

Terms & Conditions – Contact Centre

1 Interpretation

The following definitions and rules of interpretation apply in the Contract.

1.1 Definitions

BDM	BDM Talk Limited whose registered office is at Greenacre Court, Station Road, Burgess Hill, West Sussex, RH15 9DS company registration 09351269;
Campaign	the telephone calls to be made by BDM to the Client's Customers during which BDM shall communicate the Proposition;
Client	the person identified as such on the Order Form;
Client's Customers	actual or prospective customers and clients of the Client;
Commencement Date	the date the Campaign is scheduled to commence;
Conditions	these terms and conditions as amended from time to time in accordance with clause 10;
Contract	the contract between BDM and the Client for the supply of Services in accordance with these Conditions;
Data Delivery Date	the date set out in the Order Form by which the Client will deliver the Data;
Data	the information required by BDM to provide the Services including but not limited to the name and telephone number of the Client's Customers and the Proposition;
Fees	the price for the delivery of the Services as set out in the Order Form;
Planned End Date	the date specified as such (if any) in the Order Form;
Proposition	the message described as such in the Order Form or, if not so described, delivered to BDM by the Data Delivery Date;
Order Form	the BDM pro-forma order form setting out, inter alia, details of the Client and the Campaign and signed by the Client; and
Services	the advertising services to be provided by BDM to the Client comprising the Campaign.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 The Order Form forms part of the Contract and shall have effect as if set out in full in the body of these Conditions. Any reference to the Contract includes the Order Form.

2 Basis of contract

- 2.1 The Order Form constitutes an offer by the Client to purchase the Services in accordance with these Conditions.
- 2.2 The Order Form shall only be deemed to be accepted when BDM signs the Order Form at which point and on which date the Contract shall come into existence.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 Any quotation given by BDM shall not constitute an offer, and is only valid for a period of 30 days from its date of issue unless BDM has extended the period of validity of the quotation in writing.

3. Fees and payment

- 3.1 In consideration for the provision of the Services, the Client shall pay the Fees to BDM. BDM shall invoice the Client for the Fees in accordance with any schedule specified in the Order Form or, where no such schedule is specified, at such time(s) as BDM (in its absolute discretion) considers appropriate. Invoices shall be due and payable within 14 days of the date of the invoice.
- 3.2 The Fees are exclusive of Value Added Tax which shall be charged at the rate prevailing at the relevant tax point unless specifically itemised on the Order form.
- 3.3 The Fees shall be payable no later than 14 days from the date of the relevant invoice. The time stipulated for payment shall be of the essence. Failure to pay within the period specified shall entitle BDM to charge the Client for costs and expenses incurred in recovering late payments, and to charge interest at the rate then in force pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 from the due date to the date of payment (whether before or after judgement).

4. Data

- 4.1 Any data provided by the Client will remain the property of the Client in the form provided to BDM. BDM shall assign the amended data, being the date it receives from the Client after being modified as a result of the provision of the Services on payment in full of the Fees.
- 4.2 Where any data is sourced by BDM on behalf of the Client or used for its own purposes the data will remain the property of BDM. Details of clients who have expressed an interest in the products or services offered by the Client will be passed to the Client and those details shall become the property of the Client.
- 4.3 If BDM acquires, from the Client, in the course of the provision of the Services, any personal data relating to any of the Client's Customers (Client Personal Data), BDM shall:
 - 4.3.1 only process the Client Personal Data in accordance with the instructions of the Client and at all times in accordance with the Data Protection Act 1998;
 - 4.3.2 not otherwise modify, amend or alter the contents of the Client Personal Data or disclose or permit the disclosure of any of the Client Personal Data to any third party

unless specifically authorised in writing by the Client;

- 4.3.3 take appropriate technical and organisational measures against unauthorised or unlawful processing of the Client Personal Data and against accidental loss or destruction of, or damage to, the Client Personal Data; and
 - 4.3.4 provide reasonable evidence of the Agency's compliance with its obligations under this condition 4 to the Client on reasonable notice and request.
- 4.4 BDM shall notify the Client within five days if it receives a request from a data subject for access to any Client Personal Data. If BDM receives any complaint, notice or communication that relates directly or indirectly to the processing of any Client Personal Data or to either party's compliance with the Data Protection Act 1998, it shall immediately notify the Client and provide the Client with full co-operation and assistance in relation to that complaint, notice or communication.
- 4.5 At the Client's request, BDM shall provide the Client with a copy of all Client Personal Data held by it in the format and on the media reasonably specified by the Client.
- 4.6 BDM shall not transfer any Client Personal Data outside the European Economic Area without the prior written consent of the Client.
- 4.7 In this condition 4, personal data, data subject and process shall have the meanings given to them in the Data Protection Act 1988.

5. **Performance**

- 5.1. The Client will deliver the Data no later than the Data Delivery Date. The Client acknowledges that BDM will, on the date of acceptance by BDM of the Order Form make resource available to commence delivery of the Services on the Commencement Date. Accordingly, if the Client fails to deliver the Data on the Data Delivery Date BDM will incur a loss. Notwithstanding any failure to provide the Data by the Data Delivery Date the Fees remain due in full.
- 5.2 Subject to clause 5.3 below, BDM will carry out the Services between the Commencement Date and the Planned End Date (if applicable).
- 5.3 Without placing any obligation on it to do so, if BDM considers (in its sole discretion) that it is not reasonably practicable or advisable for any reason to carry out the Services or any part of them, BDM may give notice to the Client specifying the reasons. Within 5 days of receipt of the notice the Client will consult with BDM and agree what, if any, of the Services is to be undertaken. If the Client requests BDM to undertake the Services it shall pay the Fees for such Services whatever the outcome and agrees that BDM provides those Services without any liability on its part, save as set out in condition 9.1.
- 5.4 If the cost to BDM of carrying out the Services is subsequently increased by reason of increases in the cost of materials and/or labour and/or any other factor outside its control, then BDM shall notify the Client before undertaking any Services to which the increase will apply. If the Client requires BDM to discontinue the Services, it shall only be required to pay for the Services performed to the date of discontinuance.

6. **Warranty and indemnity**

- 6.1. The Client warrants to BDM that:
- 6.1.1 where BDM has access to the Client's computer system, its computer system is free from any program which contains malicious code or infiltrates or damages a computer system without the owner's informed consent or is

designed to do so or which is hostile, intrusive or annoying to the owner or user and has no legitimate purpose;

6.1.2 the entering into of the Contract by BDM and the provision of the Services will not result in the contracts of employment of any employee being transferred to BDM pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) save where the Client has informed BDM in writing prior to it entering BDM in writing prior to BDM entering into the Contract that the contracts of employment of one or more employees may be transferred to BDM pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 and has provided to BDM at the same time the names and details of all such employees; and

6.1.3 where data relates to personal data all such data supplied by it to BDM is opted in for the purposes of The Privacy and Electronic Communications (EC Directive) Regulations 2003 and any telephone numbers are not opted out for the purposes of the Telephone Preference Service.

6.2. The Client shall indemnify and hold BDM harmless against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by BDM arising out of or in connection with the Client's breach of any of the matters in condition 6.1.

7. **Confidentiality**

7.1. Each party undertakes that it shall not at any time at any time during the Contract, and for a period of three years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 7.2.

7.2. Each party may disclose the other party's confidential information:

7.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 7; and

7.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

7.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

8. **Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

9. **Liability**

9.1. Nothing in the Contract shall limit or exclude the BDM's liability for:

- (a) death or personal injury caused by its negligence;
- (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) or any other liability which cannot be limited or excluded by applicable law.

9.2 Subject to clause 9.1, BDM shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract 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; and
- (g) any indirect or consequential loss.

9.3 Subject to clause 9.1, BDM's total liability to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to a sum equal to the Fees paid in the month in which the liability or breach arose.

9.4 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

9.5 Where BDM is required to undertake the Services on the Client's premises and/or install equipment, BDM shall not accept liability for the cost of repairing or replacing parts of the Client's existing system which occurs due to faults in the system unless BDM has been negligent.

10. **Variation**

BDM reserves the right to make minor changes to these Conditions from time to time which changes shall automatically be incorporated into the Contract. Save for minor changes to these Conditions (and the Contract) no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11. **Non-solicitation**

The parties agree that neither of them will either on their own account or in partnership or association with any person, firm, company or organisation, or otherwise and whether directly or indirectly during the Contract, and for a period of six months from the end of the term of the Contract, solicit or entice away or attempt to entice away or authorise the taking of such action by any other person, any employee of the other party who has worked on the Services at any time during the term of the Contract.

12. **Governing Law and Jurisdiction**

12.1. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

12.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

13. **Entire Agreement**

- 13.1. This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

14. **Third Party Rights**

Nothing in the Contract is intended to, nor shall it confer any rights on a third party.

15. **Customer Services**

- 15.1. To protect your own interests please read the order form carefully before signing. If you are uncertain as to your rights under them or you want any explanation about them please write or email us.
- 15.2. If you are unhappy with any aspect of our service, please contact the Head of Client Services. Any complaints will be dealt with sympathetically and we will work with you to reach a satisfactory conclusion.

16. **Data Protection**

- 16.1. If BDM acquires, from the Client, in the course of the provision of the Services, any personal data relating to any of the Client's Customers (Client Personal Data), BDM shall:
 - 16.1.1 only process the Client Personal Data in accordance with the instructions of the Client and at all times in accordance with the Data Protection Act 1998;
 - 16.1.2 not otherwise modify, amend or alter the contents of the Client Personal Data or disclose or permit the disclosure of any of the Client Personal Data to any third party unless specifically authorised in writing by the Client;
 - 16.1.3 take appropriate technical and organisational measures against unauthorised or unlawful processing of the Client Personal Data and against accidental loss or destruction of, or damage to, the Client Personal Data; and
 - 16.1.4 provide reasonable evidence of the Agency's compliance with its obligations under this clause 16 to the Client on reasonable notice and request.
- 16.2. BDM shall notify the Client within five days if it receives a request from a data subject for access to any Client Personal Data. If BDM receives any complaint, notice or communication that relates directly or indirectly to the processing of any Client Personal Data or to either party's compliance with the Data Protection Act 1998, it shall immediately notify the Client and provide the Client with full co-operation and assistance in relation to that complaint, notice or communication.
- 16.3. At the Client's request, BDM shall provide the Client with a copy of all Client Personal Data held by it in the format and on the media reasonably specified by the Client.
- 16.4. BDM shall not transfer any Client Personal Data outside the European Economic Area without the prior written consent of the Client.
- 16.5. In this clause 16, personal data, data subject and process shall have the meanings given to them in the Data Protection Act 1988.

