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**GENERAL TERMS AND CONDITIONS FOR THE  
SUPPLY OF LISTS & SERVICES**

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**1. Application of Conditions**

1.1 The Supplier shall supply and the Customer shall purchase the Lists and Services in accordance with the quotation which is subject to these Conditions.

**2. Definitions and Interpretation**

2.1 In these conditions:-

**“Marketscan”** means Marketscan Limited, Regd Office 8 Dukes Court, Bognor Road, Chichester, West Sussex, PO19 8FX;

**“Services”** means the services available to you, specifically the supply of data services;

**“Lists”** means a selection of data (including any instalment) which the Supplier is to supply in accordance with these Conditions

**“Data”** means information comprising any combination of (but not limited to) postal address, email address, telephone number, contact name and qualifying information such as company size etc. in any number of fields

**“Data Rental”** means the data can be used once only

**“(Data) 12 Month Lease”** means the data can (with the exception of email data) be used unlimited times within a 12 month period from date of order

**“Data Purchase”** means the data can (with the exception of email data) be used unlimited times eternally

**"the Client"** means the individual, firm, company or other party who accepts a quotation or offer of the Supplier for the sale of Lists and supply of Services, or whose order for Lists and Services is accepted by the Supplier

**“Order Date”** means the date the order is placed by the Client

**3.0 Variation of conditions**

3.1 The Contract shall be to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer unless accepted in writing by a senior employee of the Supplier.

3.2. All orders must be signed, dated and confirmed in writing. Orders will not be accepted on the basis of verbal instructions.

**4.0 Quotations**

4.1 Quotations lapse after 30 days unless re-confirmed in writing by the Supplier.

- 4.2 List prices are subject to alteration without notice and confirmation of list prices should be sought by the Client when placing the order.

## 5.0 **Copyright**

- 5.1 All lists or parts of lists are licensed by and copyrighted to the Supplier. Unless purchased as a data file specifically for multiple usages the Supplier's data is rented for one time use only.
- 5.2 Conditions of use for special data packages are specified in the relevant quotation and on the order eg. data supplied from the Supplier's Sales Generator package can be used unlimited times within a 12 month period from date of order. Unused records at the end of the period cannot be carried over to a new period.
- 5.3 The data must not be copied or recorded by the Client or its agents, or in any way processed by the Client or its agents other than in accordance with the Order or as agreed in writing by the Supplier. Information supplied as a data file is for the sole use of the Client and must in no circumstances be offered for resale by the Client. All lists contain seed names and dummy addresses to detect unlawful use. The Supplier may take legal action against any Client that unlawfully processes data owned by the Supplier.
- 5.4 In the event of a breach of data usage by the Client, ie. where it is determined that data has been used by the Client outside of the usage terms as specified on the order, a re-use charge of 100% of the value of the order will be imposed per occasion of each breach.
- 5.5 The Client shall be liable for loss or misuse of a list whilst in his care, or the care of his agent, including but not limited to mailing bureau, computer bureau etc. It will be deemed a misuse of a list if the list is used for any activity other than the purpose for which it was originally provided.

## 6.0 **Supply and use of Data**

- 6.1 Data files are supplied for use on the Windows® operating system and in Excel Worksheet format unless otherwise specified on the order. The Supplier does not accept responsibility for the readability of data. No liability is accepted by the Supplier for conversion of the data to any format, other than that in which it was supplied.
- 6.2 If the Client wishes the Supplier to exclude certain criteria from the Supplier's range of criteria the Client must provide a suppression file to the Supplier that clearly states the requested exclusions prior to the Order Date.
- 6.3 Whilst every effort is made to quote the number of addresses accurately, the quantity may vary from time to time, as is reasonable, due to movements within the list or lists and no warranty or condition is given that the figure quoted agrees with that finally reached during the execution of the order.
- 6.4 Where more than one list is supplied, the total quantity dispatched may be less than the sum of the individual list

quantities due to persons or establishments being coded to more than one classification.

- 6.5 The Supplier uses all reasonable endeavours to ensure lists are accurate and up-to-date. However, as lists are compiled from a variety of sources, the Supplier cannot warrant that any of the records are 100% complete, neither are they built up from personal knowledge of any particular trade or profession or other body, [each one must be taken at the description accorded to it by authoritative sources].
- 6.6 The Supplier does not accept liability for the outcome of the use of its lists. In no event will the Supplier be liable for any loss of profit, revenue, goodwill, opportunity, business or other indirect or consequential loss of any kind in contract, tort (including negligence) or otherwise arising out of use of its list or lists, save where such liability cannot be excluded by law.

## **7.0 Data Protection Act 1998 & Codes of Practice**

- 7.1 As an Agency recognised by the Direct Marketing Association, the Supplier has an obligation to uphold at all times, in letter and spirit, the British Code of Advertising Practice, Sales Promotion and Direct Marketing ('the CAP Code'). The Supplier's acceptance of orders from Clients is conditional upon their undertaking to work within the accepted codes of conduct for the advertising industry, including in particular the CAP Code and the Direct Marketing Code of Practice
- 7.2 Whilst the Supplier agrees that all data has been fairly and lawfully obtained in accordance with the Data Protection Act 1998, no warranty is given regarding the accuracy or completeness of individual addresses, contact names or telephone numbers or that any list is a complete compilation of the categories of persons or establishments described therein. The Supplier is notified as required under the Data Protection Act 1998.
- 7.3 The Supplier undertakes to update data regularly in respect of the lists supplied. Lists supplied by the Supplier are maintained in accordance with the standards of list and database practice incorporated in the DMA's Code of Practice, as amended from time to time.
- 7.4 The Supplier undertakes the scanning of the lists against the TPS, CTPS, FPS and MPS registers daily to allow the Client 28 days usage from the date the lists are supplied to the Client.
- 7.5 The Client agrees to notify the Supplier as soon as possible, normally within 30 days or at least within 60 days of receipt of any request received by the Client for the suppression of a deceased name or disputed data that can be identified as being included in the data supplied by the Supplier.
- 7.6 Client agrees to notify the Supplier as soon as possible, normally within 30 days or at least within 60 days of receipt of any request for access to, or the correction or the deletion of inaccurate data it receives from an individual whose name can be identified as being included in the list supplied by the Supplier to the Client.

The Client agrees to comply with any requests for the suppression of deceased names as soon as possible before the time of use or at least within the previous 30 days.

- 7.7 The Client agrees to comply with any request for information from an individual whose name can be identified in the lists supplied to the Client by the Supplier regarding the source from which the name was obtained and that this request will be dealt with promptly and in any event within a maximum of 40 days.
- 7.8 The Client agrees to record and mark any request for suppression received by the Client from an individual whose name can be identified as being included in a list supplied by the Supplier, and that any such record will be suppressed from any list subsequently used by the Client.
- 7.9 The Client agrees, unless otherwise agreed in writing between the Client and the Supplier, that posting of mailings to any names on any list provided by the Supplier will take place no later than six months following the date of supply. In the event that the posting is delayed, the Client agrees to return to the Supplier unused copies of any list and to delete from its files any extracts from or copies of the list.
- 7.10 The Client warrants that items to be mailed contain nothing which infringes copyright or is defamatory, obscene, indecent, or otherwise illegal or unlawful or contradictory to the CAP Code, and shall keep the Supplier fully indemnified against losses, costs, charges and expenses of whatsoever nature arising out of or in connection with a claim that such items infringe copyright, are defamatory, indecent or otherwise illegal or unlawful or contradictory to the CAP Code whether or not such claim is upheld or justified.
- 7.11 The Client undertakes that at all times it shall comply fully with all relevant statutory requirements and regulations from time to time in force (including without limitation the provisions of the Data Protection Act 1984 and 1998 in so far as the provisions are applicable).

## **8.0 Post Office Returns & Warranty**

- 8.1 In relation to business addresses, an amount equal to the list cost at the time of invoice will be refunded by the Supplier to the Client on all Post Office returns in excess of 2% of the total number of addresses supplied, provided that all returned envelopes, less contents, are received by the Supplier within 6 weeks of delivery of the original Goods. In relation to home addresses, an amount equal to the list cost at the time of invoice will be refunded by the Supplier to the Client on all Post Office returns in excess of 5% of the total number of addresses supplied, provided that all returned envelopes, less contents, are received by the Supplier within 4 weeks of delivery of the original Goods. No warranty is given on telephone numbers or contact names. See clause ??? for email warranty.

## **9.0 Dispatch of Lists**

- 9.1 Dates given for dispatch of lists are given in good faith and are estimates only, based on information available at the time of

quoting. They are, however, not guaranteed and time is not of the essence of the contract.

## 10.0 **Incidental Materials and Costs**

- 10.1 Prices do not include collection and delivery of stationery, envelopes, advertising material etc. and if required is therefore charged extra to be agreed in writing by the Supplier on a case by case basis. Such collection and delivery, whether arranged by the Client or the Supplier on the Client's behalf, is at the Client's sole risk and the Carrier is deemed to be an agent of the Client.
- 10.2 Reasonable care is taken of Clients' materials, (e.g. stationery letter headings, coupons, envelopes and publicity matter) and databases while on the Supplier's or its agent's premises. However, no liability is accepted for any loss or damage to the same or any consequential loss or damage occasioned thereto; such materials are stored at the sole risk of the Client, who if necessary, should arrange appropriate insurance. When material is supplied by the Client, responsibility will not be accepted for imperfect work caused by defects in, or unsuitability of material supplied.

## 11.0 **Prepayments**

- 11.1 For all first time Clients, prepayment may be required with the order.
- 11.2 Payment is due within 30 days of date of invoice.
- 11.3 Payments for postage are required in advance and the remittance should be received at least 48 hours before posting begins otherwise mailing will be delayed until payment is received.

## 12.0 **Liability**

- 12.1 The Supplier shall be under no liability for any discrepancy, damage in transit, shortage on delivery or non-delivery of Goods or materials unless the Client notifies the Supplier in writing:
  - a) of any discrepancy, damage or shortage on delivery within 7 days of receipt of Goods.
  - b) of non-delivery within 7 days of confirmation by the Supplier that the Goods have been dispatched.The Supplier's liability is limited to replacement of the Goods supplied.
- 12.2 In no circumstances shall the Supplier be liable for consequential loss caused to the Client or its agents; the Supplier's liability is limited to that set out in Clause 12.1 above.
- 12.3 When proofs are submitted for the Client's approval, no responsibility will be accepted for any error in proofs approved by the Client.
- 12.4 Every effort will be made to carry out contracts, but should the Supplier be prevented or delayed in carrying out a contract by reason of Act of God, war, lock-outs, fire, flood, delays in transit, strikes, riots, postal delay or any other unexpected or exceptional causes or circumstances beyond the Suppliers control, the time for delivery shall be extended until a reasonable time after the event preventing or interfering with the due execution of an order

has ceased, and in no circumstances is the Supplier to be liable for any loss or damage suffered by the Client as a result thereof.

- 12.5 It is the Client's responsibility to ensure their online account details are up-to-date and current. This includes but is not limited to deleting the details of personnel who have moved from the Client's employ.

### **13.0 VAT**

- 13.1 The Supplier shall charge the amount of Value Added Tax due on the invoice whether or not included on the quotation or invoice.

### **14.0 Postal Regulations**

- 14.1 Information concerning Postal regulations will be given on request, but no responsibility is accepted for the accuracy of such information and the Client must refer to the Post Office Guide.

### **15.0 Storage charges**

- 15.1 Clients' material which is left in the Supplier's possession after completion of any order may be held for 30 days for collection by the Client. If not collected within the 30 days the material shall be subject to a storage charge [of £5.00 per day/ or a reasonable storage charge/ or as notified to the Client in writing by the Supplier] payable to the Supplier. However, the Supplier reserves the right to give the Client notice, which notice shall be deemed to be served the day after posting (the Supplier sending such notice by ordinary 1st class post), that the Supplier will destroy such material after 14 days from the giving of such notice and unless the material is collected within that period the Supplier shall have the right to destroy such material or dispose of it as the Supplier thinks fit without being in any way liable to the Client.

### **16.0 Arbitration and Jurisdiction**

- 16.1 All disputes, differences or questions at any time arising between the parties as to the construction of these conditions or as to any matter or thing arising out of the same or in any way connected therewith, shall be referred to the arbitration of a single arbitrator who shall be agreed between the parties or failing such agreement shall be appointed at the request of either party by the President for the time being of the Law Society. The arbitration shall be in accordance with the Arbitration Act 1950 and any statutory modification or re-enactment thereof for the time being in force.
- 16.2 These conditions and all other express terms of the contract shall be governed and construed in accordance with the laws of England and Wales and any disputes are to be decided only by the Courts of England and Wales.

### **17.0 Prize Promotions (includes Prize Competitions and Prize Draws unless otherwise stated)**

- 17.1 You must be 18 years or over to enter a prize promotion.

- 17.2 There are no cash alternatives available for any prize.

- 17.3 Winners of prize promotions will be notified by email within two weeks of the closing date of entry unless otherwise stated.
- 17.4 Winners of prize promotions will be announced via the Marketscan fortnightly e-newsletter.
- 17.5 No purchase is required to enter a prize draw. To enter the prize draw, please send your name, address and email address to "Prize Draw, Marketscan Ltd, 8 Dukes Court, Bognor Road, Chichester, West Sussex, PO19 8FX.
- 17.6 The Supplier does not accept responsibility for entries lost in the post or via an error in transmission by fax or email.  
To confirm receipt of entry please email [sales@marketscan.co.uk](mailto:sales@marketscan.co.uk)

## 18.0 **General**

- 18.1 Calls may be monitored for training purposes only. Calls are not recorded and data on individual calls is not collected and stored.
- 18.2 Additional charges may be incurred on highly complex list counts and orders. These will be agreed in writing between the Client and the Supplier

## **SUPPLEMENTARY TERMS AND CONDITIONS FOR THE LICENCING OF DATA FOR EMAIL MARKETING**

### 19.0 **Email Definitions and Interpretation**

- 19.1 'Undeliverables Threshold' means for the purposes of this agreement, 15% of the emails supplied against any single order.

### 20.0 **Supply and use of Email Data**

- 20.1 If the Client wish the Supplier to exclude general email addresses from the email Data field the Client must request this prior to the Order Date.
- 20.2 Subject to any restrictions of use stated in the Order Form the Client's use of the email Data may not exceed more than 12 emails to any one addressee in a 12 month period.

### 21.0 **Email Warranty and Obligations**

- 21.1 The Supplier is not responsible or liable for email addresses that prove to be undeliverable save that where the number of undeliverable addresses exceeds the Undeliverables Threshold and subject to the Client providing proof of non-delivery within 30 days of the Order Date, the Supplier will endeavour to provide two additional email addresses for each undeliverable email.
- 21.2 Proof of non-delivery in the form of undeliverable addresses must be returned to the Supplier in either a tab delimited, comma delimited, Excel or Dbase file.
- 21.3 The Supplier's obligations stated in clause 21.1 shall not apply where the Client decides to use a method of delivery that has not been approved in writing by us. Unapproved methods of delivery

include use of an SMTP (Single Message Transfer Protocol) such as Outlook, Netscape and Lotus.

- 21.4 The Supplier reserves the right to require the Client to cease or modify use of the email Data where the Supplier discovers that the contents of email sent by the Client is in our reasonable opinion inappropriate or you have misled us about the content.
- 21.5 Where the Client procures the use of the email Data to send emails, the Client must ensure that the recipient is given a simple means to opt-out of receiving further communications and the Client must forward to MarketScan the details of any recipients who do exercise their right to opt-out including any comments that may be made by such recipients in an excel or comma separated format.

??? Requests for the correction or deletion of inaccurate data or for the marking of disputed data in respect of individuals whose names are included in the lists received either directly or from any other user of the lists, have been and will continue to be completed with as soon as possible, normally within the previous 30 days or at the latest within 60 days following the receipt of such a request. Requests for the suppression of deceased names will be complied with as soon as possible. ???