

1. General

- 'Agreement' means these terms and conditions together with the Order Confirmation;
- 'Customer' means the person, firm, institution or corporation with whom Mardev contracts for the supply of a Selection;
- 'Data Protection Legislation' means the Data Protection Act 1998 and all subsequent and secondary legislation and regulations legislation in force in the United Kingdom from time relating to the use of personally identifying information;
- 'List' means the list(s) of individuals and contact details from which the Selection is extracted;
- 'List Owner' means the owner or authorised supplier of any Records;
- 'Misuse' means the use or disclosure of Records other than as specifically authorised by this Agreement;
- 'Order Confirmation' means the order confirmation despatched by Mardev to the Customer incorporating details of the Customer's order and any additional terms and conditions agreed by Mardev;
- 'Processor' means any third party data processor or mailing house appointed by the Customer to process any Records;
- 'Records' means the individual records of individuals and contact details contained within a List or a Selection;
- "Selection" means the Records selected by the Customer from a List as specified in the Order Confirmation.

2. Usage

- 2.1 Where the use specified in the Order Confirmation is single use;
- i.) the Customer shall be entitled to use the Selection once only and only for the purpose and by the date specified in the Order Confirmation; and
 - ii) the Customer shall not keep, copy or re-use in any way any Records without the prior written consent of Mardev and the List Owner, where applicable, having been obtained
- 2.2 Where the use specified in the Order Confirmation is use for a specified period of time, at the end of the term specified in the Order Confirmation the Customer shall destroy all copies of the Records .
- 2.3 Unless otherwise agreed in writing by Mardev, if the Customer does not use the Selection by the date specified in the Order Confirmation, Mardev reserves the right to terminate this Agreement and the Customer shall then immediately return the Records to Mardev.

3. Restrictions

- 3.1 Except as specifically permitted by the Order Confirmation the Customer shall not disclose or make available any Section either in whole or in part to any third party without the prior written consent of Mardev.
- 3.2 The Customer shall ensure any dealings which the Customer may have with any third party regarding the Records are conducted in accordance with the terms of this Agreement and undertakes to procure that such third party will comply fully with the terms of this Agreement.
- 3.3 The Customer shall;
- (i) procure that communications sent by or on behalf of the Customer using the Records contain no material which is defamatory or otherwise unlawful or offensive and do not infringe the intellectual property rights or other right or license of any person;
 - (ii) comply with the requirements of the Telephone Preference Scheme where applicable;
 - (iii) adhere to any relevant codes of practice recommended or adopted by Direct Marketing Association (UK) Ltd from time to time; and
 - (iv) indemnify and hold harmless Mardev and the List Owner from and against any claim by any person arising from or relating in any way to the content of any communication sent by or on behalf of the Customer

4. Ownership

Copyright, database rights and all other intellectual property rights in all Records shall at all times belong to Mardev, or to the List Owner, as appropriate..

5. Prices and Payment Terms

- 5.1 The price payable by the Customer for the Selection shall be the charges specified in the Order Confirmation and must be paid in full prior to use of the Records.
- 5.2 Additional charges shall be payable by the Customer;
- i.) for additional selections from any List;
 - ii) for any preliminary or additional work undertaken by Mardev at the Customer's request; and
 - iii) for more than one use of the Selection if such further use shall be agreed by Mardev.
- 5.3 Value Added Tax shall be payable by the Customer at the applicable rate.

6. Data Protection

- 6.1 The Customer acknowledges that the Selection contains personal data as defined in the Data Protection Legislation and undertakes to process and use all such personal data in accordance with the Data Protection Legislation.
- 6.2 The Customer will implement all appropriate technical and organisational measures to protect the Records against unauthorised disclosure or access and will procure that any Processor complies with its obligations under the Data Protection Legislation.
- 6.3 The Customer will forward to Mardev any request to access, correct or cease processing personal data made by any person pursuant to the Data Protection Legislation to Mardev within seven (7) days of receipt.
- 6.4 If the Customer is located in a country which is not within the European Economic Area and is not a country whose legislation relating to protection of personal data is regarded as adequate by the European Commission;
- i) the Customer agrees to comply with the Data Protection Legislation with respect to the personal data contained in the Records; and
 - ii) the data subjects (as defined in the Data Protection Legislation) of the personal data contained in the Records shall have the right to enforce their right against the Customer under the Data Protection Legislation in every respect as though they were parties to this Agreement.

7. Termination

- 7.1 Mardev may, without liability to the Customer, terminate this Agreement by notice in writing to the Customer if;
- i) the Customer fails to make any payment due to Mardev;
 - ii) if the Customer is in breach of any of its obligations under this Agreement; or
 - iii) if the Customer has a receiver or an administrative receiver appointed or shall pass a resolution for winding up or a court of competent jurisdiction shall make an order to that effect or becomes subject to an administration order or shall enter into a voluntary arrangement with its creditors ceases or threatens to cease to carry on business or an analogous event occurs in any jurisdiction.
- 7.2 Mardev may at any time require that the Customer, or any Processor, ceases to use or process the personal data contained in the Selection. In such event;
- i) the Customer shall return to Mardev all copies of the Records in its possession or under its control; and
 - ii) Mardev shall refund to the Customer a reasonable proportion of the charges paid by the Customer under this Agreement together with the reasonable direct costs incurred by the Customer in complying with Mardev's instructions given under this clause 7.2.

8. Liability

- 8.1 In 8.2, "Loss or Damage" means any loss or damage excluding loss of profit but including damage to the rental value of a List caused by Misuse by the Customer and any person to whom the Customer discloses Records and also including the cost to Mardev and/or the List Owner in re-verifying the List as the result of Misuse.
- 8.2 The Customer will indemnify Mardev and any List Owner from and against any Loss or Damage suffered by Mardev and/or the List Owner as the result of the breach of this Agreement or the Misuse of Records by the Customer or any other person to whom the Customer discloses or transfers the Records (whether or not authorised by this Agreement and including without limitation, any mailing house or bureau).
- 8.3 Subject to 12.6 below Mardev shall have no liability to the Customer:
- i) for loss of profit or loss of business or any consequential or incidental loss suffered by the Customer arising from any breach by Mardev or the List Owner of this Agreement; or
 - ii) for any loss or damage suffered by the Customer or any third party as the result of Misuse by the Customer or such third party.
- 8.4 Subject to 8.5 any other liability of Mardev to the Customer shall be limited to the total amount paid by the Customer to Mardev under this Agreement.
- 8.5 Mardev does not exclude liability for death or personal injury caused by its negligence or for fraud.

9. Assignment

The Customer shall not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder in whole or in part.

10. Waiver

The rights of Mardev shall not be prejudiced or restricted by any indulgence or forbearance extended by Mardev to the Customer and no waiver by Mardev in respect of a breach shall operate as a waiver by Mardev of any subsequent breach.

11. Notices

Any notices which are required to be given under this Agreement by Mardev shall be sufficiently served if sent to the email address to which the Order Confirmation was addressed.

12. Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereby agree to submit to the exclusive jurisdiction of the English Courts.