

TERMS AND CONDITIONS of THE TRAFFIC BUREAU LIMITED ("Conditions")

The Customer's attention is drawn in particular to clauses 4 and 6

these Conditions shall apply to any Services carried out by Traffic Bureau to the exclusion of any other terms and conditions purported to apply by any Customer

1. INTERPRETATION

1.1 In these Conditions (and the above recital) the following words and phrases have the following meanings:

"Business Day" any day between Monday to Friday save for any day designated in England as a bank or other public holiday;

"Commercial" a radio or television advertisement in a form ready for broadcast on radio or television as appropriate;

"Contract" a contract between Traffic Bureau and the Customer incorporating these Conditions;

"the Customer" the legal person who engages Traffic Bureau to provide the Services under the Contract;

"Customer Supplier" any third party supplier of goods or services to the Customer or agent of the Customer (including, without limitation, any Media Station, music agent, artiste's agent, media buying house, production house, independent film producer and the Broadcast Advertising Clearance Centre);

"Deadlines" deadlines imposed by the Media Station for receipt of Commercials and associated documents;

"Instructions" a brief detailing the Services required by the Customer together with full supporting information and schedules, delivered by e-mail, facsimile or post;

"Media Station" the appropriate television or radio broadcaster who will broadcast the Commercial;

"the Price" has the meaning given to it in clause 2.2;

"the Services" the services supplied by Traffic Bureau under the Contract in accordance with the Instructions

"Traffic Bureau" The Traffic Bureau Limited (company number 02775513) whose registered office is at 19 Montpelier Avenue, Bexley, Kent DA5 3AP

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires

1.4 The headings to the clauses are for ease of reference only and will not affect the construction of these Conditions

1.5 The expression "person" shall mean any person, body corporate, unincorporated association and partnership

2. FORMATION OF CONTRACT

2.1 Any quotation given by Traffic Bureau will be based on the Instructions provided by the Customer and shall be deemed to be Traffic Bureau's invitation to treat.

2.2 Acceptance by the Customer of any quotation given pursuant to clause 2.1 shall be deemed the Customer's offer to engage the Services of Traffic Bureau to carry out the Instructions provided for the quoted amount (the "Price").

2.3 Acceptance of the Customer's offer will be deemed to take place at the point that Traffic Bureau accepts the Customer's Instructions in writing (including, without limitation, by e-mail or facsimile).

2.4 In the event that the Customer wishes at any time to amend its Instructions it shall notify Traffic Bureau of such changes and Traffic Bureau shall have the right to submit a revised quotation based on those revised Instructions and clauses 2.2 and 2.3 shall apply.

2.5 In any event, any changes to the Instructions requested by the Customer shall only form part of the Contract once they have been agreed in writing (including, without limitation, by e-mail or facsimile) by Traffic Bureau.

3. SERVICES

3.1 The Customer acknowledges and accepts that Traffic Bureau shall not be responsible for making any payments to any third parties on behalf of the Customer (including, without limitation, any Customer Suppliers or any artistes appearing in the Commercials) unless expressly stated in the Instructions accepted by Traffic Bureau in accordance with clause 2.2 or 2.5 or otherwise agreed in writing signed and dated by both parties.

3.2 Traffic Bureau warrants that the Services shall be carried out by personnel who are appropriately and adequately trained exercising due care and skill and according to good practice in the industry.

3.3 Save in respect of clause 3.2 and to the fullest extent permitted in law, Traffic Bureau makes no further warranties in respect of the Services.

4. WARRANTIES AND OBLIGATIONS OF THE CUSTOMER

4.1 The Customer shall supply all additional information reasonably requested by Traffic Bureau in order to supply the Services in accordance with the Instructions, and shall ensure that such information is true and accurate in all respects.

4.2 The Customer shall ensure that:

4.2.1 all Instructions are complete and accurate; and

4.2.2 the Instructions are delivered to Traffic Bureau and the Commercials are complete and ready to be broadcasted not less than two (2) Business Days before the Deadlines.

4.3 Without prejudice to any other right or remedy of Traffic Bureau, in the event of failure of the Customer to comply with clause 4.2.2, Traffic Bureau shall be entitled to pass on to the Customer any charges imposed by a Media Station for failure to meet the Deadlines.

4.4 The Customer warrants that the Commercials will comply with all relevant legislation and codes of practice and with best industry practice.

4.5 Without prejudice to any other rights or remedies of Traffic Bureau, the Customer shall indemnify and hold harmless Traffic Bureau against any losses, liabilities, costs, damages, claims, fines and expenses (including, without limitation, legal expenses) which Traffic Bureau suffers as a result of or arising out of:

4.5.1 any breach by the Customer of the warranties and obligations set out in this clause 4; and

4.5.2 any breach by the Customer of any of its statutory obligations, including (without limitation) its liabilities to Traffic Bureau, its employees, agents or sub-contractors under the Occupiers' Liability Act 1957

5. PRICE AND PAYMENT

5.1 In consideration of Traffic Bureau providing the Services to the Customer, the Customer shall pay the Price and any other sums payable to Traffic Bureau under the Contract in accordance with this clause 5.

5.2 Unless otherwise stated, the Price is exclusive of any value added tax which shall be charged by Traffic Bureau to the Customer.

5.3 Traffic Bureau will raise its invoices in accordance with any arrangement agreed separately with the Customer in writing and where no such arrangement exists on completion of the Services.

5.4 Traffic Bureau's invoices are payable within thirty (30) days of issue.

5.5 Without prejudice to the rights of Traffic Bureau (including without limitation the right to claim interest and costs incurred as a result of pursuing any unpaid invoice) under the Late Payment of Commercial Debts (Interest) Act 1998, Traffic Bureau shall be entitled to charge the Customer interest on all overdue balances at the rate of eight per cent (8%) per annum above the repo rate (formerly the base lending rate) from time to time of the Bank of England (both before and continuing after judgment given by a court of competent jurisdiction) from the date payment became due to the date of payment in full with such interest being applied on a daily basis.

6. LIMITATION OF LIABILITY

6.1 Without prejudice to clause 6.2 and subject to clause 6.6, Traffic Bureau's total liability to the Customer in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise arising in connection with the Contract shall be limited to a maximum of five hundred thousand pounds (£500,000) in respect of any single claim or series of connected claims.

6.2 Traffic Bureau shall not be liable to the Customer for any loss of profit (direct or indirect), indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation, whatsoever (howsoever caused) which arises out of or in connection with the Contract.

6.3 The Customer acknowledges and accepts that in its dealings with any Customer Supplier, Traffic Bureau is acting as an intermediary only and any contractual relationship with such Customer Supplier is between such Customer Supplier and the Customer and in no circumstances will Traffic Bureau be held liable to the Customer for that part of any claim arising under the Contract as a result (in whole or in part) of the negligent acts or omissions or breach of contract of any Customer Suppliers.

6.4 In the event that the Customer fails, to:

6.4.1 deliver the Instructions to Traffic Bureau; and/or

6.4.2 make the Commercials ready and complete

by no less than two (2) Business Days before the Deadlines in breach of its obligations in clause 4.2.2, Traffic Bureau shall use reasonable endeavours to deliver such Commercial to the Media Station by the Deadlines, but Traffic Bureau shall not be held liable to the Customer for any losses whatsoever suffered by the Customer or any third party resulting from failure to meet such Deadlines.

6.5 Traffic Bureau shall not be held liable to the Customer for any losses whatsoever suffered by the Customer or any third party, where such losses arise from mistakes appearing in any documentation produced by Traffic Bureau as part of the Services that are as a result of inaccuracies in:

6.5.1 the Instructions provided to Traffic Bureau by the Customer in breach of the Customer's obligations under clause 4.2.2; or

6.5.2 any information or documentation provided to Traffic Bureau by any Customer Supplier.

6.6 Nothing in these Conditions shall exclude or limit the liability of either party for its negligent acts or omissions which cause death or personal injury or for fraudulent misrepresentation.

7. TERMINATION AND CONSEQUENCES OF TERMINATION

7.1 Traffic Bureau shall be entitled to terminate the Contract in whole or in part, without liability to the Customer, by giving notice to the Customer at any time if:

7.1.1 the Customer has a bankruptcy order made against him or her or makes an arrangement or composition with his or her creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer, or the Customer suffers or allows any execution, whether legal or equitable, to be levied on his, her or its property or obtained against him, her or it, or fails to observe or perform any of his, her or its obligations under the Contract or any other contract between Traffic Bureau and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade.

7.1.2 Traffic Bureau reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

7.2 Following completion of the Services or termination of the Contract in accordance with clause 7.1, unless requested by the Customer to return all Instructions and other documents supplied by the Customer under the Contract at the Customer's cost, Traffic Bureau shall be entitled to retain all such documents until collected by the Customer or destroyed by Traffic Bureau in accordance with clause 7.3.

7.3 The Customer acknowledges and accepts that the policy of Traffic Bureau is to destroy all such documents after two (2) years of the completion of related Services or early Contract termination in accordance with clause 7.1 and Traffic Bureau shall have no liability to the Customer for documents destroyed by Traffic Bureau in accordance with such policy.

8. NO POACHING

8.1 During this term of the Contract Agreement and for a period of twelve (12) months following the termination of it for any reason, the Customer shall not directly or indirectly offer employment or engagement to, or employ or engage, any person employed or engaged by Traffic Bureau who has been materially involved in the provision of the Services.

8.2 If the Customer breaches the terms of clause 8.1 it shall pay Traffic Bureau by way of liquidated damages an amount equal to one half of the final gross annual salary of the person so employed or engaged, and the parties hereby acknowledge that such amount is a reasonable assessment of the costs which would be incurred in the loss of such a person

8.3 In addition to any other rights which the Traffic Bureau may have it shall, for the avoidance of any doubt, be entitled to seek injunctive relief for any threatened or actual breach of clause 8.1.

9. FORCE MAJEURE

Neither Traffic Bureau nor the Customer shall be liable to the other in any manner whatsoever for any failure or delay in performing its obligations due to force majeure which expression means any cause beyond the control of either party which includes, without limitation, an Act of God, governmental actions, restrictions or prohibitions, war, sabotage, riots, civil commotion, fire, flood, epidemic, currency restrictions, or atmospheric conditions

10. NOTICES

10.1 Any notice shall be in writing (excluding by e-mail), signed and dated, and shall be deemed to have been served:

10.1.1 if delivered by hand, when left at the principal place of business of the recipient;

10.1.2 if sent by post, forty-eight (48) hours after being posted (excluding Saturdays, Sundays and public holidays) to the principal place of business or registered office of the recipient;

10.1.3 if given by fax to a fax number at the principal place of business, following transmission;

provided that if in the case of delivery by hand or transmission by fax such delivery or transmission occurs either after 5.00pm on a Business Day, or at any time on a day other than a Business Day, service shall be deemed to occur at 10.00am on the next following Business Day

11. GENERAL

11.1 Subject only to clause 11.2, these Conditions shall prevail in the event of any conflict between these Conditions and any other terms agreed in any Instructions or other documentation.

11.2 Any variation to these Conditions must be in writing and signed by both parties and expressly refer to the clause that it seeks to vary.

11.3 Traffic Bureau shall be entitled to sub-contract to any third party any of its obligations under the Contract.

11.4 Failure or delay by either party in exercising any right or remedy shall not in any circumstances operate as a waiver.

11.5 Any waiver of a breach of or default under the Contract shall not be deemed a waiver of any subsequent breach or default.

11.6 If any provision in these Conditions (or part thereof) is held to be illegal or unenforceable the validity or enforceability of the remainder of these Conditions shall not be affected.

11.7 Unless otherwise stated, nothing in the Contract shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999.

11.8 The Contract shall be governed by and construed in accordance with English law and the courts of England shall have exclusive jurisdiction.