

---

# RODGERSON BLACK LTD, (T/A FULCIO MARKETING), GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF LISTS & SERVICES

---

## 1. Application of Conditions

1.1 The Supplier shall supply and the Client shall purchase the Lists and Services in accordance with the quotation which is subject to these Conditions.

## 2. Definitions and Interpretation

2.1 In these conditions:-

“**Controller**” shall have the meaning set out in the DPA before 25 May 2018, and thereafter the meaning set out in the GDPR;

“**Data Protection Laws**” means any laws and regulations in any relevant jurisdiction relating to privacy or the use or processing of data relating to natural persons, including: (a) EU Directive 95/46/EC and 2002/58/EC (as amended by 2009/139/EC) and any legislation implementing or made pursuant to such directives, including (in the UK) the Data Protection Act 1998 (the “**DPA**”) and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (b) from 25 May 2018, EU Regulation 2016/679 (“**GDPR**”); and (c) any laws or regulations ratifying, implementing, adopting, supplementing or replacing GDPR; in each case, to the extent in force, and as such are updated, amended or replaced from time to time;

“**DP Regulator**” means any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Laws;

“**Enquiry**” means any request, complaint, investigation, notice or communication from a Data Subject or a DP Regulator;

“**Personal Data Breach**” shall have the meaning set out in Article 4 of the GDPR;

The terms “**Data Subject**”, “**Personal Data**” and “**processing**” shall have the meaning set out in the DPA until 25 May 2018, and thereafter the meaning set out in the GDPR;

“**Processor**” shall have the meaning set out in the DPA before 25 May 2018, and thereafter the meaning set out in the GDPR;

“**Reseller**” means a Client who is acting solely as an intermediary;

“**Supplier**” means Rodgerson black Limited, Registered Office Lansdowne House, Lansdowne Court, Gosforth, NE3 1GF;

“**Services**” means the services set out in the quotation, specifically the supply of data services;

“**Lists**” means a selection of data (including any instalment) which the Supplier is to supply in accordance with these Conditions;

“**Data**” means information comprising any combination of (but not limited to) postal address, email address, telephone number, contact name and qualifying information such as company size etc. in any number of fields;

“**Client**” means the individual, firm, company or other party who accepts a quotation or offer from the Supplier for the sale of Lists and supply of Services, or whose order for Lists and Services is accepted by the Supplier;

“**Order Date**” means the date the order is placed by the Client which shall be set out on the quotation.



### 3.0 Copyright

3.1 The Supplier warrants and represents that all lists or parts of lists are licensed by and copyrighted to the Supplier. Unless purchased as a data file specifically for multiple usages (which shall be set out in the quotation) the Supplier's data is rented for one time use only.

3.2 Conditions of use for data packages are as follows unless stated otherwise, postal addresses and telephone numbers supplied from the Supplier's package can be used unlimited times within a 12 month period from date of download and email addresses up to 12 times within a 12 month period from date of download. Unused records at the end of the period cannot be carried over to a new period.

3.3 The Data must not be copied or recorded by the Client or its agents, or in any way processed by the Client or its agents other than in accordance with the quotation or as agreed in writing by the Supplier. Data supplied as a data file is for the sole use of the Client and must in no circumstances be offered for resale by the Client. All Lists contain seed names and dummy addresses to detect unlawful use. The Supplier may take legal action against any Client that unlawfully processes data owned by the Supplier.

3.4 In the event of a breach of data usage by the Client, ie. where it is determined that Data has been used by the Client outside of the usage terms as specified on the order, a re-use charge of 100% of the value of the order will be imposed per occasion of each breach.

### 4.0 Supply and use of Data and grant of licence

4.1 Data files are supplied for use on the Windows® operating system and in Excel Worksheet format unless otherwise specified on the quotation. No liability is accepted by the Supplier for conversion of the Data to any format, other than that in which it was supplied.

4.2 If the Client wishes the Supplier to exclude certain criteria from the Supplier's range of criteria the Client must provide a suppression file to the Supplier that clearly states the requested exclusions prior to the Order Date.

4.3 Whilst every effort is made to quote the number of addresses accurately, the quantity may vary from time to time, as is reasonable, due to movements within the List or Lists and no warranty or condition is given that the figure quoted agrees with that finally reached during the execution of the quotation.

4.4 Where more than one List is supplied, the total quantity dispatched may be less than the sum of the individual list quantities due to persons or establishments being coded to more than one classification.

4.5 The Supplier uses all reasonable endeavours to ensure Lists are accurate and up-to-date. However, as Lists are compiled from a variety of sources, the Supplier cannot warrant that any of the records are 100% complete or accurate, neither are they built up from personal knowledge of any particular trade or profession or other body.

4.6 The Supplier does not accept liability for the outcome of the use of its Lists. In no event will the Supplier be liable for any loss of profit, revenue, goodwill, opportunity, business or other indirect or consequential loss of any kind in contract, tort (including negligence) or otherwise arising out of use of its Lists, save where such liability cannot be excluded by law.

4.7 The Supplier grants to the Client a non-exclusive licence for the Client to use the Data and Lists in accordance with these Conditions to:

- (a) access and view the Data and Lists;
- (b) market its goods and services to the contacts within the Data and Lists;
- (c) store the Data and Lists on the Client's systems;
- (d) use the Data and Lists in the manner permitted in the quotation.

### 5.0 Data Protection and Codes of Practice



5.1 As an agency recognised by the Direct Marketing Association (the "DMA"), the Supplier warrants and represents that it shall uphold at all times, in letter and spirit, the British Code of Advertising Practice, Sales Promotion and Direct Marketing ('the CAP Code'). The Supplier's acceptance of quotations from the Client is conditional upon the Client undertaking to work within the accepted codes of conduct for the advertising industry, including in particular the CAP Code and the Direct Marketing Code of Practice.

5.2 The Supplier warrants, represents and undertakes that all Data and Lists has been fairly and lawfully obtained in accordance with all applicable Data Protection Laws. The Data and Lists provided by the Supplier may include Personal Data (as defined in the GDPR) and the Supplier warrants, represents and undertakes that it shall obtain all necessary consents or satisfy another lawful ground for processing to enable it to share any Data or Lists with the Client or to carry out the purpose of providing the Services and to enable the Client to use the Lists or Data in the manner set out in these Conditions and the quotation.

5.3 The parties acknowledge and agree that, in respect of any Personal Data contained in the Data or Lists provided by the Supplier to the Client, they shall each be Controllers for the purposes of Data Protection Laws unless the Client is acting as a Reseller in which case the Client will be a Processor. The parties shall comply with the provisions and obligations imposed on them by Data Protection Laws at all times when processing Personal Data under these Conditions and in connection with the Services.

5.4 Each party shall co-operate with the other party and provide such information and assistance as the other party may reasonably require to enable the other party to: (a) comply with its obligations under Data Protection Laws in respect of Personal Data provided by the Supplier to the Client; and (b) deal with and respond to any Enquiry relating to the Personal Data provided by the Supplier to the Client.

5.5 If either party receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data provided by the Supplier to the Client by the other party or to either party's compliance with Data Protection Laws, it shall as soon as reasonably practicable notify the other party and it shall provide the other party with reasonable co-operation and assistance in relation to any such complaint, notice or communication.

5.6 The Supplier undertakes to update Data regularly in respect of the Lists supplied. Lists supplied by the Supplier are maintained in accordance with the standards of list and database practice incorporated in the DMA's Code of Practice, as amended from time to time.

5.7 The Supplier undertakes the scanning of the Lists against the TPS and CTPS registers daily to allow the Client 28 days usage from the date the lists are supplied to the Client.

5.8 The Client agrees to notify the Supplier within 14 days of receipt of any request received by the Client for the suppression of a deceased name or disputed data that can be identified as being included in the Data supplied by the Supplier.

5.9 The Client agrees to record and mark any request for suppression received by the Client from an individual whose name can be identified as being included in a list supplied by the Supplier, and that any such record will be suppressed from any list subsequently used by the Client.

5.10 The Client agrees, unless otherwise agreed in writing between the Client and the Supplier, that posting of mailings to any names on any list provided by the Supplier will take place no later than six months following the date of supply. In the event that the posting is delayed, the Client agrees to return to the Supplier unused copies of any list and to delete from its files any extracts from or copies of the list.

5.11 The Client warrants that items to be mailed to the Data or Lists provided by the Supplier shall contain nothing which infringes copyright or is defamatory, obscene, indecent, or otherwise illegal or unlawful or contradictory to the CAP Code.

5.12 Each party shall maintain records of all processing operations under its responsibility that contain at least the minimum information required by the Data Protection Laws, and shall make such information available to any DP Regulator on request.



## **6.0 Post Office Returns & Warranty**

6.1 In relation to business addresses which may be provided in the Data or Lists, an amount equal to the List cost at the time of invoice will be refunded by the Supplier to the Client on all Post Office returns in excess of 2% of the total number of addresses supplied, provided that all returned envelopes, less contents, are received by the Supplier within 6 weeks of delivery of the original Data or Lists. No warranty is given on telephone numbers or contact names. See clause 15.0 for email warranty.

## **7.0 Dispatch of Lists**

7.1 Dates given for dispatch of Lists are given in good faith and are estimates only, based on information available at the time of quoting. They are, however, not guaranteed and time is not of the essence of the contract.

## **8.0 Liability**

8.1 Nothing in these Conditions:

(a) shall limit or exclude either party's liability for any liability which cannot be limited or excluded by applicable law; and

(b) shall limit or exclude the Supplier's liability to the Client under clauses 5.4, 8.2, 12.2.

8.2 Subject to clause 12.1, neither party shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with these Conditions. Subject to clause 12.1, the Client's total liability to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise arising under or in connection with these Conditions shall be limited to the total charges paid by the Client under these Conditions.

8.3 The Supplier shall be under no liability for any discrepancy or shortage on delivery or non-delivery of Lists unless the Client notifies the Supplier in writing:

a) of any discrepancy or shortage on delivery within 7 days of receipt of Lists. b) of non-delivery within 7 days of confirmation by the Supplier that the Lists have been dispatched. The Supplier's liability is limited to replacement of the Lists supplied.

8.4 It is the Client's responsibility to ensure that its online account details are up-to-date and current. This includes but is not limited to deleting the details of personnel who have moved from the Client's employ.

8.5 The Supplier warrants, represents and undertakes that the Data and Lists are owned and licensed to the Supplier by third party providers. The third-party providers make no warranties with respect to the Data and exclude as far as legally possible all liability for the Data.

## **9.0 VAT**

9.1 The Supplier shall charge the amount of Value Added Tax due on the invoice and shall include that amount on the quotation and invoice.

## **10.0 Assignment and Sub-Contracting**

10.1 The rights granted to the Client hereunder are personal to it and the Client shall not assign or grant any rights in respect of or otherwise deal in the same. The Supplier shall be entitled to assign or sub-contract the provision of the Services (or any part thereof) to any third party and reference in the terms and conditions to the Supplier shall be deemed to include reference to such assignee or sub-contractor.

## **11.0 Governing Law and Jurisdiction**

11.1 These Conditions and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed and construed in accordance with the laws of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Conditions or their subject matter or formation.



## 12.0 General

12.1 **Force Majeure.** Neither party shall be in breach of these Conditions nor liable for delay in performing, or failure to perform, any of its obligations under these Conditions if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate these Conditions by giving 5 days' written notice to the affected party.

12.2 **Confidentiality.** Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party. Each party may disclose the other party's confidential information to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Conditions and as may be required by law.

12.3 **Announcements.** The Supplier shall not make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of these Conditions, or the relationship between the parties, without the prior written consent of the Client, except as required by law.

12.4 **Entire Agreement.** These Conditions and the quotation 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.

12.5 **Variation.** No variation of these Conditions shall be effective unless it is in writing and signed by the parties.

12.6 **Notices.** Any notice given to a party under or in connection with these Conditions shall be in writing and shall be: delivered by hand or pre-paid first class post or other next working day delivery service at its registered office marked for the attention of the Legal Department. Any notice shall be deemed to have been received: (a) if delivered by hand, on signature of a delivery receipt; (b) if sent by pre-paid first class post or other next working day delivery service at 9am on the second English working day after posting.

12.7 **Third party rights.** These Conditions do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to any term of these Conditions.

12.8 **Termination.** Without affecting any other right or remedy available to it, either party may terminate these Conditions with immediate effect by giving written notice to the other party if: (a) the other party commits a material breach of any term of these Conditions; (b) the other party repeatedly breaches any of the terms of these Conditions; (c) the other party is unable to pay its debts as they fall due.

## SUPPLEMENTARY TERMS AND CONDITIONS FOR THE LICENCING OF DATA FOR EMAIL MARKETING

### 13.0 Email Definitions and Interpretation

13.1 'Undeliverables Threshold' means for the purposes of these Conditions, 10% of the emails supplied against any single order that are hard bounces.

### 14.0 Supply and use of Email Data

14.1 If the Client wishes the Supplier to exclude a list of email addresses from the email Data field the Client must request this prior to the Order Date.

14.2 Subject to any restrictions of use stated in the quotation the Client's use of the email Data may not exceed more than 12 emails to any one addressee in a 12 month period and not exceed more than 4 emails to any one addressee in any one calendar month.

### 15.0 Email Warranty and Obligations

15.1 The Supplier is not responsible or liable for email addresses that prove to be undeliverable save that where the number of undeliverable addresses exceeds the Undeliverables Threshold and subject to the Client



providing proof of non-delivery within 30 days of the Order Date, the Supplier will endeavour to provide one additional email addresses for each undeliverable email.

15.2 Proof of non-delivery in the form of undeliverable addresses must be returned to the Supplier in either a tab delimited, comma delimited, Excel or Dbase file.

15.3 The Supplier's obligations stated in clause 15.1 shall not apply where the Client decides to use a method of delivery that has not been approved in writing by us. Unapproved methods of delivery include use of an SMTP (Single Message Transfer Protocol) such as Outlook, Netscape and Lotus.

15.4 The Supplier reserves the right to require the Client to cease or modify use of the email Data where the Supplier discovers that the contents of email sent by the Client is different to how the Client has represented that it will use the Data.

15.5 Where the Client procures the use of the email Data to send emails, the Client must ensure that the recipient is given a simple means to opt-out of receiving further communications.

## **SUPPLEMENTARY TERMS AND CONDITIONS FOR THE PROVISION OF DATA BY THE CLIENT TO THE SUPPLIER**

16.0 In the event that the Client provides Personal Data to the Supplier in order for the Supplier to carry out a matching, suppression or enhancement exercise against its own Data and Lists, the parties shall comply with the provisions and obligations imposed on them by the Data Protection Laws at all times when processing Personal Data in connection with such exercise. In such circumstances, the Supplier shall be a Processor and the Client shall be a Controller. The processing shall be in respect of the types of Personal Data and categories of Data Subjects set out in Clause 17 below. The nature, purpose and duration of the processing shall be solely for the Supplier to carry out a matching, suppression or enhancement of the Data and Lists for the time it takes to carry out such exercise.

16.1 Where the Supplier receives from, or processes any Personal Data on behalf of, the Client, the Supplier shall:

- (a) process such Personal Data only in accordance with the Client's written instructions from time to time (including those set out in this clause 16);
- (b) ensure that any of its personnel who have access to such Personal Data are committed to binding obligations of confidentiality when processing such Personal Data;
- (c) implement and maintain technical and organisational measures and procedures to ensure an appropriate level of security for such Personal Data, including protecting such Personal Data against the risks of accidental, unlawful or unauthorised destruction, loss, alteration, disclosure, dissemination or access;
- (d) not transfer such Personal Data outside the United Kingdom and the European Economic Area without the prior written consent of the Client;
- (e) inform the Client without undue delay if any such Personal Data is (while within the Supplier's or its subcontractors' or affiliates' possession or control) subject to a Personal Data Breach or is otherwise lost or destroyed or becomes damaged, corrupted or unusable;
- (f) at the Client's sole option, return or irretrievably delete all Personal Data on completion of the matching, suppression or enhancement exercise, and not make any further use of such Personal Data thereafter;
- (g) provide to Client and any DP Regulator such information and assistance as is reasonably required to demonstrate or ensure compliance with the obligations in this clause and/or the Data Protection Laws;
- (h) take such steps as are reasonably required to assist the Client in ensuring compliance with its obligations under Articles 30 to 36 (inclusive) of GDPR;
- (i) notify the Client within two (2) business days if it receives a request from a Data Subject to exercise its rights under the Data Protection Laws in relation to that person's Personal Data;
- (j) provide the Client with such co-operation and assistance as may reasonably be required in relation to any request made by a Data Subject to exercise its rights under the Data Protection Laws in relation to that person's Personal Data; and
- (k) not disclose any Personal Data to any Data Subject other than at the written request of the Client or as expressly provided for in these Conditions.

16.2 Subject to clause 16.4 at the Client's request and provided that the Client shall enter into appropriate confidentiality agreements (as reasonably required by the Supplier), the Supplier shall permit the Client or its representatives to access any relevant premises, personnel or records of the Supplier on reasonable notice to audit and otherwise verify compliance with this Clause 16.



16.3 The Supplier shall only be required to permit the Client or its representatives to access any relevant premises, personnel or records of the Supplier pursuant to clause 16.3:

(a) once in any calendar year; or

(b) in the event that the Client knows or has reasonable grounds to suspect that Personal Data which is processed by the Supplier pursuant to this clause 16 is subject to a Personal Data Breach or is otherwise lost or destroyed or becomes damaged, corrupted or unusable.

**17.0 Categories of Data Subjects and Personal Data**

In a matching, suppression or enhancement exercise, the categories of Data Subjects may include:

Employees of corporate clients of the Client and competitors of the Client.

In a matching, suppression or enhancement exercise, the categories of Personal Data may include:

Email addresses

Signed \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

Company Name \_\_\_\_\_

Date \_\_\_\_\_

