

THE STARTUP PACK LIMITED

TERMS AND CONDITIONS

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Advertiser: the person or firm who purchases Services from the Company.

Advertiser Default: has the meaning set out in clause 3.6.

Advertiser's Website: the Advertiser's website identified in the Order Confirmation Form .

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Advertiser for the supply of the Services in accordance with clause 6 as set out on the Order Confirmation Form.

Company: The Startup Pack Limited (registration number 12920688).

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.5.

Contract: the contract between the Company and the Advertiser for the supply of Services in accordance with the Order Confirmation Form and these Conditions.

Contributors Directory: the directory of advertisers forming part of the Pack.

Illegal Material: any material which is or may: be defamatory; contain, express or indicate illegal racist or otherwise discriminatory opinions; contain any designs, images, graphics or photographs which are illegally racist or otherwise discriminatory; illegal or contain illegal content; or infringe or breach the intellectual property rights of a third party.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order Confirmation Form: the Advertiser's order for Services as set order form to which these Conditions are annexed or published on the Website.

Pack: the Startup Pack published and distributed by the Company to newly incorporated companies with registered offices in the postcode area specified on the Order Confirmation Form .

Proof: the Advertiser's required entry for the Contributors Directory, any additional inserts or vouchers for inclusion in the Pack; or an advertisement for inclusion in the Startup Pack as part of a sponsorship deal.

Services: the publication of the Proof for inclusion in the Pack by the Company and the provision of the Website.

Specification: the description or specification of the Services provided in writing by the Company to the Advertiser or made available on the Website.

Website: the Company's website at www.thestartupack.co.uk.

1.2 Interpretation:

- (a) A reference to legislation or a legislative provision:
 - (i) is a reference to it as amended, extended or re-enacted from time to time; and
 - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

2. Basis of contract

- 2.1 The Contract shall commence on the date when it has been signed by both parties and for the period specified on the Order Confirmation Form.
- 2.2 Any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained on the Company's Website are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Advertiser seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.4 Any quotation given by the Company shall not constitute an offer, and is only valid for the period specified in the quotation.

3. Advertiser Obligations

- 3.1 The Advertiser shall supply the Proof to the Company:
 - (a) press ready in 300dpi JPEg or PNG format. All artwork must have 3mm of bleed and minimum 3mm of gutter.
 - (b) by no later than the time and date specified on the Order Confirmation Form .
- 3.2 The Advertiser acknowledges that the Company shall not be responsible for checking:
 - (a) the accuracy of the content, including but not limited to checking whether the copy is spelt correctly, is grammatically correct, or formatted in accordance with any specification, layout or design; or
 - (b) whether the artwork or layouts are positioned correctly on a page or in accordance with any instructions as to how the artwork or layout are to be reproduced or printed.
- 3.3 The Proof shall not include any Illegal Material.
- 3.4 The Advertiser shall indemnify and hold the Company and its sub-contractors harmless against all claims, demands, costs, expenses (including but not limited to legal costs and disbursements), losses and damages arising from or suffered or incurred by reason of the Proof supplied being or alleged to be Illegal Material.

- 3.5 The Advertiser shall:
- (a) ensure that the Order Confirmation Form is complete and accurate;
 - (b) co-operate with the Company in all matters relating to the Services;
 - (c) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
 - (d) comply with any additional obligations as set out in the Specification.
- 3.6 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Advertiser or failure by the Advertiser to perform any relevant obligation (Advertiser Default):
- (a) without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Advertiser remedies the Advertiser Default, and to rely on the Advertiser Default to relieve it from the performance of any of its obligations in each case to the extent the Advertiser Default prevents or delays the Company's performance of any of its obligations;
 - (b) the Company shall not be liable for any costs or losses sustained or incurred by the Advertiser arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 3.6; and
 - (c) the Advertiser shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer

4. Supply of Services

- 4.1 The Company shall include the Proof:
- (a) in the Contributors Directory;
 - (b) generally in the Pack (if inserts or vouchers);

in either case for the month[s] specified in the Order Confirmation Form ; or
 - (c) on the agreed page of the Startup Pack (if a sponsorship deal applies) for the period specified on the Order Confirmation Form .
- 4.2 All reasonable efforts shall be made to obtain the best possible colour reproduction of the Proof but variation is inherent in the print process and it is understood and accepted as reasonable that, the Company shall not be required to guarantee an exact match in colour or texture between the Proof and the final form Contributors Directory.
- 4.3 The Company shall use all reasonable endeavours to meet any target dates for publication and distribution specified on the Order Confirmation Form or in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.4 The Company reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Company shall notify the Advertiser in any such event.
- 4.5 The Company warrants to the Advertiser that the Services will be provided using reasonable care and skill.

4.6 Packs are distributed to the registered office address of newly incorporated companies. The Company does not guarantee that the registered office address is the trading address for any newly incorporated company and shall not be liable to the Advertiser for any delay in any Pack reaching its intended recipient at its trading address.

5. The Website

5.1 The Company shall provide the Website.

5.2 The Advertiser shall permit the Company to create a link from the Website to the Advertiser's Website.

5.3 The Advertiser acknowledges that the Website (including without limitation all content, text, images, software, media and other materials on the Website) is proprietary to or licensed by the Company, protected under copyright and other intellectual property laws, and may not be reproduced, transmitted, displayed, published or distributed without the express prior written consent of the Company.

5.4 The Advertiser shall not:

- (a) in any way reproduce the Website or any part of its contents other than to the extent permitted in clause 5.1; or
- (b) in any way suggest that the Company is endorsing any products or services other than its own; or
- (c) misrepresent the relationship between the Advertiser and the Company nor present any other false information about the Company; or
- (d) use any of the Company's trade marks without express written permission from the Company; or
- (e) display or use a link in a manner that causes the Website or any portion of its content to display within a frame, be associated with any advertising or sponsorship not part of the Website or the Pack, or otherwise incorporate Website content into a third-party website; or
- (f) display or use an inline link to any information file contained in the Website; or
- (g) alter, block or otherwise prevent display of any content of the Website; or
- (h) link to the Website through any other URL or mirrored website; or
- (i) link to the Website if the Advertiser's Website may reasonably be considered to be obscene, defamatory, harassing, offensive or malicious, or if the Advertiser's Website infringes any third party rights or otherwise does not comply with all applicable laws or regulations.

6. Charges and payment

6.1 The Charges for the Services shall be specified on the Order Confirmation Form.

6.2 If the Advertiser has requested inserts or vouchers to be included in the Pack the Charges for these will be specified on the Order Confirmation Form.

6.3 The Company shall invoice the Customer:

- (a) on the last working day of the calendar month during which the Proof has been included in the Pack; or
- (b) on the date of the Order Confirmation Form if the Contract relates to sponsorship of the Pack.

6.4 The Advertiser shall pay each invoice submitted by the Company:

(a) within 7 days of the date of the invoice unless specified otherwise on the Order Confirmation Form; and

(b) in full and in cleared funds to a bank account nominated in writing by the Company, and

time for payment shall be of the essence of the Contract.

6.5 All amounts payable by the Advertiser under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Advertiser shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.6 If the Advertiser fails to make a payment due to the Company under the Contract by the due date, then, without limiting the Company's remedies under clause 10, the Advertiser shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

6.7 Unless agreed otherwise in the Order Confirmation Form all amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. Intellectual property rights

7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Proof) shall be owned by the Company.

7.2 All Intellectual Property Rights in any Proof shall be owned by the Customer.

7.3 The Advertiser grants the Company a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and print the Proof for the purpose of providing the Services to the Customer.

8. Data protection

Each party shall comply with all applicable data protection legislation and regulations in force (including but not limited to the Data Protection Act 2018) and any modifications or re-enactments of them for the time being in force.

9. Limitation of liability: THE ADVERTISER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

9.1 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

9.2 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

9.3 Nothing in this clause 9 shall limit the Advertiser's payment obligations under the Contract.

9.4 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

(a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation; and

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

- 9.5 Subject to clause 9.2 (No limitation in respect of deliberate default), and clause 9.4 (Liabilities which cannot legally be limited), the Company's total liability to the Advertiser for all loss or damage shall not exceed the total amount of the Charges paid or payable by the Advertiser under the Contract.
- 9.6 Subject clause 9.2 (No limitation in respect of deliberate default), clause 9.3 (No limitation of advertiser's payment obligations) and clause 9.4 (Liabilities which cannot legally be limited), this clause 9.6 sets out the types of loss that are wholly excluded:
- (a) loss of profits.
 - (b) loss of sales or business.
 - (c) loss of agreements or contracts.
 - (d) loss of anticipated savings.
 - (e) loss of use or corruption of software, data or information.
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 9.7 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.8 This clause 9 shall survive termination of the Contract.
- 10. Termination**
- 10.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2 Without affecting any other right or remedy available to it, the Company may suspend the supply of Services under the Contract or any other contract between the Advertiser and the Company if:
- (a) the Advertiser fails to pay any amount due under the Contract or any other contract between the Company and the Advertiser in relation to the Pack on the due date for payment;

- (b) the Advertiser becomes subject to any of the events listed in clause 10.2(c) or clause 10.2(d), or the Company reasonably believes that the Advertiser is about to become subject to any of them; and
- (c) the Company reasonably believes that the Advertiser is about to become subject to any of the events listed in clause 10.2(b).

11. Consequences of termination

11.1 On termination or expiry of the Contract:

- (a) the Advertiser shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Advertiser immediately on receipt;
- (b) the link between the Advertiser's Website and the Company's Website shall be removed immediately following the final day on which the Advertiser has agreed to advertise in the Pack.

11.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. General

12.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

12.2 **Assignment and other dealings.**

- (a) The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Advertiser shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

12.3 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12.4 **Entire agreement.**

- (a) The Contract 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.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

12.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

12.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Contract deleted under this clause 12.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.8 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a Company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the Order Confirmation Form .
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by fax or email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 12.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

12.9 **Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

12.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

12.11 **Jurisdiction.** 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 the Contract or its subject matter or formation.