

## **Visit Aberdeenshire Trading Limited Terms and Conditions**

VisitAberdeenshire Trading Limited is a company incorporated and registered in Scotland with company number SC470652 whose registered office is VisitAberdeenshire, c/o P&J Live, East Burn Road, Stoneywood, Aberdeen, AB21 9FX.

This document sets out the terms and conditions upon which VisitAberdeenshire shall provide its advertising services (**Terms**).

### **1. Interpretation**

**The following definitions and rules of interpretation apply in these Terms.**

#### **1.1. Definitions:**

<b>Accepted Order:</b>	means an Order submitted by or on behalf of the Customer and accepted in writing by VisitAberdeenshire in accordance with Clause 2.2.
<b>Business Day:</b>	a day other than a Saturday, Sunday or public holiday in Scotland, when banks in Aberdeen are open for business.
<b>Charges:</b>	the charges payable by the Customer for the supply of the Services as set out in the Accepted Order.
<b>Contract:</b>	the contract between VisitAberdeenshire and the Customer for the supply of Services in accordance with these Terms.
<b>Customer:</b>	the person or firm who purchases Services from VisitAberdeenshire.
<b>Customer Materials:</b>	means all text, images, pictures, photographs, documents, graphics and other materials (in whatever form or medium) that are provided by the Customer to VisitAberdeenshire and / or its agents or representatives under or in connection with the Services.
<b>Intellectual Property Rights:</b>	patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, 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.
<b>Order:</b>	the Customer's order for Services.
<b>Services:</b>	means the services supplied by VisitAberdeenshire to the Customer as set out in the Accepted Order.
<b>Terms:</b>	these terms and conditions as amended from time to time.
<b>VisitAberdeenshire Sites:</b>	means any website and social media channel operated by or on behalf of VisitAberdeenshire at any time (including, without limitation, any mobile applications).

#### **1.2. Interpretation:**

1.2.1. 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.

1.2.2. A reference to writing or written includes email.

### **2. Basis of Contract**

2.1. The Order constitutes an offer by the Customer to purchase Services in accordance with these Terms.

2.2. The Order shall only be deemed to be accepted when VisitAberdeenshire issues written acceptance or confirmation of the Order at which point and on which date the Contract shall come into existence.

2.3. VisitAberdeenshire reserves the right to refuse any Order.

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

### **3. Charges and Payments**

- 3.1. VisitAberdeenshire shall invoice the Customer weekly in advance. The Customer shall pay each invoice submitted by VisitAberdeenshire:
- 3.1.1. 7 days in advance of the services being delivered.
- 3.1.2. in full and in cleared funds to a bank account nominated in writing by VisitAberdeenshire, and time for payment shall be of the essence of the Contract.
- 3.2. All amounts payable by the Customer 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 VisitAberdeenshire to the Customer, the Customer shall, on receipt of a valid VAT invoice from VisitAberdeenshire, pay to VisitAberdeenshire 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.
- 3.3. If the Customer fails to make a payment due to VisitAberdeenshire under the Contract by the due date, then, without limiting Visit Aberdeenshire's remedies under the Contract:
- 3.3.1. the Customer 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 will accrue each day at 5% a year above the Bank of Scotland's base rate from time to time, but at 5% a year for any period when that base rate is below 0%; and
- 3.3.2. VisitAberdeenshire may, in its sole discretion, suspend all or part of the Services.
- 3.4. 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).

### **4. Advertisement and Promotion**

- 4.1. The Customer grants VisitAberdeenshire and its agents, contractors, representatives and partners a worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to use the Customer Materials for the purposes of providing the Services, promoting the Customer's business and promoting tourism in the region.
- 4.2. The Customer warrants to VisitAberdeenshire that:
- 4.2.1. it owns all rights in and to the Customer Materials;
- 4.2.2. the receipt and use of the Customer Materials by VisitAberdeenshire, its agents, contractors, representatives and partners shall not infringe the rights, including any Intellectual Property Rights, of any third party;
- 4.2.3. the Customer Materials do not contain anything defamatory, obscene or otherwise unlawful, and that it does not breach any confidence or invade the privacy of any person and is not in breach of any legislation;
- 4.2.4. the Customer Materials can be utilised by VisitAberdeenshire across all channels and media (for example images supplied for print advertising can be utilised in web listings and vice versa);
- 4.2.5. the Customer Materials does not breach, or risk being in breach of any UK law or other legal duty or obligation owed by you or VisitAberdeenshire; and
- 4.2.6. all statements in the Customer Materials purporting to be factual are true and accurate and, that no directions or instructions, if followed accurately, will cause damage or injury to the user or any third party.

4.3. Any material published by or on behalf of VisitAberdeenshire is published without any guarantees, conditions or warranties as to the accuracy of such material by VisitAberdeenshire and it is the responsibility of the Customer to review the accuracy of all Customer Materials (including, without limitation, any advertisements (in whatever medium) prepared by or on behalf VisitAberdeenshire using the Customer Materials).

4.4. VisitAberdeenshire:

4.4.1. reserves the right to refuse to accept (or, where applicable, to amend) all or any part of the Customer Materials in relation to the Services; and

4.4.2. do not provide any guarantee to the Customer in relation to the date of insertion, position, wording or quality of any advertisement.

4.5. The Customer shall indemnify VisitAberdeenshire against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by VisitAberdeenshire arising out of or in connection with the use by VisitAberdeenshire of any of the Customer Materials including, without limitation, any claim that such use infringes any Intellectual Property Rights of any third party.

## **5. Customer Obligations**

5.1. The Customer shall:

5.1.1. co-operate with VisitAberdeenshire in all matters relating to the Services, including without limitation, providing VisitAberdeenshire in a timely manner all Customer Materials and any other documents, information, items and materials required by VisitAberdeenshire in connection with the Services and ensure that such information is accurate and complete;

5.1.2. obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable VisitAberdeenshire to provide the Services;

5.1.3. ensure that the Customer Materials comply with all applicable laws and the highest standards of business ethics;

5.1.4. not do anything, nor permit anything to be done anything which is or may be detrimental to VisitAberdeenshire's rights in or to any of the Customer Materials;

5.1.5. not do anything, nor permit anything to be done which, in VisitAberdeenshire's reasonable opinion, would jeopardise the ability of VisitAberdeenshire to perform the Services or prejudice the goodwill, reputation, image or value of VisitAberdeenshire;

5.1.6. inform VisitAberdeenshire immediately of any complaints brought against them and of any actual or likely press speculation or inquiry into them and their business, or any publication in relation to such matters;

5.1.7. inform VisitAberdeenshire as promptly as reasonably practicable of any material development or changes in the circumstances or activities of the Customer which would reasonably be expected to adversely affect VisitAberdeenshire's willingness to provide the Services;

## **6. Indemnity**

6.1. The Customer shall indemnify VisitAberdeenshire against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by VisitAberdeenshire arising out of or in connection with:

6.1.1. any breach by the Customer of any of the Terms; and

- 6.1.2. any claims or actions that are raised against VisitAberdeenshire by any third party in connection with the acts, omissions, negligence, default and / or breach by the Customer and / or any of its staff or agents.

## **7. Intellectual Property Rights**

All Intellectual Property Rights in or arising out of or in connection with the Services, including without limitation, all content on VisitAberdeenshire Sites and all publications (in whatever medium) (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier.

## **8. Data Protection**

- 8.1. VisitAberdeenshire and the Customer shall each comply with all applicable requirements of the Data Protection Legislation.
- 8.2. To the extent personal data is provided by the Customer to VisitAberdeenshire, the Customer acknowledges that the personal data will be held and processed in accordance with VisitAberdeenshire's Privacy Policy (as amended from time to time).

## **9. Termination**

- 9.1. Without affecting any other right or remedy available to it, VisitAberdeenshire may terminate the Contract by giving the Customer [ 1 ] [weeks'] written notice.
- 9.2. Without affecting any other right or remedy available to it, VisitAberdeenshire may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer:
- 9.2.1. commits a material breach of the Contract;
  - 9.2.2. has, in the reasonable opinion of VisitAberdeenshire, caused damage to VisitAberdeenshire's interests, goodwill, reputation or standing;
  - 9.2.3. has committed a crime or has become involved in any situation or activity which tends in the reasonable opinion of VisitAberdeenshire to expose VisitAberdeenshire or the region to disrepute, contempt, scandal or ridicule, or would tend to shock, insult or offend the public, or reflects unfavourably on VisitAberdeenshire's or the region's reputation;
  - 9.2.4. fails to pay any amount due under the Contract on the due date for payment;
  - 9.2.5. suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
  - 9.2.6. financial position deteriorates to such an extent that in VisitAberdeenshire's reasonable opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
  - 9.2.7. 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.
- 9.3. On termination of the Contract:
- 9.3.1. the Customer shall immediately pay to VisitAberdeenshire all of VisitAberdeenshire's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, VisitAberdeenshire shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 9.3.2. VisitAberdeenshire shall automatically cease to provide the Services; and

9.3.3. unless otherwise agreed in writing, the Customer shall cease to associate themselves with VisitAberdeenshire and remove references to VisitAberdeenshire from their websites, social media channels and any other websites, applications or marketing materials operated by or on behalf of the Customer.

## 10. Limitation of Liability

10.1. Nothing in the Terms shall exclude any liability which cannot legally be limited, including but not limited to liability for:

10.1.1. death or personal injury caused by negligence; and

10.1.2. fraud or fraudulent misrepresentation.

10.2. Subject to clause 10.1 and clause 10.3, VisitAberdeenshire's total liability to the Customer under or in connection with the Contract shall not exceed a sum equal to the aggregate fees paid by the Customer to VisitAberdeenshire in respect of the Services.

10.3. Subject to clause 10.1, VisitAberdeenshire shall have no liability whatsoever to the Customer in respect of:

10.3.1. loss of profits;

10.3.2. loss of sales or business;

10.3.3. loss of agreements or contracts;

10.3.4. loss of anticipated savings;

10.3.5. loss of or damage to goodwill; and

10.3.6. any indirect or consequential loss.

## 11. General

11.1. **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.

11.2. **Assignment:** VisitAberdeenshire 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. The Customer 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.

11.3. **Entire Agreement:** 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.

11.4. **Variation:** VisitAberdeenshire may amend, update and / or replace all or any part of these Terms at any with immediate effect on providing notice to the Customer.

11.5. **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.

11.6. **Severance:** If any provision or part-provision of the Terms 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 the Terms.

- 11.7. **Notices:** Any notice 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). Any notice shall be deemed to have been received (i) if delivered by hand, at the time the notice is left at the proper address; or (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. This clause 11.7 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.
- 11.8. **Third party rights:** The Contract does not give rise to any rights under the Contracts (Third Party Rights) (Scotland) Act 2017 to enforce any term of the Contract.
- 11.9. **Governing Law and Jurisdiction:** 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 Scots law. Each party irrevocably agrees that the courts of Scotland 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.