

# **THE UNIVERSITY OF ESSEX STUDENTS' UNION – GENERAL TERMS AND CONDITIONS OF BUSINESS.**

## **1. AGREEMENT**

1.1 This Agreement (comprising of these Terms and Conditions and the Booking Form) supersedes any previous agreements between the parties in relation to the matters dealt with herein and represents the entire understanding between the parties in relation thereto and each of the parties acknowledges and agrees that it has not entered into the Agreement in reliance upon any representation, warranty, undertaking, agreement, statement or replies to enquiries (whether oral or written) made or alleged to have been made by any other party (whether or not negligently made) on or prior to the date hereof except as expressly set out in this Agreement (provided that nothing contained in this Agreement shall operate to exclude any liability for fraudulent misrepresentation).

## **2. DEFINITIONS AND INTERPRETATION**

In this Agreement (unless the context otherwise requires) the following words and expressions shall have the following meanings:

"Promotional Activity" is that activity, including events, advertising and any form of display or distribution of promotional material by The Advertiser, by the Advertisers' agent, or by The Union.

"Artwork" or "Copy" refers to the content of advertisements provided by The Advertiser for display by The Union.

"Booking Form" means the front sheet to this agreement, setting out the specifics of the Promotional Activity and Campaign Start Date.

"Campaign Start Date" means the date specified on the Booking Form;

"Confidential Information" means all confidential information (whether oral or written) acquired by a party whether before or after the date of the Agreement and which relates to the affairs or business of the other party or its products, operations or know-how;

"GDPR" relates to General Data Protection Regulation (GDPR) and the Data Protection Act 2018;

"Intellectual Property Rights" are all inventions (whether patentable or not), design rights, databases, database rights, copyright, moral rights, semiconductor topography rights, unregistered trade and service marks, logos, get-up and trade names, all patents, utility models, registered designs registered copy rights, registered trade and service marks, domain names and applications for registration rights relating to know-how, trade secrets and confidential information in any form and any rights or forms of protection of a similar nature anywhere in the world;

"Promotional Activity" is the activity as further specified on the Booking Form, including events, advertising and any form of display or distribution of promotional material by The Advertiser, by the Advertisers' agent, or by The Union.

"The Union" means University of Essex Students' Union and its subsidiary UESU Ltd, Wivenhoe Park, Colchester, Essex, CO4 3SQ.

"Total Cost" means the total price paid by the Advertiser to The Union for the Promotional Activity, as specified on the Booking Form.

## **3. PROMOTIONAL ACTIVITY**

3.1. The Advertiser undertakes to ensure that the Promotional Activity booked by The Advertiser under the terms of this Agreement, relates solely to the promotion of products and services provided by The Advertiser or, where The Advertiser is an agent, provided by The Advertiser's Client.

3.2 The Advertiser shall only be permitted to carry out such Promotional Activities as are specified on the Booking Form.

## **4. CANCELLATION POLICY**

4.1 All cancellations must be made in writing to The Union

4.2 In addition to any statutory rights Advertisers/ and Clients may have in relation to cancelling their order(s), Advertisers may cancel all or part of their order by giving notice in writing to The Union. The Union must receive the relevant cancellation notice before the Campaign Start Date, or within 14 days of the date of the order, whichever is earlier.

4.3 The following charges apply to cancellations:

a) Where the Advertiser cancels the order less than 30 days before the Campaign Start Date, or after the Campaign Start Date, the Advertiser agrees to pay The Union the Total

Cost of the campaign and unless the Advertiser is permitted to terminate under clause 10 of this Agreement, shall not be entitled to claim any refund from the Union;

b) Where The Advertiser cancels the order more than 30 days before the Campaign Start Date, no fees will be payable by The Advertiser, unless that booking related to the Freshers' Fair, in which case a fee of 25% of the value of the order is payable.

4.4 Advertisers which cancel part of an order no longer qualify for any discounts which were provided on the basis of The Advertiser booking a campaign involving more than one Promotional Activity. In these circumstances The Union will adjust the cost of any remaining Promotional Activity to reflect the advertised (Rate Card) cost of that activity.

4.5 Where applicable, refunds will be made by The Union within 60 days of the Campaign Start Date.

4.6 In the event of national lockdown due to the Covid -19 pandemic, all fees will be refunded within 60 days.

## **5. INTELLECTUAL PROPERTY, DATA PROTECTION & THIRD PARTY'S RIGHTS**

5.1 Each party shall satisfy itself as to the extent of and shall comply with its obligations and duties under the GDPR and other applicable statutory or European Community provisions, regulations or guidance and each party shall ensure that it has given the relevant registrations and notifications under the GDPR to enable it to comply with the provisions of the GDPR.

5.2 Any use of The Union's Intellectual Property Rights, branding, logo or get-up shall only be permitted with The Union's prior approval in writing.

5.3 Subject to any express provision of this Agreement to the contrary, The Union's Intellectual Property Rights shall not be transferred or affected in any way by this Agreement and no party shall acquire any right in relation thereto.

5.4 The Advertiser will use its reasonable endeavours to ensure that advertisements or other forms of Promotional Activity will not be in breach of any third party's rights including, without limitation, any rights in respect of defamation or reputation, confidential information or trade secrets, patent, copyright, design right, registered design, trademark, or other intellectual property rights.

5.5 The Advertiser undertakes to indemnify The Union and to keep The Union fully and effectively indemnified against any claims by third parties for infringement of their rights by The Advertiser or by The Client as a result of the Promotional Activity booked by The Advertiser under the terms of this Agreement.

## **6. CONFIDENTIALITY**

6.1 Each party will treat all Confidential Information as strictly confidential and (a) will take all proper steps to prevent its use or disclosure; (b) will not itself make use of any Confidential Information for a purpose other than the performance of its obligations under this Agreement; and (c) will not disclose Confidential Information to any person (other than in accordance with Paragraph 3.2.).

6.2 Each party may disclose Confidential Information where such disclosure would otherwise be prohibited by this paragraph if and to the extent: (a) required by law; or (b) it can be shown by that party (to the other party's reasonable satisfaction) to have been known by it before disclosure to it by the other party; or (c) the information was or becomes in the public domain (other than by reason of a breach of this paragraph by that party)

## **7. BILLING & COSTS**

7.1 The Union shall be entitled to issue invoices in respect of sums due to it under this Agreement at any time after the date of this Agreement. Payment is due within 30 days of the date of issue of invoices or 7 days prior to the start date of the Promotional Activity, whichever is sooner.

7.2 If an Advertiser does not make any payment or installment due to The Union under the terms of this Agreement, The Union shall be entitled to offset this loss by retaining any sums previously paid by The Advertiser

7.3 If any party fails to pay when due the amount payable by it under this agreement, the liability of such party shall forthwith become payable on demand by the other party. The party which has failed to pay an amount owed by the due date shall also pay, on demand by the other party, interest on the overdue amount from the due date until the date of actual payment (after as well as before judgment at the rate of four per cent above the base rate from time to time of The Royal Bank of Scotland. Such interest shall accrue on a daily basis and be compounded quarterly.

7.4 All expenses incurred by or on behalf of the parties including all fees of agents, solicitors or accountants employed by any of the parties in connection with the negotiation or preparation and execution of this Agreement, shall be born solely by the third party which incurred them unless otherwise agreed herein.

## **8. SUBCONTRACTING**

8.1. The Union may engage a subcontractor or agent to perform any of their obligations under this Agreement.

## **9. ASSIGNMENT**

9.1. Save as expressly stated in this Agreement, neither party to this Agreement may assign or transfer its rights or obligations under this Agreement without the written consent of the other party, save that either party shall be entitled to effect (and the other party hereby consents to) such an assignment to transfer to: a) a company being a subsidiary or holding company of such party or another subsidiary of such holding company (the terms "holding company" and "subsidiary" having the meanings given to them in Section 1159 of the Companies Act 2006 or b) another entity to which all or substantially all of the business or assets of the former party which are required for the performance of this Agreement by such party are sold or transferred.

9.2 This Agreement shall be binding and shall endure for the benefit of the successors in title of each party.

## **10. TERMINATION**

10.1 Either party may terminate this Agreement with immediate effect at any time by giving written notice to the other party if the other party is in material breach of an obligation under this Agreement, which breach, if capable of remedy, has not been remedied within 30 days after such party has served written notice on the other party specifying the breach and the steps required to remedy it.

10.2 Either party may terminate this Agreement with immediate effect at any time by giving written notice to the other party if such other party: (a) Has a receiver, administrator or and administrative receiver appointed, or an encumbrancer takes possession, over all or any part of its undertakings or assets; or (b) Passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent reorganisation) or a court order is made for its winding up; or (c) Makes any voluntary arrangement or composition with its creditors or applies to a court for protection from its creditor's; or (d) Has an administration order made in relation to it; or (e) Ceases, or threatens to cease, to carry on business; or (f) If any analogous situation to any of the above occurs in relation to it under the law of any jurisdiction; or where such other party is a private individual: (g) Makes any voluntary arrangement or composition with his creditors

10.3. Any termination of this Agreement (however caused) shall not affect any rights or liabilities of either party which have accrued prior to date of termination nor shall it affect the coming into force or the continuation in force of any provision of this Agreement expressed to survive such termination.

10.3 The Union shall be entitled to terminate this Agreement immediately at any time by giving written notice to the Advertiser, in the event that the Advertiser or Advertiser's Client: (a) does any act or omits to do any act which brings the reputation, image or goodwill of the Union into disrepute or otherwise adversely affects the business of the Union.

(b) carries out any Promotional Activities outside the scope of those agreed on the Booking Form.

## **11. LIABILITY**

11.1 The combined aggregate liability (inclusive of interest and legal and other costs) of the The Union to the Advertiser or Advertiser's Client in respect of all claims arising under or in connection with this Agreement (whether by reason of any negligence by the The Union or any of their employees or agents, any non-fraudulent misrepresentation, any breach of contract or otherwise) shall not in any event exceed the Total Cost.

11.2 The Union shall not be liable to the Advertiser or Advertiser's Client (whether by reason of any negligence by the Union or any of their employees or agents, any non-fraudulent misrepresentation, any breach of contract or otherwise) for any:

(a) loss of profits; or

(b) damage to reputation; or

(c) loss of anticipated savings; or

(d) loss of anticipated revenues; or

(e) loss of business opportunities;

(f) loss of contracts; or

(g) loss of goodwill; or

(h) claim, action or demand made against the Advertiser or Advertiser's Client by any third party;

(i) indirect loss, damage, cost, expense or claim whatsoever; which arises out of or in connection with this Agreement.

11.3 Nothing in this Agreement shall operate to limit or exclude the liability of the Union to the Advertiser or the Advertiser's Client for any death or personal injury caused by the negligence of the Union or any of their employees or agents, or for any other matter in respect of which liability cannot lawfully be limited or excluded.

## **12. FORCE MAJEURE**

12.1. No party shall be deemed in breach of this Agreement or otherwise liable to the other parties for any failure or delay in performance by it of any of its obligations under this Agreement if and to the extent that the delay or non-performance is due to a circumstance beyond the reasonable control of that party ("Force Majeure"). If a party is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure that party shall as soon as reasonably possible give written notice to the others of the nature and extent of the circumstances giving rise to Force Majeure. The operation of this Agreement shall be suspended during the period (and only during the period) in which the Force Majeure continues and any time periods in this Agreement shall be extended accordingly.

## **13. MISCELLANEOUS**

13.1. A failure to exercise or delay in exercising any right, remedy or power provided under this Agreement or by law does not constitute a waiver of the right, remedy or power or a waiver of any other right, remedy or power. No single or partial exercise of any right, remedy or power prevents any further exercise of it or the exercise of any other right, remedy or power.

13.2. The rights, remedies and powers provided by this Agreement are cumulative and not exclusive of any rights, remedies or powers provided by law. Any waiver of a breach of any of the terms of the Agreement or of any default under this Agreement shall not be deemed a waiver of any other breach or default and shall not affect the other terms of this Agreement.

13.3. If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected.

13.4. This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, each of which when executed shall be an original, but all of which together shall constitute a single instrument.

13.5. These Terms and Conditions are subject to any express provision of this Agreement. In the event of any conflict between these Terms and Conditions and any other provision of this Agreement, such other provision shall prevail.

13.6. Advertisers are required to uphold The Union's policies at all times. This includes the Equal Opportunities Policy, Safe Space Policy and ban on the distribution of certain products. It is the responsibility of Advertiser's to ensure that they comply with The Union's policies, copies of which are available on request from The Union.

13.7. The Union reserves the right to amend these terms and conditions prior to the event.

13.8. This Agreement shall be governed by and construed in accordance with the law of England and Wales and the Parties shall be subject to the exclusive jurisdiction of the courts of England and Wales.

## **MEDIA-SPECIFIC TERMS AND CONDITIONS**

### **GENERAL**

14. The Union reserves the right, at its sole discretion, to refuse to display or to distribute any advertisement or other promotional material, which it regards as unsuitable. Where The Union exercises this right, The Advertiser or Client shall be entitled to a refund of any fees they have paid in relation to the relevant media booking. The Advertiser or Client will not be entitled to any other form of compensation or damages.

### **FRESHERS AND RE-FRESHERS' FAIRS**

15. The Freshers' Fair and Re-Freshers' Fair are those events, operated by The Union, in relation to the provision of Stalls for use by Advertisers for the purpose of promoting the products or services specified on Page 1 of this Agreement.

16. The Union reserves the right to refuse entry to the Freshers' Fair if payment has not been completed by Advertisers or their Clients, or if the Advertiser /Client has breached any of the other terms of this Agreement.

17. Advertisers/Clients using any loading areas provided by The Union must vacate their areas as soon as unloading/loading has been completed. The Union reserves the right to remove any vehicles which do not comply with this policy, which are blocking exits or which, in The Union's view, represent a safety hazard.

18. "Stalls" are the spaces provided by The Union at the Freshers' Fair. The size of each Stall, which is at the sole discretion of The Union, will be approx. 2.5m by 2.5m. A table and 2 chairs will be provided by The Union.

19. Advertisers/Clients must provide their own display materials and staff. A maximum of 2 staff per Advertiser/Client are permitted to attend the Freshers' Fair and, at the request of The Union, Advertisers/Clients agree to provide the names of any staff due to attend the Freshers' Fair.

20. Advertisers/Clients which require a larger space or want to increase the number of staff at the Fair must obtain written permission from The Union.

21. The Union does not supply backboards except by prior agreement with Advertisers/Clients. Advertisers in need of a backboard must state this on the official Booking Form at the time of booking.

22. Every effort will be made to provide Advertisers/Clients with their desired stand location. However, The Union reserves the right to move stand locations without prior notice. Customers will be informed of any changes made to the location of their stand at the earliest opportunity.
23. Advertisers must set up and dismantle their own Stalls. Advertisers must ensure that any material brought to the Freshers' Fair by the Advertiser is removed at the end of the event.
24. The Union takes no responsibility for equipment other than that supplied by The Union.
25. Any electrical equipment which Advertisers/Clients bring to the Freshers' Fair must have a current PAT certificate. Advertisers/Client must bring the relevant PAT certificates with them to the event. Equipment without a certificate will be removed for collection at the end of the event.
26. Whilst Advertisers or Clients are able to decorate stands as required The Union reserves the right to remove any material which it believes, for any reason, to be unsuitable.
27. Advertisers attend the Freshers' Fair event at their own risk. The Union does not accept any responsibility for Advertisers' staff.
28. Advertisers must ensure that their staff do not obstruct any walkways or exits.
29. Neither Advertisers nor their Clients are permitted to sell any goods without having received prior permission in writing from The Union.
30. Advertisers/Clients whose display exceeds the allocated space will be charged an additional fee. This fee will be the same as the advertised cost of a single standard Stall at the Freshers Fair.
31. There is a strict no smoking policy inside the Freshers' Fair. All staff must comply with any smoking restrictions in other locations.
32. The distribution of alcohol is not permitted, except where The Union has authorised the distribution of samples of alcohol for promotional purposes. In these cases, Advertisers and Clients must comply with any restrictions imposed by The Union.
33. Music may only be played by Advertisers or Clients which have obtained prior written authority from The Union. Where music has been properly authorised, Advertisers and Clients must abide by the volume restrictions imposed from time to time by The Union.
34. Advertisers and Clients agree not to distribute leaflets or any other promotional items outside their allocated space. Advertisers and Clients discovered leafleting outside of the authorised area will be asked to leave.

#### **PRINTED AND DIGITAL MEDIA**

35. Advertisers must ensure that any promotional material provided for display or distribution by The Union arrives at the address provided by The Union on or before the Delivery Deadline agreed with The Union.
36. Advertisers agree to ensure that any Artwork or Copy is provided in the format requested by The Union.
37. In the event that The Union, or its nominated agent, receives any required promotional material required after the Delivery Deadline, all fees and charges remain payable by the Advertiser.