



GENERAL TERMS AND CONDITIONS OF CONTRACT EDINBURGH FRINGE POSTER ADVERTISING 2017

1. Definitions

- a) 'Advertiser' means any person firm or company who enters into an Order to display Advertising Copy and shall include an Advertiser's successors in title.
- b) 'Advertisement Copy' means posters and any other advertising material intended for display by the Contractor in a physical copy format.
- c) 'Charges' means those charges set out on the Order Confirmation.
- d) 'Contractor' means Out of Hand Limited who accepts an Order
- e) 'In Charge Date' means the date specified on the confirmation email.
- f) 'Month' means 28 days.
- g) 'Order' means an order which incorporates these General Terms and Conditions of Contract and the Order Confirmation given by an Advertiser to and accepted by the Contractor for the display of Advertisement Copy.
- h) 'Order Confirmation' means a document sent to the Advertiser setting out the key terms agreed between the parties including without limitation the panels booked and the fees applicable.
- i) 'Terms and Conditions' means these terms and conditions set out herein.
- j) 'Working Day' means from Monday to Friday inclusive except any Bank or Public Holiday.

2. Acceptance of Terms and Conditions

- a) These Terms and Conditions shall be deemed to be incorporated in contracts arising from Orders for the display of Advertisement Copy offered by the Advertiser and accepted by the Contractor.
- b) The Advertiser shall be ultimately responsible for the payment of accounts of the Contractor and shall be deemed to have full authority in all matters connected with the placing of Orders and the approval or amendment of Advertisement Copy.
- c) No Terms and Conditions other than these Terms and Conditions or any variation thereof under clause 10 shall be binding on the Contractor unless in writing but nothing in these Terms and Conditions shall preclude the Contractor or Advertiser from varying any of such Terms and Conditions in writing if they mutually agree to do so in writing. In the event of any conflict, these Terms and Conditions shall prevail.
- d) All Orders shall specify the full name of the Advertiser otherwise the Order shall be deemed to have been rejected by the Contractor and this rejection confirmed to the buyer. An Order will be confirmed by the Contractor in writing following receipt of the Advertiser's Order Confirmation. Unless the Contractor receives written notification from the Advertiser of any amendments within 48 Working Hours of the Order Confirmation or by no later than 30 days prior to the In Charge Date (whichever is earlier) then the Order will be deemed binding on the Advertiser in any event.
- e) Delivery of Advertisement Copy shall not be deemed to have been made until the delivery requirements specified in Clause 3 below have been met and the relevant posting instructions have been given to and received by the Contractor.
- f) Orders will be for the period specified on the Order Confirmation.

3. Production of Advertising Copy

3.1 Where Advertising Copy will be produced by the Advertiser:

- a) The Advertiser confirms it (or any agency working on its behalf) is to produce the Advertising Copy. All Advertising Copy (unless otherwise agreed in writing between the Contractor and Advertiser) shall be delivered carriage paid at the posting depot address or addresses specified by the Contractor no later than 9th June 2017 (2nd release sales excluded).
- b) In the event of the Advertising Copy for first release sales being delivered after the aforesaid 9th June 2017 the Advertiser shall be liable to pay a special posting charge to be agreed between the Advertiser and the Contractor. In any event, where the Advertiser has failed to deliver the Advertising Copy, the Advertiser shall be liable to pay for all the sites booked in full notwithstanding that the Advertising Copy may not have been displayed.
- c) The Contractor shall be supplied with adequate Advertising Copy to complete the initial display. The Advertiser shall keep and make available when requested sufficient spare Advertising Copy so as to enable the Contractor to maintain the display in a good condition. In the event of theft or damage to the posted Advertising Copy, the Advertiser agrees to supply the Contractor with additional spare Advertising Copy being 20% of the numbers of posters initially ordered.
- d) All artwork supplied for the Contractor to undertake printing of Advertising Copy must be supplied to our published artwork specifications, paying particular attention to the resolution of images. The Contractor has no liability for low resolution images supplied.
- e) A part delivery of the Advertising Copy shall be deemed at the Contractor's discretion to be no delivery for the purposes of this clause.

3.2 Where Advertising Copy will be printed by the Contractor

- a) in this clause:

"Advertising Copy Production Services" means the production services of Advertising Copy the Advertiser engages the Contractor to undertake in return for payment of the sums set out on the Order Confirmation; and

"Initial Artwork" means the initial design work submitted by the Advertiser to the Contractor for the Contractor to use to produce the Advertising Copy unless the parties agree the Contractor shall produce such Initial Artwork for the Advertiser.
- b) Where the Advertiser is to produce the Initial Artwork, the Advertiser shall submit such Initial Artwork to the Contractor by no later than 9th June 2017 (bar second release sales). The Advertiser agrees to supply the Contractor with the Initial Artwork as finished digital artwork (via PDF or email).
- c) Where the Contractor has agreed to produce the Initial Artwork, the Contractor shall by no later than 9th June 2017 provide to the Advertiser the Initial Copy for the Advertiser's approval of the design. If the Contractor does not receive the Advertiser's approval by 15th June 2017, the Advertiser shall be liable to pay in full for the Initial Artwork services and Advertising Copy Production Services.
- d) The Advertiser shall pay for such Initial Artwork services if applicable pursuant to clause 3.2 (c) and/ or Advertising Copy Production Services within 48 hours of order confirmation unless credit facilities have been applied for and agreed. In all instances there is a min 25% deposit on orders for this project. The Contractor will clearly state payment terms on order confirmations. The Advertiser acknowledges and accepts that production of Advertising Copy will not commence by the Contractor unless full payment is received as per credit agreement stated.
- e) The Advertiser acknowledges and accepts that in the event that:
1) the Advertiser fails to provide full payment by such deadline specified in clause 3.2 (d); and/ or

2) the Advertiser fails to provide Initial Artwork by such deadline specified in clause 3.2 (b) (which may result in late posting),

the Advertiser shall be charged for and agrees to pay for the advertising panels booked on the Order Confirmation from the In Charge Date and not the date of actual posting of Advertising Copy (irrespective of whether a failure to provide Initial Artwork by such deadline results in late posting or not).

f) The Advertiser agrees to provide the Contractor with a supply of additional posters being 20% of the posters ordered such additional posters to be used by the Contractor in the event of theft or damage to posted Advertising Copy. The Contractor shall not be liable for replacement of any Advertising Copy in the event of theft or damage to the Advertising Copy howsoever caused whether in transit or after posting.

g) If the Contractor produces the Initial Artwork all intellectual property rights vested in such Initial Artwork shall belong solely to the Contractor save that the Contractor may agree to sell such intellectual property rights to the Advertiser on request at a fee to be agreed.

4. Acceptance and Display of Advertisements

4.1 The Contractor at its sole option reserves the right to substitute sites for those of a similar quality where the Contractor deems it necessary for operation reasons and in respect of which the Advertiser shall have no claim against the Contractor

4.2 The Contractor shall supply the Advertiser with proof of posting if requested by the Advertiser in writing prior to the In Charge Date.

4.3 Subject to clause 3 all campaigns shall be posted by 4th August 2017. Advertising Copy will be posted no later than this date and will remain in place for the duration of the campaign.

4.4 All rates include the maintenance of the display in good condition provided the Advertiser has made available to the Contractor replacement Advertisement Copy in accordance with clause 3.

4.5 Where the Advertiser requires a change of posters in respect of which a separate charge is to be made, this is by special arrangement only, in writing between the Advertiser and the Contractor. The Contractor shall complete any change within 48 Working Hours after the stipulated date provided the Contractor has received the posters in accordance with the above. Unless otherwise agreed by the Advertiser the Contractor shall not commence such change before the stipulated date.

5. Cancellation

a) If the advertising site booked is converted to an alternative site, the Contractor shall notify the Advertiser within 28 days of 13th July 2017 that such conversion is to take place. At the end of this notice period the converted site will be deemed deleted from the Order Confirmation and will no longer form part of the Order (the remaining sites being unaffected) and will be subject to a new agreement.

b) The Advertiser may cancel an Order in writing up to 26th June 2017 (second release sales no cancellations are allowed) written notice should be issued to the Contractor. The following terms will apply if the Advertiser terminates an Order: Order cancellations should be sent to michael.wride@outofhand.co.uk or by recorded post to Michael Wride, Out of Hand Ltd, Hebron House, Sion Road, Bristol, BS3 3BD. Cancellations are not confirmed until you have a written response from the Contractor.

1) If the order is cancelled within 48 working hours of order confirmation, the Order can be cancelled with no Charges applied;

2) If the 48 hour cooling period has expired but cancellation is prior to 9th June 2017 10% cancellation fee will apply, cancellations received from 9th June 2017 to 26th June 2017 are subject to a 50% cancellation fee, cancellations from 27th June 2017 onwards are subject to 100% cancellation fee. Second release sales are subject to no refunds.

6. Accounts

a) Invoices shall be sent to the Advertiser at the address given on the Order Confirmation unless the Parties agree otherwise.

b) All orders are to be paid proforma within 48 working hours of order confirmation unless a credit account has been applied for and approved by the Contractor

Account Department. All orders on credit accounts are subject to a min 25% deposit, exact deposit amount required will be sent in writing to the Advertiser. All credit terms and deposit amounts will be agreed in writing by the contractor.

c) In respect of any amount not received by the Contractor by the due date, the Contractor shall inform the Advertiser that the Contractor has the right to levy a surcharge on the outstanding amount, such surcharges being levied monthly until the outstanding amount is paid with the Advertiser ultimately liable for payment.

d) The Contractor shall have the right to cancel any Order in which payment is overdue, this includes deposit amounts.

e) In the event of failure to comply with any of the provisions of this Clause the Contractor reserves the right by notice in writing to require any future accounts to be dealt with in accordance with Clause 6 g) below.

f) Where so stipulated by the Contractor at the time of accepting an Order accounts shall be paid not later than the date of payment issued in writing by the Contractor. In default of payment the Contractor shall be entitled without prejudice to its other remedies for breach of contract to refuse to display the Advertisement Copy provided that due notice has been given to the Advertiser.

g) In the event of any part of an account rendered by the Contractor being disputed by the Advertiser payment in respect of that part only may be withheld pending settlement of the dispute. The remainder of the account shall be paid in accordance with Clause 6 c) to e) inclusive above. Failure to make part payment in such cases will at the Contractor's discretion invoke clause 6 c) and/or d).

7. Warranties, Liability and Indemnity

a) The Contractor accepts full responsibility for compliance with statutory and other legal requirements so far as concerns the use and maintenance of any site for the display of Advertisement Copy to which a contract relates assuming that the Advertiser has complied fully with the warranties and undertakings listed in clause 7 (b) below.

b) The Advertiser warrants and undertakes that:

1) All its Advertisement Copy will comply with all statutory and other legal requirements and provisions of the British Code of Advertising Practice and the requirements of the Advertising Standards Committee current from time to time;

2) It will be responsible for obtaining and paying for all necessary licences and consents for the posting of any advertising or copyright material contained in its Advertisement Copy or the appearance of any person in its Advertisement Copy;

3) No Advertisement Copy will breach the copyright or other rights or be defamatory of any third party and the Advertiser shall obtain from the parties referred to in the Advertising Copy any necessary consents; and

4) It will keep the Contractor indemnified against all actions, proceedings, costs, damages, expenses, penalties, claims, demands and liabilities arising from any breach of the above warranties or in any manner whatsoever in consequence of the use of any Advertisement Copy or matter supplied by or displayed for the Advertiser.

c) The Contractor, whose decision shall be final, shall have the right to see details of Advertisement Copy prior to commitment of display and of refusing to display or continuing to display any advertisement copy for any reason including Advertisement Copy:

1) Which does not comply in all respects with the Advertiser's warranties and undertakings detailed above;

2) Which the Contractor is required to remove from any of its advertising sites upon the direction or request of any relevant authority.

d) The due performance of any Order is subject to suspension variation or cancellation by the Contractor owing to Acts of God, strikes, lock-outs, inclement weather, legal restrictions, or the loss of any sites which were included in the Order. In the event of suspension variation or cancellation for any of the foregoing reasons or for any other reason beyond the Contractor's control the Contractor shall be entitled to be paid by the Advertiser the full rate for the sites in question for the full contract period together with any other monies due and owing by the Advertiser to the Contractor. The Contractor shall not be liable for any damages, costs, expenses to the Advertiser as a result of such suspension, variation or cancellation.

e) The Contractor shall not be liable for loss of, or damage to, any Advertising Copy supplied to the Contractor whether in transit or after posting.

f) If the Contractor shall be liable for:

1) the non-display or incorrect display of any Advertisement Copy being due to the Contractor's negligence or direct actions; or

2) damage to the Advertising Copy during the posting process being due to the Contractor's negligence or direct actions, or

h) Any posters or other advertising materials in the Contractor's possession which are surplus to requirements or which have been removed from display will be retained for not more than 14 days after the end of the display and may then be destroyed unless the Advertiser has given notice in writing by 4th August 2017 stating that they are to be held for collection.

8. Credit Claims for Damaged, Incorrect or Non-Display

a) Without prejudice to clause 8 (b), the Contractor shall not be liable for credit:

1) if the Advertisement Copy or Initial Artwork has not been delivered in accordance with the conditions outlined in clause 4.

2) in respect of any damage to any Advertisement Copy caused by the Contractor on posting or the incorrect or non-display of any Advertisement Copy, if the defect is remedied within 3 Working Days after receipt of notification and the Advertiser has provided the Contractor with sufficient replacement posters to remedy the defects.

b) All claims for credits should be submitted to the Contractor's Accounts department in writing within 30 days of the date of the invoice with sufficient information to enable the Contractor's Accounts department to consider the claim. The Contractor shall not be required to consider any claim submitted after the due date. The Contractor will only consider a credit claim if it has been notified of a fault in accordance with clause 8 d).

c) If applicable, credits will be agreed for individual panels on a one for one basis for each full day's loss of display and will be reimbursed by the Contractor to the Advertiser within one Month of agreement.

d) The Contractor shall not be liable to give credit in respect of faulty displays if the defect is remedied within 3 Working Days after receipt of notification in accordance with clause 8 b).

9. Bankruptcy etc.

If the Advertiser shall become bankrupt or commit an act of bankruptcy or make any assignment for the benefit of his creditors or being a company shall become insolvent or commit any act of insolvency or if any Petition for the winding up or administration of the company is presented or if any other step is taken for the purposes of the appointment of an administrator or an administrative receiver of the company or if any steps are taken or negotiations commenced by the company or by any of its creditors with a view to proposing any kind of composition, compromise or arrangement involving the company and its creditors or if there shall be any breach by the Advertiser of any other term or condition of this contract then it shall be lawful for the Contractor by notice in writing to the Advertiser to terminate the contract and/ or Order forthwith without prejudice to any right of action or remedy of the Contractor then subsisting.

10. Changes of rates and conditions

a) The Contractor reserves the right to change its advertising rates or any material change in any of these Terms and Conditions without notice. The Advertiser shall, by serving written notice on the Contractor within one Month of the date of the Contractor's notice of such change be entitled to cancel any Order to which the changed rates or terms and conditions would otherwise apply. The notice of a change in rate, so far as it concerns an Order covering a number of individually rated sites, shall contain details of the change in respect of each and every site covered by the Order.

b) the Contractor's representative dealing with an Advertiser's order shall have no authority to alter any of these Terms and Conditions.

11. Notices

Any notice to be given under these Terms and Conditions shall be in writing unless the parties mutually agree otherwise and shall be deemed to be effectively served if sent by first class registered post to the Advertiser and to the Contractor at the address stated on the Order Confirmation.

12. Anti-Corruption

The Advertiser shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Foreign Corrupt Practices Act of 1977 and Bribery Act 2010 ("Relevant Requirements"). At any time when requested by the Contractor, a director of the Advertiser (or the Advertiser if the Advertiser is not a company) shall certify in writing that the Advertiser is and has at all times been in compliance with all Relevant Requirements. The Contractor may cancel an Order or terminate an agreement with the Advertiser immediately by giving written notice to the Advertiser if the Advertiser is, or the Contractor reasonably suspects that the Advertiser is, in breach of this clause.

13. Jurisdiction

These Terms and Conditions shall be governed by English and Scottish Law and the parties submit to the exclusive jurisdiction of the Courts of England and Scotland.

(Advertisers booking into Out of Hand Scotland Ltd for this project are subject to the same terms and conditions)