

# WHOLESALE



Food & Drink  
Wholesale UK

# NEWS

THE VOICE OF UK WHOLESALE

## TERMS AND CONDITIONS

### 1. Interpretation

#### 1.1 Definitions:

**Bright Media:** The Bright Media Agency Limited incorporated and registered in England with company number 09185239 whose registered office is at The Stables, Dovecote Court, Potters Marston, Leicestershire LE9 3JR.

**Client:** the person, firm or company that places an Order for Services with Bright Media.

**Customer Materials:** any and all materials, documents, records, research, photography, logos, designs, or other property (including all Intellectual Property rights therein) belonging to the Client, which are provided to Bright Media by or on behalf of the Client.

**Contract:** the contract between the Client and Bright Media for the supply of the Services in accordance with the Order and these terms and conditions.

**Deliverables:** all copy, layouts, artwork, storyboards, presentations, drawings, documents, charts, graphics, photographs, films and/or other materials created or produced by or on behalf of Bright Media for the Client in the course of providing the Services, on any media.

**Fees:** the fees for the Services as agreed in the Order.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Client's order for the Services as set out in the Client's written acceptance of Bright Media's quotation or the Client's purchase order form.

**Services:** the advertising services to be provided by Bright Media to the Client as set out in the Order.

**Third-Party Fees:** fees payable by Bright

Media to third parties relating to the provision of the Services which are not included in the Fees.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994.

1.2 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.3 A reference to **writing** or **written** includes fax and email.

#### 2. Advertising Services

2.1 Bright Media shall supply the Services to the Client in accordance with the Contract.

2.2 In supplying the Services, Bright Media shall:  
(a) perform the Services with reasonable care and skill;  
(b) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of satisfactory quality and are fit for purpose;  
(c) take reasonable care of all Customer Materials in its possession and make them available for collection by the Client on reasonable notice and request.

2.3 The Client accepts that Bright Media will not be liable if it is not able to perform the Services or publish any advert as part of the Services in the exact position, edition or time agreed in the Order. For the avoidance of doubt, time for performance of the Services shall not be of the essence.

#### 3. The Contract and duration of the Contract

3.1 An order for Services placed by the Client constitutes an offer to purchase the Services in accordance with these terms and conditions. The Client's order shall only be deemed to be accepted when Bright Media issues written acceptance of the Order or Bright Media performs the Services at which point the Contract shall come into existence.

3.2 For the avoidance of doubt, a quotation given by Bright Media shall not constitute an offer to supply Services.

3.3 The Contract shall continue, unless terminated earlier in accordance with these terms, until the Services have been completed.

#### 4. Amendments to Services

4.1 The Client may request, and Bright Media may recommend, a change to the Services (a Change) in writing at any time before publication of an advert or before the

Services have been completed. Bright Media will inform the Client of any effect on the Fees as a result of the Change. If the Change is accepted by both parties, full details of the Change shall be agreed in writing and signed by both parties.

#### 5. Client Obligations

5.1 The Client shall co-operate with Bright Media and shall provide to Bright Media, at Bright Media's request, such information concerning the Client and the Client's requirements in respect of the Services as is reasonably necessary to enable Bright Media to perform the Services.

5.2 It is the Client's sole responsibility to ensure that the details of the Order and all information provided to Bright Media are accurate and complete in all material respects.

5.3 The Client shall ensure that all Customer Materials requested or required by Bright Media for the provision of the Services are provided within any deadlines communicated by Bright Media.

5.4 If the Client is acting on behalf of a third party, the Client warrants that it has the authority and requisite power to enter into this agreement on behalf of that third party.

5.5 If Bright Media's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, Bright Media shall:

(a) not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay;

(b) be entitled to publish an advert previously published by Bright Media on behalf of the Client in the event that the Client fails to comply with clause 5.3;

(c) be entitled to payment of the Fees despite any such prevention or delay; and  
(d) be entitled to recover any additional costs, charges or losses Bright Media sustains or incurs that arise directly or indirectly from such prevention or delay.

#### 6. Service standards

6.1 If at any time, in Bright Media's reasonable opinion, the Customer Materials provided for the purposes of the Services do not comply with the requirements of this

agreement or are not of a suitably high standard, Bright Media may notify the Client and the Client shall resubmit the Customer Materials. If the revised Customer Materials, in the reasonable opinion of Bright Media, still do not comply with the requirements of this agreement and/or are otherwise not of a suitably high standard, Bright Media shall notify the Client that either:

- (a) Bright Media terminates the Contract, in which case Bright Media shall be entitled to charge any Fees and Third-Party Fees incurred in respect of the Services or Deliverables supplied prior to the date of termination; or
- (b) Bright Media will publish an advert previously published by Bright Media on behalf of the Client and Bright Media will be entitled to charge the Fees and Third-Party Fees agreed in the Order.

#### 7. Fees

7.1 In consideration for the provision of the Services, the Client shall pay the Fees to Bright Media. For the avoidance of doubt any Fees agreed for the Services shall not determine or influence the fees chargeable by Bright Media for other or future services.

7.2 All amounts payable by the Client exclude amounts in respect of value added tax (VAT), which the Client shall additionally be liable to pay to Bright Media at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

7.3 The Client shall reimburse Bright Media for all Third-Party Fees that have been incurred by Bright Media and approved by the Client in advance.

7.4 Bright Media shall submit invoices for the Fees plus VAT if applicable and Third-Party Fees to the Client when the relevant issue of the magazine goes to press.

7.5 The Client shall pay each invoice due and submitted to it by Bright Media within 30 days of receipt, unless longer terms are agreed in writing.

7.6 If the Client fails to make any payment due to Bright Media under the Contract by the due date for payment, then:

- (a) the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will



- accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;
- (b) Bright Media shall be entitled to withdraw any discount on the Fees previously offered by Bright Media; and
- (c) Bright Media may suspend all Services until payment has been made in full.
- 7.7 All amounts due under the Contract from the Client to Bright Media shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8. Compliance of Customer Materials with the law**
- 8.1 The Client warrants that all Customer Materials shall in all material respects as delivered by the Client and in their use within the Services, shall:
- (a) comply with all applicable laws and any other applicable laws, regulations, regulatory policies, guidelines or codes in each case from time to time in force, including all such guidelines and codes issued by statutory, regulatory and industry bodies;
- (b) not infringe the Intellectual Property Rights or proprietary rights of any third party; and
- (c) not be defamatory, libellous, obscene or otherwise offensive.
- 8.2 The Client shall indemnify Bright Media against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Bright Media (Losses) arising out of or in connection with any third-party claims or any action, adjudication or decision taken against Bright Media by any regulatory body, in each case directly or indirectly arising (in whole or in part) out of any breach by the Client of clause 8.1, or any other act or omission of the Client.
- 8.3 If either Bright Media or the Client become aware that there is risk that part or all of the Customer Materials are not in compliance with clause 8.1, each shall promptly notify the other, and, without prejudice to any other right or remedy of Bright Media, Bright Media shall be entitled to make any modifications which may be necessary to remedy that defect in the Customer Materials. Any modifications shall be at the Client's cost unless the problem was due to Bright Media's act or omission.
- 9. Ownership of Intellectual Property Rights**
- 9.1 It is the intention of the parties that:
- (a) Bright Media and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables; and
- (b) the Client shall retain ownership of all Intellectual Property Rights in the Customer Materials.
- 9.2 The Client grants Bright Media a fully paid-up, perpetual, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the purposes of providing the Services to the Client in accordance with the Contract and for the purposes of reproducing and publishing the Deliverables in any country and at any time.
- 9.3 The Client shall procure that its personnel, subcontractors and its subcontractors' personnel and all artists, photographers, actors, models and other third parties used by the Client in connection with any Customer Materials provided to Bright Media for the provision of the Services provide all necessary consents, releases, and approvals to use their work or images in the Services.
- 10. Trade Mark licence**
- 10.1 The Client grants Bright Media a non-exclusive, non-transferable, royalty-free licence, and permit its subcontractors to use, the Client's trade marks in the creation and publication of the Deliverables and performance of the Services.
- 10.2 Bright Media acknowledges that it will not gain any right, title or interest in the Client's trade marks or associated goodwill, which shall vest automatically in the Client and Bright Media shall not make any use of them except in accordance with the terms of this agreement.
- 11. Limitation of liability**
- 11.1 Nothing in this agreement shall limit or exclude Bright Media's liability for:
- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be limited or excluded by applicable law.
- 11.2 Subject to clause 11.1, Bright Media shall not have any liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with this agreement.
- 11.3 Subject to clause 11.1, Bright Media shall under no circumstance be liable for and the Client shall indemnify Bright Media for any losses, costs, damages, charges, fees, penalties, levies incurred by Bright Media as a result of performance of the Services, including publication of any of the Customer Materials or any error or defect within the Customer Materials.
- 11.4 Subject to clause 11.1 and clause 11.2, Bright Media's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to the Fees payable for the Services.
- 12. Termination**
- 12.1 Bright Media may cancel all or part of the Services and/or terminate this agreement without cause, by giving written notice of immediate cancellation and/or termination to the Client at any time and for any reason.
- 12.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) an order is made or a resolution is passed for the winding up of the other party, or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or such an administrator is appointed, or a receiver is appointed of any of the other party's assets or undertakings, or circumstances arise which entitle a court or a creditor to appoint a receiver or manager or which entitle a court to make a winding-up order, or the other party takes or suffers any similar or analogous action in consequence of debt, or an arrangement or composition is made by the other party with its creditors or an application to a court for protection from its creditors is made by the other party; or
- (c) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 13. Consequences of termination**
- 13.1 On expiry or termination of this agreement:
- (a) Bright Media shall immediately cease all further performance of the Services;
- (b) Bright Media shall be entitled to invoice the Client for all outstanding incurred Fees and Third-Party Fees in respect of any part of the Services that have been performed, which shall be payable by the Client in accordance with the provisions of clause 7; and
- (c) the Client shall be entitled to request that Bright Media returns all copies of Customer Materials in its possession at the Client's cost. If the Client does not request for the Customer Materials to be returned more than 12 months after expiry or termination of this agreement Bright Media shall be entitled to destroy or delete the Customer Materials without consulting the Client.
- 13.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 13.3 On termination or expiry of this agreement, any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect; and.
- 14. Force majeure**
- Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 15. Severance**
- If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 16. Waiver**
- No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17. Entire agreement**
- 17.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 17.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 18. Variation**
- No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 19. No partnership or agency**
- Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 20. Third-party rights**
- A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 21. Governing law**
- This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 22. Jurisdiction**
- Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

