



PORTLAND DIRECT MARKETING LIMITED

**THE OLD DAIRY,
VICTORIA STREET,
FELIXSTOWE,
SUFFOLK,
IP11 7EW**

TERMS & CONDITIONS OF BUSINESS

These Terms & Conditions shall apply to any contract between Portland Direct Marketing Ltd (PDML) and the Client (which shall mean the person, firm, company or organisation placing any order which is accepted by PDML) for the supply of goods (including any instalment or part of them) and services (including any part of them) which PDML is to supply or deliver. Each contract will be confirmed by an Order Confirmation given to the Client by PDML which will outline in detail the specific items included in each contract.

These Terms & Conditions supersede any of PDML's previous Terms & Conditions and any practice or course of dealing previously applying between PDML and the Client.

1. Order, supply and delivery of materials.

1.1 Supply of Materials

1.1.1 The Client shall be responsible for ensuring that the materials supplied by it or on its behalf

- a) conform to specifications in the quotation and Royal Mail requirements
- b) are supplied punctually [also see 6.5]
- c) are accompanied by a delivery note stating the quantity and description of the materials supplied.
- d) are delivered on pallets, boxed and supplied in such a way as to withstand normal storage and handling
- e) are sufficient to enable PDML to deliver the correct quantity of any printing or reproductive work ordered allowing for normal wastage and spoilage (min 3% overs)

1.1.2 The Client shall warrant that it has good title to the goods or the permission and consent of the lawful owners of such goods to deal with them and that it will notify PDML forthwith in writing of any sale or assignment of the goods or termination of such authority.

1.1.3 The Client shall indemnify and keep indemnified PDML against all and any losses, claims, proceedings costs or liabilities arising directly or indirectly out of breach of the warranty at 1.1.2.

1.1.4 PDML shall use its reasonable endeavours to provide the Client with a reasonable estimate of the quantity of printing or reproductive work required.

1.1.5 Where copy supplied by the Client is not clear or legible, then a charge may be made to cover any additional work

1.1.6 PDML may reject any paper, plates or other materials supplied or specified by the Client which appear to PDML to be unsuitable. Additional cost incurred if materials are found to be unsuitable during production may be charged except where any unreasonable delay in ascertaining the suitability of materials has been caused by PDML and this amount shall not be charged to the Client.

1.1.7 Where materials are so supplied or specified, PDML will take every care to secure the best results, but responsibility will not be accepted for imperfect work caused by defects in or unsuitability of materials so supplied or specified.

1.1.8 All estimates provided by PDML are indeed estimates. PDML reserves the right to adjust prices without further reference to the Client, should the Client's final specification and instructions demand changes in the supply of goods or materials.

1.2 Checking Materials

PDML shall count the number of pallets or boxes containing materials supplied by or on behalf of the Client against any delivery note and shall immediately report any discrepancy to the Client. PDML shall not however be responsible for any loss arising from any errors or omissions in the goods supplied. PDML shall not be required to check the contents of pallets or boxes supplied by or on behalf of the Client. Any goods noted to be damaged upon arrival at PDML premises shall be informed to the Client immediately. PDML may, at its discretion, re-pack any inadequately packaged or damaged goods and charge a reasonable sum in respect of such re-packing but PDML shall not be liable for any loss or damage arising therefrom. PDML reserves the right to refuse to accept damaged or spilled goods and to notify the Client accordingly.

1.3 Insurance of Materials

All materials supplied by or on behalf of the Client are at the Client's risk whilst on PDML's premises or in transit to such premises or to the premises of any sub-contractor appointed by PDML. The Client is responsible for arranging adequate insurance cover for those materials unless arrangements have been made to the contrary. If the Client wishes PDML to accept insurance liability for specific materials or goods then the Client shall give written notice to be received by PDML a minimum of 7 days before the date on which the insurance is required to be operative. The Client shall specify the nature and maximum value of the Goods to be insured inclusive of duty and taxes paid or payable thereon. The materials/goods will be insured to the value provided by the Client to PDML and no claims in excess of this value can be accepted. The Client will accept an increase in PDML's charges to cover the costs incurred by PDML for this insurance cover.

1.4 Storage of Materials

Any of the Client's materials which are delivered to PDML more than 14 days prior to the date specified for delivery by PDML will be subject to storage charges. Any of the Client's materials which remain in PDML's possession 21 days from the completion of any order will be subject to storage charges. PDML reserves the right to destroy or dispose of all such materials not less than 21 days after written notice to that effect is given to the Client and to make a reasonable charge for this destruction or disposal which shall be payable by the Client immediately upon receipt of the invoice unless otherwise agreed in writing between the Client and PDML.

1.5 Storage of Promotional Materials

Storage is not charged on goods that form part of a currently running promotion. Storage is charged on: goods delivered in advance of the commencement of any promotion, goods held in storage after the completion of any promotion, goods delivered to PDML for onward transit to any other premises. All storage is undertaken by PDML on the basis that full disclosure has been made to PDML of all and any special requirements and/or precautions needed in respect of the goods. In the absence of such disclosure PDML shall be under no liability in any event for the deterioration loss damage or destruction of the goods from any cause whatsoever.

ever including any acts or omissions of PDML its agents or employees.

1.6 Physical Delivery of Materials

The cost of collection and delivery of the Clients goods or materials is not included within the contract unless specifically mentioned. Where delivery is specifically mentioned, any costs quoted will be for delivery to the address stated on the contract, any change in the delivery address may incur extra costs. Where this is carried out by PDML for the Client it will be charged for as an extra.

1.7 Proofs

Proofs of all work may be submitted for the Client's approval and PDML shall incur no liability for any errors not corrected by the Client in proofs so submitted.

1.8 Variations in Quantity on Printed Items

Every endeavour will be made to deliver the correct quantity of printed goods or materials ordered, but any contract including printed goods or materials is conditional upon margins of 5% for work in one colour only and 10% for other work being allowed for overs or shortage (4% and 8% respectively for quantities exceeding 50,000) the same to be charged or deducted.

1.9 Standing Material

Metal, film, glass, original artworks, photographs, transparencies and other materials owned by PDML and used by PDML in the production of type, plates, moulds, stereotypes, electrotypes, film-setting, negatives, positives and the like shall remain the exclusive property of PDML. Such items when supplied by the Client shall remain the Client's property. Type may be distributed and lithographic, photogravure or other work effaced immediately after the contract has been carried out unless written arrangements are made within the contract. Where such items are to be retained, then a storage charge may be made.

2. Delivery of Goods & Materials and Posting of Mailings

2.1 The specified time for delivery of goods or posting of mailings ordered under a contract shall not be of the essence unless agreed in writing with PDML. All specified times of delivery of goods or posting of mailings ordered under a contract shall be subject to receipt by PDML of all information and materials to enable it to proceed with the contract and to comply with any applicable governmental or other consent.

2.2 The Client retains the responsibility for postage and delivery of mailings. Where Clients do not have a contract with Royal Mail (or other postal services licensed in future under proposed competition reforms) PDML will either assist in the application for a postal contract, or will act as an agent on behalf of the client in dealings with the Royal Mail (or others).

2.3 Should expedited delivery of goods or materials be requested by the Client and agreed by PDML, then extra charges may be made to cover any overtime or any other additional costs involved.

2.4 Delivery shall be deemed to have taken place when the goods or materials are handed to any person collecting on behalf of the Client or when delivered by PDML into the custody of any carrier or messenger appointed by PDML or the Client, or in the case of mailings into the custody of Royal Mail or the appointed overseas consolidator or their carrier or messenger unless specifically agreed in writing between the Client and PDML before the acceptance and commencement of any contract.

2.5 Ownership of goods or materials supplied shall pass to the Client once delivery has taken place and payment has been made in full.

2.5.1 Until such time the Client shall hold the goods or materials as bailee for PDML and shall indemnify PDML against any loss, damage or deterioration.

2.5.2 If the Client sells or otherwise disposes in the ordinary course of business of any goods before the property in them has passed to the Client then the Client shall hold on trust for PDML any proceeds of sale and the right to receive such proceeds. Nothin herein

shall constitute the Client the agent of PDML for the purpose of such sub-sale.

2.5.3 PDML may enter the Client's premises and repossess any goods which remain the property of PDML at any time if the Client commits any act of bankruptcy or (being a company) enters into liquidation or has a receiver appointed or if it is in default of any of its obligations under this or any other agreement with PDML.

2.5.4 The provisions of this clause shall also apply where the goods remaining the property of PDML are mixed with other goods or become a constituent part of other goods and PDML shall also have ownership of such other goods. In the event of their being repossessed by PDML, the Client shall be entitled to fair and reasonable compensation for work carried out by and for any other goods contributed by the Client.

3. Force Majeure

PDML shall be under no liability if it shall be unable to carry out any of the provisions of the contract for any reasons beyond its control including (without limiting the foregoing) Act of God, legislation, war, fire, flood, drought, failure of power supply, lock out, strikes or other action in contemplation of the furtherance of a dispute (but not strikes or other action in contemplation of the furtherance of a dispute taken by PDML's employees). During the continuance of a situation of 'Force Majeure' the Client may by written notice to PDML terminate the contract and pay for work done and materials used, but subject to this shall otherwise accept delivery when available.

4.Data Protection

4.1The processing of personal data

PDML represents, warrants and undertakes to the Client that it shall process any personal data (as defined in the Data Protection Act 1998) solely for the purposes of the contract and for no other purpose. PDML represents, warrants and undertakes to the Client that it has in place appropriate technical and organisational measures against accidental or unlawful destruction or loss of alteration to, unauthorised disclosure of or unauthorised access to any personal data. PDML shall ensure that each of its employees, agents and subcontractors are made aware of its obligations with regard to the security and protection of personal data.

4.2Auditing of security measures

PDML shall, when requested to do so by the Client, submit its data processing facilities, data files and relevant documentation to auditing by the Client and shall comply with all reasonable requests from the Client to enable it to comply with any and all of its obligations under the Act. Upon completion or termination of the contract the Client shall provide instructions for the return or destruction of personal data.

5.Intellectual Property

The intellectual property rights in any work created by PDML or for PDML by a sub-contractor appointed by PDML in relation to a contract shall vest in PDML unless it is agreed in writing that such intellectual property rights shall pass to the client.

6.Charges and payment

6.1Payment of Invoices

Unless specifically agreed between PDML and the Client normal payment terms are in advance (proforma) a minimum of 3 working days prior to the mailing or despatch date. All prices quoted are strictly net and are exclusive of VAT which should be payable by the Client, excepting on specified exempt or zero VAT rated goods and services. The Client shall also be charged for any preliminary work produced by PDML at the Client's request whether experimentally or otherwise and any corrections made after the first proof or any other changes requested by the Client on or after the first proof. If payment is not received within the Client's allotted credit terms then the despatch of goods or handling of any promotion may be held until sufficient payments are received to re-conform to these times. When dealing

with promotions, the Client should be advised that if there is any shortfall in payment from an agency, agent or fixed fee company then that shortfall in payment will be sought from the manufacturer of the product being promoted.

6.2 Payment for postage

Where the mailing is to be undertaken through PDML's own postal account, the cost of postage shall be paid by telegraphic transfer not later than 2 working days before the mailing begins, or by cheque not later than 4 working days before the mailing begins. If the cost of the postage is not paid within the specified time limit PDML shall have the right to withhold the mailing.

6.3 Postal charge refunds

Where the cost of postage is less than the amount paid PDML shall either refund any sums remaining to the Client or shall provide a credit for the Client for the next mailing it puts through PDML's account.

6.4 Interest on overdue bills

Where credit terms have been specifically agreed PDML reserves the right to charge interest at the rate of 2% per month or part thereof on any overdue sums from the date on which payment was due (which shall mean the date specified in writing on the invoice, or 30 days after the date of any invoice if no specific date is mentioned) to the date on which payment is received.

6.5 Downtime & Rescheduling

Where any work of any type being carried out by PDML or any of its appointed sub-contractors related to a client's mailing has to be put on hold or rescheduled due to delays on the part of the Client or any of the Client's appointed sub-contractors, PDML reserves the right to levy a charge against the Client which shall be calculated in proportion to amount of administrative time taken to reschedule and/or the wages and machine time cost of downtime.

6.6 Invoices with a nett value of less than £25 may, at the sole discretion of PDML, be subject to a small invoice charge of £10.00 plus VAT.

7. Lien

Without prejudice to any other rights of action that PDML may have against the Client in the event of non-payment or other breach of these Terms & Conditions, PDML may exercise a lien over the goods and refuse to deliver or arrange for delivery of the same until all amounts due to PDML in respect of such goods have been paid in full. If full payment is not made within 30 days of a written demand sent to the Client by PDML then PDML's obligations with regard to the goods shall come to an end, and PDML shall be entitled to sell the goods at any time thereafter and shall account to the Client for the proceeds of sale of the goods after deducting therefrom all amounts due to PDML in respect of the goods in accordance with the provisions of the Torts (Interference With Goods) Act 1977 or any statute replacing, amending or re-enacting the same.

8. Codes of practice and indemnities

8.1 The Client shall

8.1.1 provide PDML with a true copy of all advertising material or other material intended to be enclosed with any material prepared by PDML.

8.1.2 ensure that all information or materials provided by the Client comply with all applicable statutory requirements and with the codes of practice of the appropriate supervisory bodies including, but not limited to, the British Codes of Advertising and Sales Promotion (BCASP), and the Direct Marketing Association's Code of Practice.

8.2 The client shall indemnify PDML against all costs, claims, liabilities, penalties and expenses which PDML may incur by reason of its' works being illegal, unlawful, infringing any copyright, trademark or other intellectual or other proprietary rights of any third party or is

defamatory, obscene or the distribution of which may infringe postal or other regulations or which is in breach of any trade description or other legislation.

8.3 PDML shall have the right upon request from the body administering the Quality Standard in Mail Production (QMP) or any successor accreditation scheme, to supply that body with samples of any mailings relating to any contracts.

9.Provision of computer data

The Client shall ensure that any computer data supplied to PDML is clean, unadulterated, capable of being read and processed and does not contain any computer viruses. In the event of the computer data supplied being corrupt, PDML shall either require the Client to supply clean unadulterated data which does not contain any computer viruses or decontaminate the data itself but at the Client's expense. The Client shall ensure that all data supplied to PDML is completely unambiguous with regard to format. A specification of the formats of the data supplied and instructions for interpretation must be provided in writing.

10.Supply of mailing lists

Where PDML is supplying the Client with only mailing lists (referred to hereafter as the List) (either owned, managed or brokered by PDML) on whatever medium specified.

10.1Clients Obligations

10.1.1 the Client shall be entitled to use the List once only and solely for the purpose of mailing the material approved by PDML.

10.1.2 the Client shall not be entitled to disclose, pass on, communicate or otherwise deal with the List or any part thereof or any information extracted from the List to any other person, company, firm or organisation without the written consent of PDML.

10.1.3 the Client shall not be entitled to use the List for profiling, nor to mark or amend any other List in any way whatsoever using the List supplied by PDML.

10.1.4 if the List is supplied to the Client on disk, CD or other recording material then the Client shall return such medium to PDML within 21 days of completion of the Client's mailing.

10.1.5 the Client will use the List as detailed on each specific Order Confirmation within three months of the date of supply or return the List to PDML. Any re-supply of any List not used within this time period will be at the Client's full cost.

10.1.6 the Client will return to PDML all requests for corrections to an individual's information arising from their mailing using the List within 30 days of the receipt of such a request the cost of returning the requests shall be at the Client's cost.

10.1.7 the Client shall not be entitled to use the List for telephone sales or telemarketing of any type unless specifically agreed with PDML at the time of ordering the List.

10.2 All Lists provided to the Client are for one mailing use only unless specified otherwise at the time of placing the order.

10.3 All Lists supplied for mailing purposes are protected by the conventional method of inserting dummy names and addresses for monitoring purposes.

10.4 PDML reserves the right to require the Client to supply a sample of the proposed mailing prior to final acceptance of any order for List supply. PDML may at its absolute discretion reject any proposed mailing material and shall not be required to give any reason for refusal to accept the order and shall be under no obligation to perform under the contract until it has notified the Client that the proposed mailing material is acceptable.

10.5 Whilst all reasonable steps are taken by PDML to check the accuracy of Lists, the accuracy is not guaranteed. For lists owned by PDML there is a set policy on refunds for 'gone-aways'. This will be provided upon request. For managed or brokered Lists PDML can only refer the Client to the List Owners in case of any complaints.

11.Liability

11.1 Limitation of PDML's liability

PDML's entire liability (including liability for acts and omissions of its employees, agents and sub contractors) in respect of any breach of its contractual obligations and of any representations, statements or tortious act or omission including negligence shall be limited to the contract price (excluding postage and telecommunications costs). PDML shall not be liable for any loss or damage caused or contributed to by a breach of any of the Client's warranties or undertakings (or by any of the circumstances by virtue of which PDML is relieved of its contractual obligations in accordance with 11.2 below).

11.2 PDML shall be relieved of its contractual obligations to the extent that their performance is prevented by or their non-performance results wholly or partly, directly or indirectly, from the act, neglect or default of the Client including any breach by the Client of these conditions.

11.3 Consequential or indirect loss

PDML shall not be liable for any indirect or consequential loss or damage, loss of profits or goodwill or loss of any kind, other than the direct loss suffered by the Client and subject to limitation under sub clause 11.1.

11.4 Liability for death or personal injury

Notwithstanding the sub clauses 11.1 and 11.2 above, PDML's liability to the Client for death or injury resulting from its own or that of its employees, agents or sub contractors negligence shall be limited to a sum no greater than one million pounds sterling.

11.5 PDML does not guarantee the result of any mailing nor accepts liability in the event of failure.

12 Termination and cancellation

12.1 Termination in the event of breach of contract by either party or upon the bankruptcy, liquidation, etc of the client.

Subject to clause 12.2 either party shall be entitled to terminate this contract by notice in writing to the other in the event of any material breach by the other party of any of its obligations under this contract. The termination will take effect 14 days after receipt of written notice unless the defaulting party has remedied the default within this time. PDML shall be entitled to terminate its contract with the Client by notice in writing in the event of the Client's failure to pay in accordance with the terms of the contract or in the event of the Client committing an act of bankruptcy or taking any steps leading to liquidation, making any agreement with its creditors or having a receiver or administrative receiver appointed over any of its assets. In the event of termination by PDML under this clause, the Client shall immediately pay any outstanding sums due from it to PDML.

12.2 Termination in other circumstances

If either PDML or the Client wishes to cancel a contract (other than for a breach of a contract by the other and the instances arising under clause 12.1) then:

12.2.1 where the Client cancels the contract it will pay to PDML a reasonable sum for any work carried out by it prior to such cancellation together with a reasonable profit on the uncompleted portion of the contract.

12.2.2 where PDML cancels the contract it will pay to the Client all costs incurred by the Client relating to that contract which are not easily transferable to another supplier.

12.2.3 Termination of the contract by cancellation in 12.2.1 and 12.2.2 above will take effect immediately upon receipt of written notice from the cancelling party to the other party. Proof of postage and receipt must be supplied.

12.3 Treatment of Goods upon Termination

PDML may at any time by notice in writing to the Client require the removal of goods within 14 days from the date of such notice or, in the case of perishable goods, within 3 days. In the event of failure by the Client to remove any of the goods, (subject to notice having been given as above), at the due time, PDML may, without prejudice to its other rights and remedies against the Client, notify the Client in writing of its intention to sell or otherwise dispose of the goods. If the goods are not recovered within 14 days, or in the case of perishable Goods within days, from the date of such notice, PDML shall be entitled to sell or otherwise dispose of all or any part of the goods at the Client's entire risk and expense by the best methods reasonably available and the proceeds of sale or disposal shall be remitted to the Client after deduction therefrom of all expenses and amounts due to PDML from the Client on any account.

13 Agency, partnership and joint ventures

Nothing in any contract shall be construed as to constitute either PDML or the Client to be the agent of the other and it shall not operate so as to create a partnership or joint venture of any kind between them.

14.Enforceability

Any complaint or claim regarding any contract supplied or carried out by PDML must be notified to PDML in writing within 21 days of the date of despatch of the goods or posting of the mailing or any such claim or complaint will be deemed to be invalid. No waiver by PDML or the Client of any breach of contract by the other, shall be considered as a waiver of any subsequent breach of the same or any other provision.

15.Severability

Notwithstanding that any provisions of this contract may prove to be illegal or unenforceable the remaining provisions shall continue in full force and effect.

16.Entire agreement

These Terms & Conditions constitute the entire agreement between PDML and the Client with respect to the matters dealt with herein. No variation to this agreement shall be valid or effective unless made in writing and signed by both of them.

17.Jurisdiction

This agreement is subject to English Law and PDML and the Client agree to submit to the jurisdiction of the English courts in respect of any dispute or difference arising under it.

18.Claims

Advice of damage, delay or partial loss of goods in transit or of non delivery must be given in writing to PDML and the carrier within three clear days of delivery (or in the case of non delivery with 28 days of despatch of the goods) and any claim in respect thereof must be made in writing to PDML and the carrier within 7 clear days of delivery (or in the case of non-delivery within 42 days of despatch). All other claims must be made in writing to PDML within 28 days of delivery or posting of the mailing. PDML shall not be liable in respect of any claim unless the aforementioned requirements have been complied with.

Signed for and on behalf of Portland Direct Marketing Ltd

Signature:

Name:

Capacity in which authorised to sign (ie, position):

Dated:

Signed for and on behalf of:

Name of Company, Individual, Firm or Organisation :

Signature:

Name: (please print):

Capacity in which authorised to sign (ie, position):

Dated:

version 07/04
incl Postage amendment
incl Reschedule amendment
incl SFI amendments