



Lots for Tots Advertising Terms and Conditions

1. INTERPRETATION

1.1 In the terms and conditions set out in this document (the "**Terms**"), certain words and expressions have been given particular meanings as follows:

"**Advert**" means any advertisement, editorial, article, or any other material supplied to **Lots for Tots** for publication

"**Advertiser**", "**you**" means, where an advertising agency is used, the advertising agency, or any other person, company, partnership and/or its agent who places Orders

"**Advertising Package**" means the services supplied by **Lots for Tots** to the Advertiser as set out in **Lots for Tots'** order confirmation form

"**Contract**" means the contract between **Lots for Tots** and the Advertiser for the provision of the Advertising Package in accordance with these Terms

"**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or 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

"**Lots for Tots**" means Lots for Tots Limited registered in England and Wales with company number 08005322

"**Order**" means the Advertiser's order for the Advertising Package as set out in the Advertiser's purchase order form, or the Advertiser's written acceptance of a quotation by **Lots for Tots**, or overleaf, as the case may be

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Advertiser to purchase the Advertising Package in accordance with these Terms.

2.2 The Order shall only be deemed to be accepted when **Lots for Tots** issues written acceptance of the Order at which point and on which date the Contract shall come into existence.

2.3 The Contract constitutes the entire agreement between us. The Advertiser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of **Lots for Tots** which is not set out in the Contract.

2.4 These Terms apply to the Contract to the exclusion of any other terms that the Advertiser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. SUPPLY AND ACCEPTANCE OF ADVERTS

3.1 Adverts will be published only if they are approved by **Lots for Tots** and comply with all applicable laws, rules and regulations, and any industry codes or rules (by which **Lots for Tots** and the Advertiser may be bound) that are in force at the time of publication.

3.2 Every care is taken to avoid mistakes but **Lots for Tots** cannot accept liability for any errors due to third parties, subcontractors or inaccurate copy instructions.

3.3 **Lots for Tots** give no guarantee of the level of response to Adverts. **Lots for Tots** are unable to offer refunds if no responses are received.

3.4 The distribution area of **Lots for Tots** may vary at the discretion of **Lots for Tots**.

4. THE ADVERTISER'S OBLIGATIONS

4.1 The Advertiser shall:

- 4.1.1 check the Advert and ensure that it is correct at copy approval stage; and
- 4.1.2 provide **Lots for Tots** with any logos, images, photos or Adverts in JPEG, pdf or any other pre-prepared formats at a minimum resolution of 300dpi. No responsibility can be taken for the print quality of any image/logo/photo supplied at a lower resolution.

4.2 The Advertiser warrants that:

- 4.2.1 all Adverts (including any images, logos, photos, trade logos, clip art or any other content that is used in the Advert) accepted by **Lots for Tots** do not breach any Intellectual Property Rights; and
- 4.2.2 any necessary permissions for the use of any images, logos, photos, trade logos, clip art or any other content that is used in the Advert have been obtained by the Advertiser.

4.3 No responsibility will be taken by **Lots for Tots** for any errors identified after the copy has been approved. The copy deadline date will be notified to the Advertiser upon Lots for Tots' acceptance of the Order.

4.4 Any Adverts supplied in JPEG, pdf or any other pre-prepared format will be inserted into **Lots for Tots** as supplied and will be assumed not to require copy approval. These files may be re-sized to fit the appropriate space.

5. CHARGES AND PAYMENT

5.1 The price of the Advertising Package shall be the price set out in the Order, or, if no price is quoted, the price set out in **Lots for Tots'** published price list in force as at the date of the Contract. The price of the Advertising Package is inclusive of amounts in respect of value added tax.

5.2 **Lots for Tots** will invoice the Advertiser following **Lots for Tots'** acceptance of the Order.

5.3 **Lots for Tots** may invoice the Advertiser for the Advertising Package on or at any time following **Lots for Tots'** acceptance of the Order. All invoices are payable in full within 14 days of the date stated on the invoice (the "**Due Date**") to ensure publication of the Advert and in no circumstances shall the Advertiser be entitled to make any deduction or withhold payment for any reason at all. Time of payment is of the essence. Any Adverts for which payment has not been received will not be published.

5.4 Adverts may be purchased in advance for multiple Lots for Tots issues. Discounts for such pre-payment apply only to Orders placed in advance, completed within one year of date of first insertion and paid by the Due Date. **Lots for Tots** reserve the right to surcharge in the event of insertions not being completed within the contractual period.

5.4.1 Without prejudice to any other rights of **Lots for Tots**, if the Advertiser fails to pay the invoice price by the Due Date the Advertiser reserves the right to:

5.4.2 withdraw any discount given in that invoice or in any other way agreed;

5.4.3 pay interest on any overdue amount from the Due Date to the date of actual payment (whether before or after judgment) on a daily basis at a rate of 4% p.a. over the base rate from time to time quoted by Lloyds TSB plc; and

5.4.4 reimburse to **Lots for Tots** all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

5.5 **Lots for Tots** reserves the right to increase its advertising rates, provided that such charges cannot be increased more than once in any 12 month period. **Lots for Tots** will give the Advertiser written notice of any such increase 1 month before the proposed date of the increase. If such increase is not acceptable to the Advertiser, it shall notify **Lots for Tots** in writing within 2 weeks of the date of **Lots for Tots'** notice and **Lots for Tots** shall have the right without limiting its other rights or remedies to terminate the Contract by giving 2 weeks' written notice to the Advertiser.

6. DATA PROTECTION

6.1 You consent to our holding and processing data relating to you for legal, personnel, administrative, management and marketing purposes.

6.2 You consent to our making such information available to those who provide products or services to us such as advisers, regulatory authorities, governmental or quasi-governmental organisations and potential purchasers of us or any part of our business.

6.3 You consent to the transfer of such information to our business contacts (such as server hosts) outside the European Economic Area.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights in or arising out of or in connection with the Advertising Package shall be owned by **Lots for Tots**. Where **Lots for Tots** has produced an Advert for the Advertiser, the Advertiser must obtain **Lots for Tots'**

prior written consent to re-use the Advert other than in **Lots for Tots'** publication. A fee will be payable to **Lots for Tots** if an Advertiser wishes to re-use an Advert in this way.

7.2 **Lots for Tots** reserve the right to refuse/edit Adverts at its absolute discretion.

7.3 To the extent that the Advert is to be created in accordance with a specification supplied by the Advertiser, the Advertiser shall indemnify **Lots for Tots** against all liabilities, costs, expenses, damages and losses (including without limitation any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by **Lots for Tots** in connection with any claim made against **Lots for Tots** for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with **Lots for Tots'** compliance with the specification. This condition shall survive termination of the Contract.

8. LIMITATION OF LIABILITY – THE ADVERTISER'S ATTENTION IS DRAWN IN PARTICULAR TO THIS CONDITION

8.1 Nothing in these Terms shall limit or exclude **Lots for Tots'** liability for:

8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or

8.1.2 fraud or fraudulent misrepresentation.

8.2 Subject to condition 7.1:

8.2.1 **Lots for Tots** shall under no circumstances whatever be liable to the Advertiser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

8.2.2 **Lots for Tots'** total liability to the Advertiser in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price for the Advertising Package.

8.3 Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 7 shall survive termination of the Contract.

9. TERMINATION AND SUSPENSION

9.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

9.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 7 days after receipt of notice in writing of the breach; or

9.1.2 the other party convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the other party or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the other party or for the granting of an administration order in respect of the other party, or any proceedings are commenced relating to the insolvency or possible insolvency of the other party; or

9.1.3 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 8.1.2; or

9.1.4 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or

9.1.5 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.2 Without limiting its other rights or remedies, **Lots for Tots** may terminate the Contract with immediate effect by giving written notice to the Advertiser if the Advertiser fails to pay any amount due under the Contract on or before the Due Date.

9.3 Without limiting its other rights or remedies, **Lots for Tots** shall have the right to suspend the provision of the Advertising Package under the Contract or any other contract between the Advertiser and **Lots for Tots** if:

9.3.1 the Advertiser fails to pay any amount due under the Contract on the Due Date; or

9.3.2 the Advertiser becomes subject to any of the events listed in condition 8.1.2, or **Lots for Tots** reasonably believes that the Advertiser is about to become subject to any of them; or

9.3.3 **Lots for Tots** reasonably believe the Advertiser to be in breach of these Terms in particular, but without limitation to, the warranty at condition 4.2.

10. TERMINATION AND CANCELLATION

10.1 *Lots for Tots* will not be bound by 'notices to stop' orders, cancellations or transfers of Adverts received on or after the copy deadline date for the relevant issue. Furthermore, once the Advertising Package has been confirmed, by confirmation telephone call, e-mail or letter, no refunds can be given if the Advertiser subsequently decides that they wish to cancel the Advertising Package.

10.2 Advertisers who pay for their Advert by standing order are advised that their Advert will be printed in the magazine until such time as they notify *Lots for Tots* that they wish to cancel. Standing orders must be set up so that payment is received by *Lots for Tots* by the date specified on the order confirmation form. If the Advertiser cancels their standing order without notifying *Lots for Tots* and the Advert is published, the Advertiser will be invoiced separately for the publication of the Advert. If the Advertiser cancels their standing order before any standing order period expires, discounts given will be reclaimed on a separate invoice.

11. CONSEQUENCES OF TERMINATION

11.1 On termination of the Contract for any reason:

- 11.1.1 the Advertiser shall immediately pay to *Lots for Tots* all of *Lots for Tots*' outstanding unpaid invoices and interest and, in respect of the Advertising Package supplied but for which no invoice has been submitted, *Lots for Tots* shall submit an invoice, which shall be payable by the Advertiser on the terms stated therein;
- 11.1.2 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, 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; and
- 11.1.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. GENERAL

12.1 Force majeure

- 12.1.1 For the purposes of this Contract, "**Force Majeure Event**" means an event beyond the reasonable control of *Lots for Tots* including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of *Lots for Tots* or any other party), failure of a utility service or 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.
- 12.1.2 *Lots for Tots* shall not be liable to the Advertiser as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 12.1.3 If the Force Majeure Event prevents *Lots for Tots* from providing the whole or part of the Advertising Package for up to 4 weeks before the copy deadline date, *Lots for Tots* shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Advertiser.

12.2 Variation

Except as set out in these Terms, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the parties.

12.3 Severance

If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.4 Waiver

A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by *Lots for Tots* in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

12.5 Cumulative Rights

Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

12.6 Notices

- 12.6.1 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded

delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number or sent by email to the other party's main email address.

- 12.6.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next business day after transmission or if sent by email on the same day as transmission.
- 12.6.3 Conditions 11.6.1, 11.6.2 and 11.6.3 shall not apply to the service of any proceedings or other documents in any legal action.

12.7 Assignment and subcontracting

- 12.7.1 **Lots for Tots** may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 12.7.2 The Advertiser shall not, without the prior written consent of **Lots for Tots**, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.