

Footfall Advertising Ltd Terms & Conditions

GOODS AND SERVICES

(V3 – 10 Nov 2014)

The following terms and conditions (“Good and Services Terms and Conditions”) will apply to the acceptance of all goods and services to be provided 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;

“A Booking” means the order confirmed by the Customer on the Booking Form.

“The Booking Form” means the Company’s booking form filled in by the Customer to confirm an order for Goods and Services;

“The Company” means Footfall Advertising Ltd;

“The Customer” means the party who places an order for Goods and Services with the Company;

“The Goods and Services” means any goods or services provided by the Company to the Customer including, without limitation, printing, website design, artwork design online services and social media, marketing consultancy, trademark applications, space hire and branding.

“The Goods” means any goods sold as part of the Goods and Services.

“Input Material” means any data, designs or other information provided to the Company by the Customer or their agent relating to the Goods and Services;

“Output Material” means any data, designs or other information provided by the Company or their agent to the Customer relating to the Goods and Services

2) Return of signed Booking Form

2.1 The return of a signed Booking Form to the Company shall be construed as the Customer confirming their order to the Company.

2.2 The return of a signed Booking Form to the Company shall be construed as acceptance by the Customer of these terms and conditions.

3) Supply and Payment for the Goods and Services

3.1 The Company shall provide the Goods and Services to the Customer subject to these Terms. Any changes or additions to these Terms must be agreed in writing by the Company.

3.2 The Company may at any time without notifying the Customer make any changes to the Goods and Services which are necessary to comply with any regulatory or other statutory

requirements, or which do not materially affect the nature or quality of the Goods and Services.

- 3.3 The Customer will pay to the Company the full sums payable for the Goods and Services, as confirmed on the Booking Form, by the date stated on the Booking Form.
- 3.4 If a deposit is required by the Company ('the Deposit') the Customer will pay to the Company the Deposit as confirmed on the Booking Form, by the date stated on the Booking Form.
- 3.5 If the Booking Form states that the sums are payable pro-forma then the Company is under no obligation to either confirm the booking or provide the Goods and Services until full payment is received.
- 3.6 Payment shall mean the receipt by the Company of cleared monies at its bank.
- 3.7 The Customer agrees to pay to the Company in respect of each booking for which payment is not made by the due time on the Booking Form:
 - 3.7.1 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.
 - 3.7.2 any such additional charges are payable within 7 days following delivery of the Company's invoice particularising it.
- 3.8 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.

4) Cancellation by the Company

- 4.1 The Company has the right at any time at its absolute discretion to decline, reject or cancel any Booking partly or in its entirety.
- 4.2 If the Company rejects or cancels any Booking 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).
- 4.3 Subject to clause 4.2 the Customer will have no further recourse to the Company if the Booking is cancelled.

5) Customer Cancellation and Cancellation Fee

- 5.1 The Customer may only cancel a Booking by sending written notice to the Company (by email or post).
- 5.2 In addition to clause 4, the Company may cancel a Booking:
 - 5.2.1 if the Customer fails to pay the Deposit;_or
 - 5.2.2 if the Customer fails to pay any invoice by the due date (this will include any pro-forma payments).
- 5.3 **'The Cancellation Fee': if the Booking is cancelled for any of the reasons in clauses 5.1 or 5.2 the Customer agrees to pay:**

- 5.3.1 50% of the 'Remaining Balance' (the sum quoted on the Booking Form less any deposit or other monies paid) if cancelled prior to the Goods and Services being provided by the Company;
 - 5.3.2 100% of the Remaining Balance if cancelled after the Goods and Services have been provided by the Company;
 - 5.3.3 Any costs already incurred by the Company in relation to the Booking.
- 5.4 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 Goods and Services Terms and Conditions.

6) Input Material

- 6.1 The Customer shall ensure the accuracy of all Input Material.
- 6.2 The Company shall have no liability for any loss or damage of the Input Material, howsoever caused.
- 6.3 The Company may correct any typographical or other errors or omissions in any Input Material provided to the Company without any liability to the Customer.
- 6.4 The property and any copyright or other intellectual property rights in any Input Material shall belong to the Customer subject only to the right of the Company to use the Input Material for the purposes of providing the Goods and Services.
- 6.5 The Customer warrants that any Input Material and its use by the Company for the purpose of providing the Goods and Services will not infringe the copyright or other rights of any third party, and the Customer shall indemnify the Company against any loss, damages, costs, expenses or other claims arising from any such infringement.
- 6.6 The Company reserves the right to refuse to publish, distribute or forward and to remove any or Input Material where it appears illegal, immoral, obscene or offensive or where necessary for the Company to comply with any statutory or regulatory requirement.

7) Output Material

- 7.1 The property and any copyright or other intellectual property rights in any Output Material shall belong to the Company until the Customer has fully paid all sums due to the Company for the Goods and Services.

8) Proofing

- 8.1 If the Company provides any Output Material to the Customer to be proofed before going to print or publication and the Customer confirms they are happy with the Output Material then the Customer can raise no complaints or issues about the Output Material after printing or publishing.
- 8.2 Once the Customer has proofed the Output Material then the Company shall not be liable to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from the Output Material being printed or published.

9) Defective Goods and returns

- 9.1 In the unlikely event that the Goods are faulty or do not comply with the Booking or do not conform with these Goods and Services Terms and Conditions, the Customer must let the Company know as soon as possible after delivery. The Customer must then return the Goods to the Company (at the Company's cost).
- 9.2 Once the Company has checked that the Goods are faulty, the Company will:
- 9.2.1 provide the Customer with a full or partial refund; or
 - 9.2.2 replace the Goods; or
 - 9.2.3 repair the Goods.
- 9.3 These Goods and Services Terms and Conditions will apply to any repaired or replacement Goods provided to the Customer.
- 9.4 If the Customer is unhappy with the Goods for any other reason, the Customer may return them to the Company at the Customers own cost within 14 calendar days of receipt.

10) Title and risk

- 10.1 The Goods will be the responsibility of the Customer from the time of delivery.
- 10.2 Ownership of the Goods will only pass to the Customer when the Company has received payment in full of all sums due for the Goods, including delivery and tax.

11) Warranties and Liability

- 11.1 The Company shall not be liable to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from their reliance on any advice given by the Company. The Customer hereby accepts that any reliance on the advice provided by the Company is entirely at their own risk and the Company shall not be liable if the advice provided is incomplete, incorrect or inaccurate.
- 11.2 This clause does not include or limit in any way our liability for:
- 11.2.1 death or personal injury caused by our negligence; or
 - 11.2.2 fraud or fraudulent misrepresentation; or
 - 11.2.3 any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 11.2.4 losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability; or
 - 11.2.5 any other matter for which it would be illegal or unlawful for us to exclude or attempt to exclude our liability.
- 11.3 Except in respect of death or personal injury caused by the Company's negligence, or as expressly provided in these Terms, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims which arise out of or in connection with the provision of the Goods and Services to the Customer.
- 11.4 The entire liability of the Company (if any) shall not exceed the amount any sums paid by the Customer to the Company or any sums paid by the Customer to the Company for the provision of the Goods and Services, except as expressly provided in these Terms.
- 11.5 The Company shall have no liability to any Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions

supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, in the wrong form, or any other fault of the Customer.

12) Indemnity

- 12.1 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 any Booking or as a result of any breach by the Customer or non-performance of any of the representations, warranties or other terms contained in these Goods and Services Terms and Conditions or implied by law and the indemnity may, without limitation, be claimed as a debt or liquidated demand.
- 12.2 The Customer warrants that it has sufficient funds and insurance to satisfy the indemnity given by it in this Clause.

13) Notices and Email

- 13.1 Any notice required to be given under these Goods and Services Terms & Conditions shall be in writing and shall be sent by recorded delivery or by commercial courier or by email.
- 13.2 Any notice or other communication shall be deemed to have been duly received:
- 13.2.1 if sent by recorded delivery, on the second working day after posting; or
 - 13.2.2 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
 - 13.2.3 If sent by email, the next working day.
- 13.3 Any Booking Form sent by the Customer by email to the Company shall be deemed as acceptance of these Goods and Services Terms & Conditions and shall be deemed to have been signed by the person or company sending the email.

14) Space Hire

- 14.1 For any Booking involving using space at the Company's venues for promotional purposes, including without limitation leafleting, canvassing, setting up a promotional stand or stall ('Space Hire) the Customer agrees to sign a Service Level Agreement ('SLA').
- 14.2 Any 'SLA' signed by the Customer shall be binding as though they formed part of these Term & Conditions and these Term & Conditions shall apply.
- 14.3 If there is any conflict between the SLA and these Term & Conditions then these Term & Conditions shall prevail.
- 14.4 The Customer agrees to have suitable public liability insurance in place for any Space Hire booking and to adhere to all applicable Health and Safety standards.
- 14.5 The Customer acknowledges that any equipment left on site will be entirely at the Customer's own risk.

15) Entire agreement

These Goods and Services 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 Goods and Services 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 Goods and Services 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 Goods and Services 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 Goods and Services 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 Goods and Services Terms and Conditions or to carry into effect the intentions of the parties as expressed herein.

22) Force Majeure

The Company shall not be liable to the Customer by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods and Services, or for loss or damage caused if the delay, failure to perform loss or damage was 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 Goods and Services 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.