

Footfall Advertising Ltd Terms & Conditions

(V5 – 5 November 2014)

The following terms and conditions (“Advertising Terms and Conditions”) will apply to the acceptance of all advertisements for publication by Footfall Advertising Ltd, The return of a Booking Form to Footfall Advertising Ltd shall be construed as an acceptance of these terms and conditions.

1) Definitions

In these terms and conditions, the following definitions shall apply;

“The Company” means Footfall Advertising Ltd;

“The Customer” means the party who places with the Company the Advertisement whether such party be the advertiser of the product or service promoted thereby or making the announcement therein (“the Advertiser”) or the Advertiser’s authorised advertising agency or media buyer;

“The Advertisement” means any part of an article for the publishing of the Advertisement accepted by the Company including, among other matters, the rate for the publishing of the Advertisement, technical specifications, copy, the positioning of the Advertisement and appearance dates and into which the Advertising Terms and Conditions are deemed to be incorporated;

“The Booking Form” means the Company’s booking form filled in by the Customer to reserve advertising space and forms a contract with the Company which is subject to these Terms and Conditions;

“The Website” means the website named www.footfalladvertising.co.uk owned and operated by the Company.

2) Grant

The Company agrees to publish the Advertisement as specified in the Booking Form (subject to receipt by the Company of any deposit required) in accordance with these Advertising Terms & Conditions and the following provisions.

3) Customers warranties

- 3.1 The Customer warrants that:-
- 3.1.1 in relation to an Advertisement the Customer contracts with the Company as a principal notwithstanding that the Customer may be acting directly or indirectly for the Advertiser as an advertising agent or media buyer or in some other representative capacity;
- 3.1.2 it has the right to publish all of the contents of the Advertisement and can grant the Company such right, and that the reproduction and/or publication of the Advertisement by the Company as originally submitted or as amended pursuant to Clause 5 will not breach any contract or infringe or violate any copyright, trademark or any other personal or proprietary right of any person or render the Company liable to any proceedings whatsoever;
- 3.1.3 any information supplied in connection with the Advertisement is accurate, complete and does not contain anything which is defamatory obscene, false or misleading;
- 3.1.4 in respect of any Advertisement submitted for publication which 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 Customer or the Advertiser has obtained the authority of such living person to make use of such name, representation and/or copy;
- 3.1.5 in relation to any investment Advertisement, the Advertiser is, or its contents have been approved by, an authorised person within the meaning of the Financial Services Act 1986 (as amended or updated) or the Advertisement is otherwise permitted under that Act and the Customer has expressly notified the Company in writing of this;
- 3.1.6 each Advertisement complies with the requirements of all relevant legislation (including subordinate legislation, the rules of statutorily recognised regulatory authorities and the law of the European Union) for the time being in force or applicable in the United Kingdom or in any other territory where the Advertisement is to be shown and directed to the residents of that territory. The Customer accepts responsibility for notifying the Company of any restrictions which should be placed on the display of an Advertisement in any territories;
- 3.1.7 all advertising copy submitted to the Company is legal, decent, honest and truthful and complies with the British Code of Advertising Practice and all other relevant codes under the general supervision of the Advertising Standards Authority in respect of electronic and on-line advertising and all other relevant industry codes of practice including such other codes as may apply to advertising in such other territories where the Advertisement is to be shown and directed to residents of that territory;
- 3.1.8 no hypertext link from any Advertisement to the Advertiser’s website will render the Company liable to any proceedings whatsoever and the Company will be promptly advised of any changes which would affect the functioning of the link and all necessary steps will be taken to correct any malfunction of any such hypertext link.

4) Indemnity

The Customer agrees promptly and fully to indemnify and keep indemnified the Company and hold the Company harmless against any and all expenses, damages, liability, claims and losses of any kind (including reasonable legal fees and costs) incurred by the Company in connection with any claims actual or threatened, of any kind (including, without limitation, any claim of trademark or copyright infringement, libel, defamation, breach of confidentiality, breach of any statutory or regulatory duty, false or misleading advertising or sales practices) arising from an Advertisement and/or any material (of the Advertiser or otherwise) to which users can link through an Advertisement or as a result of any breach or non-performance of any of the representations, warranties or other terms contained in these Advertising Terms and Conditions or implied by law and the indemnity may, without limitation, be claimed as a debt or liquidated demand. The Customer warrants that it has sufficient funds and insurance to satisfy the indemnity given by it in this Clause.

5) Company's rights to amend and/or reject advertisement

- 5.1 The Company may, without derogation from the warranties contained in Clause 3, refuse or require to be amended any artwork, materials and copy for or relating to an Advertisement so as:-
- 5.1.1 to comply with the legal or moral obligations placed on the Company or the Customer or the Advertiser; or
- 5.1.2 to avoid infringing a third party's rights, the British Code of Advertising Practice and all other codes under the general supervision of the Advertising Standards Authority, such other codes as may apply to advertising in such other territories where the Advertisement is to be shown and directed to residents of that territory or, the production and quality specifications stipulated or referred to in the Insertion Order or within these Advertising Terms and Conditions.
- 5.1.3 to comply with any guidelines contained in the licences or leases of property where the adverts will be displayed;
- 5.2 The contents of any advertisement are subject to the Company's approval. The Company does not undertake to review the contents of any Advertisements and any such review of and/or approval by the Company will not be deemed to constitute an acceptance by the Company that any such advertisement is provided in accordance with these Advertising Terms and Conditions nor will it constitute a waiver of the Company's rights hereunder.
- 5.3 The Company's Website disclaimers may include a notice to a person following a link from the Advertisement that the person is leaving the Website and the Company is not responsible for the content of the Website accessed by that link.
- 5.4 The Customer acknowledges that the Company has not made any guarantees with respect to usage statistics or levels of impressions for the Advertisement except as may be set out and expressly consented to in these Advertising Terms & Conditions.
- 5.5 It is illegal for businesses and sole traders to pretend to be making a private offer and you risk prosecution under the Business Advertisement Disclosure Order 1977.

6) Company's right to cancel

- 6.1 The Company has the right at any time at its absolute discretion to decline to publish, to omit, suspend, reject or cancel any booking, Advertisement, URL link, space reservation or position commitment or remove any Advertisement from any of the Company's properties, or any page on the Website.
- 6.2 If the Company rejects or cancels any booking, Advertisement, URL link, space reservation or position commitment then the Customer will not be invoiced for the proportion of the booking cancelled (and will be refunded for such proportion if payment has already been made to the Company).
- 6.3 Subject to clause 6.2 the Customer will have no further recourse to the Company if the booking, Advertisement, URL link, space reservation or position commitment is cancelled.

7) Payment Terms

- 7.1 The Customer shall pay to the Company the rate as quoted on the Booking Form for the publishing of any Advertisement plus VAT (where applicable) on any amounts due.
- 7.2 Unless stated otherwise on the Booking Form, a 25% deposit ('the Deposit') is payable immediately on return of the Booking Form by the Customer.
- 7.3 The Company may at its absolute discretion agree to forgo a deposit. If no deposit is required then the Customer agrees to complete a Customer Credit Form ('CCF'). If the Customer fails to, or refuses to, complete a CCF then this shall be deemed a cancellation of the Advertisement booking and a cancellation fee will be payable in accordance with clause 8.
- 7.4 The Customer will be invoiced for the first month of the booking for payment at the start of the advertising run. The Customer will then be invoiced on a monthly basis for payment in advance of each month during which the Advertisement is displayed.
- 7.5 Full details of each remittance are to be supplied to the Company by the due time. Payment shall mean the receipt by the Company at its principal place of business (or elsewhere as it may direct) or at its bank of money transferred electronically or through the clearing banks' giro credit system.
- 7.6 The Customer agrees to pay to the Company in respect of each Advertisement for which payment is not made by the due time:
- 7.6.1 interest on the amount paid late at the rate of 10% above the base rate of National Westminster Bank plc accruing from day to day (including the day on which payment was due) both before and after judgement.
- 7.6.2 any such additional charges are payable within 7 days following delivery of the Company's invoice particularising it.
- 7.7 In the event of any failure by the Customer to make payment the Customer will be responsible for all expenses (including legal fees), incurred by the Company on a full indemnity basis.

8) Customer Cancellation and Cancellation Fee

- 8.1 The Customer may only cancel an Advertisement booking by sending written notice to the Company (by email or post).
- 8.2 In addition to clause 6, the Company may cancel an Advertisement booking:
- 8.2.1 if the Customer fails to pay the Deposit;
- 8.2.2 if the Customer fails or refuses to complete a CCF; or
- 8.2.3 if the Customer fails to pay any invoice by the due date.
- 8.3 'The Cancellation Fee': if the Advertisement is cancelled for any of the reasons in clauses 8.1 or 8.2 the Customer agrees to pay:
- 8.3.1 50% of the 'Remaining Balance' (the sum quoted on the Booking Form less any deposit or other monies paid) if cancelled 21 days or more before the booking commencement date stated on the Booking Form;
- 8.3.2 100% of the Remaining Balance if cancelled 20 days or less before the booking commencement date stated on the Booking Form; and
- 8.3.3 Any costs already incurred by the Company in relation to the Booking.
- 8.4 The Company may treat as a cancellation the fact that the Customer is deemed unable to pay its debts within the meaning of the Insolvency Act 1986 Section 123 or is otherwise in breach of any of these Advertising Terms and Conditions.

9) Renewal

- 9.1 Except as expressly set out in these Advertising Terms & Conditions any renewal or acceptance of any additional advertising will be at the Company's sole discretion and the rates applicable to such renewal period are subject to change by the Company from time to time in its absolute discretion.
- 9.2 Any renewal of an Advertisement will be subject to these Advertising Terms & Conditions.

10) Positioning and licence

- 10.1 The Company is hereby granted a worldwide non-exclusive, fully paid licence to reproduce and display each Advertisement (including all contents, trademarks and brand features contained therein) in accordance with the provisions of these Advertising Terms and Conditions.
- 10.2 Except as otherwise expressly provided for in these Advertising Terms & Conditions the positioning of the Advertisement is at the absolute discretion of the Company and unless otherwise stated in these Advertising Terms & Conditions the Company will not be prohibited from also carrying advertisements for any product or business competitive to the product or business of the Advertiser.
- 10.3 The Company does not warrant the date or period of display of the Advertisement or the wording and does not warrant that the Advertisement will not be displayed after any end date specified. If the Company is not able to display the Advertisement for the dates agreed with the Customer then the Company will reduce the total rate owed by the Customer (as quoted on the Booking Form) in pro-rata proportion to the number of days the Advertisement could not be displayed.
- 10.4 The Company shall be entitled and the Customer grants an express right to the Company to reproduce all or part of the Advertisement on any promotional or advertising material promoting.

11) Notices and Email

- 11.1 Any notice required to be given under these Advertising Terms & Conditions shall be in writing and shall be sent by pre-paid first-class post or recorded delivery or by commercial courier or by email.
- 11.2 Any notice or other communication shall be deemed to have been duly received:
- 11.2.1 if delivered personally, when left at the Customer's or Company's address; or
 - 11.2.2 if sent by pre-paid first-class post or recorded delivery, on the second working day after posting; or
 - 11.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
 - 11.2.4 If sent by email, the next working day.
- 11.3 Any Booking Form sent by the Customer by email to the Company shall be deemed as acceptance of these Advertising Terms & Conditions and shall be deemed to have been signed by the person or company sending the email.

12) Provision of advertisement

- 12.1 The Customer will provide all materials for the publishing of the Advertisement and in accordance with any instructions, technical requirements or other specifications of the Company from time to time, including (without limitation) the manner of transmission to the Company and the lead time prior to publication of the Advertisement and the Company will not be required to publish any advertisement that has not been received in accordance with any such instructions, requirements and specifications and the Company will not be liable for the loss or corruption of any materials provided by the Customer, which the Customer warrants that it has retained in sufficient quality and quantity for whatever purpose.
- 12.2 Where the Customer is the Advertiser's advertising agency, the Customer warrants that it is authorised by the Advertiser to place the Advertisement with the Company and the Customer will indemnify the Company against any claim made by the Advertiser against the Company arising from the publication thereof.
- 12.3 If the Company designs the advert for the Customer then all the artwork and design shall belong to the Company. The Customer may licence the artwork and design from the Company at the licence fee quoted by the Company from time to time.

13) Re-printing of Advertisements

- 13.1 If the Customer requires their Advertisement to be re-printed then the cost of re-printing the Advertisement and fitting the Advertisement will be charged to the Customer in addition to the rate on the Booking Form.

14) Limitation of liability

- 14.1 If the Company fails to publish the Advertisement or deliver the number of impressions as provided for (or in the event of any other failure, technical or otherwise, of such Advertisement to appear), the Company's liability will be limited (at the option of the Company) to either:-
- 14.1.1 publishing the Advertisement (or a replacement Advertisement if provided by the Customer) as soon as is reasonably practicable in the period following the period during which the Advertisement was scheduled to run and for such time as is necessary to generate a number of substitute impressions equal to the shortfall; or
 - 14.1.2 refund to the Customer that proportion of the amounts paid which relate to those advertisements and/or impressions which were not provided, or if the relevant amounts were not paid by the Buyer, agree that such amounts will not be due or payable.
- 14.2 In no event will the Company be responsible for any indirect, incidental, consequential, special or economic loss of any kind including without limitation loss of profits, business, contracts, revenues, goodwill, production or anticipated savings arising out of or in connection with the publishing of the Advertisement, any failure to publish the Advertisement in a timely manner or at all in accordance with these Terms & Conditions or any other breach by the Company or these Advertising Terms and Conditions.

15) Entire agreement

These Advertising Terms and Conditions set out the entire agreement and understanding between the parties and supersede all previous agreements, arrangements, understandings and commitments and the Customer confirms that it is not placing the advertisement or accepting these Advertising Terms and Conditions or any of the arrangements contemplated hereby in reliance upon any representation or warranty not expressly set out herein (save that no liability for fraudulent misrepresentation is excluded by this provision).

16) No Assignment

The Customer may not resell, assign, transfer, encumber or otherwise dispose of or subcontract any of its rights or obligations hereunder and any attempt to do so will entitle the Company to terminate this contract and any arrangements contemplated hereby immediately without liability on the part of the Company.

17) Confidentiality

In addition to the terms of any prior confidentiality or non-disclosure agreement entered into between the parties (which shall continue in force) the parties agree to keep these Advertising Terms and Conditions and any information (written, oral or in any other form) which is of a confidential nature concerning the business and affairs of the other party obtained hereunder strictly confidential and will not make any public statement regarding such terms and information except with the prior written consent of the other such consent not to be

unreasonably withheld or delayed. This obligation shall not apply to any information which is in the public domain otherwise than as a result of breach of this clause, which is required to be disclosed by law or any regulatory or governmental body or which is provided to either party free of any obligations of confidence.

18) No Partnership

Nothing herein shall or shall be deemed to create any partnership or joint venture between the parties hereto.

19) Waivers

No failure or delay by the Company in exercising any right, power or privilege contained in these Advertising Terms and Conditions shall operate as a waiver thereof nor shall any single or partial exercise by the Company of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

20) Severability

If any one or more of the provisions contained in these Advertising Terms and Conditions shall be deemed by any Court or other competent authority to be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

21) Further Assistance

The Customer agrees to execute and deliver to the Company as appropriate all such other documents, assurances and acts as may be reasonably necessary to fulfil the provisions of these Advertising Terms and Conditions or to carry into effect the intentions of the parties as expressed herein.

22) Force Majeure

Neither the Customer or the Company shall be in breach of these Advertising Terms and Conditions or under any liability for any delay, loss, or damage caused wholly or in part by any act of God, governmental restriction, fire, flood, power failure, condition or control breakdown, malfunction in any telecommunication system computer service, link failures, power difficulties, telephone outages, network overload, default or failure of a third party, or by any other act, matter, or thing beyond its reasonable control.

23) Proper law and jurisdiction

These Advertising Terms and Conditions and the Insertion Order are governed by and shall be construed in accordance with English law and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the English Courts.