

Touch Local Limited

Advertising Products Terms and Conditions

1. Introduction, Incorporation and Interpretation

1.1. These terms are incorporated into each agreement entered into between the Customer and Touch relating to the supply of Advertising products whether or not the Customer Order Form or any other document to which the Customer agrees makes reference to these terms.

1.2. In this Contract:

“**Advertising product**” means the product (as described in the Advertising product Listing) actually specified on the Customer Order Form to be supplied by Touch;

“**Advertising product Content Collection Sheet**” means the specification of the Advertising product attached to the Customer Order Form;

“**Advertising product Listing**” means the description of Touch’s Advertising products and services as at the date of this Contract;

“**Contract**” means the contract of which the Customer Order Form forms part, to which these Terms and Conditions (“**Terms**”) apply;

“**Customer**” means the person identified as such on the Customer Order Form;

“**Customer Content**” means the Customer’s content created or supplied by the Customer for publication on the Advertising product;

“**Customer Links**” means any hyperlinks placed by the Customer in the Customer Content or otherwise on the Advertising product;

“**Customer Order Form**” means the Customer order form which forms part of the Contract;

“**Fees**” means the set up fees and any service provision fees (including interest) for the Advertising product as set out on the Customer Order Form;

“**Third Party Provider**” means the service provider on whose search results the Advertising product will appear

“**Touch**” means Touch Local Limited

2. Advertising products and Services provided

2.1. Touch shall permit the Customer to post the Customer Content on the Advertising product purchased for the relevant term and subject to the payment of Fees.

2.2. Touch shall develop the Advertising product in accordance with the Customer Content. The Customer shall provide the Customer Content to Touch either at the time of the order or within 2 weeks from the date on the Customer Order Form (unless otherwise agreed in writing) and in such format as Touch reasonably requires. If Touch receives the Customer Content after the 2 weeks allowed then Touch will complete the Advertising product using basic business details and reserves the right to make an additional charge for the time spent in publishing the Customer Content in accordance with the current rates of its service plan. By completing the Customer Order Form the Customer agrees to be bound by the terms of the Contract. No conditions other than those set forth herein shall be binding on Touch unless: (i) specifically agreed to in writing by Touch and (ii) any additional terms and conditions of the Customer are expressly written into the Customer Order Form signed by the Customer and Touch. Save in respect of an exception under sub-clause 2.2. (i) and (ii) above, in case of any inconsistency between the Customer Order Form and these Advertising Terms, these Terms will prevail.

2.3. Touch aims to complete your Advertising product within four weeks of receiving your content (where applicable) depending upon the product purchased.

2.4. Where appropriate, Touch agrees to submit the Advertising product to one or more search engines i.e. Third Party Providers as discussed with the Customer and if it does so the Customer agrees that Touch has no control over these search engines and as such cannot guarantee that the submission will be accepted or at what position in the search results the item will appear.

2.5. Except as otherwise expressly provided in the Customer Order Form, positioning of Advertising products is at the sole discretion of Touch or the Third Party Provider, and neither Touch nor the Third Party Provider will be prohibited from also carrying Advertising products for any product or business competitive to that of the Customer.

2.6. Unless stated on the Order Form, Touch cannot guarantee any delivery units i.e. impressions, clicks or leads of an Advertising Product or timescales for delivery with any such performance based Advertising product (refer to Advertising product Listing).

2.7. Touch and the Third Party Provider shall be responsible for the hosting, operation and maintenance of the Advertising product and, although it shall use its reasonable endeavours to keep the Advertising product available on the Internet, Touch gives no guarantee as to continuing service availability.

2.8. Unless otherwise agreed in writing, any property or material supplied by or on behalf of the Customer in order for Touch to create the Advertising product will not be returned to the Customer.

2.9. The Customer accepts that Touch cannot ensure that the Advertising product in all respects is visible in all browsers and versions of these browsers. Touch shall use its reasonable endeavours to ensure that the Advertising product is visible in the most commonly used version of Internet Explorer.

2.10. The Customer accepts that any Advertising product purchased is subject to editorial review by Touch and any Third Party Provider. Touch also reserves the right, without liability, to reject, replace, omit, terminate or exclude any Advertising product, Customer Links or order for the same, for any reason at any time, with or without notice to the Customer, whether or not such Advertising product, link or order was previously acknowledged, accepted, or published. Notwithstanding this, Touch will use reasonable endeavours to fulfill the Customer's requests.

2.11. Information concerning the Customer contained on the Advertising product will be derived from information provided by the Customer and it is therefore the Customer's responsibility to ensure that the information is accurate by checking the Advertising product. Touch shall incur no liability for any errors in that information except those which were introduced by Touch and could not reasonably be checked by the Customer .

2.12. The customer acknowledges and accepts that their services and or products may be reviewed either favourably or unfavourably by third party consumers and that third party review activity does not constitute the view or opinion of Touch. The Customer accepts that Touch offers no editorial services for reviews and is not in a position to investigate every review but takes reasonable steps to prevent libellous or offensive materials from being posted online, although Touch reserves the right either to maintain or to remove reviews for any reason within its sole discretion.

2.13. The Customer accepts that Touch will remove positive reviews if they can be traced to the business owner (from December 2007 'falsely representing oneself as a consumer' becomes illegal under European Legislation).

2.14. The Customer accepts that Touch will generally only remove negative reviews on the basis of a breach of the ['Terms and Conditions for Submitting Reviews' <http://www.touchlocal.com/go/page/termsReviews.>] Touch reserves the right to apply its sole discretion in the matter.

3. Payment of the Fees

3.1. Where the Fees set out on the Customer Order Form include those expressed to be initial set up fees, the Customer shall pay that element of the Fees on entering into the Contract. Where the Fees set out on the Customer Order Form include those expressed to be monthly set up or service provision fees, the Customer shall pay those elements of the Fees monthly in advance by direct debit unless otherwise specifically agreed by Touch. **In the event that Touch do not for whatever reason obtain their Fees by direct debit the Customer hereby agrees and expressly authorises Touch to charge the Customer's credit/debit card with the relevant Fee without further recourse to the Customer and where any attempt by Touch to obtain Fees by direct debit or to charge the Customer's debit/credit card fails for whatever reason the Customer will incur an administration charge of £50 which shall be payable immediately and in addition to the Fee.**

3.2. All payments made shall include value added tax at the prevailing rate.

3.3. Touch reserves the right to increase its service provision fees, on certain market controlled products only, at any time, subject to 30 days written notice of such an increase sent to the Customer's registered postal address.

3.4. The Customer shall pay all amounts due to Touch in full without any deduction or withholding and shall not assert any credit or set-off or counterclaim against Touch in order to justify the withholding of the whole or part of any such amount. If any Fees become overdue for payment Touch may claim interest, (both before and after judgment) at a daily rate of 4% above the Barclays Bank base rate on any outstanding amount until all Fees are received, together with the costs of recovering payment, including any incurred by a debt recovery agent.

3.5 The Customer shall not be entitled to withhold payment in whole or in part for any bookings of Advertising products accepted by Touch by reason of the fact that Touch is prevented from publishing (or continuing to publish) such Advertising product in total or in part by any court of competent jurisdiction or does not publish or ceases to publish such Advertising product in consequence of any actual or threatened legal proceedings or by order or request of any regulatory body or generally recognised industry or internet watchdog organisation or for any other valid reason. The Customer shall immediately on demand reimburse Touch with any costs incurred by Touch in connection with such legal or other proceedings.

3.6 Should the Customer wish to cancel their product subscription, or terminate payment at any time the Customer must provide Touch with no less than 30 days written notice upon the expiry of which ("the Cancellation Date") a cancellation fee equal to 20% of the full term purchase price of the product will be paid immediately by the Customer to Touch. For the avoidance of doubt the Customer will be required to pay all Fees up to and including the Cancellation Date.

4. Term, Renewals and Termination

4.1 The term of the Contract will be as set out in the Customer Order Form.

4.2. Touch Advertising products set out on the Customer Order Form are subject to a minimum contract period which is based on the specific product chosen and is set out on the Customer Order Form.

4.3 This contract is subject to automatic renewal for the same minimum contract period as set out in the Customer Order Form and this Agreement will continue until cancelled in accordance with the terms set out herein or otherwise terminated.

4.4. Either Touch or the Customer may terminate the Contract with immediate effect by giving notice to the other party if that other party is in breach of any of its obligations under this Contract and if, other than when the breach is a failure to pay Fees, where it is capable of remedy, the breach has continued unremedied for a period of seven days after the other party has given notice to the defaulting party specifying the breach and the steps required to remedy it.

4.5. The termination of the Contract (for any reason) shall; (i) be without prejudice to any other rights or remedies which Touch may be entitled to under the Contract or at law; (ii) not affect any accrued rights or liabilities which Touch may then have; and (iii) not affect the coming into or continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force after such termination.

5. Customer Content

5.1. The Customer shall provide the Customer Content to Touch either at the time of the order or within 2 weeks by means of an email to info@touchlocal.com or such other email address as Touch may elect or by post. Touch shall use the Customer Content to create the Advertising product.

5.2. The Customer represents, warrants and undertakes that the Customer Content and any website linked to by the Customer Links ("**Linked Content**") complies with the warranties and other provisions in Clause 7.

5.3. Touch reserves the right at any time without notice to remove any Customer Content (or Customer Links) from the Advertising product if it reasonably believes the Customer Content (or Linked Content) would or would be likely to put the Customer in breach of Clause 7 or any other provision of the Contract or would otherwise be detrimental to the interests or goodwill of Touch. Any such action shall be without prejudice to Touch's other rights and remedies.

5.4. Any Customer Content which contains content of an unlawful or otherwise unacceptable nature (including but not limited to pornography or content depicting violence) may be reported to the appropriate authorities.

6. Limitation of Liability

6.1. Except as expressly provided in this Contract, Touch gives no warranty in relation to the provision of services under this Contract and all warranties, express or implied, are excluded.

6.2. Touch does not limit or exclude liability for death or personal injury caused by negligence.

6.3. Subject to clause 6.2, Touch's entire liability to the Customer arising out of or in connection with the Contract, including without limitation breach of contract, misrepresentation (except where fraudulently made) and tort (including negligence), is limited to the amount of the Fees paid by the Customer under the Contract in the preceding 12 months.

6.4. Subject to clause 6.2 and notwithstanding the generality of this clause, Touch expressly excludes liability for any indirect, special, consequential or economic loss or damage which may arise out of or in relation to the Contract between Touch and the Customer, whether arising from any failure to publish the Advertising product in accordance with the Customer Order Form in a timely manner or at all, or otherwise, and for any loss of profits, revenue, anticipated savings, business, contracts, production or goodwill even if Touch has been advised as to the possibility of such damages.

6.5. In addition, without limiting the foregoing, Touch shall not be liable for any loss, damage or delay howsoever arising caused by events which are not reasonably foreseeable or by circumstances outside its reasonable control, including without limitation governmental action, natural disaster, insurrection, riot, explosion, failure of infrastructure or power suppliers, embargo, strikes whether legal or illegal, labour or material shortage, transportation interruption of any kind, work slowdown, the failure of third parties to provide necessary or desirable services or other reasons which result in the prevention or delay of its performance under the Contract. Touch shall be excused from such performance to the extent of such prevention or delay.

6.6 Save as specified in this clause, Touch shall not be responsible for any error in the placement of, or failure to place, any Advertising product on Touch's website or on that of a Third Party Provider. If Touch fails to publish any Advertising product or deliver the number of impressions or click-throughs provided for in the Customer Order Form or in the event of any other failure, technical or otherwise, of such Advertising product to appear as provided for in the Customer Order Form, Touch's liability will be limited (at the option of Touch) to either: (i) publishing the Advertising product (or a replacement advertisement if provided by the Customer) on positions agreed in the Customer Order Form or as agreed with the Customer as soon as is reasonably practicable in the period following the period during which the Advertising product was scheduled to run and for such time as is necessary to generate a number of substitute impressions or click-throughs of equivalent monetary value to the shortfall; or (ii) refunding to the Customer that proportion of the Fees paid which relate to those Advertising products, impressions or click-throughs which were not published or delivered or, if the relevant Fees were not paid by the Customer, agreeing that such amounts will not be due or payable. Touch will only provide a refund to the Customer under sub-clause 6.6 (ii) if: (a) the creative materials provided by the Customer arrived within the time limits specified in the Customer Order Form; (b) the creative materials performed in accordance with Touch's technical specifications; and (c) changes to media schedules were notified within the timeframe set out in the Customer Order Form.

6.7 Touch will use reasonable skill and care in performing its duties hereunder but subject thereto:- (i) Touch hereby excludes any warranty, express or implied, as to the performance, quality, accuracy or fitness for a

particular purpose of Touch or of any of the contents of its website; (ii) Touch will not be liable for any losses or damages arising (whether in tort (including negligence), contract or otherwise) directly or indirectly as a result of use of the Touch website or in connection with Advertising products on Touch's website including without limitation from any technical malfunction, computer error, defect in software, loss of data or other damage or disruption to advertisements; (iii) Touch makes no warranty that the contents of Touch's website are free from infection by viruses, worms or trojans or anything else that has contaminating or destructive properties; and (iv) certain links on Touch may lead to resources located on servers maintained by third parties over whom Touch has no control and Touch accepts no liability arising from access to or use of any material contained on those servers.

6.8. Each of the provisions of this clause 6 are to be construed separately and independently of the others, and if any provision of this clause 6 (or any other clause herein) is found by any court or other judicial body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision will not affect the other provisions of this clause 6 (or any other clause herein) which will remain in full force and effect.

7. Licences, Customer Representations and Indemnification

7.1. The Customer warrants and represents that the Customer is the owner or is licensed to use the entire contents and subject matter contained in its advertising and information, including, without limitation, (i) the names and/or pictures of persons; (ii) any copyright in the material, trademarks, service marks, logos, and/or depictions of trademarked or service marked goods or services, or any other intellectual property rights; and (iii) any testimonials or endorsements contained in any Customer Content submitted to Touch.

7.2. In addition, the Customer warrants and represents to Touch that:

- (i) It has the right to publish all of the contents of the Advertising product submitted pursuant to the Customer Order Form, and can grant to Touch such right, and that such publication will not: (a) breach the confidence or rights of privacy of, or, without limitation, infringe the copyright, database rights, trademark rights, patent rights, moral rights or any other intellectual property rights of, any third party; or (b) violate any applicable law or regulation;
- (ii) The Advertising product is legal, proper, decent, honest, accurate and socially responsible;
- (iii) It has complied with the codes of practice issued by the Committee of Advertising Practice in the UK, including, without limitation, the British Code of Advertising, Sales Promotion and Direct Marketing, and all other relevant codes under the general supervision of the Advertising Standards Authority or any other relevant authority;
- (iv) The Advertising product either: (a) does not constitute a financial promotion within the meaning of the Financial Services and Markets Act 2000 ("**the Act**"); or (b) has been approved by an "authorised person" within the meaning of the Act or is otherwise permitted under the Act or other applicable law and the Customer has expressly notified Touch in writing of this; and
- (v) It does not collect or use personal information through its Advertising product without permission from the user and shall at all times comply with the Data Protection Act 1998. The Customer may not combine, co-mingle, compare or match any information that it legally collects via its Advertising product with any personal information, click-stream or cookie information that it may have.
- (vi) Where it is required by law that a licence or other express permission is required for it to operate its business and/or to advertise, the Customer is so licensed or permitted and will be throughout the term.

7.3. Further the Customer warrants, represents and undertakes that the Customer Content, and any web site linked to by the Customer Links ("**Linked Content**"):

- (a) will not contain anything that is indecent, obscene or unlawful;
- (b) will comply with all applicable law;
- (c) will not contain any defamatory, false, misleading or untrue material or material which abuses, harasses, threatens or is otherwise offensive to any other person;
- (d) will not restrict or inhibit any other user from using the Touch website.
- (e) will not contain any virus or other material likely to harm the Touch website;
- (f) will not contain any other material which is likely to harm the reputation of Touch.

7.4. The Customer hereby expressly grants to Touch:

(i) a non-exclusive, world-wide right to use, reproduce, publicly display, and distribute the Advertising product in accordance with the Customer Order Form and these Terms and Conditions and warrants that the Customer has the right to grant such licence;

(ii) the express right to reproduce throughout the world screen shots of the Advertising product supplied to the Customer by Touch on or in any promotional or advertising material or campaign promoting or advertising Touch.

7.5. In consideration of the Customer's acceptance of such Advertising products, the Customer agrees to indemnify and hold Touch and Touch's employees harmless against any and all claims actual or of any kind (including, without limitation, any claim of trademark or copyright infringement, libel, defamation, breach of confidentiality, breach of any statutory or regulatory duty, false or misleading advertising or breach of any industry advertising codes or sales practices), damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or in connection with: (i) any material to which users are able to be linked through the Advertising product, (ii) Touch's performance under the Contract, and (iii) the copying, printing, distributing, or publishing of the Advertising product by Touch.

7.6 The Customer represents and warrants that it contracts with Touch as principal, and has the authority to do so, notwithstanding that the Customer may be acting as an advertising agency or media buyer or in some other representative capacity.

8. Copyright and Intellectual Property

The entire copyright and any other intellectual property rights in the Customer Content throughout the world (save those licensed to Touch) shall be and shall remain the exclusive property of the Customer.

9. Use of Data

The Customer hereby agrees and acknowledges that Touch (or representatives or agents of Touch) will collect personal data supplied by the Customer, including contact details such as names, addresses, telephone numbers and e-mail addresses, and that Touch may use and retain any personal data supplied by and relating to the Customer for the purposes set out in this Contract. The Customer agrees that Touch may use any Customer address or e-mail address for the purpose of contacting the Customer about Touch's products and services.

10. Confidentiality

10.1 The provisions of the Customer Order Form and all communications passing between the Customer or any of its agents and Touch are confidential and must not be disclosed to any third party except: (a) by the Customer to its qualified accountants or legal advisers; (b) by Touch to its qualified accountants or legal advisers; or (c) as otherwise agreed by the parties in writing or as otherwise required by law, by any government authority, court order, regulatory body or stock exchange requirement. In addition, in connection with their discussions, the Customer may have received and may in future receive from Touch certain valuable technical and non-technical information and materials relating to Touch and its business, which is confidential and proprietary to Touch. The Customer agrees to preserve the confidentiality of information belonging Touch.

10.2 The Customer and its agents are hereby put on notice that Touch and its affiliates are particularly sensitive to public statements about the Touch web services, their contractual relationships and their product plans. Improper or ill-timed statements are likely to have a detrimental effect on the business of Touch and its affiliates and may contravene applicable law. Consequently, the Customer must not, and must ensure that any agent or person acting on its behalf does not, make any public announcement in respect of the Customer Order Form or the relationship between the parties without the prior written consent of Touch including without limitation any pre-announcement in respect of the display of advertising on any Touch forum. For the avoidance of doubt, the foregoing prohibition includes public announcements by any third party acting on behalf of the Customer and any communication that the Customer knows will or is likely to be made public. Any breach of this clause 10.2 by the Customer will be deemed to be a breach of confidentiality under this clause 10.

11. General

11.1. All notices to be given under the Contract shall be in writing and shall be sent by first class post to the address on the Customer Order Form. Any notice given under the Contract, which is sent by post in accordance with this clause 11, shall be deemed to have been received two days after posting.

11.2. This Contract, incorporating the Customer Order Form, these Terms [and any other relevant Touch terms], constitutes the entire agreement between the Customer and Touch in relation to the Advertising product. No addition to or modification of this Contract shall be effective unless it is in writing and signed by a duly authorised representative of both the Customer and Touch.

11.3. Nothing in the Contract shall create, or be deemed to create, a partnership or joint venture between the Customer and Touch or the relationship of principal and agent between the Customer and Touch.

11.4 The Customer may not assign the whole or any part of its rights or obligations under this Contract without the prior written consent of Touch. Touch may assign or subcontract the whole or any part of its rights or obligations under this Contract without restrictions.

11.5. No person has any rights under this Contract save as may be set out in it and the parties agree that the Contracts (Right of Third Parties) Act 1999 is excluded.

11.6. This Contract shall be governed by and construed in accordance with English law and the Customer and Touch submit to the non-exclusive jurisdiction of the English courts.

11.7 The placing of a Customer Order Form for the insertion of an Advertising product shall amount to an acceptance of these Terms and, subject to sub-clause 2.2 (i) and (ii) of these Terms, any conditions stipulated on a Customer Order Form or elsewhere by an agency or a Customer shall be void in so far as they are in conflict with them.

11.8 No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, and no partial exercise of any right or remedy hereunder shall constitute a waiver of such or any other right or remedy, or the future exercise thereof.