

**HILITE LIMITED**  
**TERMS AND CONDITIONS**

These terms and conditions are deemed to be incorporated in every contact  
Entered into with "Hilite Ltd" (hereinafter called "Hilite")

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 In these Conditions:  
"Agreement" means an agreement for the provision of Materials by the Broker to the Client, incorporating these Terms and Conditions and the Order Confirmation Form;  
"Broker" means Hilite Limited (company number 1988590) whose registered offices are at Ash House, Ash Road, New Ash Green, Longfield, Kent DA3 8SA, acting as officially appointed agent[s] representing advertisers using mailing lists;  
"Client" means the individual company limited company or other party with whom the Broker enters into an Agreement pursuant to these Terms and Conditions;  
"List Owner" means the individual company limited company broker or other party who has any interest in the list forming the whole or part of the subject matter of an Agreement between Broker and Client;  
"Materials" shall mean the lists, articles or any other material in whatever form which comprises the subject of an Agreement between the Broker and the Client and more particularly described on the Order Confirmation Form;  
"Force Majeure" means in relation to either party to the Contract any circumstance beyond the reasonable control of that party (including without limitation any strike lockout or other industrial action)  
"Special Conditions" means the special terms and conditions agreed in writing between Hilite and the client.
- 1.2 These Terms and Conditions are binding on the Client and any agents, sub-agents, contractors, sub-contractors, licensees or Any other third party whom the Client chooses to employ, directly or otherwise, provided such sub-contracting or sub-letting complies with the provisions of clause 1.4 and the Client warrants that any such persons or firms thus engaged will comply fully with the obligations attributed to the Client in these Terms and Conditions. Furthermore, the Client shall fully indemnify the Broker for any losses incurred or costs suffered by the Broker as a result of any breach of these Terms and Conditions by such persons or firms who have undertaken work on the Client's behalf.
- 1.3 The Client shall notify the Broker in writing of its full name and address including the addresses of all of its branches and its registered office (if applicable) together with the names of all persons who have authority to bind the Client. If the information is not provided within seven days of request, the Broker may terminate the Agreement and the rights and liabilities of the parties shall be the same as if the Agreement had been cancelled in accordance with the provisions of clause 5.1.
- 1.4 The Agreement shall be personal to the Client who shall not be entitled to assign, sub-contract or sub-let the benefit or the burden of the Agreement without the prior written consent of the Broker.
- 1.5 Pursuant to Section 1(2)(a) of the Contracts (Rights of Third Parties) Act 1999 (the "Act"), neither party intends the terms of the Agreement to be enforceable by a "Third Party" (as that term is defined in the Act).
- 1.6 The Agreement constitutes the entire agreement between the parties in relation to its subject matter and no other terms apply to it unless such terms are specifically drawn to the Broker's attention and accepted by the Broker in writing. The Client acknowledges that any order or tender documentation (or similar) referred to in these Terms and Conditions or any Order Confirmation Form is incorporated only to the extent of describing the Services to be provided and then only to the extent that such descriptions do not conflict with the contents of these Terms and Conditions or the relevant Order Confirmation Form. The Client acknowledges that no conduct of the Broker shall be deemed to constitute acceptance of any terms put forward by the Client and that the terms of the Agreement prevail over any inconsistent terms implied by law or custom and such inconsistent terms are hereby expressly excluded to the extent permitted by law.
- 1.7 To be legally binding, any amendment to the Agreement must be made in writing and signed by authorised representatives of both parties.
- 1.8 Any waiver by the Broker of any breach of the Agreement by the Client shall not be considered to be a waiver of any subsequent breach of the same of any other provision of the Agreement.
- 1.9 All notices under the Agreement shall be in writing and may be given Personally, by first class post, email or fax addressed to the recipient at its address set out in the Agreement (or as notified to the other

pursuant to this provision). A notice given by first class post shall be deemed to be served two business days after posting. A notice given in person shall be deemed to be served immediately.

**2 PRICE OF GOODS**

- 2.1 The price for Goods supplied by Hilite shall consist of:
- (i) the rental charge for the use of a list once only on the date agreed for the purpose specified by the Client;  
(ii) the cost of the Media on which the list is supplied;  
(iii) the fee schedule for exchanges.
- The price appears in Hilite's list rental rates and fee schedule from time to time, and Hilite reserves the right to alter the published rates and fee schedule at any time. Notwithstanding that Hilite shall have accepted the client's order, if the list owner increases the rental charge for the list after such acceptance but prior to the implementation of the order. Hilite shall be entitled to increase the price by the amount of the increase imposed by the list owner.
- 2.2 Additional charges shall be payable for:
- 2.2.1 a limited or additional selection from the list;  
2.2.2 preliminary work produced by the Broker at the Client's request whether experimentally or otherwise;  
2.2.3 and delivery charges;  
2.2.4 cancellation of the order in accordance with clause 5; and  
2.2.5 more than one use of the list if such further use shall be agreed in accordance with clause 7.1 and 7.3 herein.
- 2.3 VAT is payable (whether or not mentioned in any quotation or invoice) in addition to the price and any additional charges.
- 2.4 All orders must be prepaid. Where the execution of a job extends over a period exceeding one month the Broker will, if the Broker considers it appropriate, invoice all work carried out by the Broker monthly or at such other times as may be agreed with the Client and all such charges will be payable forthwith. Final payment shall be due within thirty days of delivery of the Broker's invoice. If any such sum payable by the client under the contract is not paid on the due date then (without prejudice to Hilite's other rights and remedies) Hilite reserves the right to charge interest on a day-to-day basis (both pre and post any judgement) from the due date of payment (both dates inclusive) at the rate of 3.5 per cent above the base rate of The Bank of England.
- 2.5 Notwithstanding the above the Broker shall, at the request of the Client and in the Broker's absolute discretion, open an account facility for the Client for payments to be remitted to the Broker on a calendar monthly basis.
- 2.6 Should the list supplied be used in whole or in part for a second time without written permission or used in any way which is not in accordance with these Terms and Conditions, Hilite shall, among other things, invoice Client for the full multiple use charge and be entitled to liquidated damages of an amount equal to treble the amount of the value of the Agreement and both parties agree that this sum is a reasonable calculation of the Broker's anticipated loss and the outcome of negotiations between the parties. Unique sleepers are placed on each separate list order and the second receipt by any one of these will be deemed proof that the list has been misused.

**3 ACCEPTANCE OR ORDERS**

- 3.1 the Broker shall be under no obligation whatsoever to contract with the Client and shall not be required to give any reason for refusal to accept an order.
- 3.2 The Client shall provide two examples of each item intended to be mailed for submission to the List Owner, and acceptance of a Client's order shall not be deemed to have taken place unless and until the List Owner shall, in his absolute discretion, have confirmed such an order is acceptable.
- 3.3 All orders are accepted on the condition that reciprocal rental is made available (if applicable).

**4 DELIVERY AND TIME**

- 4.1 The Broker shall notify the Client when the Materials are available for collection by the Client. Alternatively, the Client may request the Broker to deliver the Materials to him or to his nominated clients, in which case the Broker shall be entitled to charge the Client for the costs and expenses of such delivery. Delivery shall be deemed to have taken place when the Materials are handed to the person collecting the Materials on behalf of the Client or when posted or delivered to

- any carrier or messenger, whether appointed by the Client or the Broker.
- 4.2 All amounts due to us under the Agreement shall be paid in full (without deduction or withholding) and the Client shall not be entitled to assert any credit, set-off or counterclaim against the Broker in order to justify withholding payment in whole or in part. Any refund will be at the Broker's sole discretion and subject to the Client demonstrating that there is a defect in the list supplied.
- 4.3 Whilst the Broker shall make every effort to complete the contract within the time quoted, time shall not be of the essence of the contract.
- 4.4 In the event of the Client requesting expedited completion of the contract the Broker shall use his best endeavour to complete the contract in accordance with the Client's request but shall be entitled to charge the Client for any overtime or other additional expenditure necessitated by or in connection with the request.
- 5 CANCELLATION**
- 5.1 The Broker shall be entitled to cancel the Agreement:
- 5.1.1 if the Client breaches a material term of the Agreement;
- 5.1.2 in the event of the Client failing to make payment to the Broker under the account facility or in any other case;
- 5.1.3 in the event of a Client failing to give instructions for delivery or collection of the Materials; or
- 5.1.4 in the event of a receiver being appointed over the whole or any part of the assets of the undertaking of the Client, a winding-up order is made against the Client or the Client goes into liquidation or makes any arrangement with his creditors or commits any act of bankruptcy and the Broker shall be entitled to charge the Client any costs, charges, or expenses (both direct and consequential) incurred by the Broker by reason of such cancellation and such expenses will be reimbursed by the Client forthwith.
- 5.2 Cancellation of the Agreement by the Client will only be accepted at the sole discretion of the Broker and, unless otherwise agreed in writing, only upon condition that any costs, charges or expenses (both direct and consequential) incurred by the Broker by reason of such cancellation will be reimbursed by the Client forthwith, up to 75% of the original order price or, if greater, the value of the work completed. Acceptance by the Broker of any cancellation by the Client will only be binding upon the Client if it is made in writing.
- 6 CONTENT OF LISTS**
- 6.1 Quotations of the number of names and addresses included in a list are approximate only.
- 6.2 A small percentage of sleeper names and addresses shall be included in all lists to enable the Broker to monitor usage.
- 6.3 Lists are not built up from any personal knowledge of any particular trade, and the Broker relies upon the description of a list accorded to him by the List Owner. No warranty is therefore given as to the accuracy of any list and the accuracy of any list is not a condition of contract.
- 6.4 Whilst every effort is made by the Broker to supply accurate information on the list rented, the Broker does not guarantee the result of any mailing or accept any liability in the event of failure.
- 6.5 Liability is not accepted by the Broker for any loss resulting from non-delivery of any form of mail if correctly addressed and sent, save that the Client shall be entitled to rely upon the List Owner's specific conditions. The Broker shall supply to the Client a copy of the List Owner's specific conditions. The Broker shall supply to the Client a copy of the List Owner's specific conditions at the Client's request.
- 6.6 The Broker does not accept any liability in respect of any claim arising out of or in connection with the Materials or their supply or any breach of the Agreement but in any event, damages shall be limited to the price of the contract for the provision of such Materials.
- 6.7 The Broker shall not be liable to the Client for any indirect or consequential losses (including, without limitation, loss of profits, business interruption and loss of information) even if it has been advised of the possibility of such losses by the Client. However, nothing in the Agreement shall exclude or limit the liability of either party for the death or personal injury resulting from its negligence.
- 6.8 The Broker shall require the completion of a List Owner warranty in respect of all lists containing consumer names supplied by a List Owner. Completion and signature of the warranty will be regarded as evidence of the List Owner's compliance with the terms thereof.
- 6.9 The Broker warrants that the personal data forming part of any list supplied under these Terms and Conditions has been obtained fairly and lawfully in accordance with the Data Protection Act 1998.
- 7 CLIENTS RIGHTS AND OBLIGATIONS**
- 7.1 Unless the Broker and Client shall agree otherwise in writing, the Client shall be entitled to use the Materials once only on the date

- agreed between the Broker and the Client and for the purpose specified by the Client at the time of acceptance of his order, using only Materials approved by the List Owner.
- 7.2 The Client shall not be entitled to pass on, disclose or otherwise communicate the list or any part thereof or information extracted there from to any mailing/fulfilment house, computer bureau or any other third party whatsoever without the written permission of the Broker.
- 7.3 The Client shall not be entitled to record or retain or cause to be recorded or retained any part of the list or data supplied by the Broker for any purpose other than the mailing to which the Agreement applies without the written permission of the Broker except that information volunteered by the person or organisation responding to the mailing.
- 7.4 The Client shall not be entitled to refer to the list source or data characteristics in any mailing package or telephone solicitation without the written permission of the Broker.
- 7.5 Copyright in lists, envelopes, labels, data contained on magnetic tapes and all other such materials supplied by the Broker shall at all times remain in the List Owner or the Broker as the case may be.
- 7.6 Whether or not the Broker and/or List Owner shall have seen copies of the items to be mailed by or on behalf of the Client, the Client warrants that such items contain nothing which infringes copyright or is defamatory, obscene, indecent, or otherwise illegal and unlawful, and shall keep the Broker and/or List Owner fully indemnified against losses, costs, charges and expenses of whatsoever nature arising out of or in connection with a claim that such items infringe copyright, are defamatory, indecent or otherwise illegal or unlawful, whether or not such claim is upheld or justified.
- 7.8 The Client shall be liable for loss or misuse of a list whilst in his care, or in the care of his agent, mailing house, computer bureau, etc. It will be deemed a misuse of a list if the list, having been supplied for mailing is used for telephoning or for any activity other than the purpose for which it was originally provided.
- 7.9 The Broker shall require the completion of a list user warranty in respect of all lists containing consumer names supplied to the Client. Completion and signature of the warranty will be regarded as evidence of the Client's compliance with the terms thereof.
- 7.10 The List Owner hereby reserves all his rights under the copyright laws and all other rights in the event of a breach of any term or condition of the Agreement.
- 7.11 Subject to and without prejudice to the generality of the foregoing, the Client will ensure that in any dealings with any third parties in respect of the subject matter of any agreement between the Broker and Client, he shall ensure that these Terms and Conditions shall govern any such dealings with any such third party and that in any event the Client hereby warrants that any such third party will comply fully with the obligations attributed to the Client herein and will indemnify and keep indemnified the Broker with regard to all costs, claims, damages and expenses that may arise from any breach thereof.
- 8 LIST EXCHANGES**
- 8.1 The following provisions shall apply where the Broker arranges for a List Owner (the "first owner") to agree with another list owner (the "second owner") to rent out his list once to the second owner in consideration of the second owner agreeing to rent out his list once to the first owner in lieu of a rental charge by either list owner to the other.
- 8.2 The Broker shall be entitled to charge to each list owner a fee to be payable by the relevant list owner when he takes delivery of the other list owner's list. The administration fee shall be £20 per thousand unless otherwise previously agreed.
- 8.3 CONSEQUENTIAL LOSS**
- Notwithstanding anything else contained in these terms and conditions, in no circumstances shall Hilite or the Owner be liable to the user or any indirect or consequential loss including without limitation any loss of contacts, business or profits and any costs incurred by the User in connection with the production of Inserts or Mailing Pieces.
- 9 GUARANTEES**
- If at any time the Broker shall give a written guarantee as to price and for the numbers of names and addresses included on a list such guarantee shall be subject to an allowable discrepancy of 15 per cent in either direction.
- 10 FORCE MAJEURE**
- Neither party shall be liable for any delay or non-performance under the Agreement caused by any event beyond its reasonable control (a "Force Majeure event") PROVIDED THAT whomsoever is affected gives prompt notice in writing to the other of such Force

Majeure event and uses all reasonable endeavours to continue to perform its obligations under the Agreement. Either party may terminate the Agreement if the Force Majeure event continues and has continued for more than [two] months.

**11 ENFORCEABILITY**

If at any time any one or more of the provisions of these Terms and Conditions becomes invalid, illegal or unenforceable the validity and

enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

**12 GOVERNING LAW AND DISPUTES**

The construction validity and performance of the Contract shall be governed in all respects by English law. All disputes arising in any way out of or affecting the contract shall be subject to the exclusive jurisdiction of the English Courts to which the parties to the Contract agree to submit.

I/We have read and understood these Terms and Conditions and am/are authorised to  
Be bound by them.

SIGNED by an authorised signatory of ..... (*FULL COMPANY NAME*)

Signature: .....

Name: .....

Date: .....