

# MAIL MARKETING (SCOTLAND) LIMITED

## TERMS AND CONDITIONS OF BUSINESS

Your attention is drawn to the following conditions to which all transactions between Mail Marketing (Scotland) Limited and its clients shall be subject.

<p>1</p> <p>1.1</p> <p>1.2</p> <p>1.3</p> <p>2</p> <p>2.1</p> <p>2.2</p> <p>3</p> <p>4</p> <p>4.1</p> <p>4.2</p> <p>4.3</p> <p>4.4</p> <p>4.4.1</p> <p>4.4.2</p> <p>4.4.3</p> <p>4.5</p> <p>5</p> <p>5.1</p>	<p><b>Definitions</b></p> <p>“<b>Acceptance</b>” means a written acceptance by the Company of an Order.</p> <p>“<b>Company</b>” means Mail Marketing (Scotland) Limited (Registered Number SC123981) having its registered office at 42 Methil Street, Glasgow, G14 0SZ;</p> <p>“<b>Client</b>” means any person, body of persons, firm or company with whom the Company has agreed to provide the Service in accordance with these conditions;</p> <p>“<b>the Contract</b>” means any contract for the provision of the Service, constituted by an acceptance;</p> <p>“<b>Data</b>” means all information as defined in the Data Protection Act 1998;</p> <p>“<b>Data Controller</b>” means any individual or company responsible for the control of Data as defined in the Data Protection Act 1998;</p> <p>“<b>Input Material</b>” means all documents, lists, plans, drawings, graphs, photographs, films, negatives, tapes, discs, or other devices embodying visual images or data and all other materials, data and information to be provided by the Client.</p> <p>“<b>Order</b>” means an Order by the Client, verbal or written for the supply of the Service.</p> <p>“<b>Output Material</b>” means all documents, lists, plans, drawings, graphs, photographs, films, negatives, tapes, discs or other device embodying visual images or data and all other materials and information provided by the Company relating to the Service.</p> <p>“<b>Service</b>” means the service to be provided by the Company and referred to in the Order.</p> <p>Any reference in these conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended.</p> <p>The headings in these conditions are for convenience only and shall not affect their interpretation.</p> <p><b>Acceptance of Terms and Conditions</b></p> <p>All Orders placed by the Client whether verbally or in writing are subject to these terms and conditions and by the placing of an Order the Client shall be deemed to have accepted and agreed to be bound by these terms and conditions to the exclusion of any other terms of business.</p> <p>These terms and conditions may not be modified or varied unless such modification or variation is agreed to by the Company and is set out in writing and signed by a Director of the Company and the Company shall not be deemed to accept such modification or variation nor waive any of these terms and conditions by failing to object to provisions contained in any Order or communication from the Client and no forbearance or indulgence shown by the Company to the Client in respect of services supplied or in respect of the terms hereof shall constitute a waiver of these terms and conditions or any of them.</p> <p><b>Company Obligations</b></p> <p>The Company shall provide the Service to the client subject to these conditions.</p> <p><b>Client Obligations</b></p> <p>The Client shall at its own expense supply to the Company on an efficient basis all necessary Input Information or other materials and assistance relating to the Service within sufficient time to enable the Company to provide the Service in accordance with the Contract. The Client shall ensure the accuracy of all Input Material. In order to maintain accurate costings and high standard of packaging the Client will provide the Company with samples or sizes of kit contents. These must be provided with 14 days notice to allow the Company to order packaging.</p> <p>The Client shall retain at its own expense duplicate copies of all Input Material and shall insure against its accidental loss or damage. The Company shall have no liability for any such loss or damage however caused.</p> <p>Unless otherwise specified in writing by the Company the cost of storage of the Input Material is not included in the written quotation submitted to the Client and shall be in addition to any costs included in the written quotation. Such storage costs include insurance cover of goods stored by the Company. In some instances additional insurance cover can be taken out on behalf of the Client at an extra cost.</p> <p>At any time following thirty days after the promotion closing date and in the absence of agreement in writing to the contrary, the Company reserves the right at its entire discretion and at the Client’s cost to:-</p> <p>request the Client to remove the Input Material within 14 working days; or</p> <p>transfer of the same to a warehouse of the Client’s choice; or</p> <p>continue storage at additional cost at the Company’s premises and at the Client’s risk.</p> <p>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.</p> <p><b>Operation of Service</b></p> <p>The Company will use reasonable endeavours to carry out the Service by the date set out in the agreed timescale or such other date as may be</p>	<p>mutually agreed but any date or period for performance of the Service by the Company whether stated in the Contract or an agreed timetable is only approximate and shall not be an essential term of the Contract unless in terms of the Contract the Company expressly agrees in writing to guarantee particular performance dates.</p> <p>If stock is not available, delay cards will be issued. The cost of the cards and subsequent postage will be borne by:-</p> <p>5.2.1 the Company if delay is caused by the direct fault of the Company or any of its sub-contractors;</p> <p>5.2.2 the Client if the delay is caused by the fault of the Client or any of its contractors or any other factors out with the control of the Company.</p> <p>In the case of 5.2.2 above, this service will be provided at the costs specified in the Company’s tariff of Customer Service Charges provided to the Client prior to the Client entering into this Contract.</p> <p>The Company cannot undertake to examine or check any printed materials or bulk stock unless this is agreed in writing at an additional cost to the Client. All delivery notes shall be signed prior to the Output Material being checked unless agreement has been reached between the parties in writing, specifying otherwise.</p> <p>The Company reserves the right to alter the specification of the Service always provided that any material alterations shall be subject to prior approval by the Client. The Company may correct any typographical or other errors or omissions in any brochure, promotional literature, quotation or other document relating to the provision of the Service without any liability to the Client.</p> <p><b>Rights in Input Material and Output Material</b></p> <p>The property and any copyright or other intellectual property rights in:</p> <p>6.1.1 any Input Material shall belong to the Client;</p> <p>6.1.2 any Output Material shall, unless otherwise agreed in writing between the Client and the Company, belong to the Company, subject only to the right of the Client to use the Output Material for the purposes of utilising the Service.</p> <p>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 Company and all Output Material or other information provided by the Company which is so designated by the Company 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.</p> <p>The Client warrants that any Input Material and its use by the Company for the purpose of providing the Service will not infringe the copyright or other rights of any third party, and the Client shall indemnify the Company against any loss, damages, costs, expenses or other claims arising from any such infringement.</p> <p>Subject to paragraph 6.3, the Company warrants that any Output Material and its use by the Client for the purposes of utilising the Service will not infringe the copyright or other rights of any third party and the Company shall indemnify the Client against any loss, damages, costs, expenses or other claims arising directly from any such infringement.</p> <p><b>Data Protection</b></p> <p>Any Data contained in the Input Material including names and addresses of individuals or similar information obtained as a result of handling a promotion, shall remain the property of the Client. The Company will undertake the processing of such information on the express understanding that the Client is registered as a Data Controller in compliance with the Data Protection Act 1998 and the Company reserves the right to terminate the Contract where the Client is not so registered. The Company reserves the right to decline to process any Data where it considers that the Client has failed to comply with any provisions of the Data Protection Act 1998.</p> <p>The Client undertakes that all Data has been obtained, supplied and will be used in conformity with the provisions of the Data Protection Act 1998.</p> <p>The Company reserves the right to insist on written confirmation from the Client evidencing the registration of the Data under the terms of the Data Protection Act 1998.</p> <p>The Client will indemnify the Company against any claims, loss, damage, fines, penalties, expenses and legal costs incurred by the Company in respect of any breach by the Client of the Data Protection Act 1998.</p> <p><b>Terms of Payment</b></p> <p>Fees payable to the Company will be as specified in the Acceptance but the Company reserves the right on giving thirty days’ notice to amend prices and charges to those prevailing at the date of provision of Services, to amend accidental errors or omissions and to invoice the Client accordingly, and to charge such additional fees as in the Company’s sole discretion may be required as a result of the Client’s instructions or lack of instructions, the inaccuracy of the Input Material or any other cause attributable to the Client. In the event of the Company being required to work overtime, additional costs will be discussed with the Client and overtime rates agreed prior to the commencement of the overtime work.</p>
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8.2	Fees shall be paid by the Client without any set-off or other deduction within thirty days of the issue of an invoice by the Company. The Company will not consider invoice queries raised by the Client after thirty days of the issue of an invoice.		Code of Advertising Practice, the British Code of Sales Promotion Practice and the Response Handling Code of Practice.
8.3	Interest at the rate of three per cent (3%) above the base lending rate of the Royal Bank of Scotland plc from time to time or such other rate as may be intimated in writing by the Company from time to time will be payable by the Client on all sums remaining unpaid after the due date for payment thereof such interest to accrue on a daily basis. The Company reserves the right to bill the Client for any legal costs incurred in collecting overdue accounts. The Company reserves the right to withhold delivery of both Input Material and Output Material in the event of the Client failing to pay the fee by the due date.	11.2	The Client warrants that where appropriate the Client is adequately insured against any claims for product liability and fully indemnifies the Company against such claims.
8.4	VAT will be payable by the Client on all fees and charges specified in Acceptances and invoices which are exclusive of VAT unless otherwise stated therein. The amount of any tax or other governmental charge upon provision of services or supply of goods in terms of the Contract whether now imposed by any government or other authority or hereafter becoming effective shall be added to the fees and charges specified and shall be payable by the Client.	11.3	The Client fully indemnifies the Company against any claims, damage, loss, fine or penalty and any legal costs incurred by the Company which may arise directly out of the negligence of the Client, from any breach by the Client of any of its obligations under these terms and conditions or from any breach of the foregoing warranties.
8.5	Any additional work requested beyond that specified in the Contract will only be carried out on the Client's written instructions at a cost to be agreed between the parties in advance, which shall be payable by the Client in addition to the agreed Contract fee.	12	<b>Termination</b>
8.6	Any amounts due by the Client to the Company shall in any event become due in full immediately upon the commencement of any act or proceeding in respect of the solvency of the Client.	12.1	This Agreement shall subsist for the period specified in the Contract unless earlier terminated in terms hereof, or where the Contract is for on-going services, by either party giving at least three months prior written notice of termination.
8.7	The Client shall prepay postage for consumer redemptions prior to the despatch of any work or if agreed within seven days of receipt of invoice.	12.2	The Company shall be entitled without prejudice to its other rights and remedies either to terminate wholly or in part any Contract between itself and the Client or suspend provision of any further services under any Contract in any of the following events:
8.8	Any other disbursement (eg cash, cheques or postage stamps for cash-back promotions etc) made by the Company on behalf of the Client shall be paid by the Client by way of an agreed float prior to despatch of any related work.	12.2.1	if the Client fails to provide such Input Material as may be required within a reasonable period considering the agreed timescale for the Service or is otherwise in breach of its obligations under the Contract;
9	<b>Reporting</b>	12.2.2	if any debt is due and payable by the Client to the Company but is unpaid; or
9.1	Stock and redemption level reports will be produced at the frequency and cost agreed between the Company and the Client. Information content will be in the form agreed in writing between the Company and the Client.	12.2.3	if the Client fails to provide any actual credit, Bill of Exchange or other security required by the Client provided that in such event the aforesaid rights of termination or suspension shall apply only in regard to the particular Contract in respect of which the Client shall have so failed; or
9.2	Although the Company will use all reasonable endeavours to ensure that information given to the Client is accurate, the Company does not accept liability for any consequential or other loss arising from the provision of such information.	12.2.4	if the Client fails to accept any services under the Contract otherwise than in accordance with the Client's contractual rights; or
10	<b>Warranties and Liability</b>	12.2.5	if the Client becomes insolvent or apparently insolvent or, being a body corporate, has passed a resolution for voluntary winding-up (save solely for the purpose of reconstruction) or an order is made by the court for its winding-up or if a petition is presented for a receiver or administrator to be appointed over all or any of its assets or any analogous act or proceeding is taken against it under foreign law or, being an individual or partnership, has become notour bankrupt or has suspended payment or has had a receiving order in bankruptcy made against him or them or if the Company has reasonable grounds to believe that any of the above events may occur.
10.1	The Company warrants to the Client that the Service will be provided using reasonable care and skill and as far as reasonably possible in accordance with the specification in the Contract.	12.3	The Company shall be entitled to exercise its aforesaid rights of termination or suspension at any time during which the event of default giving rise thereto has not ceased or been remedied and, in the event of any such suspension, the Company shall be entitled as condition of resuming provision of services under any Contract to require prepayment of, or such security as it may require for the payment of, the fees for any further provision of services.
10.2	Where the Company supplies in connection with the provision of the Service any goods (including Output Material) supplied by a third party, the Company does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise but shall wherever possible assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Company.	13	<b>Notices</b>
10.3	The Company 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 is 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.	14	Any notice required under a Contract or these terms and conditions shall be in writing and may be delivered personally or sent by first class recorded delivery post or transmitted by facsimile transmission in each case to the registered office or business address of the party to whom the notice is addressed and any such notice shall be deemed to have been validly served or sent by post on the expiry of 72 hours from the time of posting and if delivered personally or transmitted by facsimile transmission at the time of delivery or transmission provided that any such facsimile transmission is confirmed by letter within 24 hours of transmission.
10.4	Except in respect of death or personal injury caused by the Company's negligence or as expressly provided in these conditions, the Company 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 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 Company, its servants or agents or otherwise) which arise out of or in connection with the provision of the Service or their use by the Client and the entire liability of the Company under or in connection with the Contract shall not exceed the amount of the Company's charges for provision of the Service except as expressly provided in these conditions.	14.1	<b>General</b>
10.5	The Company will endeavour to comply with all stated dates for performance of its obligations but shall not be liable in any way to the Client for any loss or damage whatsoever whether direct or indirect arising from delay or failure to perform by the agreed dates unless in terms of the Contract the Company expressly agrees in writing to guarantee particular performance dates. The Company shall not be liable to the Client by reason of any failure or delay in performing any of its obligations under the Contract where the failure or delay is due to any cause beyond the Company's reasonable control.	14.2	Each contract shall be held to incorporate these terms and conditions and shall constitute the whole agreement between the Company and the Client relative thereto and may not be waived, varied or supplemented except in writing executed between the parties.
10.6	The Company will use all reasonable endeavours to carry out any additional work as referred to at clause 7.5, however the Company shall not be liable in any way to the Client for any delay directly attributable to the additional instructions or failure to comply with the additional instructions.	14.3	The Client shall not be entitled to assign the Contract or any benefit thereunder. The Company shall be entitled to sub-contract the performance of any part of the Contract but shall remain primarily responsible therefore to the Client.
11	<b>Client Warranties and Indemnities</b>	14.4	The construction, validity and performance of the Contract shall in all respects be governed by the Law of Scotland, unless it is agreed in writing at point of acceptance of an Order that another jurisdiction will apply.
11.1	The Client warrants that all work contracted to the Company and all Input Material complies with the requirements of Scots law, unless it is agreed in writing at point of acceptance of an order that another jurisdiction will apply. The Client shall also ensure that it is not in breach of the British	14.5	Any failure on the part of the Company to insist on the strict performance of these terms and conditions of business shall not be deemed a waiver of any rights or remedies of the Company against the Client and shall furthermore not be deemed a waiver of any subsequent breach by the Client of these terms and conditions