

## Terms & Conditions

When using Schools Marketing Company services, you confirm that you understand and are agreeing to our following terms and conditions of business:

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## DEFINITIONS OF THESE TERMS

'Conditions' means the terms and conditions set out in this document;

'Schools Marketing Company' means Family Marketing Limited t/as Schools Marketing Company, company number 5491020, registered office address: Leytonstone House, 3 Hanbury Drive, London E11 1GA;

'Buyer' means the individual firm, company or other party with whom Schools Marketing Company Limited contracts;

'Confirmation of Order' means a written or emailed confirmation of order sent to the Buyer by Schools Marketing Company setting out the Services;

'Contract' means the legally binding agreement between Schools Marketing Company and the Buyer arising out of the Buyer's Confirmation of Order whether signed or unsigned' written or sent by email; to include agreement on context, content and a send date for an email campaign, subject to the buyer providing their content by the delivery time indicated, such acceptance of the Contract to be in writing (including e-mail) or orally;

'Goods' means any goods or services supplied by Schools Marketing Company in connection with the Services;

'Services' means the services specified in the Confirmation of Order; 'Content or Material Supplied' means any items contributing to delivery of the order, both tangible and intangible that are required to complete any type of marketing campaign;

'Agent or Broker' means any individual, company or organisation working on behalf of or alongside Schools Marketing Company or the Buyer.

## PRICES/PAYMENT TERMS

1. The Buyer will pay for the Services at the times and in the manner specified in the Confirmation of Order. Payment is typically due with order, but this may be varied from time to time by prior agreement.
2. If no such provision is made in the Confirmation of Order, the Buyer will pay any invoice rendered by Schools Marketing Company in full within 30 days of the invoice date. The Buyer shall not be entitled to make any deduction from any payment due to Schools Marketing Company in respect of any claim or counter claim.
3. Schools Marketing Company reserves the right to correct prices and invoices where any clerical or typing errors have been made, be this in the quotation, order confirmation, or invoice.
4. All prices charged by Schools Marketing Company are subject to the addition of VAT at the prevailing rate where appropriate.
5. If the Buyer fails to pay any sum due to the Schools Marketing Company within 30 days of the invoice date, Schools Marketing Company reserves the right to charge interest on the outstanding amount at a rate of 3% per month or £20 per week, whichever is the greater, for

each week or part of a week from the date of invoice until the date that the payment is received. Schools Marketing Company will invoice for the charge once the original invoice is paid, or in the event of the matter going to court, will add any sum claimed in court.

6. Title or use of any Goods supplied by Schools Marketing Company to any Buyer or Third Party shall not pass to the Buyer or Third Party until all payments relating to those Goods have been made in full. All Goods shall be at the sole risk to the Buyer from when the Goods are delivered.
7. Should non-payment to Schools Marketing Company by the date specified in the Conditions occur, this will be deemed a breach of Contract. The Buyer shall be responsible for any and all costs and expenses, included but not limited to legal fees and court costs incurred by Schools Marketing Company in conjunction with the collection of any monies due hereunder.
8. In circumstances where the delivery of a job extends over a period of one month, Schools Marketing Company will, if it considers appropriate, invoice all the Services carried out by Schools Marketing Company in full at the commencement of the delivery of the contract, or at such times as may be agreed with the Buyer in advance of commencement of delivery and all such charges will be payable in full, within the terms agreed.
9. If Schools Marketing Company offers a discounted price, as part of a non-signed but contractual agreement for a package of services, including but not limited to a series of email campaigns or data supply and the Buyer cancels part way through the agreed non-signed contracted service, the discounted amount due for the work undertaken will become payable in full, within 5 working days from such date.
10. If Schools Marketing Company is in receipt of a Confirmation of Order for a data lease, or series of emails from the Buyer, the Buyer is then unable to cancel the order and full payment will be due in accordance with the original contract and payment terms. If alternative services can be agreed with the Buyer within the same value and time period of the order confirmation, however, Schools Marketing Company may be able to vary the services provided in pursuit of a reasonable alternative for the Buyer – notwithstanding the original payment terms agreed.

## YOUR OBLIGATIONS AS BUYER

The Buyer:-

1. is solely responsible for the content of any marketing sent out by Schools Marketing Company. The Buyer ensures that no Material they provide is obscene, indecent, defamatory or otherwise illegal or unlawful and ensures that it does not infringe any copyright owned by any third party. The Buyer agrees to indemnify Schools Marketing Company against any loss, claims, damages, costs and expenses howsoever arising in connection with any Material they supply;
2. the Buyer is responsible for checking and approving all content they supply.
3. The buyer shall retain copies of all Material supplied to Schools Marketing Company and insure against its accidental loss or damage at its own expense; Schools Marketing Company has no liability for any such loss howsoever caused;

4. the buyer will ensure that it complies in all aspects of the GDPR, with BCAP - The British Code of Advertising Practice, BCSPP - the British Code of Sales Promotion and Practice and AACP - the Advertising Association Code of Practice covering the use of personal data for advertising and direct marketing purposes, and all other appropriate codes of conduct;
5. will ensure that if necessary it is registered under the Data Protection Act 1984 and that it complies fully with the terms of such registration and the provisions of that act;
6. understands that by its very nature, Schools Marketing Company works with a wide variety of companies, and nothing in this Contract should be taken to mean that Schools Marketing Company will work exclusively for any one company, and not supply services to a rival company. Where a Buyer may wish to ensure Schools Marketing Company does not work for a rival company this must be expressed in writing and agreed in writing by Schools Marketing Company prior to any work commencing and in line with the business requirements of Schools Marketing Company.

## SCHOOLS MARKETING COMPANY'S OBLIGATIONS

Schools Marketing Company: -

1. will aim to provide services in a good, timely and professional manner and in accordance in all respects with the agreed Contract.
2. will endeavour to perform the Services by the date set out in the contract, but time shall not be the essence of the Contract.

## LIMITATION OF LIABILITY & WARRANTY

1. Schools Marketing Company makes no warranties, guarantees, promises or representations, either expressed, implied, oral, written or otherwise, except as expressly set forth in this Contract. Schools Marketing Company does not make any warranty guarantee, promise or representation, express, implied, oral, written or otherwise, as to the results and or potential success of any marketing campaign.
2. Schools Marketing Company shall be under no liability to the Buyer for: any costs or expenses; any loss of profit, business, contracts, revenue or anticipated savings; or any special, indirect or consequential loss of any nature suffered by the Buyer arising directly or indirectly out of the provision of the Services or the Goods by Schools Marketing Company, its employees, its sub-contractors or its agents or any defect in the Services or the Goods.
3. where any matter gives rise to a claim against Schools Marketing Company its liability shall be limited to a sum no greater than the price paid by the Buyer under the Contract.

## TERMINATION

Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 1 (one) month's written notice. If the Buyer breaches any part or clause of the Contract which cannot be remedied to the satisfaction of Schools Marketing Company within 7 days of

serving notice of the issue or breach and the remedy required, or if the Buyer goes into liquidation, or, in the case of an individual or a firm, becomes bankrupt, or has a receiver or administrator appointed.

On termination of the Contract for any reason:

- (a) the Client shall immediately pay all the Supplier's outstanding unpaid invoices and interest to the supplier;
- (b) the Client shall pay to the Supplier all Charges, costs and any other third-party fees incurred in respect of Services supplied but, whether or not an invoice has previously been submitted together with fair and reasonable compensation for any costs incurred by the Supplier up to the point of termination in fulfilling any Order, including but not limited to labour costs and other reasonable overhead costs.

## INTELLECTUAL PROPERTY RIGHTS - THIRD PARTY

Schools Marketing Company and the Buyer each undertake and agree to indemnify the other for any expense, damage or loss suffered, as a result of any claims or proceedings against the other, regarding the infringement or the alleged infringement of any IPR intellectual property rights owned by a third party, resulting from the use of any data or other materials or items supplied by that party, including content supplied, in connection with the Services.

## CHANGES AND NOTICES

Any notice or variation required to be given under these Conditions must be in writing and be served on the recipient by personal delivery, first class post, second class post, email or fax at the address shown in the Confirmation of Order, or any other address notified by the recipient from time to time and agreed between the parties.

## FORCE MAJEURE

For the purposes of these Terms and Conditions, a **"Force Majeure Event"** means an event beyond the reasonable control of the Supplier, these include but are not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier, a Subcontractor or any other party), failure of a utility, or a transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or Subcontractors.

- (i) The Supplier shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract, as a result of a Force Majeure Event.
- (ii) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 10 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

## ARBITRATION

Schools Marketing Company reserves the right to take matters relating to non-payment of invoices and similar cases to the County Court. Any dispute arising under or in connection with the Conditions or the provision of the Services or Goods which Schools Marketing Company deems to be more appropriate to be dealt with by other means, shall be referred to arbitration by a single arbitrator appointed by agreement or, in default, nominated on the application of either party by the President for the time being of the Law Society for England and Wales.

## INDEMNITY

The Buyer agrees to indemnify and hold Schools Marketing Company harmless from any liability arising out of the Buyer's Material supplied and any liability incurred indirectly or directly by Schools Marketing Company in connection with any breach of the Contract by the Buyer.

## CONDITIONS & PROPER LAW

The Conditions and any Contract to which they apply shall be interpreted and construed under English law and the Buyer hereby agrees to submit to the non-exclusive jurisdiction of the Supreme Court of Justice in England. If any term of the Contract shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision shall to that extent be deemed not to form part of the Contract but the enforceability of the remainder of the Contract shall not be affected.

## THE GDPR & SMC PRIVACY POLICY

The Schools Marketing Company collect, process and supply data and marketing services, within the terms of the GDPR and the Schools Marketing Company Privacy Policy. This policy is available on the Schools Marketing Company website and on demand.

## EMAIL SERVICES – SPECIFIC TERMS AND CONDITIONS

### 1. Timings

Schools Marketing Company send out marketing campaigns by email for Buyers by sending large numbers of emails simultaneously to Educational Establishments and businesses in the UK. Schools Marketing Company's ability to do this is governed by technology both within and outside its control. Schools Marketing Company endeavours to send out campaigns at the times agreed to with Buyers, however, when entering the Contract, the Buyer realises that it may not be carried out exactly within that time frame. If the campaign is carried out reasonably closely to the agreed times but not exactly within, the Buyer may not dispute the invoice based on this.

### 2. Cancellation of email campaign(s)

- a) The Buyer may cancel an order without penalty if the Buyer indicates that this is their intention in writing at least 3 working days prior to any date scheduled for the sending of the (first) campaign (this is providing all design work and HTML conversion or amendment work

has been done by the Buyer). If Schools Marketing Company has worked on the email content in a set-up, design or HTML conversion or amendment capacity, or set the campaign up in its broadcasting software the Buyer will be charged for all work done so far, at a rate deemed fair by Schools Marketing Company.

- b) If written notice of intent to cancel is not received at least 2 working days prior to the sending date the Buyer is liable to pay the full cost of the amount due or outstanding invoice.

### 3. Delivery of email content

we will always aim to send to the numbers quoted for any email campaigns, but due to fluctuations within the database and within the target sector, it is possible that the despatch numbers on the day of email broadcasting may be slightly higher or lower than originally quoted. We do not guarantee delivery of every mail (delivery meaning the receipt or storage of the email in the recipient's email client) as this is not due to the data used, but filtering systems at the recipients' end.

### 4. Incorrect delivery

Schools Marketing Company sends out many marketing emails a day and naturally, human errors can occur. Schools Marketing Company endeavours to deliver to the areas of the UK, and to the particular establishments, and to the recipients stipulated by the Buyer but has no liability for any loss of trade or profit to the Buyer as a result of delay in delivery, or the delivery of a campaign to an incorrect area, establishment or recipient, but every effort will be made to ensure correct delivery at all times.

### 5. Email subject lines

If the Buyer does not specify an email subject line within 48 hours of the scheduled delivery date, then the subject line may be created by Schools Marketing Company without notice at their full discretion.

### 6. Right to not send

At all times, the Schools Marketing Company reserve the right in their absolute discretion to refuse to send an email campaign without liability for losses incurred by the Buyer.

### 7. Email tracking

- a) Schools Marketing Company can offer a tracking service on all its email campaigns, subject to their being a tracking pixel or other trackable element within the content being broadcast. If not requested and paid for by the Buyer before the email is broadcast, or otherwise agreed in advance of the email sends, Schools Marketing Company cannot provide any tracking results.
- b) Schools Marketing Company has no control over any email once it has been sent from its servers and cannot guarantee that a campaign will specifically generate any sales/interest in the Buyer's product/service.

### 8. Email Suppression

Where the Buyer wishes to suppress certain email addresses from the send list, a list of those emails to be suppressed must be provided a minimum of 2 working days prior to the scheduled email send date. If the Buyer wishes to suppress any establishments from the send list, a list of the establishment name, Postcode and email address must be provided to Schools Marketing Company 3 working days prior to the scheduled delivery date, whereby Schools Marketing Company will endeavour to match and suppress those establishments from the email send. Additional charges will apply for any list or data suppressions/management.

## DATA SUPPLY AND SERVICES – SPECIFIC TERMS AND CONDITIONS

### 1. Data ownership

All Data or parts thereof are owned by and copyrighted by Schools Marketing Company or its Agents. Unless otherwise specified in the Contract Schools Marketing Company's or its Agent's data is leased to the Buyer for up to 12 months use only and no intellectual property rights of any Data shall pass to the Buyer under the Contract. The Data must not be copied or recorded by the Buyer or its Agents, or in any way processed by the Buyer or its Agents other than in accordance with the Contract or as agreed in writing by Schools Marketing Company. Data supplied must, under no circumstances, be offered for resale by the Buyer.

### 2. Supply and use of Data

- a) In the event of a breach of Data usage by the Buyer, i.e. where it is determined by Schools Marketing Company that the data has been used by the Buyer outside of the usage terms as specified in these Conditions, a re-use charge of 100% of the value of the supplied data at that date (which may be more than the original lease value) will be imposed per occasion of each breach and payable within 7 days by the Buyer.
- b) If Data is leased by a Buyer for a third party company then the Data is only authorised to be used for the marketing purposes of that one third party company and not also the Buyer himself or any other parties. Schools Marketing Company may require written confirmation of the third party company's name and company details before releasing the data. If a list is leased and used for more than one of the Buyer's third party clients then a re-use charge of 100% of the value of the data at that date (which may be more than the original lease value) will be imposed per occasion of each breach and payable within 7 days by the Buyer.
- c) The Buyer shall be liable for the loss or misuse of Data whilst in its care, or the care of his Agent. It will be deemed a misuse of a list if the list is used for any activity other than the purpose for which it was originally provided. The Buyer undertakes to keep lists and any copies or extracts of lists supplied by Schools Marketing Company secure and completely safeguarded against unauthorised use or disclosure.
- d) Schools Marketing Company reserve the right to require the Buyer to cease or modify use of Schools Marketing Company's Data where Schools Marketing Company discover that the contents of an email sent by the Buyer is, in Schools Marketing Company's reasonable opinion inappropriate, or the Buyer has misled Schools Marketing Company about the content.



- e) The Buyer must electronically mark the Data as belonging to Schools Marketing Company so that it may be easily removed from any system (CRM etc.) should the lease period expire and not be renewed by the Buyer.
- f) The Buyer must, if leasing generic email data, check with their email marketing platform provider that generic data can be uploaded to the Buyer's platform of choice.

### 3. Data accuracy

- a) Schools Marketing Company will use all reasonable endeavours to ensure Data is accurate and up-to-date. However, as lists are compiled and updated from a variety of sources, Schools Marketing Company cannot warrant that any of the records are 100% complete or accurate. Whilst Schools Marketing Company agrees that all Data has been fairly and lawfully obtained in accordance with the Data Protection Act 1998, no warranty is given regarding the accuracy or completeness of individual addresses, contact names or telephone numbers or that any list is a complete compilation of the establishments or contacts described therein.
- b) Schools Marketing Company is not responsible or liable for any email addresses that prove to be undeliverable, save where the number of undeliverable addresses exceeds any undeliverable threshold agreed with the Buyer. In those circumstances a list of undeliverable and reason for non-delivery must be returned to Schools Marketing Company in a MS spreadsheet format within 30 days of the send date of the campaign, that generated the undeliverables.
- c) Official Royal Mail returns in relation to incorrect establishment postal addresses, may be refunded at a pro rata amount equal to the list cost charged at the time of invoice and may be refunded by Schools Marketing Company for Post Office returns in excess of 4% of the total number of addresses supplied, provided that all returned envelopes, less contents, are received by Schools Marketing Company no later than 30 days after the delivery of the original Goods.

### 4. Liability

Schools Marketing Company does not accept liability for the outcome of the use of its Data or services. In no event will Schools Marketing Company be liable for any loss of profit, revenue, goodwill, opportunity, business, third-party cost, or other indirect or consequential loss of any kind in contract, tort (including negligence) or otherwise arising out of use of its Data, save where such liability cannot be excluded by law.

### 5. Buyer's obligations

The buyer:

- a) agrees to use any data or services supplied by Schools Marketing Company in accordance with the GDPR and all other aspects of UK common Law, data privacy and data protection Laws; this includes that; the buyer will comply with any requests for the suppression of deceased names and to notify Schools Marketing Company of any request received by the Buyer for the suppression of a deceased name, that can be identified as being included in the Data supplied by Schools Marketing Company.

- b) Will ensure where any generic emails are supplied for email marketing, that any emails sent will contain a simple means to opt-out of receiving further communications from the buyer and that they will maintain their own suppression list, in line with the GDPR.
  - c) Will ensure where Data is leased from SMC to send postal marketing, that they will maintain their own suppression list, in line with the GDPR.
  - d) shall inform Schools Marketing Company in writing if they close, cease to trade, or go into liquidation as the Data must ceased to be used at that point, as it cannot be sold on as part of a company's assets or transferred to another company.
6. Data seeds in data sets supplied to clients or third parties

All lists contain seed names and dummy addresses to protect Schools Marketing Company's intellectual property and copyright. Schools Marketing Company do not pass out seed addresses to The Buyer or their Agents even in the event of a dispute.

7. Volumes of data

Whilst every effort is made to quote volumes of data accurately, the quantity may vary from time to time, as is reasonable, due to movements within the Database and Sector and no warranty or condition is given that the figure quoted agrees with that finally achieved during the execution of the order.

## EMAIL SET UP & LAYOUT SERVICES - SPECIFIC TERMS AND CONDITIONS

1. When proofs are submitted for the Buyer's approval, no responsibility will be accepted for any error in proofs approved by the Buyer.
2. If email set up or design work is carried out in accordance with the Contract and Schools Marketing Company is unable to achieve either a list of design amendment(s) or set-up/design sign-off after 14 days of the Buyer's last amendment(s) then the design will be immediately payable in full by the Buyer.
3. Any copyright or other intellectual property rights in any design or other artwork generated by Schools Marketing Company in connection with the Services, will belong to Schools Marketing Company until the Buyer has paid in full all sums that may be due to Schools Marketing Company in respect of the Services. Schools Marketing Company grants to the Buyer a non-exclusive licence to use such design or artwork until the due date for payment of all sums due in respect of the Services, and after such date Schools Marketing Company may revoke the licence hereby granted in these conditions.
4. Schools Marketing Company reserves the right to use any designs as examples and case studies on its website or marketing literature.