

Magnetise Media – Adcentre Terms and Conditions

INTRODUCTION

Before you join and use the Adcentre network as an End User advertiser or Agency (as defined below) you must agree to these terms and conditions by the method set out below.

LICENCE ACCEPTANCE PROCEDURE

By ticking the acceptance box marked “I agree to the t&c”, you indicate acceptance of these terms and conditions and the limited warranty and limitation of liability set out in these terms and conditions. Such acceptance is either on your own behalf or on behalf of any corporate entity which employs you or which you represent (‘corporate user’). In these terms and conditions, ‘publisher’ or ‘you’ includes both the reader and any corporate user.

LICENCE REJECTION PROCEDURE

You should therefore read these terms and conditions carefully before ticking the acceptance box marked “I agree to the t&c”. If you do not accept these terms and conditions, you should not tick the acceptance box and accordingly you will not have entered into a relationship with us whereby you would have joined the Adcentre network and been entitled to use associated services.

1. These Terms and Conditions

- 1.1 These terms and conditions apply to all services provided by us, Magnetise Media Limited (“us” or “we”) to you, the advertiser or client (“you”).
- 1.2 All Services and Client Data supplied by us are licensed and/or provided subject to these Terms and Conditions. These terms, together with any Insertion Order(s) we supply constitute your Agreement(s) with us. Any Agreement will supersede any prior agreement and will contain the entire agreement and understanding of the parties. We will not be bound by any terms and conditions you supply to us or purport to issue.

2. Definitions

- 2.1 In these terms and conditions the following terms shall have the following meanings:

“**Agency**” means any person who orders Client Data or Services on behalf of a third party End User;

“**Broker**” means any person who orders Client Data for the purposes of reselling or sub-licensing such Client Data to an End User;

“**Campaign**” means any promotional marketing or sales campaign however delivered (whether by post, phone, email, text message or other format);

“**Client Data**” means any data or results supplied by us to you including data we have agreed to supply in accordance with the terms of the Insertion Order;

“**Confidential Information**” means all confidential information (whether oral, written or in any other form) including without limit any material containing or consisting of material of a technical, operational, administrative, economic, marketing, planning, business or financial nature and relating to either party including the existence and the contents of these Terms and the Client Data but excluding any information which is in the public domain or which comes into the bona fide possession of a party by other lawful means;

“**Delivery**” means delivery to you of all or any part of the Client Data however such delivery is effected (and shall include for the avoidance of doubt obtaining data by means of remote login);

“**End User**” means any person who uses Client Data for its own marketing or advertising purposes;

“**Insertion Order**” means the online order form completed by you containing details of the services and data we have agreed to provide and other information;

“**Insolvency Event**” means in relation to a party any one or more of the following events: that Party; (a) is unable to pay its debts; or (b) enters into liquidation; or (c) passes a resolution for a creditors winding up; or (d) enters into a composition in satisfaction of its debts or a scheme of arrangement with its creditors; or (e) suffers distress or execution over any part of its assets and undertaking or has any County Court or High Court judgement made against it; or (f) suffers an application for an administration order in respect of that party or it suffers the appointment of an administrator, receiver or administrative receiver over all or any part of its assets; or (g) suffers any event similar in nature or effect to those listed in (b) - (f) in any jurisdiction.

“**Services**” means the services we have agreed to provide to you in accordance with the terms of the Insertion Order;

3. Services

- 3.1 We will perform the Services and create or deliver the Client Data in accordance with the Insertion Order and these terms and conditions, subject always to payment of our fees.

- 3.2 Time shall not be of the essence in relation to the issue of any survey, questionnaires or offer (“surveys”) or the delivery of Client Data. We may vary the dates on which surveys are issued where you have specified questions for us to include in a survey we may at our sole discretion remove any such question from the survey.

- 3.3 We will use our reasonable endeavours to de-duplicate and validate the details of all consumers that respond to surveys but we will not undertake this service unless this has been specifically agreed with you.

- 3.4 Unless otherwise agreed we will supply to you all of the data we receive in response to a survey plus any other Client Data we have agreed to provide as set out in the Insertion Order. We will supply the Client Data to you in the format set out in the Insertion Order. You agree that volume of data we expect to receive as may be set out in the Insertion Order is an estimate only and we do not guarantee any level of response to a survey. You will be invoiced on the basis of the amount of data supplied to you.

- 3.5 Unless otherwise specified in the Insertion Order a standard lead will comprise the following: first name, last name, email address, address 1, postcode.

4. Your licence to use Client Data

- 4.1 Where we have delivered Client Data to you, you shall be granted a non-transferable and non-exclusive licence to the Client Data for either single, double, multi use or multi use (unlimited) as specified in the Insertion Order. Your licence to use the Client Data will be for a period specified in the Insertion Order. In the event that the Insertion Order fails to specify the type of licence granted to you then your licence shall be for one-time use of the Client Data for a period of 3 months. Unless otherwise agreed each licence to use Client Data extends to one brand of your organisation only and may not be transferred to any of your group companies.

- 4.2 Single use is defined as one telemarketing campaign or one mailing or other campaign carried out not more than 2 months from Delivery of the Client Data. Double use is defined as two telemarketing campaigns or two mailing or other campaigns carried out not more than 3 months from Delivery. Multi use is defined as no more than one telemarketing campaign or mailing or other campaign per calendar month within the period of 12 months from Delivery. Multi use (unlimited) has no defined monthly or annual limits. For the avoidance of doubt you may not use the Client Data otherwise than as licensed to you.

- 4.3 You acknowledge that all rights of any nature in the Client Data provided to you together with any other material we produce shall remain our property and that you have no rights whatsoever in the Client Data other than as licensed to you in accordance with these Terms. For the avoidance of doubt you may not (subject to the provisions of clause 10) transfer, disseminate, sublet, publish, sell, licence or dispose of any Client Data except in accordance with the licence granted under these Terms without our express written approval.

5. Campaigns and Use of Data

- 5.1 In the event that as part of the Services provided we have agreed to operate a Campaign on your behalf we agree to comply with all relevant legislation and codes of conduct in respect of marketing campaigns generally including the then current Direct Marketing Association guidelines, the British Codes of Advertising and Sales Promotion Practice and Data Protection legislation. We agree that before running a Campaign we will submit it to you for your approval.

- 5.2 You agree that in using the Client Data you will comply with all relevant legislation and codes of conduct in respect of marketing campaigns generally including the then current Direct Marketing Association guidelines, the British Codes of Advertising and Sales Promotion Practice and all relevant Data Protection legislation. You agree that before running a Campaign you will submit it to us for our approval.

6. Confidentiality

- 6.1 Each party agrees not to disclose any Confidential Information obtained under or pursuant to this Agreement save in accordance with the terms of this Agreement or as agreed in writing by the other party and to ensure that Confidential Information is disclosed only to such employees and agents as is required in order to perform its duties under this Agreement.

- 6.2 You agree not to make copies of the Client Data or part thereof without our express written consent save for such number of copies as may be strictly required for back-up or archival purposes.

7. Seeding

- 7.1 We may seed Client Data in order to detect any unauthorised use or duplication thereof. You may not remove the seeds from the Client Data. If we discover any unauthorised use or duplication by you we will invoice you the full amount of a multi use licence and you also agree to pay further liquidated damages equal to three times the amount of the relevant multi use licence. You agree and accept that these liquidated damages are a reasonable pre-estimate of the losses that we would incur as a result of your unauthorised use.

8. Price and Payment

- 8.1 You agree to pay our fees and charges as set out in the Insertion Order. All sums are exclusive of VAT. All invoices are due and payable by you within 30 days of the date of the invoice.

- 8.2 All sums due from you which are not paid on the due date (without prejudice to our rights under these terms) shall bear interest from day to day at the rate of 8% above Bank of England base rates from time to time.

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- 8.3 We may from time to time increase our rates set out in the Insertion Order by such amount as is reasonable and unless you object to such increased rates within seven days of notification in writing all Services shall from the date of notification be provided at the increased rates.
- 4 You are not entitled to withhold payment of any sum otherwise payable to us by reason of any claim, set-off or for damages. During any period in which payments from you are overdue, we may suspend work.
- 9. Liability**
- 9.1 You must examine the Client Data on Delivery and if there are any errors in the Client Data you must notify us in writing within 10 working days of Delivery, failing which you will be deemed to have accepted the Client Data. You must provide us with a unique email address and an accompanying reason when notifying us of any errors in the client data. Unless otherwise specified, only Topfox campaigns allow post collection/post delivery returns. Magnetise In-Banner or In-Video solutions do not accept post collection/post delivery refunds.
- 9.2 We will not be liable to you for any pure economic loss, nor will we be liable for any indirect, special or consequential loss you may suffer (in particular lost profit, lost opportunity, lost bargain or loss of reputation) arising out of or in connection with the provision of any goods or services by us to you.**
- 9.3 No warranty express or implied is provided by us in relation to the Client Data or the media on which the Client Data is provided including (but not limited to) warranties of accuracy, completeness, currentness, satisfactory quality or fitness for a particular purpose. Furthermore we cannot guarantee that the Client Data will generate any particular level of sales, interest or response to any Campaign. Invalid telephone, email or SMS leads will not be declared invalid because of any lack of interest or response. Magnetise will determine an invalid lead when; in the case of an email lead which is "hard-bounced" as determined by the Service where a welcome email is sent by the Service; or in the case of an SMS lead which is not delivered due to the telephone number not existing as determined by the Service where a welcome SMS message is sent by the Service; or in the case of a telephone number lead which is a telephone number which does not exist (as opposed to a number which does not answer).
- 9.4 Our liability for any loss arising under this agreement in respect of any event or series of connected events shall not exceed the charges payable by you in respect of the Services to which the loss relates.**
- 9.5 Nothing in these terms and conditions will limit or exclude our liability for death or personal injury caused by our negligence or for any losses you suffer as a result of fraud or dishonesty on our part.
- 9.6 You agree to indemnify us on a continuing basis from and against any and all costs, claims, liabilities, damages and expenses (including legal fees on a full indemnity basis) we may suffer or incur arising from any breach by you of these Terms and Conditions or any misuse or unauthorised use by you or your customers, clients, agents, employees or advisors of the Client Data.
- 10. Brokers, Agencies and Processors**
- 10.1 Unless you have obtained our prior written consent you may not pass the Client Data onto any other third party. If you wish to supply the Client Data to a third party for that third party to process the Client Data then that third party must be expressly identified in the Insertion Order or you must obtain our prior written consent to pass on the Client Data to the processor. We reserve the right to refuse our consent to any such processing.
- 10.2 If you are an Agency supplying the Client Data to an End User or processing the Client Data on behalf of an End User then you must disclose to us that you are an Agency and you must identify the End User in the Insertion Order. Providing you have complied with this clause 10.3 the Client Data may be sub-licensed to the End User or processed on behalf of that End User provided that you do not use, transfer or licence the Client Data to any other party or process the Client Data on behalf of any other party. You may deliver one copy of the Client Data to the End User for use by the End User (but not by any other party), provided that you ensure that the End User complies with these Terms and provided that the End User does not exceed the relevant single, double or multi-use licence terms set out above. **You will be liable to pay all charges which may be due to us and you will be responsible for any failure by the End User to comply with these terms and you agree to indemnify us accordingly.**
- 10.3 If you are a Broker or an Agency and you wish to licence the Client Data to an End User, then you must identify the End User in the Insertion Order. Providing you have complied with this clause 10.3 the Client Data may be sub-licensed to the End User provided that you do not use, transfer or licence the Client Data to any other party. You may deliver one copy of the Client Data to the End User for use by the End User (but not by any other party), provided that you ensure that the End User complies with these Terms and provided that the End User does not exceed the relevant single, double or multi-use licence terms set out above. **You will be liable to pay all charges which may be due to us and you will be responsible for any failure by the End User to comply with these terms and you agree to indemnify us accordingly.**
- 11. Termination**
- 11.1 Either party may terminate an Agreement pursuant to these terms immediately in the event that the other party is in material breach of these Terms and fails to remedy such breach within thirty (30) days of written notice specifying the nature of such breach or in the event that the other party suffers or incurs an Insolvency Event.
- 11.2 In the event of termination you agree that as soon as reasonably practicable following the termination or expiry of the Term, but in any event no more than 28 days following such termination or expiry to destroy all copies of the Client Data or provide all copies of the Client Data to us (including any Client data supplied to a third party processor or end user) and to certify to us in writing that such Client Data has been destroyed or returned to us.
- 11.3 No cancellation will be accepted after return of our Confirmation Order / Insertion Order. In the event that Magnetise accepts cancellation of this order, £1,000 or a third of the total order value (whichever is greater) will be payable by you.
- 12. General**
- 12.1 The benefit of this Agreement is personal to you and you will not be permitted to assign or transfer any of your rights under this Agreement without our express written consent.
- 12.2 All notices must be in writing and delivered to an office or authorised representative of the party concerned or sent by registered mail to the respective address shown overleaf.
- 12.3 The invalidity or unenforceability of any provision in these terms will not affect or impair the validity of any other provision.
- 12.4 Failure by us at any time to enforce any one or more of the terms or conditions set out above will not prevent us from taking steps to enforce at a later date any right we may have under these terms.
- 12.6 If the person named on the Insertion Order is more than one person or entity, all parties to the Agreement are liable jointly and severally for all obligations arising from the Agreement.
- 12.7 This agreement does not give rise to a partnership between the parties.
- 12.8 This agreement is governed by English law and is subject to the jurisdiction of the English Courts.
- 12.9 You may not disclose the existence of this agreement without our consent, which consent shall not be withheld unless we would be commercially prejudiced by the proposed disclosure.
- 12.10 This agreement sets out the entire agreement between the parties in relation to its subject matter. A purported alteration of this agreement is not effective unless it is in writing and is signed by both of the parties.
- 12.11 The Contracts (Rights of Third Parties) Act 1999 does not apply so as to give to a person who is not a party to this agreement a right under it.
- 12.12 If we are prevented or delayed in the performance of any of our obligations under this Agreement by force majeure, and provided we give written notice to you specifying the matters constituting force majeure and specifying the period for which it is estimated that such prevention or delay will continue then we shall be excused performance or the punctual performance of our obligations from the date of such notice for so long as the cause of prevention or delay continues. For the purpose of this Agreement 'force majeure' shall be deemed to be any cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond our reasonable control.