



# LLOYD JAMES MEDIA

## Broking Terms & Conditions

### 1. APPLICATION OF CONDITIONS

- a) In these conditions the "Broker" means Lloyd James Media Limited. The "Buyer" means the individual firm, company or other party with whom the Broker contracts. The "List Owner" means the individual firm, company, Broker or other party with proprietary rights including copyright in the list which forms the whole or part of the subject matter of the Contract between Broker and Buyer and which contains personal or other data, and whether or not such person is a user of such list.
- b) Any agreement made between the Broker and the Buyer for the sale or use of materials by the Broker to the Buyer (the Contract) shall only be subject to these Conditions; any representation or warranty made by or on behalf of the Broker prior to the Contract whether orally or in writing is hereby expressly excluded and shall be of no effect.
- c) Unless otherwise agreed in writing signed by the Broker, these conditions shall override any Terms and Conditions stipulated, incorporated or referred to by the Buyer in its order or any other document or during pre-contract negotiations. In the event of the Broker entering into the Contract without having submitted a written quotation but in circumstances where the buyer has had prior notice of the Conditions, then all materials supplied shall be subject to these Conditions.
- d) The Broker reserves the right to insist that the Buyer notifies it in writing of the full name and address of the Buyer and all its branches and where the Buyer is a limited company its registered office and the names of all persons who have authority to bind the Buyer. If the information is not provided within seven days of request therefore by the Broker, the Broker may terminate the Contract.
- e) The Broker reserves the right to assign, sub-contract or sub-let the fulfilment of the Contract or any part thereof. The Buyer shall not be entitled to assign the benefit or burden of the Contract without the consent in writing of the Broker.
- f) The Broker will not be prejudiced by any forbearance granted to the Buyer, and no waiver by the Broker of any further breach.

### 2. PRICE

- Unless the broker otherwise agrees in writing:
- a) The price for the materials shall be as follows:
- The rental charge for the use of a list and all data contained therein
  - The cost of the materials on which the list is supplied
- The price appears in the Broker's list rental rates from time to time which rates may be increased at any time.
- b) Additional charges shall be payable for:-
- Limited or additional selection from list
  - Preliminary work produced by the Broker at the Buyer's request whether experimentally or otherwise
  - In accordance with the Terms and Conditions 4 and 5
- c) VAT is payable (whether or not mentioned in any quotation or invoice) in addition to the price and any additional charges.
- d) Orders must be prepaid net and in cash. For long jobs the Broker may render interim invoices monthly or at such other times as may be agreed with the Buyer, which are payable forthwith net and in cash.
- e) Notwithstanding the above the Broker may in his absolute discretion open an account facility for the Buyer for payments to be remitted to the Broker on a calendar monthly basis.
- f) The Broker shall be entitled to interest on all monies not paid on the due date at the rate of 8% over base on late payments as stipulated by The Late Payment of Commercial Debts (Interest) Act 1998.
- We understand and will exercise our statutory right to interest under The Late Payment of Commercial Debts (Interest) Act 1998 if we are not paid according to the agreed credit terms.

### 3. ACCEPTANCE OF ORDERS

- a) The Broker shall be under no obligation whatsoever to contract to the Buyer and shall not be required to give any reason for refusal to contract.
- b) The Buyer shall provide two examples of each item intended to be mailed for submission to the list owner, and acceptance of a Buyer's order shall not be deemed to have taken place unless and until the "List Owner", shall, in his absolute discretion, have confirmed such order is acceptable.

### 4. DELIVERY AND TIME

- a) The Broker shall notify the buyer when the materials are available for collection by the Buyer. Alternatively, the Buyer may request the Broker to deliver the materials to him or to his nominated clients, in which case the Broker shall be entitled to charge the Buyer for the costs and expenses of such delivery. Delivery shall be deemed to have taken place when the materials are handed into the custody of the person collecting the materials on behalf of the Buyer, when posted or delivered into the custody of any carrier or messenger, whether appointed by the Buyer or the Broker.
- b) Whilst the Broker shall make every effort to complete the Contract within the time quoted, time shall not be of the essence of the Contract unless specifically agreed by the Broker in writing. The Broker shall endeavour to inform the Buyer of the likelihood of any substantial delay.
- c) In the event of the Buyer requesting expedited completion of the Contract i.e. Completion earlier than would otherwise reasonably be expected, the Broker shall use its best endeavours to complete the Contract in accordance with the Buyer's request but shall be entitled to charge the Buyer for any overtime or other additions necessitated by or in connection with the request.

### 5. CANCELLATION

- a) The Broker shall be entitled to cancel the Contract and any future Contract:-
- Where the Buyer fails to make payment to the Broker under the account facility or in any other case.
  - Where the Buyers fails to give instructions for delivery or collection of the materials.
  - Where a receiver is appointed over the whole or any part of the assets of the undertaking of the Buyer or a Winding-up or administration order is made against the Buyer or the Buyer goes into liquidation or causes a meeting or makes any arrangement with his or its creditors or commits any act of bankruptcy.
  - In accordance with Condition 1 (d) or 11.
  - If the Buyer shall, in the Brokers opinion, have breached the provisions of Condition 7.

In any such case, the Broker shall be entitled to charge the Buyer any costs, charges or expenses (both direct or consequential) incurred by the Broker by reason of such cancellation which will be reimbursed by the Buyer to the Broker forthwith. The Broker shall notify the Buyer of the cancellation as soon as reasonably practical.

b) Cancellation of the contract by the Buyer will only be accepted at the sole discretion of the Broker and, unless otherwise agreed in writing, only upon condition that any costs, charges of expenses (both direct and consequential) incurred by the Broker up to the date of cancellation and the value of all loss or damage (both direct and consequential) incurred by the Broker by reason of such cancellation will be reimbursed by the Buyer to the Broker forthwith. Acceptance by the Broker of any cancellation by the Buyer will only be binding upon the Broker if it is made in writing.

### 6. BROKERS RIGHTS AND OBLIGATIONS

- a) The number of names and addresses included in a list are approximate and, together with price quotations, are subject to an allowable discrepancy of 15% more or less.
- b) A small percentage of dummy names and addresses shall be included in all lists to enable the Broker to monitor usage.
- c) Lists are not built up from any personal knowledge of any particular trade, and the Broker relies upon the description of the list accorded to it by the List Owner. No warranty is therefore given as to the accuracy of any list and the accuracy of any list is not a condition of the Contract. Without prejudice to the foregoing allowance must be made by the Buyer when the Buyer has requested expedited delivery of the materials.
- d) Whilst every effort is made by the Broker to supply accurate information on the list rented, the Broker does not guarantee the result of any mailing or accept liability in the event of failure.
- e) Liability is not accepted by the Broker for any loss resulting from non delivery of mail.
- f) Damages for consequential loss or otherwise in respect of any claim by the Buyer arising out of or in connection with the materials or their supply or any breach of Contract by the Broker, shall in any event, be limited to the price of the Contract.
- g) Any data relating to the nature of the list provided or detailing categories such as the demographic, social, economic, racial, professional or other status of the geographical location of the names/addresses supplied is part of the list as a whole, is copyright and the subject of these Conditions.

### 7. BUYERS RIGHTS AND OBLIGATIONS

- a) Unless otherwise agreed in writing between the Broker and the Buyer all data supplied shall be used only once for one specific promotion at the time agreed and using the agreed channel.
- b) The Buyer may use only names and contact channel information supplied. No other data contained in the data output may be used by the Buyer for any purpose whatsoever without the previous consent in writing of the Broker.
- c) No copies of data may be retained by the Buyer for more than one calendar month save with the previous consent in writing of the Broker such consent to be in the absolute discretion of the Broker.
- d) The Buyer shall not be entitled to pass on, disclose or otherwise communicate the list or any part thereof or information extracted therefrom to any addressing bureau or any other third party without the previous permission of the Brokers.
- e) Copyright in data in any media supplied by the Broker shall at all times remain with the List Owner or the Broker as the case may be.
- f) Whether or not the Broker and/or List Owner shall have seen copies of the items to be mailed by or on behalf of the Buyer, the Buyer warrants that (a) shall comply with all requirements and conditions of any applicable law, regulation or code of practice; b) the Buyer's Promotional Material will not infringe any copyright, trademark or other intellectual property or similar right of any third party or infringe the moral rights of any person, nor will it be defamatory, offensive, obscene, racist or in breach of any person's rights, including a breach of confidence, privacy or any other rights; and shall keep the Broker and/or List Owner fully indemnified against losses, costs, charges and expenses of whatsoever nature arising out of our in connection with a claim that such items of the mailing infringe copyright, are defamatory, indecent or otherwise illegal or unlawful whether or not such a claim is upheld or justified.
- g) The Buyer shall be liable for loss or misuse of a list whilst in his care, or in the care of his agent, mailing bureau, computer bureau, etc or any other breach by them of any of these conditions. It will be deemed misuse of a list if the list having been supplied for mailing is used for telephoning or any other activity other than the purpose for which it was originally provided.

### 8. DATA PROTECTION

- The Buyer warrants that:-
- a) Personal data will be used by it only for the purpose or purposes or advertising or direct marketing as registered by the List Owner and as specified by this Contract.
- b) The Buyer is notified with the Information Commissioner and the terms of registration cover the purposes for which it will process or disclose the data.
- c) Where the Buyer is not required to notify with the Information Commissioner, personal data will not be disclosed unless authorised by the Broker under Condition 7 and then only to the extent required from the Buyer's advertising or marketing purposes).
- d) Any request for access correction or deletion of data received by the Buyer from data subject whose personal data are included in the materials will be referred to the List Owner.
- e) The Buyer will keep the Broker, the List Owner and their officers, agents and employees fully and effectually indemnified in respect of all claims, demands, charges and penalties incurred by it or them as a result of any breach of non-observance of this clause by the Buyer.

### 9. FORCE MAJEURE

- Notwithstanding the provisions of paragraph 4(b) the Broker shall not be liable for the loss suffered or incurred by the Buyer as a result of the Broker being unable to perform the Contract by reason of any act of God, War, lockout, strike, fire, flood, delay in transit, postal delay, riot or any other unexpected or exceptional cause or circumstances beyond the Broker's control in which the Broker shall be entitled to cancel the Contract or delay the performance thereof for as long as is reasonably necessary.

### 10. ENFORCEABILITY

- If at any time one or more of the provisions of these Conditions becomes or is held by a Court to be invalid or illegal or unenforceable under any law, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

### 11. JURISDICTION

- These Conditions and each and every Contract pursuant thereto, shall be governed by and construed in all respects in accordance with the laws of England, and the Broker and the Buyer hereby agrees to submit to the jurisdiction of the English Court.