

Clockwork Marketing Terms and Conditions

DATED: MARCH 2019 | VERSION 4

Your attention is particularly drawn to Clause 9 (Limitation of Liability).

1. Interpretation

1.1 DEFINITIONS:

Clockwork Marketing Clockwork Marketing Marketing & Direct Mail Ltd, a company registered in England and Wales at Longlands Barns, Wilborough Road, Kingskerswell, Newton Abbot, Devon, TQ12 5DY with company number 04831890.

Business Day a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours 09:00 to 17:00 on any Business Day.

Charges the charges payable by the Client for the supply of the Services in accordance with clause 5 (Charges and payment).

Client the individual or organisation who engages the Services of Clockwork Marketing.

Conditions these terms and conditions, as amended from time to time in accordance with clause 12.5.

Contract the contract between Clockwork Marketing and the Client for the supply of Services in accordance with these Conditions.

Customer potential or actual customers of the Client.

Intellectual Property Rights rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Materials all information, documents, plans and other items provided to the Client which form part of or relate to the Services.

Payment Terms the document marked as such which sets out the terms for payment of the Charges in relation to all or part of the Services.

Privacy and Data Protection Requirements (PDPR) the Data Protection Act 1998, the Data Protection Act 2018 (the DPA), the Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended) and General Data Protection Regulation (GDPR) and all applicable laws and regulations relating to the processing of the personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other national data protection authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

Proposal the document marked as such which sets out the Services to be provided by Clockwork Marketing to the Client.

Services the services supplied by Clockwork Marketing to the Client as set out in the Proposal.

Start Date the date on which Clockwork Marketing agrees to provide the Services to the Client (or such other date as the parties may mutually agree).

- Term** the duration for which the Services will be provided, as set out in the Proposal.
- 1.2** A reference to a statute or statutory provision is a reference to it as it is in force on the Start Date.
- 1.3** Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4** A reference to **writing** or **written** includes email but not fax.
- 1.5** Should any conflict arise between these Conditions, the Proposal or the Payment terms, the following hierarchy of interpretation shall apply:
- Firstly the Conditions; then,
 - Payment Terms; and then
 - Proposal.

2. Supply of Services

- 2.1** In consideration of the Charges, and upon Clockwork Marketing's written acceptance, Clockwork Marketing shall supply the Services to the Client in accordance with the Proposal in all material respects and use reasonable care and skill in the provision of the Services.
- 2.2** Clockwork Marketing reserves the right to amend these Conditions, the Payment Terms or Proposal if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services and Clockwork Marketing shall notify the Client in any such event.
- 2.3** Clockwork Marketing shall provide and use its own equipment in the provision of the Services except where the Client has provided specific equipment for the provision of some or all of the Services and the same is noted in the Proposal.
- 2.4** Clockwork Marketing shall provide Materials for the provision of the Services as required.

3. Client's Obligations

- 3.1** The Client shall:
- 3.1.1** ensure that any information it provides to Clockwork Marketing is complete and accurate;
 - 3.1.2** warrants that any data it provides to Clockwork Marketing (or grants Clockwork Marketing access to) complies with relevant data processing and protection regulations (being the PDPR);
 - 3.1.3** co-operate with Clockwork Marketing in all matters relating to the Services;
 - 3.1.4** keep all Materials, equipment, documents and other property of Clockwork Marketing at the Client's premises in safe custody at its own risk and not dispose of or use the property of Clockwork Marketing other than in accordance with Clockwork Marketing's written instructions or authorisation;
 - 3.1.5** not replicate, disseminate or use the Materials for any other purpose than that as set out by Clockwork Marketing in the Proposal and/or during the provision of the Service;
 - 3.1.6** comply with all applicable laws and regulations with respect to its activities;
 - 3.1.7** provide Clockwork Marketing with access to the Client's online accounts as reasonably required by Clockwork Marketing;
 - 3.1.8** maintain all necessary licences, permissions and accounts required for Clockwork Marketing to provide the Services;

- 3.1.9** comply with any additional obligations as set out in the Proposal; and
- 3.1.10** indemnify Clockwork Marketing against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Clockwork Marketing arising out of or in connection with any breach of the Client's obligations under these Conditions.

4. Changes to Proposal

- 4.1** The Proposal may be amended at any time provided that both parties agree to the changes.
- 4.2** Clockwork Marketing may issue to the Client further Proposals during the Term. Proposals accepted by the Client will form part of the Contract.
- 4.3** Clockwork Marketing reserves the right to change Payment Terms if necessary due to changes to the Proposal/acceptance of a new Proposal by the Client. The Client will be notified of the changes in writing before any changes are implemented. If the Client gives any instruction to proceed then the revised prices shall bind the Client and form part of this agreement.

5. Charges and Payment

- 5.1** The Charges for the Services shall be calculated in accordance with Clockwork Marketing's fee rates, as set out in the Payment Terms.
- 5.2** The Client shall pay each invoice submitted by Clockwork Marketing in accordance with the relevant Payment Terms. A mandate form will be issued for completion.
- 5.3** Except where otherwise agreed with Clockwork Marketing, payment shall be by direct debit and payment shall be taken dependant on the date of the invoice. Invoices dated;
 - 5.3.1** 1st – 14th of the month payment is taken on or around the last day of that month;
 - 5.3.2** 15th – 31st of the month payment is taken on or around the 14th of the month after.
- 5.4** Estimates and proposals provided by Clockwork Marketing are valid for thirty days from the date of issue and are subject to final survey and technical appraisal,
- 5.5** All amounts payable by the Client under the Contract are exclusive of tax, including any Value Added Tax.
- 5.6** If the Client fails to make a payment due to Clockwork Marketing under the Contract by the due date, then, without limiting Clockwork Marketing's other remedies, the provision of the Service may be suspended and the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.
- 5.7** Interest under this clause 5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.8** All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.9** In the event that a Client meeting necessitates a Clockwork Marketing team member to stay overnight, Clockwork Marketing requests that accommodation, subsistence and travel expenses are provided for by the Client. If this is not possible then Clockwork Marketing reserves the right to invoice for reasonable costs for alternative arrangements. Such costs will be charged at Clockwork Marketing's sole discretion and will not apply to Client's based within 50 miles of the Clockwork Marketing registered office address.
- 5.10** Any contract which has a Term in excess of 12 months will be subject to an annual fee increase of 3% which shall apply automatically and without notice, except where Clockwork Marketing have specified otherwise.

6. Intellectual Property Rights

- 6.1** All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by Clockwork Marketing) shall be owned by Clockwork Marketing.
- 6.2** Upon payment of all Charges due, Clockwork Marketing grants to the Client a royalty free, perpetual, worldwide, non-exclusive, licence to Clockwork Marketing's Intellectual Property Rights which may arise during the course of the Services.
- 6.3** Clockwork Marketing acknowledges and agrees that all details of Customers provided by the Client belong to and remain the sole property of the Client.
- 6.4** Any data collected by Clockwork Marketing under the Contract concerning Customers will remain the exclusive property of the Client.
- 6.5** The Client grants Clockwork Marketing a non-exclusive licence to the Client's Intellectual Property Rights for the duration and sole purpose of receiving the Services.
- 6.6** For the avoidance of doubt, the Contract does not grant the Client any right to use Clockwork Marketing's Intellectual Property Rights or any provided materials for purposes other than receiving the Services.

7. Confidentiality

- 7.1** Both Parties undertake to the other that it shall not at any time during the Contract, and for a period of three years after termination or expiry of the Contract, disclose to any person any confidential information concerning the events, experiences, proprietary techniques, business, affairs or clients of the other party, except as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. For the avoidances of doubt, the Proposal and Materials are confidential information.
- 7.2** The Client shall not use Clockwork Marketing's confidential information for any purpose other than to receive the Services.
- 7.3** Clockwork Marketing may inform third parties that it has provided the Services to the Client.

8. Employment of Clockwork Marketing Employees

- 8.1** In order to protect the legitimate business interests of Clockwork Marketing, the Client agrees not to:
- 8.1.1** employ or contract any Clockwork Marketing employee, business contractor or agent, who works on behalf of Clockwork Marketing;
- 8.1.2** solicit or attempt to solicit any Clockwork Marketing employee, business contractor or agent, who work on behalf of Clockwork Marketing; or,
- 8.1.3** induce any Clockwork Marketing employee, business contractor or agent, who work on behalf of Clockwork Marketing, to leave the employment of Clockwork Marketing to work for any third party.

These restraints shall be in force for the Term and for 12 months from the date of termination or expiry of this Contract, howsoever arising.

The Client's attention is particularly drawn to this Clause

9. Limitation of Liability

- 9.1** Nothing in the Contract shall limit or exclude either parties liability for:
- 9.1.1** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 9.1.2** fraud or fraudulent misrepresentation; or
 - 9.1.3** any other liability which cannot be limited or excluded by applicable law.
- 9.2** Subject to clause 9.1, Clockwork Marketing 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 any indirect or consequential loss, including but not limited to loss of profits, sales or business, agreements or contracts, anticipated savings, use or corruption of software, data or information, and damage to goodwill.
- 9.3** Subject to clauses 9.1 and 9.2, Clockwork Marketing's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 100% of the total Charges paid under the Contract.
- 9.4** This clause 9 shall survive termination of the Contract.

10. Term & Termination

- 10.1** The Contract shall start on the Start Date and continue until the Term and expire at the end of the Term unless a new Term is mutually agreed between the Parties.
- 10.2** Where the Term is equal or greater than six months, the Client may terminate on at least three months notice after the first six months of the Term has passed.
- 10.3** Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 10.3.1** the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified to do so;
 - 10.3.2** the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
 - 10.3.3** a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership);
 - 10.3.4** an order is made for the appointment of an administrator, or an administrator is given or an administrator is appointed, over the other party (being a company);
 - 10.3.5** the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 10.3.6** a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
 - 10.3.7** the other party suspends or ceases carrying on all or a substantial part of its business; or,
 - 10.3.8** any event occurs, or proceeding is taken that has an effect equivalent or similar to any of the events mentioned in clause 10.2.2 to clause 10.2.7 (inclusive).

- 10.4** In the event of termination by the Client, the Client will be liable for all fees, charges and costs for Services provided up to and including the final day on which any or all of the Service is provided. This includes any third party cost incurred by Clockwork Marketing on the Client's behalf and with their consent.
- 10.5** Without affecting any other right or remedy available to it, Clockwork Marketing may terminate the Contract with immediate effect by giving written notice to the Client if:
- 10.5.1** the Client fails to pay any amount due under the Contract on the due date for payment; or
- 10.5.2** the beneficial ownership of more than 50% of the issued share capital of the Client or the legal power to direct or cause the direction of the general management of the Client changes.

11. Consequences of Termination

- 11.1** On termination of the Contract the Client shall:
- 11.1.1** immediately pay to Clockwork Marketing all of Clockwork Marketing's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Clockwork Marketing shall submit an invoice, which shall be payable by the Client immediately on receipt; and
- 11.1.2** return any and all property of Clockwork Marketing held by or at the premises of the Client. If the Client fails to do so, then Clockwork Marketing may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose.
- 11.2** Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 11.3** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. General

- 12.1** **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 12.2** **Assignment.** Clockwork Marketing may assign or sub-contract any of its obligations under the Contract from time to time.
- 12.3** **Counterparts.** These Conditions may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 12.4** **Entire agreement.**
- 12.4.1** The 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.
- 12.4.2** 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 these Conditions or the Proposal. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Conditions or the Proposal.

12.5 Variation. Clockwork Marketing may amend these Conditions from time to time by issuing revised Conditions to the Client in writing.

12.6 Waiver. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy

12.7 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.

12.8 Notices.

12.8.1 A notice given to a party under or in connection with these Conditions shall be in writing and sent to the party at the address given in this Agreement or as otherwise notified in writing to the other party.

12.8.2 The following table sets out methods by which a notice may be sent and its corresponding deemed delivery date and time:

Delivery method (to the addresses provided in the Proposal)	Deemed delivery date and time
<i>Delivery by hand or courier.</i>	<i>On signature of a delivery receipt or at the time the notice is left at the address.</i>
<i>Pre-paid first class post or other next working day delivery service providing proof of postage.</i>	<i>Midday on the second Business Day after posting or at the time recorded by the delivery service – whichever is earlier.</i>
<i>Email</i>	<i>At the time of transmission if during Business Hours, otherwise at 10:00 on the next Business Day after transmission.</i>

12.8.3 This clause 12.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12.9 Third party rights. A person who is not a party to this Contract shall not have any rights under or in connection with it.

12.10 Governing law & Jurisdiction. The validity, construction and performance of the Contract shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Client and Clockwork Marketing submit.

Clockwork Marketing, Longlands Barns, Whilborough Road, Newton Abbot, Devon TQ12 5DY

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