplier Materials are the exclusive property of the Supplier.

**9. 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 or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 9 shall survive termination of the Contract.

**10. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

10.1 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).

10.2 Subject to clause 10.1:

- (a) the Supplier shall under no circumstances whatever 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 arising under or in connection with the Contract; and
- (b) the Supplier's 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 payable by the Customer under the Contract.

10.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.



10.4 This clause 10 shall survive termination of the Contract.

## 11. TERMINATION

11.1 Without limiting its other rights or remedies, each 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 the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing of the breach;
- (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) 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) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [14] days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) 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 11.1(b) to clause 11.1(i) (inclusive);

- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

11.2 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.

11.3 Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party three (3) months' written notice, or such additional notice as is required pursuant to clause 6.3.

11.4 Without limiting its other rights or remedies, the Supplier shall have the right to 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 11.1(b) to clause 11.1(l), 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.

## 12. 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) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, 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
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 13. GENERAL

13.1 Force majeure:

- (a) 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.

- (b) 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.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 4 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.

13.2 Assignment and subcontracting:

- (a) The Supplier may at any time assign, transfer, 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, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or 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, on the next Business Day after transmission.
- (c) This clause 13.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

13.4 Waiver:

- (a) A waiver of any right under the Contract 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 under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

13.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

13.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.

13.9 Governing law and jurisdiction: 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.