

TERMS AND CONDITIONS OF CONTRACT

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Definitions

- 'Principal' means any advertiser or advertising agency and shall include their successors in title and assigns who gives an order as the Principal to the Contractor and as such is liable for payment for display of advertising copy.
- 'Advertising agency' means any person recognised as an advertising agency by the Contractor and who acting as a Principal gives an order.
- 'Buying Agency' shall mean any person acting as an agency for the Advertising Agency and shall include the Buying Agency's successors in title.
- 'Contractor' means PosMark Limited and shall include their successors in title and assigns.
- 'Advertiser' means any person firm or company who acting as a Principal gives an order.
- 'Agent' means any person firm or company appointed by a Principal to administer an order.
- 'Order' means an order given by an advertiser or an Advertising Agency to and accepted by the Contractor for the display of advertisement copy.
- 'Order Confirmation' means a written acceptance by the Contractor of an Order
- 'Advertisement copy' means posters and any other advertising material intended for display in or on frames owned by the Contractor or other advertising or promotional material intended for display in sites serviced by the Contractor.
- 'Working day' means from Monday to Friday inclusive except any Bank or Public Holiday.
- 'In Charge Date' means the date from which the Campaign shall commence as specified in the Order Confirmation.
- 'Out of Charge Date' means the date on which the Campaign shall end as specified on the Order Confirmation.
- 'Campaign' means a period of four weeks, or such other period as specified in the Order, beginning with the in charge date.
- 'Principal's contact address' and 'Contractor's contact address' mean the address specified on the Order Confirmation for, respectively, the Principal and the Contractor. If no address is specified then the address shall be deemed to be the address on the order and acceptance letters.
- 'Rate Card' means the Contractor's rate card in force at the date of the Order

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Acceptance of Terms and Conditions

- 2.1 These terms and conditions shall be deemed to be incorporated in contracts arising from orders for the display of advertisement copy accepted by the Contractor.
- 2.2 The Principal shall be ultimately responsible for the payment of accounts and shall be deemed to have full authority in all matters connected with the placing of orders and the approval or amendment of advertisement copy. Any person firm or company other than an Advertiser or an Advertising Agency recognised as such by the Contractor or giving an order for and on behalf of a client shall not be deemed to contract as a Principal but shall be regarded for all purposes as an agent for a disclosed Principal unless such person firm or company is accepted as a Principal by the Contractor.
- 2.3 No terms and conditions other than these terms and conditions or any variation thereof under Clause 12 shall be binding on the Contractor unless agreed in writing but nothing in these terms and conditions shall preclude the Contractor or Principal from varying any of such terms and conditions if they mutually agree to do so and such variation is recorded in writing signed on behalf of the Contractor and the Principal.
- 2.4 Delivery of advertisement copy shall not be deemed to have been made until the delivery requirements specified in Clause 3 below have been met.

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Acceptance and display of advertisements

- 3.1 Posters shall be delivered carriage paid to the Contractor's distribution centre as specified on the Order Confirmation not less than seven working days before the In Charge Date or the date for the change of display as the case may be.
- 3.2 In the event of the posters being delivered less than the aforesaid seven working days but within at least two working days the Contractor undertakes to make every reasonable endeavour to post the posters as soon as possible provided the Principal agrees to pay a supplemental posting charge and to accept an invoice for the full Order value.
- 3.3 If the posters are delivered less than two working days prior to the in charge date the Contractor shall deem this to be a cancellation and will invoice the Principal or Agent in accordance with Clause 6.1.
- 3.4 The Principal shall ensure that the Contractor is supplied with the number of posters specified in the Order Confirmation to complete the initial display which shall include an additional amount so as to enable the contractor to maintain the display in good condition. This additional amount of posters shall be a minimum of 10% of the total number of posters.
- 3.5 Posters shall be printed in accordance with the Specification contained in the Contractor's Rate Cards.
- 3.6 A part delivery of the posters or delivery of posters of a size not the same as that specified in the Contractor's Rate Card shall be deemed to be no delivery for the purposes of this clause.
- 3.7 Subject to the above all campaigns shall be posted by the Contractor within five working days following the in charge date.
- 3.8 Unless stipulated to the contrary in writing by the Advertiser or his Agent prior to the In Charge Date, the Contractor is authorised at his discretion to retain the Advertisers' posters in the frames beyond the Out of Charge Date of the Campaign until further notice provided that no charge shall be made to the Advertiser for such display beyond the Out of Charge Date.

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Substitution of Sites

The Contractor, at its option, reserves the right to substitute similar sites where the Contractor deems it necessary for operational reasons including, but not limited to, juxtaposition, duplication and the Advertising Agency's own request and in respect of which the Advertising Agency shall have no claim against the Contractor. Wherever possible these sites will be in the same district, TV or ISBA region.

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Confirmation of Orders

Bookings received by the Contractor will be confirmed on an Order Confirmation form within seven days of receipt. These details will be sent to the Principal's contact address. Unless any amendments are notified in writing to the Contractor within 10 working days of receipt of Order Confirmation OR five working days prior to the in charge date of the display, whichever is earlier, then the Order Confirmation will be deemed to be binding on the Advertising Agency.

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Cancellation

- 6.1 Orders may be cancelled by either party without penalty by six calendar months' written notice in advance of the In Charge Date. In the event of notice of cancellation being received by the Contractor less than six calendar months before the In Charge Date, the Contractor will accept such notice on payment by the Principal of the following percentages of the total gross contract price:

If less than 6 months but at least 5 months' notice is given	30%
If less than 5 months but at least 4 months' notice is given	40%
If less than 4 months but at least 3 months' notice is given	50%
If less than 3 months' notice is given or no posters are received.	100%

Notice of cancellation shall be made by registered post to the Contractor at his registered office.

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Accounts

- 7.1 The amount due for a Campaign shall be the number of sites on which the Advertiser's posters have been installed multiplied by the rate per site as specified on the Order Confirmation provided that the number of sites shall not exceed the maximum as specified on the Order Confirmation.
- 7.2 Invoices for the amount(s) specified in the Order Confirmation shall be sent to the Principal where no Agent has been appointed by the Principal. Where an Agent has been appointed by the Principal invoices shall be sent to the Agent. The invoice shall state the name of the Agent followed the words 'acting as Agent for' and shall then give the name of the Principal. The Principal shall be sent a monthly statement of account from the Contractor.
- 7.3 Where the Order Confirmation includes "variable pricing" the invoice amount shall be the number of sites available on the In Charge Date multiplied by the price per site as specified on the Order.
- 7.4 Invoices shall be rendered on or after the In Charge Date and shall be paid in full by the 30th day of the month following the month in which the In Charge Date falls.

- 7.5 In respect of any amount not received by the Contractor by the due date, the Contractor shall have the right to levy a surcharge of 2% per month of the outstanding amount, such surcharges being levied monthly until the outstanding amount is paid.
- 7.6 The Contractor shall have the right to cancel any order for display placed by a Principal in the event that any sums payable by the Principal in respect of the Order or of any other Order placed by the Principal are more than seven working days overdue, on giving the Principal five working days notice in writing of the sums outstanding and that, in the event that those sums are not paid in full within five working days the Order and any other Orders placed by or on behalf of the Principal for the display of material in future campaigns will be treated as having been cancelled by the Principal. On cancellation the charges prescribed in Clause 6 shall become payable in addition to and without prejudice to any other rights of the Contractor.
- 7.7 In the event of failure by the Principal to comply with any of the provisions of this Clause the Contractor reserves the right by notice in writing to require any future accounts to be dealt with in accordance with clause 7.8 below.
- 7.8 Where so stipulated by the Contractor at the time of accepting an Order accounts shall be paid not later than 10 working days before the In Charge Date. In default of payment the Contractor shall be entitled without prejudice to its other remedies for breach of contract to refuse to display the advertisement copy provided that notice has been given to the Principal of non-payment within five days following the prescribed date for payment.
- 7.9 In the event of any part of an account rendered by a Contractor being disputed by the Principal payment in respect of that part only may be withheld pending settlement of the dispute. The remainder of the account shall be paid in accordance with Clauses 7.4 above. Failure to make part payment in such cases will at the Contractor's discretion cause the implementation of clauses 7.5 and 7.6 above.

8 Warranties, Liabilities and Indemnity

- 8.1 The Contractor accepts full responsibility for compliance and other legal requirements so far as concerns the use and maintenance of any site for the display of advertisement copy to which a contract relates.
- 8.2 The Principal warrants and undertakes that:
- all his advertisement copy will comply with all statutory and other legal requirements and the provisions of the British Code of Advertising Practice, the requirements of the Advertising Standards Authority and the Code of Advertising Practice Committee.
 - if any posters supplied to the Contractor for display purposes require to be amended or replaced or changes are recommended by any trade association prior to the posting date, it will indemnify the Contractor for any costs arising from this requirement.
 - it will be responsible for obtaining and paying for all necessary licences and consents for the posting of any advertising or copyright material contained or the appearance of any person in his advertisement copy.
 - no advertisement copy will breach the copyright or other rights of or be defamatory of any third party.
 - it will keep the Contractor 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 material supplied by or displayed for the advertiser.

- 8.3 The Contractor shall on request be provided with details of proposed advertisement copy prior to accepting an order for display and may refuse display any advertisement copy:
- which does not comply in all respects with the Principal's warranties and undertakings detailed above, or
 - which differs in any material respects from the advertisement copy specified in the order at the time of booking or subsequently changed without the approval of the Contractor. If the Principal applies to the Contractor for approval for change, such approval shall not be unreasonably withheld and no claim on the part of the Principal for damages for breach of contract shall arise and the sites reserved shall be paid for in full notwithstanding that the posters have not been displayed.

- 8.4 The Principal or his Agent authorises the Contractor to publicise the name of the product or service to be advertised at the time the Order is placed. Provided that if the Principal can demonstrate to the Contractor that the release of this information will be prejudicial to his business and/or lead to loss of profit, the Contractor will release the Principal from this obligation.

- 8.5 The due performance of any Order is subject to suspension variation or cancellation by the Contractor owing to Acts of God, strikes, lock-outs, inclement weather, legal restrictions or the accidental loss of any sites which were included in the order. In the event of suspension variation or cancellation for any of the foregoing reasons or for any other reason beyond the Contractor's reasonable control the Contractor shall be entitled to be paid by the Principal the full rate for the sites in question up until the time at which any such suspension, variation or cancellation occurs together with any other monies due and owing by the Principal to the Contractor.

- 8.6 The Contractor will use his best endeavours to ensure that all frames included in a Campaign are illuminated by mains electricity. In the event of any statutory electricity supply failure, other local restriction or error on the part of the retailer, which prevents the illumination of all or any part of the sites included in the order, the Contractor will not be liable for any refund.

- 8.7 Subject to clause 9.3 below, while the Contractor will endeavour to ensure the display of any advertising material in accordance with the Order, the Contractor shall be liable for the non-display or incorrect display of any advertising copy only to the extent to which the non-display or incorrect display represents a failure by the Contractor to provide the service specified in the Order Confirmation. The Contractor shall not be liable if the pharmacy manager refuses to display a particular poster in the exercise of his professional skill and judgement.

- 8.8 The Contractor shall not be liable for loss of or damage to any advertisement copy supplied to the Contractor, except in the case of fire, lightning, explosion of boilers, storms and tempests, flood bursting or overflowing of water tanks, apparatus or pipes, when the Contractor's liability shall not exceed the original cost to the advertiser of the destroyed or damaged advertisement copy in the Contractor's hands for display against a current Order.

- 8.9 Any posters or other advertising materials in the Contractor's possession which are surplus to requirements or which have been removed from the display will be retained for not more than 10 days after the end of the display and may then be destroyed unless the Advertiser has given notice in writing that they are to be held for collection for which a reasonable storage charge will be made.

9 Credit Claims for Damaged, Incorrect or Non-Displays

- 9.1 The Contractor shall not be liable to give credit in respect of any damage to any advertisement copy or the incorrect or non-display of any advertisement copy if the defect is remedied within three working days after receipt of notification and provided the Contractor has sufficient replacement posters in stock to remedy the defects or the Contractor has notified the Principal or Agent if one is appointed of any shortfall in supply and the Contractor's failure to rectify is attributable to failure by the Principal or Agent to provide replacement posters.

- 9.2 All claims for credits shall be submitted to the Contractor in writing within 28 days following the Out of Charge Date with sufficient information to enable the Contractor to consider the claim. This is a reciprocated arrangement between both parties. The Contractor shall not be required to consider any claim submitted after the due date.

- 9.3 The number of sites at which the Advertisement Copy is intended to be displayed will be shown on the Order Confirmation, representing the number of sites which the Contractor reasonably believes will be available at the In Charge Date. If this number is subject to reduction for reasons beyond the control of the Contractor for example because of cancellation by the pharmacist, fire, flood, theft, or damage the Contractor shall reduce the charges specified in the Order Confirmation pro-rata only when the number of sites originally specified is reduced by more than 5%.

10 Bankruptcy

- If the Principal shall become bankrupt or commit an act of bankruptcy or make any assignment for the benefit of his creditors or being a company shall become insolvent or commit any act of insolvency or if any Petition for the winding up or administration of the company is presented or if any other step is taken for the purposes of the appointment of an administrator or an administrative receiver of the company or if any steps are taken or negotiations commenced by the company or by any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the company and its creditors or if there shall be any breach by the Principal of any other term or condition of this contract then it shall be lawful for the Contractor by notice in writing to the Principal to terminate the contract forthwith without prejudice to any right of action or remedy of the Contractor then subsisting.

11 Notices

- Any notice to be given under these terms and conditions shall be in writing unless the parties mutually agree otherwise and shall be deemed to be effectively served if sent by first class post to the Principal's contract address, and to the Agent where an Agent has been appointed by the Principal at their respective addresses and to the Contractor at the Contractor's contact address.

12 Modification

- The Contractor reserves the right to change its advertisement rates or make any material change in any of these terms and conditions at 30 days notice. The Advertising Agency shall, by serving written notice on the Contractor within 10 days of the date of the Contractor's notice of such change be entitled to cancel any order for an advertisement to which the changed rates or terms and conditions would otherwise be applicable.

13 Jurisdiction

These Terms and Conditions shall be governed by English Law and the parties submit to the exclusive jurisdiction of the courts of England.

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