

ADVERTISING CONTRACT – LUDIS PUBLICATIONS LIMITED

1. INTERPRETATION

1.1 In these terms and conditions the following terms have the following meanings:

Advertisement: the text and image(s) to be printed on the page(s) of the Brochure in accordance with these Conditions.

Advertiser: the person or firm whose product and/or service the Advertisement promotes.

Brochure: the corporate publicity brochure designed and produced by Ludis to promote the Club.

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

Buyer: the person or firm who places an order with Ludis for the design and publication of the Advertisement in the Brochure and whose details appear in the Order Confirmation, whether they be the Advertiser, Advertiser's agent or an Employee of the Advertiser.

Charges: the charges payable by the Buyer for the design and publication of the Advertisement in the Brochure as specified in the Order Confirmation.

Club: the club that commissions the Brochure.

Conditions: these standard terms and conditions as amended from time to time in accordance with condition 13.5.

Contract: the contract between the Buyer and Ludis for the design of the Advertisement and publication of the Advertisement in the Brochure.

Deadline Date: the date specified in the Order Confirmation.

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 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.

Ludis: Ludis Publications Limited (company number: 08588366) whose registered office is at Unit 17, Newhaven Enterprise Centre, Denton Island, Newhaven, East Sussex BN9 9BA.

Order: the Buyer's order for the design of the Advertisement and the publication of the Advertisement in the Brochure, which may be given by e-mail.

Order Confirmation: the written order confirmation sent to the Buyer by Ludis, which may be given by e-mail.

Promotional Period: the period of 16 calendar months from the Publication Date.

Publication Date: the date on which the Brochure is physically delivered to the Club by Ludis.

Specification: the summary of the information to be included in the Advertisement and any preferences as to the style and/or appearance of the Advertisement provided to Ludis by the Buyer.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the design and publication of the Advertisement and shall, together with the Order Confirmation, apply to and be incorporated into the Contract to the exclusion of all other terms and conditions.

2.2 In the event of a conflict between the terms of the Order Confirmation and these Conditions, the terms contained in the Order Confirmation shall prevail.

2.3 When the Buyer submits an Order to Ludis, this does not mean that Ludis has accepted the Buyer's Order. These Conditions become binding on Ludis and the Buyer when Ludis accepts the Buyer's Order. Ludis accepts the Buyer's Order by providing the Buyer with an Order Confirmation, at which point a Contract will come into existence (**Commencement Date**). If Ludis is unable to accept the Buyer's Order, it will inform the Buyer of this and will not process the Buyer's Order.

2.4 The Buyer contracts with Ludis as a principal notwithstanding that the Buyer may be acting directly or indirectly for the Advertiser as an agent or in some other representative capacity.

2.5 Where the Buyer is the Advertiser's agent, the Buyer warrants that it is authorised by the Advertiser to place the Order with and provide the Specification to Ludis and the Buyer will indemnify Ludis against any claim made by the Advertiser against Ludis arising from the design and publication of the Advertisement.

2.6 By placing an Order the Buyer warrants that it:

- (a) is legally entitled to enter into and perform this Contract; and
- (b) either owns or has obtained and paid for licences to use all materials provided to Ludis in connection with the design and production of the Advertisement; and
- (c) shall indemnify Ludis and keep Ludis fully and effectively indemnified against all actions, costs, demands, losses, claims and expenses of whatsoever kind or nature arising from any actual or threatened breach or non-performance of any of the warranties, representations, undertakings or obligations on the Buyer's part contained in this agreement

2.7 Any samples, drawings, descriptive matter or advertising issued by Ludis including any illustrations and descriptions of the Advertisement are issued for the sole purpose of giving an approximate idea of the Advertisement and shall not form part of the Contract or have any contractual force.

3. DESIGN & PUBLICATION

3.1 Where the Buyer instructs Ludis to design the Advertisement, the Buyer shall provide to Ludis a Specification. It is the Buyer's responsibility to ensure that the Specification is complete and accurate

3.2 The parties shall consult in good faith with each other over the design and appearance of the Advertisement provided that Ludis shall, in its absolute discretion and giving good faith consideration to the Buyer's view, have final editorial and artistic control over the Advertisement.

3.3 Where the Buyer supplies a pre-prepared Advertisement to Ludis for inclusion in the Brochure, Ludis may refuse to publish or require to be amended the text or artwork of any Advertisement supplied by the Buyer so as to comply with the legal or moral obligations placed on Ludis, to avoid infringing a third party's rights, the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing and all other codes under the general supervision of the Advertising Standards Authority and to meet Ludis' technical requirements.

3.4 Where the Buyer supplies a pre-prepared Advertisement to Ludis for inclusion in the Brochure, it is the Buyer's responsibility to ensure that it is complete and accurate.

3.5 Ludis has the right to change the position of any Advertisement within the Brochure prior to publication but will use reasonable efforts to comply with the Buyer's wishes.

3.6 Ludis shall have the right to select and engage a third party to design and produce the Brochure. All matters relating to the design and production of the Brochure shall be at Ludis' sole discretion.

3.7 Ludis accepts no responsibility regarding copyright issues from artwork provided by the advertiser.

3.8 The advertiser will have the opportunity to request amendments to the first proof of their advertisement free of charge. Further amendments will be at the expense of the advertiser unless previous amendment instructions were not originally met by the designer.

3.9 If the advertiser does not supply artwork and have not cancelled within the time period required, then Ludis will create a generic advert from scratch to be used by advertiser and will not need it approved.

4. BUYER'S WARRANTIES

4.1 The Buyer warrants that:

- (a) the publication by Ludis of the Advertisement as submitted by the Buyer or as designed by Ludis will not breach any contract or infringe or violate any copyright, trademark or any other personal or proprietary right of any person or render Ludis liable to any proceedings whatsoever and is not libellous of any person or in any way defamatory;
- (b) any data or information supplied in connection with the Advertisement is accurate, true and complete;
- (c) in respect of any Advertisement submitted for publication which contains the name or pictorial representation (photographic or otherwise) of any living person and/or any part thereof or any text or image by which any living person is or can be identified, the Buyer or the Advertiser has obtained the authority of said living person to make use of such name, representation and/or text;
- (d) in relation to any financial promotion (as defined under the Financial Services and Markets Act 2000), the Advertiser is, or its contents have been approved by, an authorised person within the meaning of that Act or the Advertisement is otherwise permitted under the Act, under the Financial Promotion Order 2001, or under any other legislation subordinate to the Act; and
- (e) the Advertisement complies with the requirements of all relevant legislation (including subordinate legislation), regulations and codes of practice for the time being in force or applicable in the United Kingdom.

5. INDEMNITY

5.1 The Buyer shall indemnify and hold Ludis harmless 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 professional costs and

expenses) suffered or incurred by Ludis arising out of or in connection with any breach of the warranties in condition 4 above. At Ludis' request and at the Buyer's expense, it shall provide all reasonable assistance to enable Ludis to resist any claim, action or proceedings brought against Ludis as a consequence of that breach.

- 5.2 If a payment due from the Buyer under this condition is subject to tax (whether by way of direct assessment or withholding at its source), Ludis shall be entitled to receive from the Buyer such amounts as shall ensure that the net receipt, after tax, to Ludis in respect of the payment is the same as it would have been were the payment not subject to tax.
- 5.3 The Buyer shall pay to Ludis interest on overdue sums under this condition at the rate of 3% per annum above the base lending rate of National Westminster Bank Plc from time to time. Such interest shall accrue on a daily basis from the due date until payment of the overdue amount whether before or after judgement. The Buyer shall pay the interest together with the overdue amount.

6. LUDIS' RIGHTS AND OBLIGATIONS

- 6.1 Following the Publication Date, Ludis shall make available to the Club 1,000 copies of the Brochure to be displayed at the Club and may distribute copies of the Brochure to businesses and homes located within a reasonable proximity of the Club. All matters relating to the distribution shall be at Ludis' sole discretion.
- 6.2 Any times and/or dates specified by Ludis for publication of the Brochures are estimates only and time shall not be of the essence in this regard.
- 6.3 If Ludis' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (**Buyer Default**):
- (a) Ludis shall without limiting its other rights or remedies have the right to suspend performance of its obligations until the Buyer remedies the Buyer Default and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays Ludis' performance of any of its obligations;
 - (b) Ludis shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from Ludis' failure or delay to perform any of its obligations; and
 - (c) the Buyer shall reimburse Ludis on written demand for any costs or losses sustained or incurred by Ludis arising directly or indirectly from the Buyer Default.

7. CHARGES AND PAYMENT

- 7.1 The Buyer shall pay to Ludis all Charges (without deduction or set off) within 7 days of the date of its invoice/proforma in full and in cleared funds to a bank account nominated in writing by Ludis. Time for payment by the Buyer of these Charges shall be of the essence.
- 7.2 Unless otherwise stated all Charges are exclusive of VAT which shall be charged by Ludis at the applicable rate from time to time in force.
- 7.3 Ludis may review and increase the Charges from time to time including without limitation due to the content of any Specification provided by the Buyer. Ludis shall give the Buyer written notice of any such increase 7 days before the proposed date of the increase. If such increase is not acceptable to the Buyer, the Buyer shall notify Ludis in writing within 7 days of the date of Ludis' notice and Ludis shall have the right, without limiting its other rights or remedies, to terminate the Contract in accordance with condition 11.
- 7.4 Without prejudice to any other right or remedy that it may have, if the Buyer fails to pay Ludis on the due date:
- (a) the Buyer shall pay the sum of £20 as an administrative charge;
 - (b) the Buyer shall pay interest on the overdue amount at the rate of 3% per annum above the base lending rate of National Westminster Bank Plc 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 judgement. The Buyer shall pay the interest together with the overdue amount; and
 - (c) Ludis may terminate the Contract in accordance with condition 11.
- 7.5 All sums payable to Ludis under this Contract shall become due immediately on its termination, despite any other provision. This condition 7.5 is without prejudice to any right to claim for interest under the law, or any such right under this Contract.
- 7.6 The Buyer shall be liable to pay Ludis, on demand, all reasonable costs, charges or losses sustained or incurred by Ludis arising directly or indirectly from the Buyer's fraud or negligence, subject to Ludis confirming such costs, charges and losses to the Buyer in writing.
- 7.7 Ludis may, without prejudice to any other rights it may have, set off any liability of the Buyer to Ludis against any liability of Ludis to the Buyer.

8. INTELLECTUAL PROPERTY RIGHTS

Where Ludis, the Buyer or the Advertiser designs the Advertisement, all Intellectual Property Rights in or arising out of or in connection with the Advertisement shall be owned by the Buyer or the Advertiser as appropriate.

9. CONFIDENTIALITY

9.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers or suppliers of the other except as permitted by clause 9.2.

9.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives or advisers, who need to know such information for the purposes of exercising the party's rights or carrying out its obligations; and
- (b) as may be required by law, court order or any governmental or regulatory authority.

9.3 This condition 9 shall survive termination of the Contract.

10. LIMITATION OF LIABILITY:

10.1 Nothing in these Conditions shall limit or exclude Ludis' liability for:

- (a) death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

10.2 Subject to clause 10.1, Ludis shall not be liable to the Buyer, whether in contract, tort (including negligence), for breach of statutory duty or otherwise arising under or in connection with this agreement for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill;
- (f) loss of use or corruption of software, data or information; or
- (g) any indirect or consequential loss.

10.3 Subject to clause 10.1, Ludis shall not be liable to the Buyer for:

- (a) any error, misprint or non-appearance of an Advertisement unless caused by its negligence;
- (b) any error or misprint which, in Ludis' reasonable opinion, does not materially detract from the Advertisement; or
- (c) any claim for loss of publicity or opportunity to enhance the reputation of the Advertiser.

10.4 Subject to clause 10.1, clause 10.2 and clause 10.3, Ludis' total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount of the Charges paid or payable by the Buyer.

10.5 Any documents, artwork, photographs or other material supplied to Ludis in connection with the design and publication of the Advertisement by the Buyer in advance of the Publication Date shall be destroyed at the conclusion of the Promotional Period unless collected by the Buyer in advance.

10.6 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.

10.7 This clause 10 shall survive termination of the Contract.

11. TERMINATION

11.1 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 within the agreed deadlines:

- (a) the other party commits a material breach of any of the material terms of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
- (b) the other party becomes insolvent, or commits an act of bankruptcy, or a winding up order is made against them, or they make any arrangements with their creditors, or any execution or distress is levied upon any of their property, or they are unable to pay their debts as they fall due, or a petition is filed or

a resolution is passed for their insolvency, or any appointment is made to the Court for the appointment of an administrator, or any judgment against them shall remain unsatisfied for 14 days; or

- (c) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which they are subject that has an effect equivalent or similar to any of the events mentioned in condition 11.1(b).

11.2 Upon termination of the Contract for any reason:

- (a) the Buyer shall immediately pay to Ludis all of Ludis' outstanding unpaid invoices and interest; and
- (b) the Buyer shall immediately pay to Ludis upon demand any costs and expenses incurred by Ludis in collecting any sums due under this Contract.

11.3 Without limiting its other rights or remedies, the Buyer may terminate the Contract by giving Ludis written notice or email to cancel@ludis-publications.co.uk 7 days from confirmation. Written notice given after the Deadline Date shall not be binding on Ludis and shall not affect the Buyer's liability for payment of the Charges.

11.4 Where written notice to terminate is given by the Buyer after the Deadline Date, Ludis shall be entitled to demand, as agreed compensation for Ludis' loss, a sum equal to the entire Charges that would (but for the termination) have been payable if the Contract had continued from the date of such demand to the end of the Promotional Period.

11.5 Termination of this Contract shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

12. Notices

Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or the international equivalent to the other party. Any notice shall be deemed to have been duly received if delivered personally, when left at the address of the other party, or, if sent by pre-paid first-class post or recorded delivery or the international equivalent, on the second business day after posting.

13. Miscellaneous

13.1 **No partnership of agency:** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.

13.2 **Waiver:** A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

13.3 **Third party rights:** A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.4 **Matters outside Ludis' control:** Ludis shall have no liability to the Buyer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including the default of suppliers or subcontractors.

13.5 **Variation:** The Contract may only be amended or varied in writing signed by a duly authorised representative of the parties.

13.1 **No reliance:** The Buyer acknowledges that, in entering into the Contract it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) that is not set out in this agreement. Nothing in these Conditions shall limit or exclude any liability for fraud.

13.2 **Severance:** If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

13.3 **Additional information:** Ludis' VAT number is 166 4792 71. Ludis covers the provision of Ludis' services in England and Wales.

13.4 **Jurisdiction:** The validity, construction and performance of the Contract shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts.