

1. INTERPRETATION

- a) In these conditions "DCL" means Discrete Communications Limited.
- b) "the Services" means any SMS campaign management with or without the use of ANPR cameras.
- c) "The Buyer" means the party to whom the Services are supplied by DCL.
- d) "Supplied," means being made available as the service to which the buyer's SMS campaign will be broadcast by or on behalf of DCL.

2. APPLICATION OF THESE CONDITIONS

- a) Any Agreement for the supply or use of the Services shall be subject to these Conditions and unless otherwise expressly agreed in writing by DCL these conditions override any terms or conditions stipulated incorporated or referred to by the Buyer in his or its order or negotiations.
- b) These conditions embody the entire agreement of DCL and the Buyer and accordingly any promises, representations warranties or understandings not expressed herein are not relied on and shall be of no effect.
- c) No variation of these Conditions shall be effective against DCL unless expressly agreed in writing and signed by a duly authorised employee of DCL on its behalf.
- d) Without prejudice to the aforesaid by signing the booking confirmation the Buyer is deemed to acknowledge and accept their application to his or its agreement with DCL and to have assented to these Conditions as the terms on which the Services are supplied.

3. PAYMENT

- a) VAT will be payable upon the price of the Services whether or not mentioned.
- b) 100% of the price along with the VAT on such will be paid by the Buyer upon the placing of the order unless the buyer has an approved account facility with DCL in which event invoices for the Services shall be paid within 7 days of the invoice date.
- c) In the event that payment of the price in full is not made to DCL at the time stipulated above interest on the balance outstanding will become immediately payable at the rate of 2.50% per month or part thereof until such payment is received by DCL.

4. BROADCAST

DCL will broadcast the SMS as soon as possible following the acceptance of the order from the Buyer. In the event that a date of broadcast is agreed between DCL and the Buyer DCL shall use its reasonable endeavors to ensure that the broadcast occurs on the agreed date, however, DCL accepts no responsibility for loss or damage which may result from its failure to broadcast the SMS on the agreed date.

5. CANCELLATION AND REPOSSESSION OF THE SERVICES

DCL shall be entitled (without prejudice to such other rights as it may have) to rescind this and any other contract with the Buyer in any of the following events:

- i) the Buyer failing to make payment in full or when due in accordance with Clause 3 hereof: or
- ii) any Breach by the Buyer of his or its obligations under Clause 6 or any other Clause hereof: or
- iii) a Receiver being appointed over the whole or any part of the assets or the undertaking of the Buyer or in the event that a winding-up or administration order is made against the Buyer or the Buyer goes into liquidation or causes a meeting of or makes any arrangement with his or its creditors or commits any act of bankruptcy.

6. COPYRIGHT AND TITLE

- a) Copyright and all other intellectual property rights in the Services, including any right to prevent extraction and/or re-utilization, shall at all times remain with DCL, and nothing in these Conditions shall constitute a transfer, assignment or license of any copyright or other intellectual property right of DCL. Save as aforesaid and without prejudice to DCL's retention of copyright and other rights, neither legal nor beneficial title to or property in the Services shall, notwithstanding delivery, pass to the Buyer except upon payment of the price in full.

7. THE BUYERS DATA

The Buyer may supply data to DCL for the purpose of deduplication against the Services in which event:-

- i) the data must be supplied in the approved format as specified by DCL
- ii) the data must be supplied and warranted by the Buyer as "Virus Free"
- iii) whilst DCL will take every reasonable precaution to protect the data no responsibility is accepted or its loss or damage.

8. THE BUYER'S OBLIGATIONS

a) The Services may contain 'dummy' SMS numbers for control purposes. These numbers will be unknown to the Buyer. A breach of this Agreement is conclusively proven and damages named hereinafter shall be deemed owed when DCL establishes the following:

c) That DCL placed 'dummy' numbers in the Services; and

d) That the 'dummy' numbers received any SMS sent or generated by the Buyer or with the Buyer's consent or knowledge outside the scope of this Agreement between the Buyer and DCL.

e) Because the Services provided by DCL to the Buyer are extremely valuable and completely proprietary, and because the nature of this asset makes an evaluation of any damage after a breach of this Agreement impossible, then in the event the Services are used or otherwise handled in such a way that constitutes a breach of this Agreement by the Buyer, its agents, or subcontractors, DCL will be entitled to damages of five pounds (£5.00) for each number supplied irrespective of whether such number was used in breach of this Agreement, with the amount of damages not to exceed one million pounds (£1,000,000).

f) The Buyer agrees and warrants that any documents or other items SMS by or on behalf of the Buyer as a result of or following his or its purchase of the Services will contain nothing which infringes copyright or any other right, or will be defamatory, obscene, indecent or otherwise illegal or unlawful and undertakes to indemnify and hold harmless DCL against all damages, losses, costs, charges and expenses of whatever nature arising out of or in connection with any claim that such documents or other items infringe copyright or are defamatory, obscene, indecent or otherwise illegal or unlawful whether or not such claim is justified or upheld. The Buyer in addition undertakes to work within the normally accepted codes of conduct for the advertising industry, including in particular the British Code of Advertising Practice, The British Code of Sales Promotion Practice and the ICSTIS code.

g) In the event that any recipient of any documents or other items SMS by the Buyer objects to such SMS or requests that it cease or asks for his or its name be removed from any list, the Buyer shall forthwith inform DCL and provide DCL with particulars of any documents and other items SMS to that Recipient and of the SMS

9. SMS PIECES

a) The Buyer will ensure that any use to which the Services are put complies with the current Codes of Practice of the appropriate supervisory Bodies whose current codes are as follows:

i) The British Code of Advertising Practice (BCAP)

ii) The British Code of Sales Promotion Practice (BCSPP)

iii) The Code of Practice of the Independent Committee for Standards of Telephone Information Services (ICSTIS).

b) The Buyer will submit to DCL the proposed SMS communication at least 3 (three) working days before the day on which the broadcast is required. DCL will, where necessary, submit the mail pieces or other items to the Bodies responsible for administering the Codes of Practice for their advice and or guidance as to compliance with the Codes. The decision of those Bodies shall be accepted by DCL and the Buyer and no claim shall be made for damage or consequential loss as a result of their decision.

10. LIMITATION OF DCL'S LIABILITY

a) DCL neither warrants nor undertakes nor represents nor is it a term or condition of any sale or agreement for any supply of the Services that the Services are accurate or complete or that any information contained therein is accurate or complete and (except for any liability for death or personal injury resulting from the negligence of DCL or that of its servants or agents, or in relation to any other liability which may not by applicable law be excluded or limited) DCL shall not be liable for any damages, losses, costs, charges or expenses of whatever nature (even if DCL has been advised of the possibility of such damages), including any indirect or consequential loss or damage howsoever arising and including loss of profits, loss of sales, loss of turnover, loss of bargain, loss of opportunity or damage or corruption to or loss of use of computer equipment, software or

data or loss of time on the part of management or other staff, caused by, arising out of or in any way connected with any such inaccuracy or omission.

b) Without prejudice to the aforesaid any liability of DCL in respect of any claims of whatever nature arising out of or in any way connected with the Services or their sale, supply or use or in respect of any breach by DCL of any obligation or duty pertaining to the Services or to their supply or use (including any other liability of DCL for negligence or breach of copyright) shall not in any circumstances whatsoever exceed in total the contract price of the Services or £250,000, whichever is the greater, unless separately agreed in writing by the Buyer and DCL, following prior written notice by the Buyer to DCL of a request for increased liability and on terms to be agreed.

11. GOVERNING LAW

These conditions and any questions, disputes or other matters relating to them or any contract made subject to them shall be governed by and determined in accordance with the laws of England and the parties accept the jurisdiction of the English courts

2. CANCELLATIONS

No cancellations will be accepted after instructions to commence output have been issued by DCL. In the event that DCL accepts cancellation of this order any direct costs incurred prior to cancellation will be payable by the Buyer