

Asian Interactive Media International Limited  
Terms & Conditions of Sale

1. Definitions

1.1 **Advertisement** means an advertisement placed in a Magazine.

**Artwork** means the copy, design, drawings, photographs, plans including all Intellectual Property Rights and other such items supplied by the Customer, whether belonging to the Customer or a third party, illustrating or describing the Customer's advertisement.

**Booking Form** means the Publisher's contract booking form which is issued to the Customer in accordance with the terms herein.

**Conditions** means these terms and conditions of sale.

**Contract** means any contract, in whatever form, between the Publisher and the Customer for the performance of the Service by the Publisher, incorporating these Conditions.

**Customer** means any person, body of persons, firm or company with whom the Company enters into a Contract for the provisions of the Service.

**Customer's Order** means a signed copy of the Booking Form.

**Intellectual Property Rights** means any patent, copyright, database right, moral right, design right, registered design, trade mark, service mark, domain name, know-how, utility model, unregistered design or, where relevant, any application for any such right or other industrial or intellectual property right subsisting in any part of the world.

**Magazines** means any of the magazine titles carried by Asian Interactive Media International Limited.

**Proof** means a mock-up bearing the Customer's advertisement including the Artwork prepared by the Publisher for the Customer's approval.

**Publisher** means Asian Interactive Media International Limited and its associated companies.

**Service** means the service the Publisher will provide to the Customer under the terms of this Contract which is purchasing advertising space in the Magazines.

1.2 These terms and conditions shall supersede all prior understandings and shall constitute the whole agreement between the Publisher and the Advertiser and shall not be modified or varied unless specifically accepted in writing by a duly authorized employee of the Publisher.

1.3 In the event of any conflict between the Conditions and the terms and conditions, if any, in any communications from the Customer, these Conditions shall prevail.

2. Prices and Acceptance of Order

2.1 A quote by the Publisher does not constitute an offer and shall not be binding and the Publisher reserves the right to withdraw or amend a quotation at any time prior to the Publisher's acceptance of the Customer's Order.

2.2 The Publisher's acceptance of the Customer's Order including telephone orders shall be effective and the Contract shall become binding only where the Publisher receives a copy of its Booking Form without variation of any of the terms and conditions thereof, but subject at all times to:

- i. final approval of the Customer's Advertisement by the Publisher, whose approval or rejection shall be intimated to the Customer as soon as is reasonably possible, and
- ii. the Customer's credit rating being approved by the Publisher.

2.3 If the Customer attempts or purports, in returning the signed copy of the Booking Form to the Publisher or otherwise, to introduce any or all of its own terms and conditions or varies or rejects any of the Publisher's terms and conditions then such introduction, variation or rejection shall constitute a counter offer by the Customer and the Publisher shall be entitled to reject such counter offer absolutely.

2.4 No cancellation or variation of an order by the Customer shall be accepted unless approved in writing by a duly authorised employee of the Publisher and any cancellation so accepted shall be subject to the provisions of Clause 4.

3. Prices and Charges

3.1 All prices shall be calculated and paid in sterling.

3.2 All prices are quoted exclusive of VAT and other relevant taxes.

3.3 The Publisher shall be entitled to make a reasonable charge for additional work carried out as a result of any Artwork supplied by or on behalf of the Customer not being clear and legible.

3.4 The Publisher shall be entitled to charge the Customer for any additional work required to correct any error or omission by the Customer.

3.5 The Customer may request a Proof before the Advertisement is published in a Magazine subject to prior written agreement with the Publisher specifying dates and charges for the Proof. A Proof is not included in the Customer's Order and additional charges will be incurred for such a Proof.

3.6 The Publisher shall be entitled to charge to make any change to a Proof approved or deemed to have been approved by the Customer if those changes are required to correct any error or omission by the Customer.

4. Cancellation charge

4.1 The Customer hereby acknowledges that the Publisher will suffer loss in the event that the Customer cancels its order after its acceptance in accordance with clause 10 and agrees to compensate the Publisher in full for any losses that the Publisher will suffer in the event of cancellation.

5. Payment

5.1 Payment of any invoice must be made in full within 48 hours from the issue of the Booking Form for the prices quoted on the Booking Form to be valid unless otherwise agreed in writing with the Publisher.

- 5.2 Time of payment shall be of the essence of the Contract.
- 5.3 No payment shall be deemed to have been received until the Publisher has received cleared funds.
- 5.4 Where any account or part thereof is overdue for payment, the Customer shall cease to be entitled to the benefit of any discount specified in that account which shall become payable forthwith and the Publisher shall be entitled to charge interest at the rate of eight per cent per annum over the Barclay's Bank plc base rate in force from time to time calculated on a daily basis on the total amount due (including the discount as aforesaid) from the due date for payment until the actual date when payment is received by the Publisher (both dates inclusive) and such interest shall be charged as well after as before any judgment.
- 5.5 If the Customer fails to make payment of any invoice (whether under the Contract or otherwise) on the due date, the Publisher may (without prejudice to any other rights or remedies available to it) suspend all further performance of the Service (or any other service being performed for the Customer) and cancel the Contract until payment of the amount due (including interest thereon) is made in full.
- 5.6 If the Customer breaches, or is deemed to have breached, the Contract for any reason then the Publisher shall, in addition to any other remedy available to it, be entitled to seek damages for any loss, whether direct or consequential, suffered by it as a result of such breach.
- 5.7 Any amount due by the Customer to the Publisher under the Contract shall be payable in full without any deduction, compensation, set-off or counterclaim.
- 5.8 All payments payable to the Publisher under the Contract shall be due immediately upon termination of this Contract notwithstanding any other provision.

#### 6. Lien

- 6.1 If in the performance of the Service, the Publisher has control or possession of any goods, equipment, Artwork, materials or other chattels of the Customer then, in addition to any other remedies available to the Publisher under these Conditions or otherwise, the Publisher shall have a lien over and a right to hold (in its own or other places) any such goods, equipment, Artwork, materials or other chattels for all sums due from the Customer on any account whatsoever, and shall be entitled to retain them until payment of the amount due (including interest thereon) and the expenses of maintaining and exercising the lien, is made to the Publisher in full, or at its option after giving 30 days notice in writing to the Customer, to dispose of them on such terms as the Publisher thinks fit without liability to the Customer.

#### 7. Customer's Obligations

- 7.1 The Artwork and other property supplied to the Publisher by or on behalf of the Customer shall, while it is in the possession of the Publisher or in transit to or from the Customer, be at the Customer's risk and the Customer should insure accordingly.
- 7.2 Any third parties (for example, models, photographs) involved in the creation of the Customer's Advertisement introduced by the Customer will be contracted at the Customer's risk and the Customer should insure accordingly.
- 7.3 The Customer warrants to the Publisher that the Artwork does not infringe the Intellectual Property Rights of any third party.

#### 8. Limitation of Liability

- 8.1 Subject to Clause 9 the following provisions set out the entire financial liability of the Publisher (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:-
- (a) Any breach of these Conditions;
  - (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract;
- 8.2 All warranties, conditions and other terms implied by statute or common law (save for conditions implied by section 12 of Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 8.3 Nothing in these Conditions excludes or limits the liability of the Publisher for death or personal injury caused by the Publisher's negligence or fraudulent misrepresentation.
- 8.4 Subject to clauses 8.2 and 8.3, the Publisher's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the contract price.
- 8.5 The Publisher shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

#### 9. Warranty

- 9.1 The Publisher warrants to provide the Service with all reasonable care and skill and in a good and professional manner.
- 9.2 The Publisher shall be under no liability:-
- i. in respect of any defect in the Advertisement or the Service arising from the Artwork or any other drawing, design or specification supplied by or on behalf of the Customer or from a Proof approved, or deemed to be approved, by the Customer.
  - ii. if the Customer's account with the Publisher is not paid up to date.

#### 10. Customer's Indemnity

- 10.1 The Customer acknowledges that the Publisher places particular reliance upon the provisions of the Contract and in addition to any other remedy available to the Publisher, the Customer irrevocably and unconditionally agrees to indemnify the Publisher, its employees, sub-contractors and agents (who shall have no duty to mitigate their loss) in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including without limitation legal and other professional advisers' fees and all consequential and economic loss (including without limitation loss of profit, future revenue, reputation or goodwill and anticipated savings) whether direct or indirect made against or incurred or suffered by any of them directly or indirectly and whether wholly or in part resulting from the matters listed below whether or not such losses or consequences of the matters listed below were foreseeable at the date of the Contract:
- i. the performance of the Service by the Publisher in accordance with the Customer's Artwork.
  - ii. any claims that any Intellectual Property Rights of a third party have been infringed through the performance of the Service (save to the extent the same have been supplied in accordance with specifications or designs of the Publisher).

- iii. the cancellation of any order by the Customer after its acceptance by the Publisher in accordance with Clause 2.2
- iv. any breach by the Customer of its obligations under the Contract.
- v. any breach by the Publisher of its obligations or any other act or omission (including without limitation, negligence) of the Publisher, its employees and agents in excess of the liability of the Publisher under the Contract

11. Termination

- 11.1 The Publisher may, as it thinks fit, (without prejudice to any other rights or remedies it may have against the Customer) immediately suspend further performance of the Contract or cancel any outstanding provision of the Service or by notice in writing to the Customer terminate the Contract without liability to the Publisher if:
- i. the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy;
  - ii. the Customer fails to remedy a breach of its obligations under the Contract which is capable of remedy, or persists in any breach of any of its obligations under the Contract after having been requested in writing by the Publisher to remedy or desist from such breach within a period of 14 days;
  - iii. the Customer (being a partnership) or the Customer's partner offers to make any arrangements with or for the benefit of the creditors of the Customer or the Customer's partner generally or there is presented in relation to the Customer or the Customer's partner a petition of bankruptcy;
  - iv. the Customer (being a limited company) is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer calls a meeting for the purpose of passing a resolution to wind up its company or such a resolution is passed or the Customer presents or has presented a petition to wind up or presents or have presented a petition to appoint an administrator or have an administrative receiver appointed to the whole or an part of the Customer's business, undertaking, property or assets;
  - v. the Customer ceases, or threatens to cease, to carry on business;
  - vi. a secured lender to the Customer takes any steps to obtain possession of the property on which it has security or otherwise to enforce its security;
  - vii. the Publisher reasonably believes that any of the events specified in Clause 10.1.i.- 10.1.vi is about to occur in relation to the Customer.
- 11.2 Notwithstanding any such termination or suspension in accordance with Clause 10.1 above the Customer shall pay the Publisher at the Contract rate for all Service provided up to and including the date of suspension or termination and the termination of the Contract or any contract for whatever reason shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any such owing or to become owing to the other.

12. General

- 12.1 Failure or delay by the Publisher in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 12.2 Any waiver by the Publisher of any breach of, or any default under any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 12.3 All rights to the Advertisement under this Contract are the property of the Publisher and cannot be used elsewhere, sold to or in any other way disclosed to others by the Customer without the prior written consent of the Publisher.
- 12.4 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.5 The Customer shall not be entitled to assign or transfer in whole or in part the benefit or burden of the Contract without the Publisher's prior written consent.
- 12.6 The rights and remedies of the Publisher set out in these conditions shall be in addition to and without prejudice to any other rights and remedies which may be available to the Publisher at common law or under statute.
- 12.7 Each party shall comply with its obligations under the Data Protection Act 1984 and 1998.
- 12.8 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.

\_\_\_\_\_  
 Signed by [Print name] \_\_\_\_\_  
 Who is a Director/ an officer of the Customer registered at Companies House

On Behalf of \_\_\_\_\_ Date \_\_\_\_\_  
 [Customer]

Signed by \_\_\_\_\_ Date \_\_\_\_\_  
 On Behalf Asian Interactive Media International Limited [Publisher]