

**1 Interpretation**

1.1 In these Conditions:

- “CLIENT” means the person named on the Specification Sheet for whom the Supplier has agreed to provide the Specified Service in accordance with these Terms;
- “CONTRACT” means the contract for the provision of the Specified Service;
- “DOCUMENT” includes, in addition to a document in Writing, a map, plan, design, drawing, picture or other image, or any other record of any information in any form;
- “INPUT MATERIAL” means any Documents or other materials, and any data or other information provided by the Client relating to the Specified Service;
- “OUTPUT MATERIAL” means any Documents or other materials, and any data or other information provided by the Supplier relating to the Specified Service;
- “POSTAGE COSTS” means any postage costs incurred by the Supplier in providing the Specified Service;
- “SPECIFICATION SHEET” means the sheet to which these Terms are appended;
- “SPECIFIED SERVICE” means the service to be provided by the Supplier for the Client and referred to in the Specification Sheet;
- “SUPPLIER” means CMS Direct Mail Limited (registered in England under number 05264996).

1.2 The headings in these Terms are for convenience only and shall not affect their interpretation.

**2 Supply of the Specified Service**

- 2.1 The Supplier shall provide the Specified Service to the Client subject to these Terms. Any changes or additions to the Specified Service or these Terms must be agreed in Writing by the Supplier and the Client.
- 2.2 The Client shall at its own expense supply the Supplier with all necessary Documents or other materials, and all necessary data or other information relating to the Specified Service, within sufficient time to enable the Supplier to provide the Specified Service in accordance with the Contract. The Supplier shall not be liable to the Client for failure to provide the Specified Service if such failure is due to the Client not supplying all necessary Input Material data and/or other information within sufficient time to enable the Supplier to provide the Specified Service and in the event that there is a delay in supplying such Input Material the Supplier reserves the right to re-schedule the Specified Service with no liability in respect thereof to Client. The Client shall ensure the accuracy of all Input Material.
- 2.3 The Client shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Supplier shall have no liability for any such loss or damage, however caused. All Output Material shall be at the sole risk of the Client from the time of delivery to or to the order of the Client.
- 2.4 The Client should be responsible for ensuring that all Input Material supplied by it or on its behalf:
  - 2.4.1 conforms to any specification as stated in the Specification Sheet and any applicable Royal Mail requirements;
  - 2.4.2 it is accompanied by delivery note stating the quantity and description of all Input Material supplied;
  - 2.4.3 is delivered on pallets, boxes, packed and supplied in a way satisfactory to the Supplier
  - 2.4.4 is supplied with 5% more Input Material than is required for processing to allow for normal wastage;
  - 2.4.5 is legible and accurate;
  - 2.4.6 where appropriate, is supplied in strict sequence;
  - 2.4.7 shall comply with all applicable statutory requirements and with any applicable codes of practice from supervisory bodies including, without limitation, those of the direct marketing association, the advertising standards authority and QMP.
  - 2.4.8 the Supplier accepts no liability for any loss suffered as a result of the Client’s breach of this clause 2.4
- 2.5 The Supplier shall, at its absolute discretion, refuse to process any Input Material supplied by the Client that the Supplier deems to be immoral, pornographic, offensive or misleading or infringes the Client’s obligations under these Terms.
- 2.6 In the event of the Client being in breach of clauses 2.2 and/or 2.4 above, the Supplier, at its sole discretion, is entitled either to cancel the Contract, reschedule the time for the supply of the Specified Service and/or charge such an additional amount to the Client in respect of any additional work carried out by the Supplier as a result of the Client’s breach of the aforementioned clauses.
- 2.7 The Supplier shall not be required to check the contents of any Input Material supplied by the Client nor shall the Supplier be required to check the contents of any Input Material supplied against any corresponding delivery note. Any of the Client’s Input Material which remain in the Supplier’s possession after 14 days from the completion of the Specified Service may, at the Supplier’s sole discretion, be subject to storage charges. The Supplier reserves the right to dispose of all such Input Material at any time 21 days after the Specified Service has been provided and the Client shall be responsible for any such disposal charges.
- 2.8 The Specified Service shall be provided in accordance with the Specification Sheet and otherwise in accordance with the Supplier’s current brochure or other published literature subject to these Terms. Further details about the Specified Service, and advice or recommendations about its provision or utilisation may be made available on Written request.
- 2.9 The Supplier may correct any typographical or other errors or omissions in any brochure, promotional literature, quotation or other document relating to the provision of the Specified Service without any liability to the Client.
- 2.10 The Supplier may at any time without notifying the Client make any changes to the Specified Service which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Specified Service.
- 2.11 Where approval is required from the Client prior to the Supplier providing the Specified Service then such approval must be made in writing to the Supplier within the period specified by the Supplier. Approval will be deemed to have been given in the event that no written response is received within the period so specified.

**3 Charges**

- 3.1 Subject to any special terms agreed, the Client shall pay the Supplier’s charges and any additional sums which are agreed between the Supplier and the Client for the provision of the Specified Service or which, in the Supplier’s sole discretion, are required as a result of the Client’s instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Client.
- 3.2 The Supplier shall be entitled to vary the Supplier’s charges from time to time by giving not less than one months’ Written notice to the Client.
- 3.3 All charges quoted to the Client for the provision of the Specified Service are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time and Postage Costs.
- 3.4 The Supplier shall be entitled to invoice the Client at any time following the provision of the Specified Service, or at other times agreed with the Client.
- 3.5 The Supplier’s Charges and any additional sums payable shall be paid by the Client (together with any applicable Value Added Tax, and without any set-off or other deduction) within 28 days of the date of the Supplier’s invoice.

- 3.6 If payment is not made on the due date, the Supplier shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 2% above the base rate from time to time of the Royal Bank of Scotland Plc Bank plc from the due date until the outstanding amount is paid in full.
- 3.7 If the Specified Service involves the Supplier incurring charges in respect of Postage Costs then the Client shall provide the Supplier with cleared funds in respect of the Postage Costs to be incurred at least 48 hours prior to the performance of the Specified Service. In the event that funds in respect of Postage Costs are not received within 48 hours of the Specified Service being performed then the Supplier, at its sole discretion, has the right to withhold and/or re-schedule the provision of the Specified Service without any additional liability to the Client.
- 3.8 Where the Postage Costs incurred by the Supplier are less than the amount forwarded by the Client to the Supplier pursuant to clause 3.7 above, the Supplier shall either refund the difference to the Client or provide a credit for the Client against any invoice to be raised in respect of the Specified Service.

#### **4 Rights in Input Material and Output Material**

- 4.1 The property and any copyright or other intellectual property rights in:
- 4.1.1 Any Input Material shall belong to the Client
- 4.1.2 Any Output Material shall, unless otherwise agreed in Writing between the Client and the Supplier, belong to the Supplier, subject only to the right of the Client to use the Output Material for the purposes of utilising the Specified Service.
- 4.2 Any Input Material or other information provided by the Client which is so designated by the Client and any Output Material shall be kept confidential by the Supplier, and all Output Material or other information provided by the Supplier which is so designated by the Supplier shall be kept confidential by the Client; but the foregoing shall not apply to any Documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.
- 4.3 The Client warrants that any Input Material and its use by the Supplier for the purpose of providing the Specified Service will not infringe the copyright or other rights of any third party, and the Client shall indemnify the Supplier against any loss, damages, costs, expenses or other claims arising from any such infringement.
- 4.4 Subject to paragraph 4.3, the Supplier warrants that any Output Material and its use by the Client for the purposes of utilising the Specified Service will not infringe the copyright or other rights of any third party, and the Supplier shall indemnify the Client against any loss, damages, costs, expenses or other claims arising from any such infringement.

#### **5 Warranties and Liability**

- 5.1 The Supplier warrants to the Client that the Specified Service will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Specification and at the intervals and within the times referred to in the Specification Sheet. Where the Supplier supplies in connection with the provision of the Specified Service any goods (including Output Material) supplied by a third party, the Supplier does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Supplier.
- 5.2 The Supplier shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
- 5.3 Except in respect of death or personal injury caused by the Supplier's negligence, or as expressly provided in these Terms, the Supplier shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Supplier, its servants or agents or otherwise) which arise out of or in connection with the provision of the Specified Service or their use by the Client, and the entire liability of the Supplier under or in connection with the Contract shall not exceed the amount of the Supplier's charges for the provision of the Specified Service, as set out at clauses 3.1 and 3.3 (excluding VAT and Postage Costs), except as expressly provided in these Terms.
- 5.4 The Supplier shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations in relation to the Specified Service, if the delay or failure was due to any cause beyond the Supplier's reasonable control.

#### **6 Termination**

- 6.1 The Client shall be entitled to terminate the Contract at any time by giving not less than one months' Written notice to the Supplier.
- 6.2 Either party may (without limiting any other remedy) at any time terminate the Contract by giving Written notice to the other if the other commits any breach of these Terms and (if capable of remedy) fails to remedy the breach within 15 days after being required by Written notice to do so, or if the other goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.

#### **7 Data Protection**

- 7.1 All personal data (as defined by the Data Protection Act 1998) supplied by the client to the Supplier shall be processed by the Supplier in accordance with the provisions of the Data Protection Act 1998.
- 7.2 The Client hereby warrants to the Supplier that all personal data passed onto the Supplier for the purposes of providing the Specified Service has been collected in accordance with the provisions of the Data Protection Act 1998 and the Client hereby indemnifies the Supplier in respect of any loss suffered by the Supplier in relation to personal data supplied by the Client which has been obtained and/or used by the Client in breach of the provisions of the Data Protection Act 1998.

#### **8 General**

- 8.1 These Conditions (together with the terms, if any, set out in the Specification Sheet) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in Writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 8.2 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 8.3 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 8.4 If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 8.5 Any dispute arising under or in connection with these Terms or the provision of the Specified Service shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society of England and Wales.
- 8.6 English law shall apply to the Contract, and the parties agree to submit to the non-exclusive jurisdiction of the English courts.

Name:

On behalf of:

Signed:

Date: