

POCKET LONDON LIMITED
TERMS AND CONDITIONS (August 2005 version)

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions:

<i>Advertisement</i>	all content, logos, branding and photographs used within a specified area in a Product;
<i>Contract</i>	means any contract for the sale of products and/or the supply of services between us and you into which these Conditions are incorporated;
<i>Conditions</i>	means the standard terms and conditions of sale set out herein, including any special terms and conditions agreed in writing by us and attached hereto;
<i>Products</i>	means the products and/or services (excluding Media Intelligence Services) which we shall supply in accordance with these Conditions, details of which are set out on the order form;
<i>we</i>	means Pocket London Limited, and "us" and "our" shall be construed accordingly;
<i>you</i>	means the customer whose details are set out on the order form, together with any person or agent who is authorised to bind you (and by submitting the order on your behalf such person or agent warrants that they are duly authorised by you to do so), and "your" shall be construed accordingly.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.3 All rights expressly reserved by or granted to us by these Conditions shall be without prejudice to any other rights which we may have from time to time.

1.4 Unless expressly stated otherwise, where rights and decisions are to be exercised or made at our discretion, then we shall be under no duty or obligation to you to justify or provide a reason for the decision.

1.5 Unless expressly stated otherwise, where our prior written consent is required in these Conditions, then we shall be under no obligation not to unreasonably withhold or delay in giving that consent.

2. BASIS OF SALE

2.1 These Conditions shall apply to all Contracts for the sale of Products by us to you to the exclusion of all other terms and conditions including any terms or conditions which you may purport to apply under any purchase order, and no variation of these Conditions shall be binding unless agreed in writing by us and attached hereto. These Conditions set out the entire agreement to the exclusion of all other terms and conditions, and become binding (subject only to your receipt of our acceptance of your order) on the earliest of the date you:

- (a) sign a Contract incorporating these Conditions; or
- (b) email confirmation; or
- (c) confirm to us your acceptance of these Conditions by telephone call (which we will subsequently confirm to you in writing or by email); or
- (d) supply us with any copy or artwork; or
- (e) instruct us to do any work on your behalf; or
- (f) sign off or approval of any piece of artwork;

provided always that we have provided you with a copy of these Conditions before such date, and you have not notified us in writing that you do not accept the terms set out in these Conditions.

2.2 Where the Products form part of a composite order or are to be delivered by instalments, each part of the composite order and instalment shall constitute a separate Contract. Each order for Products shall constitute a separate Contract. Failure by us to deliver any Product or instalment shall not entitle you to treat the Contract as repudiated.

2.3 You undertake and warrant that you will have sold or distributed all Products in your possession to customers before the date that we are due to send you any updated versions of the Products.

3. ORDERS AND SPECIFICATIONS

3.1 No order submitted by you shall be deemed to have been accepted by us unless and until you receive our order confirmation, and thereafter the order shall be binding on you.

3.2 You shall be responsible for ensuring the accuracy of the terms of any order submitted by you, and for giving us any necessary information relating to the Products within a sufficient time to enable us to perform the Contract in accordance with these Conditions.

3.3 If the Advertisement is to be prepared by us in accordance with a specification submitted by you, you shall indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in connection with or paid or agreed to be paid by us in settlement of any claim for infringement of any patent, copyright, design right, trade mark or other intellectual property rights of any other person which results from our use of your specification. We reserve the right to make changes in the specification or positioning of the Advertisement which are required as a result of your failure to give us full or timely instructions, or to conform with any applicable statutory or EU requirements.

3.4 No order which has been accepted by us may be cancelled by you except with our prior written consent and on terms that you shall indemnify us in full against all loss (including loss of profit for the minimum period specified on the order), costs (including the cost of all labour and material used), damages, charges and expenses incurred by us as a result of cancellation.

3.5 We may cancel your order at any time at our discretion, and (unless we have done so as a result of your actions or omission) we shall refund to you 120% of any monies paid for undelivered Products, but we shall have no further liability to you. We may also postpone or suspend delivery of any Product or publication of any Advertisement for no more than 3 months (subject to cl. 5.3 and 11.1).

3.6 Unless otherwise agreed in writing, your order shall be for the minimum period stated on the order form calculated from the date shown on the order form, providing that any Contract will automatically be renewed for successive one year periods until and unless we receive at least three months notice to terminate any Contract to expire on the anniversary of the original date of order.

3.7 We cannot guarantee to match exactly corporate and artwork colours as print tolerances vary with each print run. In addition, up to ten percent of any print run may have unavoidable blemishes due to paper feed, ink flow and plate slippage. We shall not be liable for such variations or blemishes and you shall not be entitled to reject the Products based thereon.

4. PRICE OF THE GOODS

4.1 The price of the Products shall be our quoted price from time to time.

4.2 We reserve the right, by giving notice to you at any time before delivery, to increase the price of the Products to reflect any increase in the cost to us which is due to any factor beyond our reasonable control, any change in delivery dates, quantities or specifications for the Products which are requested by you, or any delay caused by your instructions or your failure to give us adequate information or instructions.

4.3 Except as otherwise agreed in writing by us, all prices are given by us on an ex works basis, and where we agree to deliver the Products otherwise than at our premises, you will be liable to pay our charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax which you shall automatically be liable to pay to us.

4.5 If the order is submitted by anyone other than a person authorised you (ie. the customer named on the order form), then such person agrees to personally indemnify us in respect of any non-payment by you of any sums due and payable to us as though such person was the principal debtor.

5. TERMS OF PAYMENT

5.1 Unless expressly agreed by us in writing, we shall invoice you for the price of the Products at any time after receipt of your order.

5.2 You undertake and warrant to pay the price of the Products (without deduction or set off) within 14 days of the date of the invoice. The time of payment shall be of the essence of the Contract.

5.3 If you fail to make any payment on the due date then we reserve the right to:

- (a) cancel the Contract or suspend further deliveries to you;
- (b) appropriate any payment made by you to such of the Products as we may think fit; and
- (c) charge you interest (as well after as before any judgment) on the amount unpaid, at the rate of 4% per annum above National Westminster Bank plc base rate from time to time, until payment is made in full, accruing pro rata on a daily basis.

5.4 Any discount we may offer for a series of Advertisements is offered on the basis that no Advertisement within that series shall be cancelled. If one or more Advertisements are cancelled, you shall be liable to pay us the full rack rate or card amount for each Advertisement not cancelled.

6. DELIVERY

6.1 You shall make all arrangements to take delivery of the Products whenever they are tendered for delivery.

6.2 Any dates quoted for delivery of the Products are approximate only and we shall not be liable for any delay in delivery of the Products howsoever caused. Time for delivery shall not be of the essence of the Contract unless previously agreed in writing by us. We may deliver the Products in advance of the quoted delivery date upon giving you reasonable notice.

6.3 If we fail to deliver the Products (or any instalment) for any reason other than any cause beyond our reasonable control or your fault, and we are accordingly liable to you, our liability shall be limited to the excess (if any) of the cost to you (in the cheapest available market) of similar products to replace those not delivered over the price of the Products.

6.4 If you fail to take delivery of the Products or fail to give us adequate delivery instructions at the time stated for delivery then we reserve the right to:

- (a) store the Products until actual delivery and charge you for the reasonable costs (including insurance) of storage; or
- (b) sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to you for the excess over the price under the Contract or charge you for any shortfall below the price under the Contract.

7. RISK AND PROPERTY

7.1 All artwork, photographs and specifications sent by you to us shall be at your risk.

7.2 Risk of damage to or loss of the Products shall pass to you:

- (a) in the case of Products to be delivered at our premises, at the time when we notify you that the Products are available for collection; or
- (b) in the case of Products to be delivered otherwise than at our premises, at the time of delivery or, if you fail to take delivery of the Products, the time when we have tendered delivery of the Products.

7.2 Notwithstanding delivery and the passing of risk in the Products or any other provision of these Conditions, the legal and equitable property in the Products shall not pass to you until we have received in cleared funds payment in full of the price of the Products.

7.3 Until such time as the property in the Products passes to you, you shall hold the Products as our fiduciary agent and bailee, and shall keep the Products separate and properly stored, protected and insured and identified as our property, but you shall be entitled to resell or use the Products in the ordinary course of your business.

7.4 Until such time as the property in the Products passes to you (and provided the Products are still in existence and have not been resold) we shall be entitled at any time to require you to deliver up the Products to us and, if you fail to do so forthwith, to enter upon any premises where the Products are stored and repossess the Products.

8. WARRANTIES AND LIABILITY

8.1 SUBJECT AS EXPRESSLY PROVIDED IN THESE CONDITIONS, AND EXCEPT WHERE THE PRODUCTS ARE SOLD TO A PERSON DEALING AS A CONSUMER (WITHIN THE MEANING OF THE UNFAIR CONTRACT TERMS ACT 1977), ALL WARRANTIES, CONDITIONS OR OTHER TERMS IMPLIED BY STATUTE OR COMMON LAW ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY THE APPLICABLE LAW.

8.2 Where the Products are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976, as amended) your statutory rights are not affected hereby.

8.3 Any claim by you which is based on any defect in the quality of condition of the Products or Advertisement or their failure to correspond with specification shall be notified to us within ten days of receipt of a voucher copy of the Product or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discover of the defect or failure. If delivery is not refused, and you do not notify us accordingly, you shall not be entitled to reject the Products and we shall have no liability for such defect or failure, and you shall be bound to pay the price as if the Products had been delivered in accordance with the Contract.

8.4 Where any valid claim in respect of any of the Products/Advertisement which is based on any defect in the quantity or condition of the Products/Advertisement or their failure to meet specification is notified to us in accordance with these Conditions, we shall be entitled to repair or replace the Products (or the part in question) free of charge, but we shall have no further liability to you.

8.5 EXCEPT IN RESPECT OF DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE, WE SHALL NOT BE LIABLE TO YOU BY REASON OF ANY REPRESENTATION (UNLESS FRAUDULENT), OR ANY IMPLIED WARRANTY, CONDITION OR OTHER TERM, OR ANY DUTY AT COMMON LAW OR UNDER THE EXPRESS TERMS OF THE CONTRACT, FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE (WHETHER FOR LOSS OF PROFIT OR OTHERWISE), COSTS, EXPENSES OR OTHER CLAIMS FOR COMPENSATION WHATSOEVER (WHETHER CAUSED BY OUR NEGLIGENCE OR OUR EMPLOYEES, AGENTS OR OTHERWISE) WHICH ARISE OUT OF OR IN CONNECTION WITH THE SUPPLY OF THE PRODUCTS OR THEIR USE OR RESALE BY YOU, AND OUR ENTIRE LIABILITY IN CONNECTION WITH THE CONTRACT SHALL NOT EXCEED 120% OF THE PRICE OF THE PRODUCTS, EXCEPT AS EXPRESSLY PROVIDED IN THESE CONDITIONS.

8.6 You will indemnify us in full against any and all claims, losses or damage suffered or incurred by us (including but not limited to loss of profit) arising from your breach of the Conditions.

9. ADVERTISING REGULATIONS

9.1 You undertake and warrant to comply with the Trade Descriptions Act 1968, the British Codes of Advertising and Sales Promotion (as amended) and any additional regulations or guidelines published from time to time to the extent that they apply to the Products and the Advertisement, and you shall indemnify us in respect of any and all claims arising from your failure to comply therewith.

10. RETURN OF THE GOODS

10.1 We shall only accept the return of any defective Products within 10 days of the date of delivery or within a reasonable time after discovery of the defect and such Products shall be returned with written notification which must state the nature of the fault of each item and the invoice number in relation to the purchase of each item.

10.2 All transportation charges relating to the return of Products will be borne by you unless otherwise agreed in writing, and the risk in the Products shall remain with you until the Products are received by us and any Products so returned are despatched by you at your own risk.

10.3 You shall not be entitled to reject part only of the Products delivered in accordance with these Conditions.

10.4 Any claims against us for Products not credited or replaced will only be considered where you can provide proof of delivery to us. We will not provide cash refunds.

10.5 We will at our discretion replace whenever possible Products found to be defective after examination provided that the Products have been returned in accordance with these Conditions. We will return products after examination if they are found not to be defective.

11. YOUR INSOLVENCY

11.1 If you make any voluntary arrangement, become bankrupt, insolvent or commit any other act of bankruptcy, we reserve the right to cancel the Contract or suspend any further deliveries under the Contract without any liability to you, and if the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. GENERAL

12.1 We will not be liable to you or deemed to be in breach of contract by reason of delay or failure to perform any of the Company's obligations if the delay or failure to do so is caused by any event beyond our reasonable control.

12.2 These Conditions do not purport to confer a benefit on any third party.

12.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other's principal place of business.

12.4 No waiver by us of any breach of the contract by you shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.5 If any provision of these Conditions are held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the remainder shall not be affected.

12.6 The Contract and these Conditions shall be governed by the laws of England, and you agree to submit to the exclusive jurisdiction of the English courts.