

Gedling Borough Council

Terms and Conditions of Advertising

1. Definitions & Interpretation

(1.1) in these terms and conditions:

“**Advertisement**” means any kind of promotional or advertising material that the Council is asked to publish, whether in print, digital or other format, by the Buyer and which is intended to be viewed by the public;

“**Advertisement Confirmation**” means the Council’s written confirmation of acceptance of the Buyer’s Order;

“**Advertiser**” means the entity advertising the product or service that is the subject of the Advertisement;

“**Booking Deadline**” means the date by which all bookings must be made with the Council;

“**The Buyer**” means party placing an Order with the Council for publication of the Advertisement;

“**The Council**” means Gedling Borough Council of Civic Centre, Arnot Hill Park, Arnold, Nottingham NG5 6LU;

“**Data Protection Legislation**” means (i) the General Data Protection Regulation (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable law about the processing of personal data and privacy;

“**Intellectual Property Rights**” means 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 know-how), 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; and

“**Order**” means a completed ‘Gedling Borough Council Advertising Order Form’, either in print or digital format, signed by the Buyer.

1.2 Where the context so requires, words importing the one gender shall include all other genders and words importing the singular shall include the plural and vice versa.

1.3 A reference to a statute, statutory provision or other legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment.

1.4 “Including” and similar expressions are not words of limitation.

1.5 headings are for reference only and do not affect the meaning or interpretation of these terms and conditions.

2. Application of these Terms and Conditions

2.1 These terms and conditions shall become binding on the Buyer when the Advertisement Confirmation is issued by the Council.

2.2 Together with the Advertisement Confirmation and Order these terms and conditions are the complete and exclusive agreement between the Buyer and the Council and shall apply to the exclusion of all other terms and conditions, proposals, commitments, representations, or other communication whether oral or written between the Buyer and the Council.

2.3 Subject to clause 2.4 these terms and conditions (incorporating the Advertisement Confirmation and Order) prevail over any conflicting or additional terms of any purchase order, ordering document, acknowledgement or confirmation or other document issued by Buyer, even if signed and returned.

2.4 No variation to these terms and conditions shall have effect and be binding unless executed in writing and signed by authorised representatives of the Buyer and the Council.

2.5 No Order placed by the Buyer shall be deemed accepted by the Council until the Advertisement Confirmation is issued. Acceptance of an Advertisement is subject to the Council's approval and space being available.

2.6 Notwithstanding any other provision of these terms and conditions, no obligation shall require the Council to do or omit to do anything which would contravene any applicable laws or regulations including, but not limited to, the Data Protection Legislation, the Gambling Act 2005, the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008.

3. Status of the Buyer

3.1 The Buyer shall have full liability under this agreement for all obligations of both the Buyer and of the Advertiser. This is regardless of whether that party is the Advertiser itself or is the Advertiser's advertising agent or assign or is acting for the Advertiser in some other representative capacity.

4. The Buyer's Obligations

4.1 The Buyer hereby warrants, represents and undertakes to the Council that:

- a) In relation to any and all Advertisements the Buyer contracts with the Council as principal notwithstanding that the Buyer may be acting directly or indirectly of the Advertiser or in any other representative capacity;
- b) The publication of the Advertisement by the Council in the form originally submitted by the Buyer, or as amended, will not:
 - i. breach any contract with a third party;
 - ii. infringe the rights (including Intellectual Property Rights) of any third party;
 - iii. be defamatory, derogatory or offensive to any third party;
 - iv. be prejudicial to the reputation of the Council; or
 - v. otherwise be unlawful or render the Council liable to any proceedings, claims, damages, costs or expenses or any other loss whatsoever;

- c) any information supplied in connection with the Advertisement is accurate, complete, true and not misleading;
- d) in the case of any Advertisement submitted for publication by the Buyer which contains the name or pictorial representation, whether photographic or otherwise, of any living person or any part of any living person or any material by which a living person may be identified, the Buyer or the Advertiser has obtained the authority of such living person to make use of their name, identity, image, representation and /or copy;
- e) in relation to any investment or financial promotion (as defined under the Financial Services and Markets Act 2000) the Advertiser is, or its contents have been approved, by a person within the 2000 Act or the Advertisement should otherwise be permitted under the 2000 Act, under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended) or any other legislation subordinate to the 2000 Act;
- f) the Advertisement complies with the requirements of all relevant legislation (including subordinate legislation and the rules of statutorily recognised regulatory authorities) and applicable laws for the time being in force or applicable to the United Kingdom including, but not limited to, the Data Protection Legislation, the Gambling Act 2005, the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008 where applicable;
- g) all advertising copy submitted to the Council is legal, decent, honest and truthful and complies with the UK Code of Non-broadcast Advertising and Direct and Promotional Marketing, or any replacement code as may be adopted from time to time, and all other relevant codes under the general supervision of the Advertising Standards Authority.;
- h) all instructions, artwork or other material submitted to the Council by electronic means shall not contain software viruses or any other computer code, files or programs designed to interrupt, damage, destroy or limit the functionality of any software, hardware or telecommunications equipment and shall not be corrupted;
- i) where the Buyer is the Advertiser's agent, the Buyer is authorised by the Advertiser to place the Advertisement with the Council and the Buyer shall indemnify the Council against any claim made by the Advertiser against the Council;
- j) the Buyer has retained sufficient quality and quantity of any artwork, film or other materials and copy relating the Advertisement and the Council shall not be liable for the loss of or damage to any of those items submitted to the Council; and
- k) the Buyer has obtained all necessary rights, consents, licenses and clearances in relation to the publication of Advertisement

4.2 The Buyer agrees to indemnify the Council and keep it indemnified against all claims, costs, proceedings, demands, losses, damages or expenses whatsoever arising directly or indirectly as a result of any breach of or non-compliance with any of the representations, warranties or any other term implied by law.

5. Content and Delivery of Advertisements

5.1 The Council shall be entitled at any time to require the Buyer to amend any artwork, materials and copy for and relating to any Advertisement, or refuse without notice to publish any Advertisement for the purpose of:

- a) complying with any legal or moral obligation of the Council or the Buyer or the Advertiser;
- b) prevent infringement of (i) the rights of any third party (including Intellectual Property Rights), or (ii) the UK Code of Non-broadcast Advertising and Direct and Promotional Marketing, or any replacement code as may be adopted from time to time, and all other relevant codes

under the general supervision of the Advertising Standards Authority, or (iii) any other applicable law;

- c) meeting the technical and quality specifications, to the Council's reasonable satisfaction.

5.2 The Council reserves the right at its sole discretion and without notice to the Buyer:

- a) to decline to publish or omit, alter, change or suspend the position of any Advertisement. The Buyer shall have no claim against the Council in these circumstances. The Council does not warrant the date of publication, the wording or the quality of the reproduction of the Advertisement; and
- b) to destroy all artwork, film, other materials or copy submitted by the Buyer to the Council 6 months from the date of last use by the Council, unless agreed otherwise with the Buyer.

5.3 The Buyer must supply final artwork and/or copy instructions in the format and by the deadline specified by the Council at the time of the Advertisement Confirmation. If the Buyer submits its copy late or in an incorrect format the Council reserve the right to publish the Advertiser's name and address only and the full fee for the Advertisement will be payable.

5.4 The Buyer must supply final artwork in the format detailed, the Council will not be held liable for any errors or quality issues in provided artwork. If the Council is producing artwork on behalf of the Buyer then the Buyer must proof and sign off final artwork prior to the deadline. The Council will not be held liable for errors in artwork once it has been signed off by the Buyer. Proofs must be returned by the specified date.

5.5 Any artwork created by the Council on behalf of the Buyer remains the property of the Council and all Intellectual Property Rights that are created or exist in such material in connection with the publication of the Advertisement remain vested in the Council unless otherwise agreed in writing by the Council.

5.6 If the Council receives any complaint or objection about the content of an Advertisement it may at its sole discretion remove the Advertisement without any liability to the Buyer or Advertiser.

6. Digital Advertising

6.1 If an Advertisement links to another website the Buyer is responsible for maintaining the link to that third party website. The Council may at its sole discretion remove any Advertisement which contains content or links to a website which, in the Council's opinion, is or is likely to be defamatory, objectionable or otherwise bring the Council into disrepute.

6.2 The Buyer shall indemnify the Council and keep it indemnified against all claims, costs, proceedings, demands, losses, damages or expenses whatsoever arising directly or indirectly arising in connection with the content of an Advertisement or from links contained in an Advertisement

6.5 In the case of digital advertising, a late copy or artwork shall result in the omission of the Advertisement from digital. Full payment for the Advertisement shall still be due.

6.6 The Buyer warrants that:

- a) any landing page or destination site linked to from the Advertisement will (i) be legal, decent, honest and truthful; (ii) not be contrary to any applicable law, regulation or code of practice (including the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing);

(iii) not be libellous or obscene; (iv) not infringe the rights of any person (including any person's Intellectual Property Rights); (v) not be prejudicial to the image or reputation of the Council; (vi) be free from viruses, adware, malware, and/or bit torrents, (vii) not cause an adverse effect on the operation of the Council's website; and (viii) have a privacy policy which complies with all applicable Data Protection Legislation and privacy laws, regulations and codes of practice;

- 6.7 The Council will not share any data collected for the reporting of the campaign with any third parties without the express permission of the Buyer.
- 6.8 Where an Advertiser or Buyer wishes to drop cookies on users' computers or use pixels, web beacons or other data collecting technology for the purpose of tracking impressions, analytics, measurement and verification of advertising campaigns, it shall do so only with the Council's consent. The Buyer must notify the Council in advance of booking an Advertisement and provide all information requested by the Council regarding such data collecting technology. Where the Council agrees to the use of data collection for analytic tracking the Buyer and/or Advertiser must ensure that data is only collected and used in the manner disclosed to the Council.
- 6.9 In no event shall data collecting technology or the data collected from it: (i) be used by the Buyer or Advertiser for the purposes of profiling users' interests, segmentation, or tracking or targeting users when they leave the Council's website; or (ii) be combined with information collected from other sources.
- 6.10 The Buyer or Advertiser must ensure that it has a lawful basis for the use of such data collecting technology and the collection of data from visitors to the Advertiser's site(s) and that the Advertiser and the Advertiser's site complies with all applicable Data Protection Legislation and privacy laws, regulations and codes of practice.
- 6.11 The Buyer shall use its best endeavours to ensure that the Advertiser complies with all applicable laws and regulations with respect to such data collecting technology.

7. Responsibility and Liability

- 7.1 The Buyer shall indemnify and keep indemnified the Council against all proceedings, claims, demands, damages, costs, expenses or any other loss whatsoever arising as a result of (i) the publication of the Advertisement or (ii) any breach of the Buyer's obligations under these terms and conditions or implied by law.
- 7.2 With regard to the actual or intended publication of an Advertisement the Council shall not be responsible to the Buyer or liable for:
- a) checking the correctness of the Advertisement in the form it is received from the Buyer;
 - b) any error in the Advertisement in the form it is received from the Buyer;
 - c) the wording, representation, placement or quality of colour or mono reproduction of the Advertisement;
 - d) the actual positioning or prominence if the Advertisement;
 - e) the failure, corruption or malfunction of any system of electronic publication, whether by means of electronic storage, display or retrieval equipment or otherwise;
 - f) any cancellation of an Order unless it is given to the Council in writing prior to the Booking Deadline; and
 - g) any failure of the Advertisement to meet or generate any target response levels.

7.3 Subject to Clause 7.2 if an Advertisement contains an error caused by the Council and this error detracts materially from the Advertisement then provided the Buyer gives the Council written notice of the error in the Advertisement within 5 days of its publication in the case of a single order or before the Booking Deadline for its next publication in the case of a series order, the Council shall, at its sole discretion, either:

- a) give the Buyer credit for the cost of the Advertisement containing an error; or
- b) publish the Advertisement for a second time without additional charge to the Buyer

Such credit or re-publication shall be the sole remedy available to the Buyer.

7.4 Except to the extent specified in Clause 7.3, the Council shall not be liable for any loss or damage suffered by the Buyer or the Advertiser as a result of total or partial failure of publication, distribution or availability of any publication in which any Advertisement is scheduled to be published or any error or omission in the Advertisement.

7.5 The Council's total liability to the Buyer for any act or omission of the Council, its employees, contractors or agents relating to any Advertisement shall not exceed the amount of the full refund any fees paid to the Council for the Advertisement. The Council shall not be liable for any:

- a) economic losses (including without limitation loss of revenues, data, profits, contracts, business or anticipated savings);
- b) goodwill or reputation; or
- c) any indirect or consequential losses

7.6 The Council shall be under no liability for any delay or failure to deliver an Advertisement or otherwise perform any obligation as specified in these terms and conditions if the same is wholly or partly caused whether directly or indirectly by circumstances beyond its reasonable control.

8. Payment Terms

8.1 Payment for any Advertisement is due in advance of first publication of the Advertisement unless otherwise agreed in writing by the Council. Where otherwise agreed with the Council, payment for the Advertisement shall become due 30 days after the date of issue of an invoice by the Council.

8.2 The Buyer must submit all information requested by the Council, including but not limited to any relevant purchase order number, in accordance with the Council's instructions and deadlines in order for the Council to generate the applicable invoice and failure to supply such information shall not excuse late or non-payment.

8.3 If the Buyer fails to pay the invoice in accordance with clause 8.1 above the Council:

- a) shall be entitled to terminate this agreement with the Buyer immediately
- b) charge interest on any outstanding balance owed to the Council at the rate of 4% over the base of HSBC Bank Plc from the date that the invoice became due for payment until the date it is paid in full; and
- c) instruct a debt collection agency to recover any sum due to the Council and the Buyer shall be liable for any and all charges incurred by the Council as a result of such instruction.

9. Cancellation and Termination

- 9.1 Any request from the Buyer to cancel or suspend an Advertisement must be in writing and received by the Council prior to the Booking Deadline. Where notice of cancellation is received after the Booking Deadline, the total booking fee remains payable to the Council.
- 9.2 The Council shall be entitled to terminate this agreement (without prejudice to any other remedy available to it) if the Buyer or the Advertiser:
- a) being an individual, dies or makes voluntary arrangement with his creditors or he becomes bankrupt;
 - b) being a company becomes insolvent, has a receiver appointed or enters into liquidation or commences to be wound up;
 - c) is unable to pay its debts as they fall due or ceases or threatens to cease to carry on business; or
 - d) is in breach of any obligation under these terms and conditions.

10. Anti-Corruption

The Council shall be entitled to terminate this agreement (at its sole discretion), and to recover from the Buyer the amount of any loss resulting from such termination, if:

- a) the Buyer shall have offered, promised or given a financial or other advantage to another person, and the Buyer intends the advantage to induce a person to perform improperly, or reward a person for improper performance of a relevant function or activity in relation to obtaining or execution of the agreement or any other contract with the Council; or the Buyer knows or believes that the acceptance of the advantage would itself constitute the improper performance of the relevant function or activity in relation to the obtaining or execution of the agreement or any other contract with the Council; or
- b) if the like acts shall have been done by any person associated with the Buyer or acting on its behalf (whether with or without the knowledge of the Buyer); or
- c) in relation to any contract with the Council, the Buyer or any person associated with it or acting on its behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972.

11. General

- 11.1 No Partnership: Nothing in this agreement is intended to create a partnership or joint venture of any kind between the parties. Neither party shall have authority to act in the name or on behalf of or otherwise to bind the other party in any way.
- 11.2 Waiver: No failure or delay by the Council to exercise any right or remedy under these terms and conditions or as provided by law shall constitute a waiver of that or any other right or remedy nor shall it restrict or preclude the further exercise of that or any other right or remedy.
- 11.3 Assignment: The Buyer may not assign or subcontract any if its rights or obligations under this agreement without the prior written consent of the Council, such consent not to unreasonably withheld or delayed.
- 11.4 Third Parties: No person other than a party to this agreement may enforce these terms and conditions by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

- 11.5 Severance: If any provision of these terms and conditions is determined to be illegal or unenforceable by any court it shall be deemed to be deleted without affecting the remaining provisions.
- 11.6 Governing Law: All matters affecting the placing of the Advertisement and these terms and conditions shall be governed by the English Law and the parties submit to the exclusive jurisdiction of the English Courts.