

Terms & Conditions



T.H.E Data Associates
OPTIMISED MARKETING SOLUTIONS

1. Terms

1.1. The headings to each clause in these Terms and Conditions are for reference only and shall not affect the interpretation or construction thereof.

1.2. The Client`s specific attention is drawn to clauses 8 and 11 below

2. General

Insofar as the context admits these Terms and Conditions are deemed to be incorporated in the agreement and together with the Sales Order constitutes the entire agreement between the parties relating to its subject matter. No representation, addition, deletion or modification of these terms shall be binding upon the parties unless made in writing and signed by the duly authorised representative of each of the parties.

3. Definitions

“the Client” the individual firm or company which is named on the Sales Order or invoice

“the Client Material” information supplied by the Client to be included in the Survey or otherwise describing data subjects

by their characteristics, demography and/or purchasing history or intentions

“the Company” The Data Associates Limited company registration number 10473561”

“the Company’s Questions” the Company`s own formulated questions for inclusion in the Survey

“Contract Date” the date stated on the Sales Order

“the Data” one copy of the replies to a Survey and the Company’s Questions that are maintained by the Company

and communicated between the Company and the data subjects or alternatively stored on the

Company’s computer all being supplied in accordance with the Output Details with the Company

reserving the right to provide the Client with all the Data sourced from a Survey or held by the Company

unless a maximum or capped quantity is specified on the Sales Order

“Estimated Quantity” the estimated quantity of Data to be supplied by the Company

“the Fee” the fee or fees payable by the Client to the Company for the Data and the Licence to be provided by the

Company and calculated in accordance with clause 8 below

“First Usage Data” data not sold by the source of the data specified in the Client Material or in the Output Details prior

to the signing of this Agreement and Licence

“the Licence” a Licence granted under clause 6 by the Company to the Client to use the Data which may be designated

on the Sales Order as Single Use, Multi Use, Outright Purchase and limited in time or scope or

howsoever

“Multi Use” a Licence granted under clause 6 relating to the right of the Client to use the Data

on multiple occasions for one specific direct marketing campaign for a period of up to a maximum of

ninety days from the Contract Date unless otherwise specified on the Sales Order

“Names” the name of each person who completes the Survey and also the name of each person identified on the

completed Survey as a spouse or partner of the person who completed the Survey or who otherwise

appears on the Data

“Net Names Agreement” is defined in clause 9 (d) below

“Outputs and Output Dates” are defined in clause 7 (b) below

“Output Details” are defined in the Sales Order

“Outright Purchase” a Licence granted under clause 6 relating to use of the Data indefinitely for marketing campaigns. The

Data remains the property of the Company in accordance with Clause 5 Copyright.

“Sales Order” the Sales Order form signed by the Client

“Single Use” the Licence granted under clause 6 relating to the right of the Client to use the Data

on one occasion only for one specific direct marketing campaign for the period specified in the Sales

Order or up to a maximum of three contact attempts expiring after a period of ninety days from the

Contract Date.

“Subcontractor” the individual firm or company to whom the Company may sub-contract some or all of its duties and

obligations under the terms of this Agreement

"The Survey" a survey of data subjects compiled in response to the Company`s Questions using the Client Material

the Data being derived from which is supplied in accordance with the Output Details

4. Usage

The Client acknowledges that the Company has the right in its sole discretion to amend the wording of the Company`s Questions, Client Material and contents of the Survey at any time.

5. Proprietary and Intellectual Property Rights

(a) the property and the copyright and database rights (and all other intellectual property rights) in the Data, the Survey and the Company's Questions shall at all times remain reserved or vested in the Company and the Company reserves the right to grant licences in respect of the Data and supply the same to any other party

(b) in the event of the Client being aware of any unauthorised use of any part of the Data the Company must be notified by the Client in writing forthwith

6. Licence

(a) In consideration of the Fee the Company hereby grants to the Client the non- exclusive right to use the Data subject to these Terms and Conditions

(b) The Client shall have the right to use but not to copy alter or adapt the Data for a period of twenty weeks only unless otherwise authorised on the Sales Order. The Company reserves and shall have the right to analyse and extract information from that part of the Data which is derived from the Client Material and to formulate conclusions from such analyses and shall be entitled to use such analyses and information in its sole discretion and grant licences to third parties in respect thereof provided that nothing herein shall permit the Company to reveal to any third party that part of the Client Material that relates exclusively to the business of the Client

(c) The Client must not breach the terms or scope of the Licence. In the event the Company establishes to its reasonable satisfaction that the Client has used, authorized the use or allowed the use of the Data (intentionally or otherwise) outside the scope of the Licence the Company shall have the contractual right to claim the Fee or Fees from the Client on the same terms as this Sales Order without prejudice to its additional right to proceed for any relief to prevent or enforce a breach or breaches of the proprietary and intellectual property rights referred to in clause 5 above. If the Company exercises this right it will issue

further invoices which the Client shall pay on the same terms as this Sales Order.

7. Company Obligations

- (a) The Company will deliver the Data to the Client at the address specified and in accordance with the Sales Order or Invoice but time is never of the essence of this agreement with respect to delivery dates
- (b) The Company reserves the right to supply the Data in instalments ("Outputs") on varying dates ("Output Dates")
- (c) The Company will only be obliged to supply replacement data for invalid records proven to equal or exceed 5% of the volume of the Data supplied
- (d) In the event of any complaints or disputes concerning the Data supplied, the Company shall replace elements of Data only where the same is not in accordance with the Sales Order, subject to the following:
- i. In respect of 'First Usage' Data collected via online surveys, the Client shall return all disputed data for investigation to the Company within 14 days of the Output Date or as otherwise stated on the Sales Order.
 - ii. The Client must return all other disputed data for investigation to the Company via email at the specified address on the delivery notice within 30 days of the Output Date or as otherwise specified on the Sales Order.
 - iii. the Company has the right to provide replacement Data should a dispute be validated in accordance with its internal procedures and compliance criteria
 - iv. where a dispute concerns the conduct or content of a Survey, in the event the Client requires call recordings thereof, the Client must pay for those recordings in advance at cost plus 10% handling fee.
- (e) The Company shall use reasonable endeavours to keep confidential that part of the Data which consists of the Client Material

8. Client Obligations

- (a) The Client must accept the Data and at all times comply with the Data Protection Act 1998, the data protection principles therein, any and all codes of practise issued pursuant thereto and the Privacy & Electronic Communications (EC Directive) 2003 Regulations. This includes and is not limited to complying with all TPS and CTPS regulations and use of the data and scrubbing prior to use.

(b) The Data may only be used by the Client for its internal use and only as a source of reference for its circulation of offers of products and services by mail, telephone, sms or email (if applicable) to some or all of the individuals listed in the Data unless the Company has

otherwise given its written consent. The Data may not be used in some other manner or disclosed to any third party. The Client is referred to the terms of clause 3 above.

(c) If the Data is contained on magnetic tape or disk the Client alone may extract information there from and print the same in documentary form provided the Client retains all documents and any copies thereof and does not pass on any such information however obtained to any third party

(d) The Client must at all times comply with current British Code of Advertising Practice, the British Code of Sales Promotion Practice and the PhonePayPlus Code of Practice along with all other applicable laws and regulations

(e) The Client must not infringe any intellectual property rights including, but not limited to copyrights, database rights, trademarks and the like, or the rights of any third party or issue any defamatory, indecent, illegal or otherwise unlawful material using the Data

(f) If any third party who is in receipt of any communication sent to it by the Client requests that this should cease, the Client will forthwith notify the Company in writing and remove any such third party from any mailing list the Client or its parent, subsidiary or associated companies own or control

(g) The Client warrants that the Client Material supplied is correct and complete

(h) The Client must supply the Client Material to the Company at least twenty eight days prior to the proposed delivery date and in the event of the Client failing to do this the Company reserves the right to recover from the Client any additional costs incurred

(i) The Client must retain the Data under its control and ensure the security of the Data from access by unauthorised persons

(j) The Client shall allow the Company to include in the Data a small percentage of seed and dummy data subject details for control purposes

(k) The Client its servants and agents shall keep confidential all information concerning the business of the Company that it has obtained or received as a result of the performance of this Agreement; and

(l) The Client must comply with the provisions of clause 7 (d) above in relation to any complaints or disputes arising concerning Data supplied

(m) The Client undertakes to provide the Company with any notices it receives relating to any breach of the provisions of this clause 8 and the Client agrees to indemnify and hold the Company harmless in respect of any losses and costs (including reasonable legal costs) it might sustain as a result thereof

9. Payment

(a) The Fee is exclusive of VAT which will be charged at the prevailing rate

(b) The Fee will be calculated by reference to the quantity of Data supplied and will be charged in bands at the rate set out in the Sales Order or as a fixed fee as referred to in the Sales Order

(c) In the event that the Fee shall be a fixed fee:

i. The Company shall deliver as the Data such quantity of Data as are available as shall equal the Estimated Quantity

ii. The Company shall be entitled to offer to the Client at a pro rata rate and calculated by reference to the Estimated Quantity and the flat fee, all additional Data

iii. The Company shall offer to its customers any additional Data which the Client shall decline to accept on such terms as the Company may determine

(d) In the event that the Company agrees to supply the Data for the purpose of deduplication against other data held by the Client and on the basis that the Client shall only pay a proportion of the price reflecting the net names actually used ("Net Names Agreement") any claim for credit for the unused proportion of Data:

i. Must be made within a period not exceeding 30 days from the date of delivery unless otherwise agreed in writing by the Company; and

ii. must be supported by a written deduplication report or certificate from a recognised data processing bureau or other independent agency approved in writing by the Company

10. Interest

The Company reserves the right to charge interest on any sum not paid on the due date at the rate of two and a half percent per month or part thereof until payment is received by the Company regardless of any Judgement the Company might obtain.

11. Warranty and Limitation of Liability

(a) save as specifically set out herein the Company shall not be liable whatsoever (however arising) in relation to any loss suffered by the Client or any third party arising from the

supply of the Data

(b) the Client acknowledges:

i. That the Company has no responsibility for and gives no warranty or representation as to the performance of the Data

or the rate at which it converts into actual or eventual sales or payment activity; and

ii. Any data description including the words "first", "second" or "third" etc. usage data relates to the usage by the source

from whom the Company derived the data. It cannot denote the preclusion of any other or prior distribution of the

same or similar data by the data subject itself over which the Company has and can have no control

iii. the Company does not warrant that the Data is accurate or complete or that any information contained therein is

accurate or complete and the Client shall not be entitled to refuse to pay any part of the Fee by reason of any error or

admission which the Client may suffer as a result and any claim which the Client may have shall not exceed the Fee

iv. the employees and agents of the Company are not authorised to make oral or written representations concerning any

Sales Order

v. the Company shall not be liable for any damages or costs of whatever nature either in terms of loss of profits or

consequential or otherwise which may arise as a result of any breach of these Terms and Conditions or the Sales Order

or if the Data quantity is less than the Estimated Quantity or any failure by the Company to perform any obligation

hereunder due to causes beyond its reasonable control or any other circumstances which the Company could not

reasonably foresee and provide against

vi. the Client shall not institute proceedings for damages for breach of these Terms and Conditions or arising from the

Sales Order after the expiration of one year from the date on which the Client became aware of the same or the date

on which it ought reasonably to have become aware of the same

12. Termination

The Company may terminate this Agreement and Licence forthwith on giving written notice to the Client if:

- (a) The Client commits a serious breach of these Terms and Conditions and in the event of the breach being capable of being remedied shall have failed to remedy the breach within fourteen days after the receipt of a request in writing from the Company to do so; or
- (b) The Client fails to comply with any statutory demand or goes into liquidation or has passed a resolution for its winding up or an Administration Receiver appointed or a Petition presented to the Court for an Administrative Order or a Voluntary Arrangement; or
- (c) At any time prior to supply of the Data or the execution of the Survey the Company serves written notice to the Client of its intention to do so without incurring any liability other than liability which may not by applicable law be excluded or limited in which event no part of the Fee shall be payable by the Client.

In the event of any termination of this Agreement and Licence (irrespective of the reasons) the Client shall forthwith return the Data together (including all copies) with all other information which the Client might hold on or have received from the Company and confirm in writing that the client has done so. Termination of this Agreement and Licence for whatever reason shall not affect the accrued rights or liabilities of either party.

13. Assignment of and Sub-contracting

- (a) This Agreement nor the Licence is assignable or otherwise transferable by the Client
- (b) The Company shall have the right to sub-contract any of its duties and obligations under this Agreement and Licence
- (c) In the event that The Company has sub-contracted any of its duties and obligations such as data supply or Survey services, the Client shall not be liable for a refund or resupply of data prior to the Company receiving the same from the Subcontractor

14. Waiver

The rights of the Company shall not be prejudiced or restricted by any indulgence or forbearance extended by the Company to the Client and no waiver by the Company in respect of any breach shall operate as a waiver in respect of any subsequent breach.

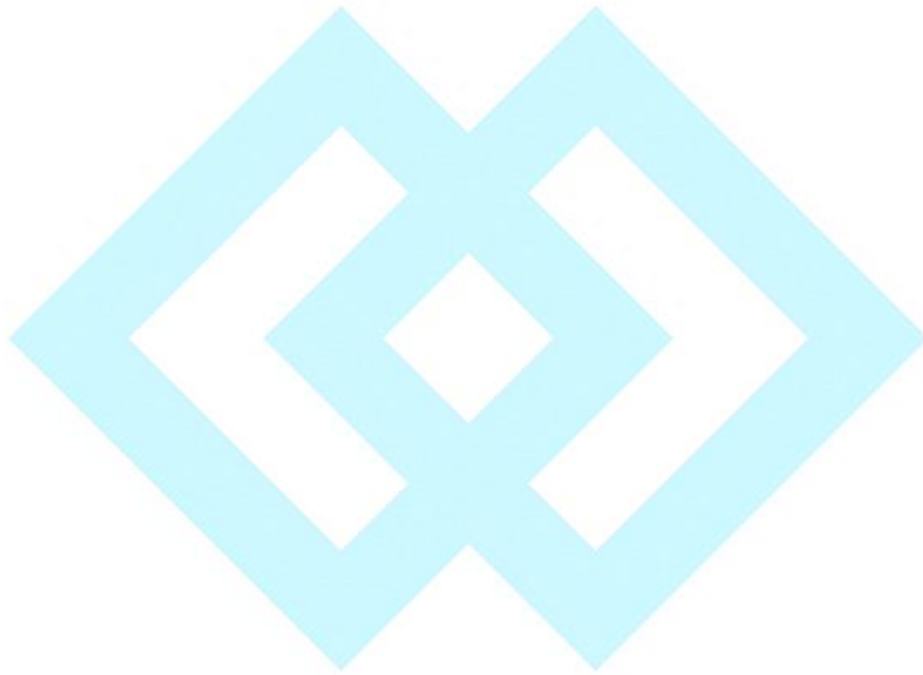
15. Notices

Any Notices given under the Agreement shall be in writing and shall be sent by registered post or recorded delivery service addressed in the case of a Notice to the Company to the Company's Registered Office and in the case of a Notice to the Client to the address of the Client or its representative or agent shown in the Sales Order form. Notices may also be

served by email or facsimile provided proof of sending is given. Any Notice that is given shall be deemed served if by post forty eight hours after posting and if by email or facsimile when despatched.

16. Jurisdiction

These Terms and Conditions shall be governed by and construed in all respects in accordance with English law and the Courts of England and Wales shall be the sole courts of jurisdiction



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