

Advertising Terms & Conditions

1. Definitions

In these Conditions, the following words and expressions shall have the meaning set out below:

“Advertiser” is the entity or person whose products and/or services are featured in the Advertising Material;

“Advertising Material” means promotional material (including any text, images, audio and video content) to be placed on one or more Platforms in accordance with the terms of this Agreement;

“Agreement” means these Terms and Conditions and the associated Booking Terms;

“Booking Terms” means (i) an insertion order; and (ii) any other written documents (including emails) which set out the details of a booking to place Advertising Material on Platforms and which have been accepted in writing by Publisher;

“Campaign Period” means the campaign period booked by the Client during which the Advertising Material will be placed on one or more Platforms;

“Client” means the Advertiser and/or its advertising agency as set out in the Booking Terms;

“Client Trade Marks” means the name of the Advertiser and any other trade marks incorporated in the Advertising Material other than Publisher Trade Marks;

“Client Website” means the web site(s) referred to in the Advertising Material and/or to which the Advertising Material is linked via hyper-text link(s);

“ESL” means Evening Standard Limited (company number 6770098);

“Evening Standard Platforms” means the Evening Standard printed newspaper, ES Magazine and any printed supplements, the websites standard.co.uk and esmag.co.uk and the corresponding mobile/tablet apps (including the Evening Standard App);

“GDPR” : has the meaning given to it in section 3(10) of the Data Protection Act 2018 (as supplemented by section 205(4));

“IDNML” means Independent Digital News and Media Limited (company number 7320345);

“Independent Platforms” means The Independent and indy100 digital editions, the websites independent.co.uk and indy100.com and all corresponding mobile/tablet apps (including the Independent Premium App and the Independent Daily Edition App);

“Information” means video, audio, text, images, Client Trade Marks and other materials which will appear within (or will be used to create) the Advertising Material;

“Personal Data” has the meaning given in the GDPR.

“Platform” means the relevant Publisher Platforms and (where applicable) selected Third Party Platforms;

“Publisher” means the company which publishes the relevant Publisher Platform where the Advertising Material will appear. Where more than one company is involved, each one will have the benefit of these terms. For information, the relevant companies are currently: IDNML for the Independent Platforms and ESL for the Evening Standard Platforms;

“Publisher Platforms” means the Independent Platforms and the Evening Standard Platforms;

“Publisher Trade Marks” means all trade marks owned by Publisher;

“Third Party Platform” means a digital platform owned and operated by a third party; and

“User” means any person who accesses or otherwise engages with a Platform.

“User Data” means Personal Data collected from end-users of Platforms (whether through the use of cookies, web beacons or any other technology).

2. Rights and Obligations of Publisher

2.1 Publisher will arrange for the Advertising Material to appear in the Platforms, as arranged with the Client insofar as is possible. While every endeavour will be made to meet the wishes of the Client, Publisher does not guarantee that any particular Advertising Material will be disseminated.

2.2 Publisher retains full editorial control over the Publisher Platforms.

2.3 All rights (including copyright) in all artwork, copy and other material produced by Publisher shall vest in Publisher

3. Rights and Obligations of the Client

3.1 The Client agrees to supply to Publisher on or before the agreed delivery date either:

(i) a file containing the Advertising Material in the format agreed between the Client and Publisher; or

(ii) (if it is specifically agreed with Publisher that Publisher will create the Advertising Material) all Information requested by Publisher in an agreed format and medium.

3.2 The Client agrees that it will not rotate advertisements for multiple Advertisers within one digital ad tag.

3.3 In relation to digital campaigns, the Client will not, and will not authorize any third party to, (i) generate automated, fraudulent or otherwise invalid impressions, inquiries, clicks or conversions or (ii) conceal conversions.

4. Acceptance

4.1 The placing of an order for the insertion of Advertising Material shall amount to an acceptance by the Client of the terms of this Agreement.

4.2 Any conditions stipulated verbally or in any other format by the Client shall be void insofar as they are (i) not approved by Publisher in writing; and/or (ii) in conflict with this Agreement.

5. Advertising Material

5.1 Publisher retains the right to omit, amend, suspend or change the position/timing of any Advertising Material, including, but not limited to where in the sole discretion of Publisher: (i) the Advertising Material is in breach of any undertakings or warranties under this Agreement, (ii) the software code associated with the Advertising Material (e.g. pixels, tags, JavaScript) or the website to which the Advertising Material is linked does not comply with Publisher's policies or any applicable laws, regulations and/or guidelines; or (iii) where any third party claims that any of its rights or any relevant regulations have been breached.

5.2 In the event that Publisher elects to amend the Advertising Material (or the position/timing thereof), Publisher will use reasonable endeavours to consult with the Client in good faith.

6. Charges

6.1 The Client shall pay all fees and charges in advance unless an account has been previously approved by Publisher.

6.2 Where an account has been approved by Publisher, the due time for payment shall be no later than 2.00 p.m: (i) if the Client is a recognised agency under the Recognition Scheme of the News Media Association, on the last working day of the month following that in which the Advertising Material appeared; or (ii) in any other case, on the last working day prior to the 16th day following the end of the month in which the Advertising Material appeared.

6.3 In respect of each advertisement for which payment is not made by the due date, the Client agrees to pay Publisher interest on the amount overdue at the rate of 1.5% per month (or the maximum amount permitted by law if less) accruing from the due date.

6.4 The Client agrees that Publisher's statistics (including its impression count) will be used for all digital campaigns and will be final and binding on Client.

7. Errors

7.1 It is the responsibility of the Client to check upon the first appearance of the Advertising Material and notify Publisher immediately of any errors. Publisher assumes no responsibility for the correction of errors unless notified by the Client within 7 days. In the event of any error or omission in the appearance of Advertising Material which is caused by Publisher, Publisher will either re-publish the Advertising Material (or relevant part thereof) or make a reasonable refund of or adjustment to the charges. No re-publication, refund or adjustment will be made where the error, misprint or omission does not materially detract from the advertisement.

8. Warranties

8.1 Publisher warrants to the Client that it has the full power and authority to enter into and perform this Agreement.

8.2 The Client warrants and undertakes to Publisher that:

- (i) it has the full power and authority to enter into and perform this Agreement;
- (ii) where it is acting as advertising agency for an Advertiser, it is authorised by the Advertiser to place the advertisement with Publisher, that it is entering into this Agreement with Publisher as a principal and that it will indemnify Publisher against any claim made by the Advertiser against Publisher arising from the publication thereof;
- (iii) the reproduction of the Advertising Material and Information on the Platforms shall not infringe any copyright, trade mark, right of privacy, right of publicity or personality or any other right of any nature of any third party;
- (iv) where any Advertising Material contains the name or pictorial representation (photographic or otherwise) of any living person and/or any part of any living person and/or any copy by which any living person is or can be identified, the Client has obtained the authority of such living person to make use of such name, representation and/or copy;
- (v) in relation to any investment advertisement, the Advertising Material has been approved by a person authorised under the relevant legislation;
- (vi) there are and shall be no claims, demands, liens, encumbrances or rights of any kind in any of the Information which can or will impair or interfere with the rights or obligations of Publisher;
- (vii) the Advertising Material, the Client Website and any claims made therein:
 - (a) comply with all relevant laws, regulations and advertising codes (e.g. The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing) and any other standards communicated to Client by Publisher from time to time;
 - (b) do not contain any material that is misleading, deceptive, obscene, blasphemous, defamatory, infringing of any rights of any third party or is otherwise legally actionable

under any civil or criminal laws in force in any jurisdiction from which the Advertising Material will be accessible;

(c) do not contain and will not distribute any viruses, spyware, malware or other malicious or destructive code; and

(d) do not contain any material which might bring Publisher, its products or partners into disrepute.

8.3 In relation to Advertising Material which includes: (i) a competition, prize draw, discounted offer or other form of sales promotion; and (ii) both Client Trade Marks and Publisher Trade Marks (a "Promotion"), the Client warrants and undertakes to Publisher that:

(i) it is entitled to supply the goods and services featured in the Promotion and Publisher will incur no cost or liability in respect of such supply (and the Client will put in place suitable insurance arrangements);

(ii) such goods and services will comply with any specification or description agreed between Publisher and the Client;

(iii) such goods and services will be supplied with reasonable care and skill and in accordance with best industry standards,

(iv) such goods and services will comply with all applicable laws, regulations and guidelines both in their supply and manufacture,

(v) such goods will be delivered and such services will be performed in a timely fashion, in the quantities, at the time(s) and location(s) set out in the Advertising Material or as otherwise agreed by Publisher and the Client;

(vi) in the event of any defect in such goods or in the performance of such services, the Client will supply substitute goods or services in a timely fashion, in the quantities, at the time(s) and location(s) specified by Publisher; and

(vii) it will use its best endeavours to ensure the success of the Promotion and shall cooperate fully with Publisher in respect of any reasonable request made by Publisher in relation to the Promotion.

9. Liability

9.1 The Client agrees to defend, indemnify and hold harmless Publisher and its officers, directors, agents, affiliates and employees, at all times against all claims, proceedings, demands, damages, liabilities and costs (including reasonable legal fees) arising in connection with: (i) a breach of this Agreement by the Client; (ii) the content of any Advertising Material or Client Website; (iii) a contaminated file, virus, worm, or Trojan horse originating from the Client or Advertiser; and (iv) any transaction entered into by the Client and a User.

9.2 Publisher will not be liable for any loss or damage, direct or consequential, arising out of any failure to publish any Advertising Material or for the delayed publication of any Advertising Material or Publisher's failure to perform any other obligation howsoever occasioned, save where caused by the direct negligence of Publisher, in which case compensation shall be limited to the charges payable by the Client.

9.3 Publisher gives no warranties or guarantees in respect of Third Party Platforms and Publisher will not be liable for any loss or damage, direct or consequential, arising out of or in connection with Third Party Platforms.

9.4 Save for any liability that cannot be limited by law, Publisher's liability to the Client will be limited to the amount of the fees due under the Booking Terms and Publisher shall have no liability to the Client for any indirect losses.

9.5 Nothing in this Agreement limits or excludes any liability that cannot be limited or excluded by law.

10. Intellectual Property Rights

10.1 The Client warrants and undertakes that it is and shall remain the owner (or expressly authorised by the owner), of all intellectual property rights in the Client Website and the Client Trade Marks.

10.2 The Client hereby grants Publisher a non-exclusive licence to use the Information and to publish the Advertising Material on the Platforms as agreed in the Booking Terms.

10.3 Where any third party claims that any Advertising Material infringes the intellectual property rights of a third party: (i) the Client shall notify Publisher immediately; and (ii) Publisher may modify the Advertising Material or delete or replace any part of the Advertising Material, or information contained in the Advertising Material in accordance with Clause 5.

11. Confidentiality and Data

11.1 Each party agrees to keep confidential (both during and after the Campaign Period) the terms of this Agreement and all other information concerning the business or affairs of the other party. This obligation will not apply in the case of any disclosure required by law, or information which is already publicly available or in the possession of a party at the time of disclosure by the other (other than as a result of a breach of any confidentiality obligation).

11.2 Client agrees that it will not make any disclosure or public statement concerning the subject matter of this Agreement without Publisher's prior written approval.

11.3 Client will comply with all applicable data protection legislation, including the GDPR.

11.4 Client will not collect or otherwise process any User Data without Publisher's prior written consent.

11.5 If Publisher does grant such consent, Client acknowledges and agrees that Client will:

- (i) be an independent controller of User Data;
- (ii) stop processing User Data within 7 days of its collection;
- (iii) not use User Data to retarget individuals on other sites;
- (iv) not disclose User Data to any third party, unless it has been anonymised prior to such disclosure and there is no reference to Publisher or any Platform;
- (v) not process User Data in a way that is inconsistent with the privacy notice displayed to end-users of our websites from time to time; and
- (vi) not utilise the User Data to create or augment profiles of individuals based on their behaviour.

11.6 Client will ensure that all third parties who Clients work with (directly or indirectly) adhere to these provisions of this clause 11.

12. Cancellation

Orders cannot be cancelled once Publisher has started to carry out the order in accordance with the first publication date requested by the Client. Where Publisher has not started to carry out the order, unless otherwise agreed in the Booking Terms, not less than twenty-eight (28) days' notice of cancellation is required. Email notification of cancellation is not acceptable unless acknowledged by Publisher.

13. Termination

13.1 Either party may terminate this Agreement immediately by giving written notice to the other party:

- (i) if the other party commits any material breach of its obligations and/or warranties under this Agreement which, in the case of a breach capable of remedy, is not remedied within 10 days of service of a notice specifying the breach and requiring it to be remedied (Publisher reserves the right to suspend dissemination of the Advertising Material pending its eventual reinstatement upon the breach in question being remedied); or
- (ii) if the other party holds any meeting with or proposes to enter into or has proposed to it any arrangement or composition with its creditors (including any voluntary arrangements as described in the Insolvency Act 1986); has a receiver, administrator, or other encumbrance take possession of or appointed over or has any distress, execution or other process levied or enforced (and not discharged within 7 days) upon the whole or substantially all of its assets; ceases or threatens to cease to carry on business or becomes unable to pay its debts within the meaning of the Insolvency Act 1986; or
- (iii) pursuant to Clause 16.

13.2 Upon termination of this Agreement:

(i) Publisher will remove the Advertising Material from the Platforms; and

(ii) The Client will account to Publisher within 7 days for all fees and charges payable up to and including the last day of the Campaign Period or date of termination, as applicable.

13.3 Termination of this Agreement shall be without prejudice to any rights of a party accrued before termination.

14. Disputes

14.1 This agreement 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 the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

15. Notices

15.1 Any notice given under this Agreement will be in writing and may be delivered to the other party or sent by pre-paid post or courier to, the main business of that party (or such other address as may be notified under this Agreement by that party from time to time for this purpose). Email is not acceptable, unless specifically mentioned in these Terms and Conditions.

16. Force Majeure

16.1 A party will not be liable for any failure or delay in performing its obligations under this Agreement to the extent that this failure is the result of any cause or circumstance beyond the reasonable control of that party. If by reason of force majeure a party is unable to perform all or any part of its obligations under this Agreement for a continuous period of 20 working days, the other party may terminate this Agreement immediately by written notice.

17. Assignment

17.1 This Agreement is personal to and for the sole benefit of the Client and the Client shall not assign, transfer, sub-license, sub-distribute, mortgage, charge or in any other way dispose of any of its rights, interests or obligations under this Agreement to any person or organisation. Publisher shall be entitled to assign or license the whole or any part of its rights under this Agreement to any associated company within Publisher's group and in such event all of the representations, warranties and undertakings on the part of the Client contained in this Agreement shall inure for the benefit of the relevant Publisher associated company.

18. General

18.1 Nothing in this Agreement will be deemed to create a partnership or joint venture between the parties.

18.2 No failure or delay by any party in exercising its rights under this Agreement will operate as a waiver of that right nor will any single or partial exercise by either party of any right preclude any further exercise of any other right.

18.3 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not expressly set out in the Agreement.

18.4 Each party agrees that it shall:

(i) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements"); and

(ii) maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures to ensure compliance with the Relevant Requirements and will enforce them where appropriate.

18.5 Nothing in this agreement shall exclude or restrict either party's liability for death or personal injury resulting from the negligence of that party or for any other liability which cannot be limited by law.

18.6 Any variation to the Booking Terms must be in writing and agreed by the parties. Publisher may modify these Terms and Conditions at any time and without liability by posting an updated version on its website: www.independent.co.uk/adterms