

SMG - Terms & Conditions: Reviewed and updated: December 2024

1. Basis of contract

1. The Campaign Confirmation Form constitutes an offer by the Advertiser to purchase the Services in accordance with the Contract. The Campaign Confirmation Form shall only be deemed to be accepted when the Agency issues written acceptance of the Campaign Confirmation Form.
2. Any samples, drawings, descriptive matter or advertising issued by the Agency, and any descriptions or illustrations contained in the Agency's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Deliverables and/or Services described in them. They shall not form part of the Contract or have any contractual force.
3. These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Advertiser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
4. Any quotation given by the Agency shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2. Deliverables and Service

- 2.1 The Agency shall supply the Deliverables and the Services to the Advertiser in accordance with the Brief in all material respects.
- 2.2 The Agency warrants to the Advertiser that the Services will be provided using reasonable care and skill.
- 2.3 The Agency shall use reasonable endeavours to meet any performance dates specified in the Campaign Confirmation Form but any such dates shall be estimates only and time shall not be of the essence for provision of the Deliverables or performance of the Services.
- 2.4 The Agency shall have the right to make any changes to the Deliverables and/ or Services which are necessary to comply with any applicable law or safety requirement or which do not materially affect the nature or quality of the Deliverables or Services and the Agency shall notify the Advertiser in any such event.

3. Advertiser's obligations

- 3.1 The Advertiser shall:
 - (a) ensure that the terms of the Campaign Confirmation Form and any information the Advertiser provides in the Brief are complete and accurate;

- (b) ensure that the Brief and the Deliverables comply with all 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;
- (c) co-operate with the Agency in all matters relating to the Deliverables and the Services;
- (d) provide the Agency with such information and materials as the Agency may reasonably require in order to supply the Deliverables and the Services, and ensure that such information is accurate in all material respects;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start or the Deliverables are to be produced;
- (f) keep and maintain all materials, equipment, documents and other property of the Agency (“Agency Materials”) at the Advertiser’s premises in safe custody at its own risk, maintain the Agency Materials in good condition until returned to the Agency and not dispose of or use the Agency Materials other than in accordance with the Agency’s written instructions or authorisation; and
- (g) comply with any additional obligations as set out in the Campaign Confirmation Form.

3.2 If the Agency’s performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Advertiser or failure by the Advertiser to perform any relevant obligation (“Advertiser Default”):

- (a) the Agency shall without limiting its other rights or remedies have the right to suspend provision of the Deliverables and/or performance of the Services until the Advertiser remedies the Advertiser Default and to rely on the Advertiser Default to relieve it from the performance of any of its obligations to the extent the Advertiser Default prevents or delays the Agency’s performance of any of its obligations;
- (b) the Agency shall not be liable for any costs or losses sustained or incurred by the Advertiser arising directly or indirectly from the Agency’s failure or delay to perform any of its obligations as set out in this clause 3.2; and
- (c) the Advertiser shall reimburse the Agency on written demand for any costs or losses sustained or incurred by the Agency arising directly or indirectly from the Advertiser Default.

4. Charges and Payment

4.1 The Agency shall invoice the Advertiser on the date when the applicable Media Campaign is scheduled to go live as identified on the Campaign Confirmation Form.

4.2 The Advertiser shall pay each invoice submitted by the Agency within 30 days of the date of the invoice and in full and in cleared funds to the bank account nominated in writing by the Agency dedicated to receiving income in connection with the Client Services. Time for payment shall be of the essence of the Contract.

4.3 All amounts payable by the Advertiser under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (“VAT”). Where any taxable supply for VAT purposes is made under the Contract by the Agency to the Advertiser, the Advertiser shall, on receipt of a valid VAT invoice from the Agency, pay to the Agency such additional amounts in respect of VAT as are chargeable on the supply of the Deliverables and Services at the same time as payment is due for the supply of the Deliverables and Services.

4.4 If the Advertiser fails to make any payment due to the Agency under the Contract by the due date for payment, then the Advertiser shall pay interest on the overdue amount at the rate of 4% per cent per annum above Barclays Bank’s base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Advertiser shall pay the interest together with the overdue amount.

4.5 The Advertiser shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Agency may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Advertiser against any amount payable by the Agency to the Advertiser.

5. Intellectual Property Rights

5.1 Each party (or its licensors) shall retain ownership of its Background IPRs.

5.2 Subject to clause 5.1:

(a) all Intellectual Property Rights in or arising out of or in connection with the Deliverables and/or Services shall be owned by the Client; and

(b) the Advertiser shall and hereby does assign to the Client with full title guarantee (or procure such assignment of) all and any Intellectual Property Rights, upon creation of the same, in any Deliverables or other products, documents, drawings, plans, data, or other works compiled, developed or prepared by the Advertiser in connection with the Services. The Advertiser shall and shall procure that all employees, staff, other workers, agents, consultants and sub-contractors of the Advertiser shall waive absolutely and irrevocably their moral rights granted under the Copyright, Designs and Patents Act 1988 or equivalent or analogous rights under laws of other jurisdictions in relation to such Intellectual Property Rights.

5.3 Notwithstanding clause 5.1, where elements of any of the Advertiser’s Background IPRs are incorporated into the Services and/or Deliverables or are required to use or exploit the Services, the Advertiser hereby grants to the Agency, the Client and the Client’s Affiliates an irrevocable, worldwide, non-exclusive, royalty-free and fully paid-up licence to use such elements of the Advertiser’s Background IPRs during the Term to enable the Agency, the Client and/or the Client’s Affiliates to obtain the full benefit of the Services.

5.4 The Advertiser indemnifies the Agency against all Losses suffered or incurred by the Agency arising out of or in connection with any claim or allegation that any of the Advertiser's Background IPRs infringe the Intellectual Property Rights of any third party.

6. Flow-down terms

6.1 The Advertiser acknowledges that each sale of Media Space is subject to the prior approval of the Client in its absolute discretion.

6.2 The Advertiser warrants that any and all Media Campaigns and Promotional Materials:

- a) comply with all Advertising Regulations;
- b) comply with the then current Client Marketing Strategy;
- c) do not cause disparage, criticise or denigrate the Client, its staff, customers, members or suppliers;
- d) are not reasonably likely to be deemed offensive by the average consumer or damage the Client's business, reputation, goodwill or image;
- e) do not infringe the rights, including any Intellectual Property Rights, of any third party; and
- f) comply with the Client's values, ethics and policies as notified by the Agency to the Advertiser from time to time.

6.3 The Advertiser acknowledges that all Media Campaigns and Promotional Materials are subject to the prior approval of the Client, in its absolute discretion.

6.4 The Advertiser acknowledges that approval by the Client of Media Campaigns and/ or Promotional Materials does not constitute an acceptance by the Client or the Agency that the relevant Media Campaigns and/or Promotional Materials meet the requirements of clause 6.2 and does relieve the Advertiser of its obligations or liability under clauses 6.2 or 6.5 or the Client's rights under clause 6.5.

6.5 The Advertiser indemnifies the Client against all Losses suffered or incurred by the Client arising out of or in connection with any allegation or claim (including any claim for breach of contract) made against the Client in connection with any claim or allegation that any Media Campaign or any Promotional Material breaches the Advertising Regulations or infringes the rights, including any Intellectual Property Rights, of any third party.

6.6 The Advertiser indemnifies the Agency against all Losses suffered or incurred by the Agency arising out of or in connection with: (i) any allegation or claim against the Client to the extent that such claim or allegation arises from or is in connection with any act or omission of the Advertiser which has caused any breach, negligent performance or failure or delay in performance of the Contract by the Agency; and/or (ii) any breach by the Advertiser of clause 11.3 (Confidentiality).

7. Limitation of Liability

7.1 Nothing in the Contract shall limit or exclude the Agency's liability for: (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; (ii) fraud or fraudulent misrepresentation; (iii) breach of the terms implied by section 2 of the Supply of

Goods and Services Act 1982 (title and quiet possession); or (iv) any other liability which cannot be limited or excluded by applicable law.

7.2 Subject to clause 7.1, the Agency shall not be liable to the Advertiser, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss arising from or in connection with any decision by the Client to modify, restrict, reschedule or cancel a Media Campaign, loss of or damage to goodwill or any indirect or consequential loss.

7.3 Subject to clauses 7.1 and 7.2, the Agency's total liability to the Advertiser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to one hundred per cent (100%) of the total Charges paid or payable under the Contract in the 12-month period before such breach.

7.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

7.5 This clause 7 shall survive termination of the Contract.

8. Terms and Termination

8.1 The Contract shall commence on the Commencement Date and shall expire on the End Date ("Term"), subject to earlier termination in accordance with this clause 8.

8.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.3 Without limiting its other rights or remedies, the Agency may terminate the Contract with immediate effect by giving written notice to the Advertiser if:

- (a) the Advertiser fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven (7) days after being notified in writing to make such payment;
- (b) the Agency's agreement with the Client for the provision of Client Services expires or is terminated for any reason;
- (c) the Advertiser is in breach of any of the warranties in clause 6.2; or
- (d) there is a change of Control of the Advertiser.

8.4 Without limiting its other rights or remedies, the Agency may suspend provision of the Deliverables and Services under the Contract or any other contract between the Advertiser and the Agency if the Advertiser becomes subject to any of the events listed in clause 8.2(b) to clause 8.2(d) or the Agency reasonably believes that the Advertiser is about to become subject to any of them, or if the Advertiser fails to pay any amount due under this Contract on the due date for payment.

9. Consequences of Termination

On termination of the Contract for any reason:

- (a) the Advertiser shall immediately pay to the Agency all of the Agency's outstanding unpaid invoices and interest and, in respect of Deliverables and Services supplied but for which no invoice has been submitted, the Agency shall submit an invoice, which shall be payable by the Advertiser immediately on receipt;
- (b) the Advertiser shall return all of the Agency Materials and any Deliverables which have not been fully paid for. Until they have been returned, the Advertiser shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

10. Data Protection

10.1 For the purposes of this Clause 10, the words and phrases "Data Controller", "Data Processor", "Personal Data" and "Process" shall have the meanings given to them in applicable Data Protection Law.

10.2 The parties acknowledge and agree that for the purposes of the Contract the Advertiser is the Data Controller and the Agency is the Data Processor.

10.3 If the Agency Processes any Personal Data on the Advertiser's behalf when performing its obligations under the Contract:

- (a) the Advertiser shall ensure that it is entitled to transfer the relevant Personal Data to the Agency so that the Agency may lawfully Process the Personal Data in connection with the provision of the Deliverables and the performance of the Services pursuant to the Contract;
- (b) the Advertiser shall ensure that the relevant third parties have been informed of and have given their consent to such transfer and Processing in accordance with the requirements of applicable Data Protection Law;
- (c) the Agency shall Process the Personal Data only in accordance with the reasonable and lawful instructions of the Advertiser; and
- (d) the Agency shall take appropriate technical and organisational measures against unauthorised or unlawful Processing of the Personal Data or its accidental loss, destruction or damage.

11. General

11.1 Force majeure.

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 Assignment and other dealings.

- (a) The Agency may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Advertiser shall not, without the prior written consent of the Agency, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

11.3 Confidentiality.

- (a) Except with the disclosing party's prior written consent, the parties undertake to keep Confidential Information secret and strictly confidential and shall not disclose Confidential Information to any third party for the Term and thereafter and shall not use such Confidential Information other than for the purpose of properly performing their respective obligations under this Contract.
- (b) Either party may disclose Confidential Information to its Affiliates, staff, agents or sub-contractors who need to know about such Confidential Information. Each party shall procure the compliance by its Affiliates, Staff, agents or sub-contractors with the obligations of that party under this clause 11.3.

(c) The provisions of clause 11.3(a) shall not apply to any information which:

- (i) is in the possession of either party without any obligations of confidence in relation to use or disclosure prior to the Commencement Date;
- (ii) is in or enters into the public domain other than by breach of this Contract or any obligation of confidence owed to the disclosing party and/or its Affiliates;
- (iii) is authorised for release by the written consent of the disclosing party; or (iv) is required to be disclosed by law.

(d) The contents of this Contract shall be treated by the parties as Confidential Information

11.4 Entire agreement.

(a) The Contract 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.

(b) Each party agrees that it 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. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

11.5 Variation.

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.6 Waiver. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

11.7 Severance. If any provision or part-provision of the Contract 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 partprovision shall be deemed deleted. Any modification to or deletion of a provision or partprovision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.8 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.9 Third parties. The Client and the Client's Affiliates are intended third party beneficiaries of this Contract and (without prejudice to the right of the Agency to exercise such rights) may exercise the rights given to them by this Contract. Except as provided in the preceding sentence, nothing in the Contracts (Rights of Third Parties) Act 1999 shall operate to give any third party the right to enforce any term of this contract.

11.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

11.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including noncontractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

12. Interpretation

12.1 Definitions

"Advertiser": the party identified as the 'Client' in the Campaign Confirmation Form.

"Advertiser Background IPRs": all Intellectual Property Rights in all materials, equipment and tools, drawings, specifications and data supplied by the Advertiser to the Agency.

"Advertiser Default": has the meaning set out in clause 3.2.

"Advertising Regulations": any law, legislation, instrument, rule, order, regulation, directive, by-law, industry code or decision which applies to, concerns or otherwise affects any Media Campaign or Promotional

Material, including (without limitation), Consumer Protection from Unfair Trading Regulations 2008, Business Protection from Misleading Marketing Regulations 2008, The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing, The UK Code of Broadcast Advertising, The Portman Group Code; and the Data Protection Legislation.

“Affiliate”: any entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity.

“Agency”: Shopper Media Group Ltd, a company incorporated and registered in England and Wales with company number 10366888 and its registered office a 22a Leathermarket Street, London, England, SE1 3HP.

“Agency Background IPRs”: all Intellectual Property Rights that are owned by or licensed to the Agency and which are or have been developed independently of the Contract (whether prior to the Commencement Date or otherwise).

“Background IPRs”: the Agency Background IPRs or the Advertiser Background IPRs (as applicable).

“Brief”: the description or specification of the Deliverables and the Services as set out in the Campaign Confirmation Form.

“Business Day”: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

“Campaign Confirmation Form”: the form headed ‘Campaign Confirmation Form’ agreed by the Advertiser and the Agency and incorporating these Terms and Conditions.

“Charges”: the charges for the supply of the Deliverables and the Services as set out in the Campaign Confirmation Form payable by the Advertiser in accordance with clause 4.

“Client”: <CO-OPERATIVE GROUP LIMITED> a registered society registered in England with registered number <IP00525R> whose registered office is at <1 Angel Square, Manchester, M60 0AG>.

“Client Marketing Strategy”: the marketing strategies and trade plans of the Client, as specified by the Client from time to time in its absolute discretion and as notified by the Agency to the Advertiser from time to time.

“Client Services”: the services provided by the Agency to the Client in connection with advertising, promotional or marketing campaign activities.

“Commencement Date”: the date on which the Agency issues written acceptance of the Campaign Confirmation Form pursuant to clause 1.1.

“Confidential Information”: any information, however conveyed or presented (whether disclosed orally or in writing), that relates to the business, affairs, operations, customers, members, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, the Client or its Affiliates, together with all information derived by the receiving party

from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked “confidential”), or which ought reasonably be considered to be confidential.

“Contract”: the Campaign Confirmation Form and these Terms and Conditions.

“Control”: shall be as defined in section 1124 of the Corporation Tax Act 2010, and Controlled and the expression change of Control shall be construed accordingly.

“Data Protection Law”: the Data Protection Act 1998, Directive 95/46/EC of the European Parliament and any regulations implementing it, and any other applicable laws in any jurisdiction relating to the processing of personal data as amended or updated from time to time.

“Deliverables”: any records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Agency in the provision of the Services.

“End Date”: the date when this Contract shall expire specified as the ‘End Date’ on the Campaign Confirmation Form.

“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 protect the confidentiality of, confidential information (including knowhow), 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.

“Losses”: 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 professional costs and expenses).

“Media Campaign”: means any advertising, promotional or marketing campaign or activity in connection with which the Advertiser wishes to purchase Media Space.

“Media Channels”: those channels of media owned and/or operated by the Client and which the Client chooses, in its absolute discretion, to make available to the Agency in connection with the Client Services.

“Media Space”: a physical, digital or other location, space or opportunity where a Promotional Material can be displayed, shown, transmitted, broadcast or communicated on, in, at or via a Media Channel and which the Client makes available to the Agency in connection with the Client Services.

“Promotional Materials”: any image, design, photo, logo, document, text, animation, video or other work, prop or item (in whatever form or medium) of the Advertiser that appears in, or via, any Media Space.

“Replacement Agency”: a provider of services to the Client which are identical to or substantially similar to the services provided by the Agency to the Client (including the Client or an Affiliate of the Client providing such services) and which is appointed in place of the Agency.

“Services”: the services supplied by the Agency to the Advertiser as set out in the Campaign Confirmation Form.

“Term”: has the meaning given in clause 8.1.

“Terms and Conditions”: these Terms and Conditions for Media Sales, including any documents or policies incorporated by reference, as amended from time to time in accordance with clause 11.5.

“Third Party Materials”: any work or materials authored, created or performed by a third party and either commissioned for, or used in relation to, the Deliverables and/or the Services.

12.2 Interpretation

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to writing or written includes email.