

Commercial Contract

TERMS CONDITIONS FOR THE DISPLAY BANNER ADVERTISEMENTS



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

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Terms conditions for the display banner advertisements

Terms conditions for the display banner advertisements on _____ website and its related portals (_____)

1. The following terms and conditions ("Agreement") shall govern the business relations between the Online Publisher and the Advertiser. By placing an order on the Banner Request Form, the Advertiser agrees to accept and be bound by the following Terms and Conditions that constitute this Agreement.

1.1 In this Agreement the following expressions shall have the following respective meanings unless the context requires otherwise:

1.2 "Online publisher" means the _____

1.3 "Advertiser" means the person or company identified on the Banner Request Form.

1.4 "Banner Request Form" means the advertising order form specified by the Online Publisher.

1.5 "Website" means the website and its related portals as detailed on the Banner Request Form.

1.6 "Approved Package" means the banner advertisement plan offered by the Online publisher.

2. Modes of Acceptance

2.1 The acceptance of an advertisement for the purpose of display shall be subject to space availability and upon receipt of the online acceptance of the Banner Request Form by the online publisher.

2.3 Submission of a banner request form will be considered as an acceptance of the terms & conditions of the agreement by the advertiser.

3. Terms of Payment

3.1 Payments can be made through Demand Draft/Pay Order in the name of " _____".

3.2 All payments to the online publisher hereunder shall be made in Pak Rupees and shall be exclusive of any Taxes chargeable thereon.

3.3 Receipt of Demand Draft/Pay Order shall be considered as confirmation of the order and acceptance of terms & conditions of the Agreement.

3.4 The online publisher shall have the right to hold the advertiser liable for such movies as are due and payable to the online publisher for advertisements which the advertiser ordered and which were published and displayed.

4. Advertiser's Representations

The advertiser warrants and represents that:

4.1) The contents of the advertisement shall be devoid of any infringement upon the rights of any third party including, without limitation, intellectual property rights.

4.2) The advertiser shall be fully responsible for the terms (including, without limitation, product description, price and compliance with all applicable laws and regulations) of any contract for the sale of goods or services to customers who have seen the advert displayed by the online publisher.

4.3) The advertiser agrees to indemnify the online publisher forthwith on demand and hold the online publisher harmless against any and all expenses, damages and losses of any kind (including legal fees and costs) incurred by the online publisher in connection with any claims, actual or threatened, of any kind (including, without limitation, breach of contract, any claim of trademark or copyright infringement, libel, defamation, breach of confidentiality, false or misleading advertising or sales practices) arising from the advertisement and/or any online content belonging to the advertiser, which the users can access through the advertisement and any other contract entered into for the purchase of the advertised goods or services..

4.4) The advertiser will defend or settle at its own expense any action or other proceedings brought against the online publisher that relates to the advertisement and/or any online content belonging to the advertiser, which the users can access through the advertisement. **The online publisher shall notify the advertiser promptly of any such claim, action or proceeding.** The advertiser shall pay any and all proper costs, damages and expenses (including but not limited to legal fees and costs) awarded against or incurred by the online publisher in any such action or proceedings.

5 Online Publisher's Representations

5.1) The online publisher reserves the right to re-design parts of or the entire website as detailed in the Banner Request Form and to re-position the advertisement accordingly without prior notice.

5.2) Positioning of advertisements is at the sole discretion of the online publisher except where a request for a specific preferred position is acknowledged by the online publisher in writing. Material must be received by the agreed date, otherwise position may be lost.

5.3) All contents of advertisements are subject to the online publisher's prior approval. The online publisher reserves the right to reject or cancel any advertisement or a part thereof, banner request, space reservation or position commitment at any time, or remove any advertisement from any website page controlled by the online publisher, or reject any URL link embodied within any advertisement.

5.4) The online publisher shall within (please insert number of days) of the receipt of the demand draft/pay order, notify the advertiser by email, on the email address given by the advertiser that the advertisement has either been added to the website or rejected wholly or in part

5.5) The agreed duration for the display of the advertisement on the website shall begin from the actual date on which the advertisement is displayed on the designated web portal of the online publisher.

5.6) Approval by, the online publisher for the display of the advertisement on the website shall not be deemed to constitute an acceptance by the online publisher that such advertisement is provided in accordance with the terms of the Agreement, nor shall it constitute a waiver of the online publisher's rights hereunder.

5.7) The online publisher makes no warranty, express or implied, as to the accuracy of any advertisement as well as the content thereof whilst it is on display on the website. In the event that any advert is inaccurate, the advertiser's sole remedy is for the online publisher to remedy such inaccuracy within 2 working days of it being notified of the inaccuracy by the advertiser.

5.8) All banner requests are accepted subject to provisions of the current approved packages. Rates are subject to change upon notice from the online publisher.

6. Cancellation Policy:

6.1 Subject to Clause 6.2 hereunder any Advertisement/Banner can be cancelled by the advertiser without charge up to 30 days before the Publishing date of the Advertisement/Banner by the online publisher.

6.2 Cancellation damages of 50% of the advertising contract amount will be due and payable to the online publisher by the advertiser if the Advertisement/Banner is cancelled by the advertiser less than 3 days before the Publishing date of the Advertisement/Banner.

7. Changes in the Advertisements

7.1 The advertiser must notify the online publisher as soon as is reasonable by **email and postal mail** of any inaccuracy and/or changes that need to be made in the advertisement.

7.2 The online publisher shall make the changes within 2 working days of it being notified of such change in accordance with clause 7.1

8. Limitation of Liability

The online publisher shall not be liable, in contract, tort (including, without limitation, negligence), pre-contract or other representations or otherwise arising out of or in connection with these terms and conditions for:

8.1 Any monetary losses (including without limitation loss of income, revenues, profits, contracts, business or anticipated savings);

8.2 Any loss of goodwill or reputation;

8.3 Any special or direct/indirect or consequential losses; whether or not such losses were within the contemplation of either party at the date on which the event giving rise to the loss occurred, suffered or incurred by a party arising out of or in connection with the provisions of any matter under these terms and conditions.

8.4 In particular, and without limitation, the advertiser acknowledges that the online publisher shall not be liable for such losses whether arising from a failure to publish an advertisement, or from the inaccuracy of any data contained in any advertisements (whether such inaccuracy arises from any action, or failure to act, of the online publisher, the advertiser or a third party).

8.5 Subject to the above, the liability of the online publisher in contract, tort, negligence, pre-contract or other representations or otherwise arising out of or in connection with these terms and conditions or the performance or observance of its obligations under these terms and conditions, and every applicable part of them shall be limited to the amendment of any inaccurate data in accordance with Clause 8 above or in the event that the online publisher fails to electronically publish an advertisement, the advertiser's sole remedy and the online publisher's entire liability to the advertiser shall be limited at the online publisher's option to either a refund of the advertising fee or relevant portion thereof, or placement of the advertisement at a later time in a comparable position.

8.6 The advertiser acknowledges that the website and its portals on which the advertisement is displayed is provided on an "as is" and "as available" basis without any representation or endorsement. The online publisher makes no warranties of any kind, whether express or implied, in relation to the website, including but not limited to, implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security, accuracy, condition or completeness, or any implied warranty arising from course of dealing or usage or trade or that the website will meet any requirements or will be uninterrupted, timely, secure or error-free, that defects will be corrected, or that the website or the server that makes it available are free of viruses or bugs or are fully functional, accurate, or reliable.

8.7 No conditions other than those set forth in the approved packages, Banner Request Form and this agreement shall be binding on the online publisher unless specifically agreed to in writing by the online publisher.

8.8 The online publisher shall not be liable for delays in the online placement of the advertisement in the event of any situation beyond the control of the online publisher.

9. Miscellaneous

9.1) These terms and conditions (as amended from time to time) together with any document expressly referred to in any of the terms including the Banner Request Form, contains the entire

agreement between the parties relating to the subject matter covered and supersede any previous agreements, arrangements, undertakings or proposals, written or verbal, between the parties in relation to such matters. No verbal explanation or verbal information given by any party shall alter the interpretation of these terms and conditions. Each party confirms that, in agreeing to these terms and conditions, it has not relied on any representation save insofar as the same has expressly been made a representation in these terms and conditions and agrees that it shall have no remedy in respect of any misrepresentation which has not become a term of these terms and conditions save that the agreement of each party contained in this.

9.2) The invalidity, illegality or unenforceability of any provision of these terms and conditions shall not affect or impact the continuation in force of the remainder of these terms and conditions.

9.3) Nothing in these terms and conditions shall be construed as creating a partnership or joint venture of any kind between the parties or as constituting either party as the agent of the other party for any purpose whatsoever and neither party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party in any way or for any purpose.

9.4) No conditions other than those set forth in the banner request form or this agreement shall be binding unless expressly agreed to in writing. In the event of any inconsistency between the banner request form and this Agreement, this Agreement shall prevail.

10. Arbitration

In the event that a dispute arises between the parties to the agreement, the matter in dispute shall be referred to an arbitrator appointed with the mutual consultation of both the parties, whose decision shall be final and binding