

Website Advertising Terms

by SEQ Legal

Website Advertising Terms¹

Please read these Website Advertising Terms carefully before applying to become an Advertiser, as they set out our and your legal rights and obligations in relation our Advertising Services. You will be asked to agree to these Website Advertising Terms before becoming an Advertiser.

You should print a copy of these Website Advertising Terms for future reference. We will not file a copy specifically in relation to you, and they may not be accessible on our website in future.²

These Website Advertising Terms are available in [the English language] only.³

If you have any questions or complaints about our Advertising Services please contact us by writing to [address] or by email to [email address].

1. Definitions and interpretation

1.1 In the Agreement:

"Acceptance Email" means an email sent by the Publisher in accordance with Clause [2.3], confirming that an applicant has been accepted as an Advertiser;

"Advertiser" means the person (natural or legal) specified as the advertiser on the Registration Form;

"Advertiser Content" means the advertisements and other content submitted by the Advertiser to the Publisher for publication on the Website;

"Advertising Services" means [the advertising services specified on the Website / the advertising services selected by the Advertiser using the Registration Form];⁴

"Affiliate" means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company, firm or individual;

"Agreement" means the agreement between the Publisher and the Advertiser incorporating these Website Advertising Terms, the Registration Form and the Acceptance Email, and any amendments to it from time to time;

"Business Day" means any week day, other than a bank or public holiday in

1 This template is suitable for use in relation to web advertising deals, where the Publisher and the Advertiser contract online. It has been drafted to favour the interests of the Publisher over the interests of the Advertiser.

2 The Electronic Commerce (EC Directive) Regulations 2002 (aka the Ecommerce Regulations) require that, subject to any agreement between businesses to the contrary, an information society service provider must provide certain information where a contract is concluded online. That information includes: "*whether or not the concluded contract will be filed by the service provider and whether it will be accessible*" (Regulation 9(1)(b)).

3 See the footnote above concerning the Electronic Commerce (EC Directive) Regulations 2002. The information required by the Ecommerce Regulations also includes: "*the languages offered for the conclusion of the contract*" (Regulation 9(1)(d)).

4 You should clearly set out somewhere the exact nature of the advertising services to be provided. E.g. "a 100 x 300 banner advertisement to be continuously shown on the Website homepage for the period specified on the Registration Form". Note that the period for which any particular service is provided might be different from the Term.

[England];

“**Business Hours**” means between [09:00] and [17:30] on a Business Day;

“**Charges**” means the amounts payable by the Advertiser to the Publisher under or in relation to the Agreement (as set out [on the Website / in the Registration Form]);

“**Control**” means the legal power to control (directly or indirectly) the management of an entity (and “**Controlled**” will be construed accordingly);

“**Effective Date**” has the meaning given to it in Clause [2.3];

“**Force Majeure Event**” means an event, or a series of related events, that is outside the reasonable control of the party affected (including [failures of or problems with the internet or a part of the internet, hacker attacks, denial of services attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars]);

“**Intellectual Property Rights**” means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the “intellectual property rights” referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

“**Prohibited Content**” means:

- (a) works and materials that:
 - (i) breach any law, regulation or legally-binding code;
 - (ii) infringe any person's Intellectual Property Rights or other legal rights; and/or
 - (iii) give rise to a cause of action against any person,in each case in any jurisdiction and under any applicable law;
- (b) works and materials that contravene the Committee on Advertising Practice Code (the CAP Code);
- (c) obscene, indecent, pornographic, lewd or graphic works and materials; and
- (d) works and materials that may cause annoyance, inconvenience or anxiety to any internet user;

“**Publisher**” means [*company name*], a company incorporated in [England and Wales] (registration number [*number*]) having its registered office at [*address*];⁵

5 Where the Publisher is a sole trader or partnership rather than a company, the following party definitions may be used:

sole trader: “... means [*individual name*] trading as [*business name*], which has its principal place of

“**Registration Form**” means the HTML form on the Website enabling users to apply to become Advertisers;

“**Term**” means the term of the Agreement; and

“**Website**” means the website at [URL] and any successor website operated by the Publisher from time to time.

- 1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:
 - (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 1.3 The Clause headings do not affect the interpretation of the Agreement.
- 1.4 The ejusdem generis rule is not intended to be used in the interpretation of the Agreement.⁶

2. The Agreement

- 2.1 In order to apply to become an Advertiser, the applicant must complete and submit the Registration Form.⁷
- 2.2 If the applicant makes any input errors during the order process, these may be identified and corrected by the applicant before the Registration Form is submitted by [insert details].⁸
- 2.3 The Agreement will come into force if and when the Publisher sends to the Advertiser the Acceptance Email following the submission of a completed Registration Form by the Advertiser (the “**Effective Date**”).⁹
- 2.4 The Agreement will continue in force

[indefinitely, unless and until terminated in accordance with Clause [8]

OR

business at [address];”

partnership: “... means [partnership name], a partnership established under [English] law having its principal place of business at [address];”

- 6 Where the ejusdem generis rule applies, the meaning of a general provision may be restricted by the listing of particular examples. This is usually undesirable.
- 7 See the footnote above concerning the Electronic Commerce (EC Directive) Regulations 2002. The information required by the Ecommerce Regulations also includes: “*the different technical steps to follow to conclude the contract*” (Regulation 9(1)(a)).
- 8 See the footnote above concerning the Electronic Commerce (EC Directive) Regulations 2002. The information required by the Ecommerce Regulations also includes: “*the technical means of identifying and correcting input errors prior to the placing of the order*” (Regulation 9(1)(c)).
- 9 This should be sent without “*undue delay*” (Ecommerce Regulations, Regulation 11(1)(a)). If you want to delay acceptance, you should send an interim acknowledgement email that expressly states that it does not constitute acceptance of the application to become an Advertiser.

until the completion of all Advertising Services, upon which it will terminate automatically, unless terminated earlier in accordance with Clause [8]].

3. Advertising Services

3.1 During the Term, the Publisher will provide the Advertising Services to the Advertiser.

3.2 The Advertiser grants to the Publisher a non-exclusive, worldwide, royalty-free licence to publish the Advertiser Content on the Website as contemplated by the Agreement.

3.3 The Advertiser warrants and undertakes:

(a) to ensure that all Advertiser Content is accurate and fair;

(b) to ensure that Advertiser Content does not consist of, contain, or link to any Prohibited Content;

(c) promptly [to remove or edit / to request the removal or editing of] any Advertiser Content which ceases to be accurate and fair, or becomes Prohibited Content, for whatever reason;

(d) to ensure that the advertising and sale of any products and services that are advertised through the Advertising Content is legal under all applicable laws;

[(e) to ensure that the products and services advertised through the Advertising Content are appropriate for the Website's user base; and]

[(f) to ensure that the Advertiser Content is of a quality commensurate with the content published on the Website generally.]

3.4 Subject to scheduled maintenance, express restrictions on the Advertising Services, and any Force Majeure Event affecting the Publisher or the Publisher's appointed hosting services provider, the Publisher will use reasonable endeavours to maintain the availability on the internet of:

(a) the Website; and

(b) the published Advertiser Content,

during the relevant period; but the Publisher does not guarantee 24/7 availability.

3.5 The Publisher reserves the right to suspend the publication of any Advertiser Content or remove any Advertiser Content from the Website at any time where it reasonably determines that the content breaches this Clause [3].

4 Charges and payment

[4.1 The Publisher will issue invoices for the Charges to the Advertiser

[monthly [in advance / arrears] [on the [1st] day of each calendar month] during the Term]

OR

[from time to time [in advance / arrears] during the Term].

- 4.2 The Advertiser will pay the Charges to the Publisher within [30] days of the date of [issue/receipt] of an invoice issued in accordance with Clause [4.1].]

OR

- [4.1 The Advertiser must pay the Charges upon receipt of the Acceptance Email or within [5] days following receipt of the Acceptance Email, failing which the Agreement will terminate automatically.

- 4.2 The Publisher will issue a receipt for the Charges upon receipt of payment in cleared funds.]

- 4.3 All Charges stated in or in relation to the Agreement are stated [exclusive / inclusive] of VAT, unless the context requires otherwise.

- 4.4 Charges must be paid by [debit or credit card, direct debit, bank transfer or by cheque (using such payment details as are notified by the Publisher to the Advertiser from time to time)].¹⁰

- 4.5 If the Advertiser does not pay any amount properly due to the Publisher under or in connection with the Agreement, the Publisher may:

- (a) charge the Advertiser interest on the overdue amount at the rate of [8]% per year above the base rate of [HSBC Bank Plc] from time to time (which interest will accrue daily and be compounded quarterly); or
- (b) claim interest and statutory compensation from the Advertiser pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

5 Warranties

- 5.1 The Advertiser warrants to the Publisher that it has the legal right and authority to enter into and perform its obligations under the Agreement.

- 5.2 The Publisher warrants to the Advertiser:

- (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement; and
- (b) that it will perform the Advertising Services under the Agreement with reasonable care and skill.

- 5.3 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law and subject to Clause [7.1], no other warranties and representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

6. Indemnity

The Advertiser hereby indemnifies the Publisher and undertakes to keep the

¹⁰ You may want to insert payment details into this Clause.

Publisher indemnified against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid in settlement of legal claims) arising directly or indirectly out of any breach by the Advertiser of Clause [3.3] of the Agreement.

7. Limitations and exclusions of liability¹¹

7.1 Nothing in the Agreement will:¹²

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.¹³

11 Contractual limitations and exclusions of liability are regulated and controlled by law, and the courts often rule that particular limitations and exclusions of liability in contracts are unenforceable. The courts are particularly likely to intervene where a party is seeking to rely on a limitation or exclusion of liability in its standard T&Cs, but will also sometimes intervene where a term has been individually negotiated. You should take legal advice if you may wish to rely upon a limitation or exclusion of liability. Please note that the guidance notes to this Clause provide only an incomplete and basic overview of this complex subject.

The courts may be more likely to rule that provisions excluding liability – as opposed to those merely limiting liability – are unenforceable.

If there is a risk that any particular limitation or exclusion of liability will be found to be unenforceable by the courts (for example, because it may be unreasonable under UCTA – see below), that provision should be drafted as an independent term, and be separately numbered from the other provisions.

It may improve the chances of a limitation or exclusion of liability being found to be enforceable if the party seeking to rely upon it specifically drew it to the attention of the other party before the contract was entered into.

Please note that this draft Clause is entirely unsuitable for use in contracts with consumers, and these guidance notes do not cover the issues arising in relation to exclusions and limitations of liability in consumer contracts.

12 Exclusions and limitations of liability in UK B2B contracts are primarily regulated by the Unfair Contract Terms Act 1977 (“UCTA”).

B2B contracts regulated by UCTA cannot exclude or restrict a party's liability for death or personal injury resulting from negligence (Section 2(1)).

Except insofar as the relevant term satisfies the requirements of reasonableness, nor can such contracts exclude or restrict liability: (i) for “negligence” (which includes a breach of an express or implied contractual obligation to take reasonable care or exercise reasonable skill) (Section 2(2)); or (ii) for misrepresentation (Section 3, Misrepresentation Act 1967).

In addition, where a B2B contract is regulated by UCTA, and one of the parties is dealing on the other's written standard terms of business, then except insofar as the relevant contractual term satisfies the requirements of reasonableness the other party cannot: (i) exclude or restrict his liability in respect of a breach of contract; or (ii) claim to be entitled to render a contractual performance substantially different from that which was reasonable expected of him; or (iii) claim to be entitled, in respect of the whole or any part of his contractual obligation, to render no contractual performance at all (see Section 3).

Note that UCTA includes various other restrictions, particularly in the case of contracts for the sale of goods and contracts under which possession or ownership of goods pass.

13 Do not delete this Clause (except upon legal advice). Without this Clause, the specific limitations and exclusions of liability will not usually be enforceable.

- 7.2 The limitations and exclusions of liability set out in this Clause [7] [and elsewhere in the Agreement]:
- (a) are subject to Clause [7.1]; and
 - (b) govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.
- 7.3 The Publisher will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.¹⁴
- 7.4 The Publisher will not be liable for any loss of business, contracts or commercial opportunities.
- 7.5 The Publisher will not be liable for any loss of or damage to goodwill or reputation.
- 7.6 The Publisher will not be liable in respect of any loss or corruption of any data, database or software.
- 7.7 The Publisher will not be liable in respect of any special, indirect or consequential loss or damage.¹⁵
- 7.8 The Publisher will not be liable for any losses arising out of a Force Majeure Event.
- 7.9 The Publisher's liability in relation to any event or series of related events will not exceed the greater of:
- (a) [*amount*]; and
 - (b) the total amount paid and payable by the Advertiser to the Publisher under the Agreement during the [*number*] month period immediately preceding the event or events giving rise to the claim.
- 7.10 The Publisher's aggregate liability under the Agreement will not exceed the greater of:
- (a) [*amount*]; and
 - (b) the total amount paid and payable by the Advertiser to the Publisher under the Agreement.

14 You should consider carefully the particular kinds of loss you want to try to limit or exclude.

If you wish to try to limit/exclude for liability in respect of reckless, deliberate, personal and/or repudiatory breaches of contract, you should specify this in relation to the relevant Clause (for example, using the following wording: "The limitations and exclusions of liability in this Clause [*number*] will apply whether or not the liability in question arises out of any reckless, deliberate, personal and/or repudiatory conduct or breach of contract"). In some circumstances the courts will find these types of limitations and exclusions to be unenforceable (e.g. because unreasonable under UCTA).

15 "Consequential loss" has a special meaning in English law: it means losses that, whilst not arising naturally from the breach, were specifically in the contemplation of the parties when the contract was made.

8. Termination

- 8.1 [Either party] may terminate the Agreement at any time by giving at least [30 days'] written notice of termination to the other party.]¹⁶
- 8.2 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if the other party:
- (a) commits any [material] breach of any term of the Agreement, [and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within [30] days of receipt of a written notice requiring it to do so; or]]; or
 - [(b) persistently breaches the terms of the Agreement.]
- 8.3 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up [(other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement)]; or
 - (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
- 8.4 The Publisher may terminate the Agreement immediately by giving written notice of termination to the Advertiser if the Advertiser fails to pay any amount due to the Publisher under the Agreement in cleared funds by the due date for payment.

9. Effects of termination

- 9.1 Upon termination all the provisions of the Agreement will cease to have effect,

¹⁶ Where the Agreement automatically terminates after a short Term, you may want to omit this "termination for convenience" Clause. If the Term is indefinite, both parties should have the right to terminate for convenience, although you may want to adjust the suggested notice period time.

save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses [1, 4.5, 6, 7, 9 and 10.3 to 10.10].

9.2 Termination of the Agreement will not affect either party's accrued rights (including accrued rights to be paid) as at the date of termination.

[9.3 If the Agreement is terminated by the Publisher under Clause [8.1] or by the Advertiser under Clause [8.2] or Clause [8.3], the Advertiser will be entitled to a refund of any amounts paid to the Publisher in respect of Advertising Services which were to have been provided after the effective date of termination. Such amount will be calculated by the Publisher using any reasonable methodology. Save as provided in this Clause [9.3], the Advertiser will not be entitled to any refunds or release from any liability to pay Charges (whether or not invoiced) upon the termination of the Agreement.]

10. General

10.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by [registered signed-for] post, or sent by fax [or email],¹⁷ for the attention of the relevant person, and to the relevant address, fax number or [email address] given in the Registration Form (or as notified by one party to the other in accordance with this Clause).

10.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

- (a) where the notice is delivered personally, at the time of delivery;
- (b) where the notice is sent by [registered signed-for] post, [48 hours] after posting; and
- (c) where the notice is sent by fax [or email], at the time of the transmission (providing the sending party retains written evidence of the transmission).

10.3 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

10.4 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

10.5 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.¹⁸

¹⁷ If you decide that contractual notices may not be served by email, you should delete the references to "email" in Clauses 10.1 and 10.2.

¹⁸ This is intended to prevent, for example, one party claiming that the contract price was changed in a telephone call.

- 10.6 The Advertiser hereby agrees that the Publisher may freely assign [any or] all of its rights [and obligations] under this Agreement [to any Affiliate of the Publisher or any successor to all or substantial part of the business of the Publisher from time to time]. Save as expressly provided in the Agreement, the Advertiser may not without the prior written consent of the Publisher assign, transfer, charge, license or otherwise dispose of or deal in this Agreement or any of its rights or obligations under this Agreement.
- 10.7 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.¹⁹
- 10.8 Subject to Clause [7.1], this Agreement constitutes the entire agreement and understanding of the parties in relation to the subject matter of this Agreement, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of this Agreement.
- 10.9 The Agreement will be governed by and construed in accordance with the laws of [England and Wales];²⁰ and the courts of [England]²¹ will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

19 This provision is designed to exclude any rights a third party may have under the Contracts (Rights of Third Parties) Act 1999.

20 This template has been drafted to work in the English law context. If you plan to change the governing law, you should have the document reviewed by someone with expertise in the law of the relevant jurisdiction.

21 As a practical matter, it makes sense for the courts with expertise in the relevant law to have the right to adjudicate disputes. Where one of the parties is outside England (or at least the UK), you may want to grant the courts of their home jurisdiction the right to adjudicate disputes, as this could ease enforcement in some circumstances.

**Information to be specified in or captured
by the Registration Form**

- ⤴ Details of kinds of Advertiser Content to be supplied by Advertiser
- ⤴ Details of the Advertising Services to be provided by the Publisher (if not specifically identified elsewhere on the Website)
- ⤴ Information about Charges and payments (if not specifically identified elsewhere on the Website)
- ⤴ Addresses and other details for contractual notices
- ⤴ The consent of the Advertiser to the Website Advertising Terms