

“WHAT’S ON” PUBLICATIONS
STANDARD TERMS AND CONDITIONS
FOR SUPPLY OF ADVERTISING SERVICES.

1. DEFINITIONS

- (a) “The Vendor” means What’s On Publications, of Two Edinburgh Road, Lauder, Berwickshire, TD2 6TW
- (b) "Contract" means any Order placed by a Customer which is accepted by the Vendor.
- (c) "Customer" means any person, firm, company or unincorporated association which orders, buys or licenses goods or Services from the Vendor.
- (d) “Services” means such advertising services which are the subject of a Contract and any component thereof.
- (e) “Invoice” means an invoice given or sent to the Customer detailing the Services and the price thereof.
- (f) “Order” any order which shall require to be in written form placed by the Customer (of which the customer accepts that these Terms and Conditions form part) for the supply of Services by the Vendor to the Customer.
- (g) “Price” means the total priced to be paid by the Customer to the Vendor for the supply of the Services irrespective of any negotiated discounts and based upon the Vendor’s current Published Rate Card from time to time.

2. ACCEPTANCE OF ORDERS

- (a) Any quotation relating to Services to be supplied by the Vendor in any mailshot or any such advertisement of such Services shall not constitute an Offer capable of acceptance by the Customer but merely an invitation to treat. Any Order shall be accepted entirely at the discretion of the Vendor and, if accepted, is accepted subject to these conditions.
- (b) These conditions override any contrary, different, additional terms or conditions as may be contained in or referred to in any Order other than the Vendor’s Standard Order Form received from the customer or any other correspondence or documents from the Customer and, except insofar as hereinafter expressly provided for, no addition, alteration or substitution of these conditions will bind the Vendor or form a part of any Contract unless the same has been expressly accepted in writing by a person duly authorised to sign on the Vendor’s behalf.
- (c) An Order shall only be deemed to have been accepted on:-
 - i) The acceptance by the Vendor of payment of clear funds for the Services.
 - ii) Despatch to the Customer of a Advice Note advising that the Contract has been recorded and will be fulfilled once the Services to which the Advice Note relates are available.
 - iii) In the case of any series of Advertisements on completion of the first issue of the publication in which the Advertising is to appear.
 - iv) Commencement by the Vendor of performance of the Services contracted for.
- (d) Each and every Order accepted by the Vendor shall constitute an individual legally binding Contract between the Vendor and the Customer.

3 DELIVERY OF SERVICES

- (a) Unless otherwise agreed with the Customer, the Vendor shall effect delivery of his Services by way of ensuring that the Advertisement ordered appears in the agreed Publication, or Publications, throughout the period of the Contract and for the number of publications agreed.
- (b) Delivery to the Customer shall be deemed to have taken place when the Advertisement appears in the agreed Publication. Where Advertisements are to appear in a series of Publications, the Customer shall not be entitled to treat the defective delivery in respect of one or more of the series as a repudiation of the whole of the Contract, nor to withhold payment in respect of any earlier or subsequent Advertisement.
- (c) Any time or date for performance provided by the Vendor to the Customer is given in good faith but is an estimate only.

4 INSPECTION AND ACCEPTANCE OF SERVICES

The customer shall be entitled if so requesting to check the advertising copy before its inclusion in the first Publication and, within five working days of having sight of same, or such shorter period as may be reasonable having regard to agreed Publication Deadline, shall be required to give notice in writing to the Vendor of any alleged errors or inaccuracies, or of any other matter, or thing, by reason whereof the Customer might claim that such copy is not in accordance with the Contract. If the Customer shall fail to give such notice, then the copy shall be conclusively presumed to be in accordance with the Contract in all respects and the Customer shall not, thereafter, be entitled to reject the Services or to claim from the Vendor in respect of any matter.

5 SPECIAL DISCOUNTS

The Vendor may at its entire discretion grant discounts to a Customer by prior arrangement. Any application for the granting of discounts should be addressed to the Vendor and will require to be agreed to by the Vendor before the acceptance of an Order by the Vendor.

6 PRICE AND PAYMENT

- (a) The price shall be the price quoted by the Vendor or, where no price has been quoted (or a previously quoted price is no longer valid), then the price shall be determined by reference to the Vendor's Published Rate Card as at the date of delivery of the Services plus VAT where applicable and/or any other taxes, duties and appropriate other charges as shall be specified in the Invoice. Unless otherwise agreed with the Customer, any quotation shall be valid only for thirty calendar days from the date of the quotation.
- (b) Any rates, prices and discounts published, howsoever, and as the same may have been issued or advertised by or on the Vendor's behalf, are subject to variation at any time without prior notice.
- (c) Any invoice shall be given or despatched by the Vendor to the Customer on the date agreed between the parties or as soon as reasonably practicable thereafter: Declaring that the Vendor reserves the right to despatch further invoices to the Customer in respect of any increases or other charges payable in terms of these conditions and in so far as the same may not have been ascertainable at the time of despatch of the original invoice. In the absence of agreement otherwise, the Vendor shall be entitled to issue the invoice at any time following acceptance of the Order, and to require prepayment of same in full or in part.
- (d) The price shall be paid in full by the Customer to the Vendor on or before the date shown on the invoice as the due date for payment unless otherwise agreed in writing. In the absence of any indication to the contrary on any invoice, the price shall be payable in full within twenty one days from the date of the invoice.
- (e) If the price is not paid in full by the due date, then interest, compounded at the end of each month, shall (at the absolute discretion of the Vendor) be payable (both before and after any decree or judgement) on the price or any part thereof unpaid from the due date for payment until paid in full, at the rate of Two Per Centum Per Annum (2%) above the Base Rate for the time being and from time to time of the Bank of Scotland, or at such other rate as the Vendor in its absolute discretion shall determine by notice in writing to the Customer. Furthermore, the Customer shall reimburse to the Vendor (on a full indemnity basis) all costs and expenses incurred by the Vendor in connection with the recovery of any due to the Vendor under the Contract.
- (f) Without prejudice to the foregoing clause, it is hereby expressly stated that prompt payment of the price is of the essence of the Contract and in default of prompt payment the Vendor may at its option either suspend all further performance under the Contract until payment is made or cancel the Contract and subsequent Contracts, so far any Services remain to be delivered or performed thereunder. All previously agreed discounts shall be forfeited and the Vendor shall be entitled to charge the full pre discount price in the event of any delay of payment of an invoice properly rendered without prejudice to any other rights of the Vendor. Any payments made by the Customer to the Vendor may be applied by the Vendor to invoices and to such services listed on invoices in such order or manner as the Vendor shall at its entire discretion think fit.
- (g) Except with the express agreement in writing of the Vendor, no deduction shall be made by a Customer from any payments for Services for, or on account of, any matter, or thing, whatsoever including, but not limited to, any setoff compensation, counterclaim, or present, or future taxes.

7. WARRANTIES & GUARANTEES AND LIMITATION OF LIABILITY

- (a) The Vendor warrants that it has the right to deliver and provide the Services agreed to and that all services provided by the Vendor will be provided with reasonable care and skill.
- (b) The Vendor's liability howsoever arising under a Contract shall exclude any liability in tort, delict, or arising out of negligence, or breach of statutory duty, or otherwise, or for any loss or damage howsoever claimed by the Customer in excess of the costs charged for the Services provided.

- (c) In particular, the Vendor gives no warranties, makes no representation, express or implied, that the advertising copy is free from error or omission. In no circumstance, without prejudice to 7(b) hereof shall the Vendor be liable under contract, tort or delict (including negligence or breach of statutory duty) or otherwise howsoever, whatever the cause thereof, for any increased costs or expenses, any loss of profit, business contacts, revenues or anticipated savings, any liability of the Customer to any third party, or any special, indirect or consequential damage of any nature whatsoever arising directly or indirectly out of the provision by the Vendor of the Services, or of any failure or defect therein, or of the performance, non-performance or delayed performance by the Vendor of the Contract.
- (d) Nothing in these conditions shall, however, operate or be construed, so as to operate or exclude or restrict any liability of the Vendor for either death or personal injury resulting from the negligence of the vendor or its servants, employees or agents, or any statutory rights of a Customer where the Contract entered into is a Consumer Transaction (as defined in the Consumer Transaction (Restrictions on Statements) Order 1976 (as amended)).

8. FORCE MAJEURE

The Vendor shall not be responsible for any delay or failure to fulfil any of its obligations under the Contract, nor be liable for any loss or damage suffered or incurred by the Customer by reason of any delay in delivery of the services or any part thereof caused directly or indirectly by any Act of God, War, Government or Parliamentary Restriction, Import or Export Regulation, Strike, Lockout, Trade Dispute, Fire, Theft, Flooding, Breakdown of Plant or Premises, failure of Water or other Supplies or any other cause whatsoever beyond the control of the Vendor.

9. INDEMNITY

The Customer shall indemnify the Vendor in respect of all loss, damage or injury occurring to any person, Firm, Company or property and against all actions, suits, claims and demands, charges or expenses in connection therewith for which the Vendor may become liable in respect of the Services in the event that such loss, damage or injury shall have been occasioned by the negligence of the Customer, or arising out of any breach of Copyright rights in the nature of Copyright or any other intellectual property rights whatsoever arising from any editorial, or artwork, or information supplied by the Customer to the Vendor. Declaring that all Copyright and other rights in the nature of Copyright, or any other intellectual property right whatsoever in the Services provided, derived other than from documents prepared by the Customer are reserved to the copyright owner and the Customer irrevocably acknowledges and agrees that the supply of Services by the Vendor shall not serve to transfer any such rights. No part of the Services supplied by the Vendor may be reproduced in any material form (including photocopying or storing in any medium by electronic means and whether or not transient or incidental to some other use of the Services) without the written permission of the Vendor, except as the same may be permitted by law, or under the terms of a licence issued by the Copyright Licensing Agency Limited of 90 Tottenham Court Road, London. Applications for the Copyright owner's written permission to reproduce any part of the Services should be addressed to the Vendor. It should be noted that the doing of any unauthorised act in relation to a Copyright work may result in both a civil claim for damages and criminal prosecution.

10. TERMINATION

In the event of the Customer committing any breach of any term or provision of the Contract, including for the avoidance of doubt, any of these conditions, or going into liquidation, having a Receiver, Administrator, Judicial Factor or other similar Officer appointed over the whole or any part of its assets, becoming bankrupt or notour bankrupt, or apparently insolvent or of granting any Trust Deed or entering into any composition or similar arrangement with its creditors, or if any circumstances arise which in the sole opinion of the Vendor, render any of the foregoing likely to occur, then the Vendor shall be entitled, without notice and without any liability whatsoever, to terminate the Contract forthwith. The Vendor shall, notwithstanding, also be entitled to cancel all Contracts with any part thereof remaining unfulfilled as between the Vendor and the Customer. Termination of the Contract shall not discharge the customer of any pre-existing liability of the Customer to the Vendor, and on such termination, the Vendor shall be entitled to recover from the Customer, such loss or damage as the Vendor has suffered by reason of such termination.

11. GENERAL

- (a) No failure of or delay by the Company to exercise any right, power, remedy or privilege shall operate as a waiver of the same.
- (b) If any provision of these conditions shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law, then such term or provision or part shall to that extent be deemed not to form part of these conditions, but the validity and enforceability of the remainder of these conditions shall not be effected.
- (c) Any notices or other communications required or permitted to be given by the Vendor to the customer, or vice versa under these conditions shall be in writing and sent in the case of notices to the Vendor, to the address given in these conditions (or such other address as may be intimated to the Customer from time to time) and in the case of notices to Customers to that Customer's last known address. Notices and other

communications shall be sent by first class mail, facsimile transmission or delivered by hand and shall be deemed to have been received in the case of first class mail, 72 hours after posting, in the case of facsimile transmission on the completion of their transmission and on delivery by hand at the time of delivery.

- (d) The amount of any sum due by the Customer to the Vendor under any Contract shall be sufficiently ascertained by a certificate and that at the hand of a principal of the Vendor and such certificate shall be final and binding on the Customer for every purpose and in the case of contracts between the Vendor and Customers to whom a services are to be provided in Scotland, the Vendor and the Customer consent to the registration of the Contract and any such certificate for preservation and execution.
- (e) The Vendor shall be entitled in its entire discretion to alter these conditions or any of them at any time or from time to time, whether by way of variation and/or substitution and/or deletion of the subsisting conditions and/or by adding new conditions and these conditions are so altered shall apply to all contracts whether current at the time or entered into hereafter, provided always that in the case of each Contract then current, one month's prior notice in writing shall be given by the Vendor to the Customer stating the amended condition of supply of services and the effective date thereof.
- (f) If an order is placed by or on behalf of a Private Limited Company, or an unincorporated body, then unless otherwise agreed in advance, it is a condition of the Vendor's accepting instructions that the Directors of the Company or the Principals of such unincorporated body accept joint and several liability along with the Company or such unincorporated body for payment of all costs and interest thereon as the case may be. The Vendor also reserves the right to request written evidence of the authority of an instructing party to give instructions on behalf of any Company, business or Firm, and to bind the Directors or Principals in such Company, Business or Firm personally before accepting such instructions. Any party giving instructions to the Vendor shall also be deemed to have accepted personal liability for the costs and interest thereon as the case may be in the event that the principal party on whose behalf such order is placed fails to make proper payment of such costs and interest as the case may be.

12. JURISDICTION AND GOVERNING LAW

These conditions and any Contract of which they form part shall be governed in all respects by the Laws of Scotland and the Vendor and the Customer both hereby irrevocably agree to submit to the non-exclusive jurisdiction of the Scottish Courts.