

Conditions Of Contract

For Grant Of A Sub-Licence By Access Point Limited (APL) For Concessionaire To Occupy Retail Space At The Retailer's Site

- A** On formation of this contract the concessionaire (as detailed on **APL's** order form) is granted a licence, subject to the further terms and conditions herein to occupy a retail space (hereinafter called "The Site") at the Retailers Site (as defined on **APL's** order form) for the period of occupation (as defined on **APL's** order form) and the concessionaire shall pay the contract price (defined as the Amount Due on **APL's** order form).
- B** The contract consists of (i) the Special Conditions; (ii) these Conditions; and (iii) Promotor Guidelines. Where there is any conflict between the three documents they shall rank in the order in which they are set out in this condition B. These conditions and the documents referred to herein and warranties shall constitute the whole of the agreement between **APL** and the concessionaire and all orders are placed and accepted under these terms and conditions alone.
- C** The offer to grant a licence to occupy a Site on **APL's** order form which comprises an invitation to treat is open for a period of five days only from the date thereof, at which time, it shall automatically expire, provided that **APL** have not previously withdrawn it. A contract will only be formed when **APL's** office in Southport receive the concessionaires returned order duly signed and have notified the concessionaire whether orally or in writing of its acceptance. Acceptance following the withdrawal or expiry of the acceptance period shall be at the sole discretion of **APL**. Only orders signed on **APL's** printed order form shall hereafter bind **APL**.
- D** These terms and conditions exclude any other terms and conditions inconsistent herewith, which a concessionaire might seek to impose, even though such other terms and conditions may be submitted in a later document and/or purport to exclude or supersede any terms and conditions inconsistent with them, or may be contained in any offer, acceptance or counter offer, made by the concessionaire. **APL's** employees or agents are not authorised to make any representations concerning the licence unless confirmed by **APL** in writing. In entering into the Contract, the concessionaire acknowledges that it does not rely on any such representations, which are not so confirmed, but nothing in this licence affects the liability of either party for fraudulent misrepresentation.
- E** No variation of these terms and conditions is permitted except where expressly agreed by **APL** in writing. The date stated on **APL's** written agreement to such variation shall be conclusive in any dispute as to the date of such variation. No cancellation or postponement by the concessionaire is permitted except where expressly agreed in writing by **APL**. The date stated on **APL's** written agreement of such cancellation or postponement shall be conclusive in any dispute as to the date of such variation. The concessionaire will in the event of the agreed cancellation or postponement by the concessionaire, indemnify **APL** fully against all and any expense incurred up to the time of such cancellation or postponement together with, by way of liquidated damages a proportion of the contract price which will be paid by the concessionaire to **APL** forthwith in accordance with the following scale related to the date of commencement of the concessionaire occupation of the site.
- AMENDMENT CHARGES**
(i) Amendment accepted less than 14 days before the commencement date 100%.
(ii) Amendment accepted between 14 and 28 days before commencement date 50%.
(iii) Amendment accepted later than 28 days before the commencement date 25%
- CANCELLATION CHARGES**
(i) Cancellation accepted less than 28 days before commencement date 100% of the price.
(ii) Cancellation accepted 28 or more days before commencement date 50% of the price.
- Postponement and cancellation charges as detailed above only apply to **APL** exclusive retailer venues. **APL** reserve the right to pass on charges incurred for non-exclusive sites where cancellation / postponement policies differ from **APL's**. Any variation will be detailed in Special Conditions.
- F** The contract price quoted is exclusive of VAT, which the concessionaire shall be additionally liable to pay to **APL**.
- G** **APL** shall not be liable to the concessionaire by any reason or by any representation (unless fraudulent) or any implied warranty, conditions or other terms or any duty at common law, or under the express terms of this contract for any indirect special or consequent loss and damage (whether loss of profit, loss of opportunity or otherwise), costs expenses or other claims for compensation whatsoever (whether caused by negligence of **APL** its employees agents or otherwise) which arise out of or in connection with the grant of this licence to occupy a site by **APL**. The entire liability of **APL** under or in connection with this contract as damages or otherwise shall not exceed 115% of the contract price. **APL** shall not be liable any loss whatsoever or howsoever arising by its inability or failure to make space available on the due date. The concessionaire must notify **APL** forthwith in case of any difficulty experienced when attending the space, which has been licensed. Nothing in this licence limits **APL's** liability in respect of death or personal injury arising from **APL's** negligence or for fraud. All warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- H** (a) **APL** shall not be liable in any way or be deemed to be in breach of the Contract for its failure to inability to make space available arising from conditions outside its control.
(b) Non-exhaustive illustrations of such circumstances would be act of God, war, riot, explosion, abnormal weather conditions, fire, flood, strikes, lockout, government action or regulation (UK) or otherwise, accidents and withdrawal of the Site by the Retailer.
(c) Should **APL** be prevented from making space available in the above circumstances it shall give the concessionaire written notice of the fact as soon as is reasonable practical to do so.
(d) If this contract and the licence granted hereunder is cancelled in this way **APL** will refund any payment which the concessionaire has already made on account of the price (subject to deduction of any amount **APL** may be entitled to claim from the concessionaire). **APL** will not be liable to compensate the concessionaire for any further loss or damage caused by the failure to make space available.
- I** (a) All sums become due and payable under these terms and conditions no later than 14 days before the commencement date, unless otherwise provided for in the Special Conditions.
(b) Time for payment shall be of the essence, if payment is not made on the due date **APL** shall be under no obligation to make the site available to the concessionaire and may cancel the licence granted under this contract accordingly save that otherwise terms and conditions shall be in full force and effect and the concessionaire shall remain liable to pay the contract price.
(c) **APL** shall be entitled to offset amounts due from amounts from the concessionaire under any other contract between **APL** and the concessionaire and **APL** reserves the right to charge 8% per annum on all overdue accounts such interest being deemed to accrue on a day basis from the due date for payment under clause 1(a). The parties agree that this constitutes a substantial remedy in terms of the Late Payment of Commercial Debts (Interest) Act 1998.
(d) The concessionaire shall have no right of setoff statutory or otherwise.
(e) If the concessionaire (being the company) has a petition presented for its winding up or passes resolution for voluntary winding up otherwise than for purposes of a bone fide amalgamation or reconstruction or compounds with its creditors or have a receiver appointed of all or any part of any assets or being an individual becomes bankrupt or insolvent or enters into any agreement with his creditors or commits a material or serious breach of this agreement (and in the case of such a breach being remedied, fails to remedy it within seven days of receiving notice to do so) he will be deemed to have repudiated the contract.
(f) **APL** reserve the right at any time at their discretion to demand a deposit/ full payment before the 14 days referred to in clause 1(a) or security for payment before continuing with any order. Categories for which a deposit may be required include but are not limited to where the licence is for a period in excess of three weeks, or where remedial works may be required as a result of the licence. Deposits (or the balance thereof) shall be returned following termination or expiry subject to the terms of this licence and rights of set off. Any person signing an order for or on behalf of the concessionaire warrants to **APL** that he or she is fully authorised and empowered to place such an order.
- J** The concessionaire indemnifies **APL** against all any actions, claims for costs and demands of any nature however arising out of the concessionaires site occupation pursuant to these terms and conditions. Notwithstanding the generality of the foregoing **APL** reserve the right to require a security deposit (in addition to any deposit mentioned in clause 1(f) above) at any time at their discretion which shall be distributed if at all by **APL** in meeting any action, claims, costs and demands of any nature howsoever arising out of the concessionaire's occupation by the site. Any sum not so distributed shall be returned to the concessionaire six weeks after termination of the period of occupation.
- K** During the site occupation the concessionaire, concessionaire's employees, agent and servants will obey the following regulations for behaviour performance on the site and for payment for additional space occupation.
- L** (a) Display equipment and materials may not be delivered or erected until the start of the business on the first day of the booking on the order and should be removed by the close of business on the last day of booking. Failure to remove any equipment and materials of any description belonging to the concessionaire incurs a liability to pay an additional charge of a minimum one weeks booking fee for any period of delay up to one week and thereafter on a weekly basis for any subsequent week or part week when the property is not removed. Notwithstanding the prior provisions of this sub-clause L(a), **APL** reserves the right to remove and discard any property of the concessionaire left at the site following the expiry of this sub-licence.
(b) The size and position of the Site and any exhibition contained therein is at the retailers' site managers discretion.
(c) The concessionaire must maintain the space occupied and the surrounding area in a clean safe condition and ensure that the area is left as it is found at the end of the contract.
(d) The concessionaire must ensure that the Site is manned by not more than two people. The site must be manned throughout the retailers trading hours. The concessionaires staff must restrict themselves to the Site whilst conducting business.
(e) Unless otherwise stated in Special Conditions the concessionaire on Site shall sell no goods or services, nor shall stock (other than samples) be stored on site, and the Site may be used for exhibition only. The concessionaire shall not do anything which could damage the name, reputation or brand of the retailer or which would place the retailer in breach of any lease.
(f) All personnel involved with the exhibition must be introduced to the retailer or site manager on first entering the site and the concessionaire must ensure that both statutory employment regulations and the Retailers or Hosts own in-house rules are adhered to during the course of the licence.
(g) The retailer or other host site owner will at all times have total discretion over the exhibition and may require specific items be removed from site, terminate the booking of the concessionaire from the site at any time without prior notice or reason. (i) **APL** shall endeavour to provide not less than one day's notice for bookings of more than one week and less than one month (or where more than one week and less than one month of the licence period remains) or where the concessionaire needs to carry out de-installation of equipment or remedial works; and (ii) seven days' notice for licence periods for which there is more than one month remaining.) In such circumstances this contract and the licence granted hereunder, shall also terminate forthwith without any liability on the part of **APL** or the retailer and a pro rata refund will be issued in respect of any unexpired time of period of occupation. No refund will be issued if the concessionaire's occupation is terminated for such a breach of any of these conditions or any requirement made by the retailer or host site owner is not adhered to when required to do so.
(h) Upon termination or expiry of the licence, the concessionaire shall leave the Site in the condition in which it was provided having carried out all remedial works necessary or as otherwise required by **APL** or the Retailer.
(i) Where the concessionaire fails to vacate the Site in accordance with this licence, **APL** and/or the Retailer shall be entitled to remove the concessionaire's items left on Site without notice to the concessionaire. Items removed may, at the entire discretion of **APL** or the Retailer and without any liability of either, be stored, sold or destroyed.
(j) **APL** may (having regard to the period of notice of termination and any requirement on the concessionaire to remove equipment, de-install RMUs or carry out remedial works) but shall, be under no obligation to, notify the concessionaire of its intention to remove, sell or destroy items left on Site if the items are not removed by the concessionaire by specific date and to have remedial works carried out at the liability of the concessionaire if not carried out by the required date.
(k) **APL** shall be entitled to apply liquidated damages for any time beyond expiry or termination of the licence for which the Site remains unavailable for any reason due to the concessionaire's default including, remaining on Site, leaving items on Site, failing to carry out remedial works to put the Site back into condition. Liquidated damages for this purpose shall be the daily rate plus a further 100% of the daily rate applied under the licence.
(l) The concessionaire shall be liable to and shall indemnify in full on demand, both **APL** and the Retailer for the costs of carrying out remedial works, removal, storage or destruction of items. **APL** shall be entitled to retain and offset any monies arising from a sale of items pursuant to this condition for time and costs suffered or incurred.
- M** If any of the provisions if this contract are found by a Court to be void or other complaint authority to be void or unenforceable, it shall be deemed to be deleted from the contract and the remaining provisions shall continue to apply. The concessionaire and **APL** shall negotiate in good faith to agree the terms of mutually satisfactory provisions to be substituted for the provision found to be void and unenforceable.
- N** This contract shall be governed and constitute in accordance with English law and all disputes arising in conjunction with the contract shall be submitted to the jurisdiction of the English courts. As stated in clause C of these terms and conditions all contracts are made at Southport and a course of action for any breach is agreed to arise at Southport aforesaid.
- O** The Concessionaire confirms that it holds Public Liability Insurance to a value of no less than £5,000,000 with a reputable insurance company and that it shall maintain such insurance for the duration of this sub-licence. The Concessionaire shall produce a copy of its Public Liability Insurance policy to **APL** prior to occupying any Site pursuant hereto.
- P** The parties confirm that the rights granted by this licence do not create a lease or tenancy covered by the Landlord and Tenant Act 1954 and there is no agreement for lease.
- Q** Any personal data (as defined in applicable data protection law) that a party receives from the other party relating to that party's officers employees and agents for the purpose of managing and processing the business contemplated by this Contract, shall be provided in compliance with the applicable data protection law and (i) used by the recipient only insofar as strictly necessary for carrying out the purpose; and (ii) retained by the recipient only to the extent strictly required for carrying out the purpose, and in each instance in accordance with the Data Protection Law. Notwithstanding the foregoing, each party will provide and will hold and process personal data of employees and officers (such as work email address and telephone numbers) of the other party in the performance of this Agreement on the basis of legitimate expectation. Each party shall in respect of such personal data comply with all applicable data protection law or regulation.
- R** The Retailer is entitled to enforce any of the terms of this Sub-licence as against **APL** and the Concessionaire as if it were a party hereto.
- S** The Concessionaire shall not, without prior consent of the manager of the Retailer's store manager, be entitled to use any facilities reserved for the use of the Retailer's staff, and under no circumstances shall the Concessionaire or any of its employees or representatives be entitled by virtue of this Sub-licence to any other benefits normally granted to the Retailer's staff by virtue of their employment in the store of which the Site forms part.
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- Data Protection:** I confirm that Access Point are able to store information about our company and employees and that they/we are happy to be contacted by them in the future via phone or email. TICK HERE
- I HAVE READ AND ACCEPT THE TERMS AND CONDITIONS:**
- SIGNED** **PRINT NAME**