

Terms & Conditions

2010



Advertising Terms and Conditions

(Tribune Publishing/Los Angeles Times)

These Advertising Terms and Conditions are hereby made part of the Agreement (the "Advertising Agreement") by and between Los Angeles Times Communications LLC ("Publisher") and the advertiser named therein and party thereto ("Advertising Party") and its advertising agency, if any ("Advertising Agency," and together with Advertising Party, "Advertiser"). Each such party acknowledges that the following additional terms and conditions are incorporated in and made a part of the Advertising Agreement. These Advertising Terms and Conditions, including the Advertising Agreement (along with any supplements, amendments, exhibits, schedules or addendums thereto, collectively, the "Agreement"), shall be binding upon the parties.

1. ADVERTISING ACCEPTANCE; PUBLISHER'S RIGHT TO REJECT OR ALTER

(a) Submission of an advertisement to Publisher does not constitute a commitment by Publisher to publish or distribute the advertisement. Publisher accepts advertising only by publishing or distributing such advertisement. Upon such acceptance, Advertiser acknowledges that (i) the terms and conditions set forth in this Agreement shall apply to all advertising orders unless such terms and conditions are modified, superseded or otherwise altered by a written instrument signed by an authorized representative of Publisher, (ii) the terms and conditions set forth in this Agreement shall prevail over any inconsistent terms and conditions set forth in any order or contract form of any Advertiser and (iii) insertion orders containing disclaimers are not acceptable and are not legally binding or valid. Publisher has the right, in its sole and absolute discretion, to reject any advertisement or any portion thereof. Publisher's publication or distribution of an advertisement shall not affect its right to reject such advertisement thereafter.

(b) Publisher reserves the right to alter any advertising material in order for the material to conform to its current mechanical specifications. The rates stated in the Advertising Agreement shall remain the same upon a reduction in the size of any advertisement as long as the advertisement maintains the same proportion of the entire page. Publisher rates are based on column inch size rather than actual published size, which may have shrinkage related to the printing process.

2. LAWFUL ADVERTISING; INDEMNIFICATION

Advertising Party and Advertising Agency, if applicable, jointly and severally represent and warrant that (a) any and all material submitted to Publisher (i) is accurate and original, (ii) is in compliance with and does not violate any law or contract or infringe the copyrights, trademarks, trade names, patents or other intellectual property or proprietary rights of any person, (iii) does not constitute unfair competition, and (iv) contains no matter which is libelous, an invasion of privacy or publicity, an unlawful appropriation of any name or likeness or is otherwise injurious to the rights of any person; and (b) each of Advertising Party and Advertising Agency, if applicable, has obtained all necessary consents for publication or distribution prior to submission to Publisher. Advertising Party and Advertising Agency, if applicable, jointly and severally agree to defend, indemnify and hold Publisher and its affiliates and their respective directors, officers, principals, managers, members, partners, shareholders, employees, and controlling persons and their affiliates (Publisher and each such person being an "Indemnified Party"), harmless from and against all damages to and liabilities resulting from or relating to demands, claims, actions or causes of action, assessments or other losses, costs and expenses relating thereto, interest and penalties thereon and attorneys' fees, legal fees and any other expenses in respect thereof or in enforcing their rights hereunder, by reason of or resulting from or attributable to its breach of this Agreement, the publication or distribution of any advertisement by Publisher (whether or not Publisher assisted in the preparation of the advertisement), or the distribution of any sample product or other material submitted by Advertising Party and/or Advertising Agency.

3. MATERIALS; COPYRIGHTS, TRADEMARKS AND INTELLECTUAL PROPERTY

(a) Publisher has no obligation to return any material submitted to Publisher by or on behalf of Advertiser to Advertiser or any other party, and Publisher shall have no liability for its loss or destruction.

(b) Publisher shall have the right to use any advertising published or distributed in Publisher's publication for the purpose of promoting any of the products and services of Publisher. Advertiser grants Publisher a non-exclusive, perpetual, irrevocable and worldwide license to publish any and all advertising content created by Advertiser or its agents or Publisher, including but not limited to photographs, artwork, text and graphics, in any media, presently known or unknown, including but not limited to Publisher's electronic publications on the Internet and in any archival retrieval system whether that information is digitally stored or stored on any other media. To the extent feasible and with the use of known technological resources, Publisher agrees that it will make reasonable efforts to prevent the reproduction of coupons capable of redemption by a consumer in any of Publisher's electronic publications.

4. POSITION REQUESTS

Publisher shall not be deemed in breach of this Agreement in the event that it does not honor a specific position agreement due to conflicting editorial or positioning needs, in Publisher's sole discretion. In the event Advertiser has paid a premium for a particular position, reimbursement for failure to publish or distribute in a particular position shall be limited to the refund of all or a portion of such premium to Advertiser. With respect to advertising inserts, such reimbursement shall be limited to a refund of that portion of the premium associated with the portion of the advertising inserts that were not distributed in accordance with the specific position request.

5. LIABILITY FOR ERRORS, OMISSIONS OR FAILURE TO PUBLISH OR DISTRIBUTE

(a) Publisher's liability for errors or omissions in display advertisements shall be limited to the cost of advertising space in an amount equal to the erroneous portion of the advertisement. Publisher's liability for errors in distribution of advertising inserts shall be limited to the cost of distribution of the improperly distributed advertising inserts. Publisher's liability for failure to publish any advertisement or distribute any advertising insert shall be limited to a refund of any amount paid to Publisher for such advertisement or insert. Notwithstanding the foregoing, Publisher shall have no liability for, and no credit shall be issued to Advertiser for, errors that do not materially affect the value of the advertisement or advertising insert or where Advertiser is responsible for the error or omission. Credits for errors in advertisements or advertising inserts materially affected by the error are allowed for the first publication or distribution only.

(b) Notwithstanding anything to the contrary herein, in no event shall Publisher be liable to Advertiser or to any other parties for any further damages of any kind arising from any breach of this Agreement or any other advertising contract, written or oral, or act or omission of Publisher with respect to an advertisement or advertising insert, including but not limited to, direct, indirect, special, consequential, or punitive damages.

(c) Publisher is not responsible for errors involving orders, cancellations or corrections given orally. Written or facsimile confirmation of orders, cancellations or corrections must be received prior to Publisher's cancellation deadline. Publisher will publish or distribute advertisements and bill Advertiser for all advertising orders that are not canceled prior to the deadline. Advertiser may be subject to a cancellation charge when such cancellation results in production delays.

(d) Publisher shall not be deemed in breach of the Agreement in the event that it does not publish a particular wrap advertisement even if Publisher has sent Advertiser a client confirmation.

6. PAYMENT; DISPUTES

Advertiser shall pay all invoices within 15 days of invoice date. Advertiser waives any dispute regarding any item included in an invoice unless notice of such dispute is provided to Publisher in writing within 30 days of the invoice date.

For advertising inserts distributed via insertion in the Publisher's newspaper and/or via Publisher's non-subscriber distribution program(s), quantity billed is based on the delivery quantity requirements provided by Publisher to Advertiser. Delivery quantity requirements are based on an estimate of circulation ordered plus an estimate for non-subscriber distribution, if any, and an estimated amount for shipment and machine spoilage. Newspaper circulation is variable, therefore it is recommended that Advertiser confirm delivery quantity requirements with their advertising sales representative just prior to ordering a print run. However, the Publisher shall not be responsible nor provide rate adjustments for shortages or overages in delivery quantity requirements realized through circulation fluctuations or for circulation missed caused by shortages in the Advertiser's insert quantity provided.

7. AMENDMENTS; WAIVERS; RATE CHANGES

(a) Waiver of any term of this Agreement or failure of Publisher to terminate this Agreement on account of any breach by Advertiser shall not be deemed a waiver of Publisher's rights to subsequently enforce any term or to terminate this Agreement by reason of any subsequent breach by Advertiser. No waiver by either party on any one occasion shall extend to or effect or be construed as a waiver of any right or remedy on any future occasion or with respect to any prior occasion. No course of dealing of any person nor any delay or omission in exercising any right or remedy shall constitute an amendment of this Agreement or a waiver of any right or remedy of any party hereto.

(b) Except as set forth in subsection (c) of this Section 7, no amendment of any term, provision or condition of this Agreement shall be effective, unless in a writing executed by each of the parties hereto that specifically refers to this Agreement.

(c) Publisher shall have the right to revise the advertising rates set forth in this Agreement at any time upon notice to Advertiser of such rates. Advertiser may terminate this Agreement on the date the new rates become effective by giving written notice within 30 days of such termination. In the event of such termination, Advertiser shall be liable for Advertising published or distributed prior to such termination at the Current Agreement Rate. "Current Agreement Rate" is defined as the billing rate in effect at the time of publication.

(d) If the United States Postal Service implements a postage cost increase at any time during the term of this Agreement, Advertiser understands and agrees that the advertising rates set forth in this Agreement shall be adjusted to reflect that increase automatically upon the effective date of the United States Postal Service increase.

(e) If Publisher is printing advertisements for Advertiser and there is an increase in the cost of paper at any time during the term of this Agreement, Advertiser understands and agrees that the advertising rates on the client confirmation form or wrap insertion order may be adjusted to reflect that increase automatically upon the effective date of the cost of paper increase.

8. TERMINATION OF AGREEMENT; EFFECT OF TERMINATION

(a) Publisher shall have the right to terminate this Agreement at any time, with or without notice to Advertiser, for Advertiser's failure to remit payment for invoices by the due date of such bills.

(b) Publisher reserves the right to review the volume of advertising placed on a quarterly basis and to cancel the contract in its sole discretion if advertising placed falls 15% or more below the quarterly average volume needed to fulfill the twelve-month contract amount, if Advertiser has such a contract with Publisher. Failure of Publisher to review the frequency of advertising or cancel the contract for any reason shall not be deemed a waiver of the right to cancel in the future or to impose any applicable rate adjustment.

(c) Subject to the terms of subsection (e) of this Section 8, Advertiser shall have the right to terminate this Agreement at any time by written notice to Publisher.

(d) Publisher shall have the right to terminate this Agreement for any reason and at any time by written notice to Advertiser, in which event and so long as Advertiser has been meeting its revenue, volume or other commitment to Publisher over time in a way that is consistent with Advertiser reaching its final commitment, Advertiser shall be liable for advertising prior to such termination at the Current Agreement Rate.

(e) Except for a termination under Section 7 above, in the event the Agreement is terminated or for any other reason Advertiser fails to purchase during the term of the Advertising Agreement the advertising generating the revenue, volume or other commitment due to Publisher, Advertiser immediately shall pay to Publisher the lesser of the following: (i) the original commitment made to Publisher under the Advertising Agreement or (ii) an amount for all advertising published or distributed during the term including advertising previously billed ("Amount Due"), adjusted for space, inserts and color actually used. The unpaid balance of such adjusted Amount Due shall be based upon the "Actual Rate Earned" for advertising during the term.

The "Actual Rate Earned" is defined as the rate that would have been payable by Advertiser if the amount of advertising actually purchased during the term had been contracted for in the first instance, and such Actual Rate Earned shall be ascertained by reference to the applicable Publisher rate card in effect on the date that the advertising was published or distributed.

9. INTEGRATION

Advertiser agrees that no representations of any kind have been made to Advertiser by Publisher or by any of its agents and that no understanding has been made or agreement entered into other than as set forth herein.

10. FORCE MAJEURE

Publisher shall not be liable for failure to publish or distribute any advertisement because of strikes, labor disputes, government action, war, fire, breakdown of equipment, terrorist act, or any other cause beyond its reasonable control.

11. OTHER SERVICES

Except as stated otherwise, payments by Advertiser to Publisher for services or goods other than advertising space, inserts and color shall not be applied toward any revenue totals set forth in the Agreement.

12. COLLECTIONS

Advertiser shall be liable for all costs incurred by Publisher, including but not limited to attorneys' fees and expenses, in collecting past due accounts and in defending any and all claims asserted in the action.

13. TAXES

Any and all taxes levied against advertising shall be added to the advertising charges, including but not limited to any sales taxes.

14. PREPARATION OF ADVERTISING

Advertiser represents and warrants that it is familiar with all laws and regulations applicable to its advertisement(s), and that advertising material submitted to Publisher shall be in compliance with such laws and regulations. On request, Publisher may assist Advertiser in preparing its advertisement(s) for publication. This assistance may include design, composition, text and artwork. Publisher does not assume any obligations to perform a legal review of Advertiser's advertisement(s). Advertiser remains solely responsible for the contents of the advertisement(s) and for compliance with any laws regulating such advertising.

15. ASSIGNMENT

This Agreement and the rights and obligations hereunder are personal to Advertiser and may not be assigned by any act of Advertiser or by operation of law, change of control of Advertiser or otherwise without the prior written consent of Publisher, to be granted or not granted in Publisher's sole and absolute discretion. Advertiser may not assign to, nor utilize for the benefit of another person or entity, any of the lineage required to be purchased by Advertiser without Publisher's prior written consent, to be granted or not granted in Publisher's sole and absolute discretion.

16. SEVERABILITY

If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision, and such invalid or unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this Agreement. To the full extent, however, that the provisions of any applicable law may be waived, they are hereby waived to the end that this Agreement be deemed a valid and binding agreement enforceable in accordance with its terms.

17. JOINT AND SEVERAL LIABILITY OF ADVERTISING PARTY AND ADVERTISING AGENCY

Advertising Party and Advertising Agency are each hereby obligated, jointly and severally, to pay any and all amounts owed to Publisher, as and when the same shall become due and payable, in accordance with the terms hereof.

All written agreements between Advertising Party and Advertising Agency, shall include provisions whereby each such party agrees that Publisher has a right to recover any and all amounts owed hereunder from either such party directly. Publisher shall be a third-party beneficiary of all such agreements. Publisher is hereby irrevocably appointed as each of Advertising Agency's and Advertising Party's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any amounts owing from Advertising Party to Advertising Agency, or Advertising Agency to Advertising Party, as the case may be, pursuant to such agreements and Publisher shall retain such amounts to offset amounts due hereunder. Each of Advertising Agency and Advertising Party shall immediately upon receipt pay directly to Publisher any and all amounts that it receives from Advertising Party or Advertising Agency, as the case may, for payment of amounts owed pursuant to this Agreement.

18. REPRESENTATIONS AND WARRANTIES

Each of Advertising Party and Advertising Agency, hereby represents and warrants to Publisher:

- (a) It is duly incorporated or formed, as the case may be, validly existing and in good standing under the laws of the state of its incorporation or formation, as the case may be, and has all requisite power to own, lease and operate its property and to carry on its business as now being conducted.
- (b) All action on the part of such party necessary for the authorization, execution and delivery of, and the performance of all of its obligations under, this Agreement has been duly taken. This Agreement constitutes a valid and binding obligation of such party, enforceable against it in accordance with its terms.
- (c) The execution and delivery by such party of this Agreement do not, and the consummation of the transactions contemplated hereby will not, (i) violate or conflict with the organizational documents of such party or (ii) constitute a material breach or default or give rise to any lien or other encumbrance, third-party right of termination, cancellation, material modification or acceleration under any material agreement, understanding or undertaking to which it is a party or by which it is bound, or violate or conflict with any applicable law.
- (d) All written agreements between Advertising Party and Advertising Agency include provisions whereby each such party agrees that Publisher has a right to recover any and all amounts owed hereunder from either such party directly.
- (e) Advertising Agency is authorized and has the power to (i) enter into this Agreement on behalf of or in the name of Advertising Party and (ii) bind Advertising Party to this Agreement without the prior written consent of Advertising Party.
- (f) Advertising Party is authorized and has the power to (i) enter into this Agreement on behalf of or in the name of Advertising Agency and (ii) bind Advertising Agency to this Agreement without the prior written consent of Advertising Agency