

Flow magazine – Terms and Conditions of Sale

Flow magazine is a titled owned by the British Pump Manufacturers Association and published under licence through a partnership between G and C Media Ltd and Touchwave Media Ltd– collectively referred to as ‘The Publishers’

1. Definitions & Interpretation

1.1 In these terms and conditions:

1.1.1 “BPMA” means the British Pump Manufacturers’ Association a company registered in England and Wales Number: 6936735. Registered Office: The NMC, 47 Birmingham Road, West Bromwich. B70 6PY

1.1.2 “GCM” means G and C Media Ltd a company registered in England and Wales Number: 09242891. Registered Office: 7 Brampton Bank, Five Oak Green Rd, Tonbridge. TN11 0PN

1.1.3 “TWM” means Touchwave Media Ltd a company registered in England and Wales Number: 07250009. Registered Office: 7 Clarks Yard, Flimwell, Wadhurst, East Sussex. TN5 7NG

1.1.4 “Advertisement” means any kind of promotional or advertising material (including, but not limited to, advertorial content, display advertisements, classified entries and any other paid for promotions) that is, as the case may be:

1.1.4.1 to be printed in a print publication and/or

1.1.4.2 to be published or otherwise displayed by electronic means (including, but not limited to, an online version of the publication) via or as part of or in connection with any online publication.

1.1.5 “Advertisement Confirmation” means TWM’s (as nominated sales agent) written confirmation of the Buyer’s order.

1.1.6 “The Advertiser” means any person who promotes products or services to the general public or a section of the public, or person/business whether such person is the Buyer or not.

1.1.7 “Advertiser Dependencies” means the Copy Deadline, together with any other obligations of the Buyer which the publishers may specify in connection with the proposed publication of the Advertisement (whether included in the advertisement confirmation, the rate card, the booking form or otherwise) including, but not limited to, the delivery format and/or file configuration in

which any copy for the advertisement (whether for a print publication or an online publication) is to be supplied to the publishers.

- 1.1.8 “The Buyer” means the person placing the order with the publishers for the publication of the advertisement (including, but not limited to, the Advertiser’s advertising agency or media buyer).
- 1.1.9 “Copy Deadline” means, where applicable, the latest date (as shown on the Advertisement Confirmation) by which the Buyer is obliged to give The Publishers full instructions and copy for carrying out the Buyer’s order in accordance with and subject to these terms and conditions.
- 1.1.10 “Online publication” means any website operated or controlled by BPMA and/or The Publishers or other electronic medium (including, but not limited to, e-mail communications, social media posts, and alerts), whether connected with or related to the title of a print publication or otherwise.
- 1.1.11 “The Publication” means any newspaper, magazine, insert or outsert (and including any supplement for which no charge is made to its recipient and which is published whether regularly or occasionally as part of or in association with such newspaper or magazine) published by The Publishers.
- 1.1.12 “The Rate Card” means the rate card from time to time in force which is used by The Publishers and as such may include (amongst other things) the publishers scale of advertisement rates and also technical specifications relating to the standard and quality of reproduction of any advertisement including its setting, style, delivery format, file configuration and size and wording; and
- 1.1.13 “Working Days” means 9am to 5pm any day Monday to Friday inclusive other than Christmas Day, Good Friday, bank and other public holidays.
- 1.2 Where the context so admits, words importing the one gender shall include all other genders and words importing the singular shall include the plural and vice versa. A reference to a statute, statutory provision or other legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment.

2 Application of these Terms and Conditions

- 2.1 All Advertisements accepted for publication by The Publishers are accepted subject to these terms and conditions which shall apply to the exclusion of all other terms and conditions (including any which the Buyer purports to apply

under any purchase order, confirmation of order, specification or other document). Any variation to these terms and conditions and any representations about the Advertisement shall have no effect unless expressly agreed in writing and signed by an authorised representative of The Publishers. The Advertisement Confirmation shall form part of these terms and conditions.

2.2 Unless circumstances specifically dictate otherwise in connection with the publication of an Advertisement in an Online Publication, no order placed by the Buyer shall be deemed accepted by The Publishers until the Advertisement Confirmation is issued.

3 The Buyer's Obligations

3.1 The Buyer hereby warrants, represents and undertakes to The Publishers that:

- 3.1.1 in relation to any and all Advertisements the Buyer contracts with The Publishers as principal notwithstanding that the Buyer may be acting directly or indirectly for the Advertiser or in any other representative capacity;
- 3.1.2 should the Buyer change its name, trading style, identity, address, or should any other details disclosed by the Buyer to The Publishers change, the Buyer must give written notice to The Publishers within 5 Working Days of such change(s);
- 3.1.3 any and all other Advertiser Dependencies will be met and, unless otherwise agreed in writing by The Publishers, all copy for any Advertisements will be delivered to The Publishers in an approved digital format and/or file configuration and, in the case of an Advertisement to be published in a Print Publication, delivered at least 14 Working Days prior to the Final Copy Deadline and within 5 working days of the primary notified copy deadline in the copy/artwork request email/communications;
- 3.1.4 the publication of the Advertisement by The Publishers (either in the Print Publication or the Online Publication or both, as the case may be) in the form originally submitted by the Buyer (or as amended pursuant to Condition 4 below) will not breach any contract with a third party or infringe any copyright, trade mark or other proprietary right of any third party or otherwise be unlawful or render The Publishers liable to any proceedings, claims, demands, costs or expenses or any other loss whatsoever;
- 3.1.5 in the case of any Advertisement submitted for publication by the Buyer which contains the name or pictorial representation, whether photographic or

otherwise, of any living person or any part of the anatomy of any living person or any material by which any living person may be identified, the Buyer or the Advertiser has obtained the authority of that living person to make use of his or her name, identity, image, representation and/or copy;

- 3.1.6 in relation to any financial promotion (as defined under the UK Financial Services and Markets Act 2000), the Advertiser is, or its content have been approved by, an authorised person within the meaning of the Act or the Advertisement is otherwise permitted under the Act, under the UK Financial Promotion Order 2001 or under any other legislation subordinate to the Act;
- 3.1.7 the Advertisement complies with the requirements of all relevant legislation (including subordinate legislation, the rules of statutorily recognised regulatory authorities and the law of the European Economic Community) and applicable laws for the time being in force or applicable to the United Kingdom;
- 3.1.8 all advertising copy submitted to The Publishers is legal, decent, honest and truthful, and complies with the British Code of Advertising, Sales Promotion and Direct Marketing and all other relevant codes under the general supervision of the Advertising Standards Authority;
- 3.1.9 all instructions, artwork or other material submitted to The Publishers by electronic means shall not contain software viruses or any other computer code, files or programs designed to interrupt, damage, destroy or limit the functionality of any computer software or hardware or telecommunications equipment, and shall not be corrupted;
- 3.1.10 any information supplied in connection with the Advertisement is accurate, complete and true;
- 3.1.11 where the Buyer is the Advertiser's agent, the Buyer is authorised by the Advertiser to place the Advertisement with The Publishers and the Buyer will indemnify The Publishers against any claim made by the Advertiser against The Publishers arising from publication of the same; and
- 3.1.12 the Buyer has retained sufficient quantity and quality of any artwork, film or other materials and copy relating to the Advertisement as The Publishers shall not be liable for the loss of or damage to any of these items submitted to The Publishers.

4 Advertisements: Copy, Alterations, Accuracy, Publication, etc.

- 4.1 Notwithstanding Condition 3 above The Publishers shall be entitled at any time to require the Buyer to amend any artwork, materials and copy for and relating to any Advertisement, or refuse (without notice) to publish any Advertisement for the purpose of:
- 4.1.1 complying with any legal or moral obligations placed on The Publishers or the Buyer or the Advertiser; or
 - 4.1.2 avoiding the infringement of (i) the rights of any third party or (ii) the British Code of Advertising, Sales Promotion and Direct Marketing and all other relevant codes under the general supervision of the Advertising Standards Authority or (iii) any other applicable law; or
 - 4.1.3 meeting to The Publishers' reasonable satisfaction (i) the production and quality specifications stipulated on the Rate Card or (ii) any other Advertiser Dependencies.
- 4.2 The Publishers reserve the right at its discretion and without notice to the Buyer:
- 4.2.1 to decline to publish, or omit, alter, suspend or change the position of any Advertisement otherwise accepted for insertion, or publication. However, The Publishers will endeavour to comply with the reasonable and practicable wishes of the Buyer although The Publishers do not warrant the date of publication or insertion, the wording, or the quality of the reproduction of the Advertisement; and
 - 4.2.2 to destroy all artwork, film, copy or other materials submitted by the Buyer and which have been in The Publishers' possession for more than six (6) months from the date of their last use by The Publishers, unless specific written instructions have been received from the Buyer to the contrary.
- 4.3 All copyright and all other rights of a similar nature that are created or exist in material originated by The Publishers in connection with the publication of the Advertisement remains vested in The Publishers.
- 4.4 Advertisements: Online Publications
- 4.4.1 The Buyer shall submit copy for the Advertisement at least 72 hours prior to the intended go-live date. If the Buyer submits its copy late then The Publishers reserve the right to publish the Advertisement at a time of their choosing.
 - 4.4.2 If the Buyer is supplying creative content in the form of an Advertisement that links to another website the Buyer must inform The Publishers in writing at least 21 Working Days prior to the intended go-live/publication date.

- 4.4.3 If an Advertisement links to another website the Buyer is responsible for maintaining the link and for the content of the linked-to website. The Publishers may remove any Advertisement which contains content or links to a website which, in The Publishers' discretion, is (or is likely to be) defamatory or objectionable or otherwise likely to bring The Publishers into disrepute. The Buyer will indemnify The Publishers from and against any claims or liability suffered or incurred by The Publishers arising in any connection from links contained in an Advertisement.
- 4.4.4 if the Publishers receive complaints about the content of an Advertisement it may, at its discretion, remove the Advertisement from display without reference or liability to the Buyer or Advertiser.
- 4.4.5 the provisions set out in this condition 4.4 apply in addition (save where the context expressly permits) and without prejudice to all other provisions set out in these terms and conditions.

5 Advertisements: Responsibility and Liability

- 5.1 The Buyer shall indemnify and keep indemnified The Publishers against all proceedings, claims, demands, damages, costs, expenses or any other loss whatsoever arising directly or reasonably foreseeable as a result of (i) the publication of the Advertisement or (ii) any breach of the Buyer's obligations under these terms and conditions or implied by law.
- 5.2 With regard to the actual or intended insertion of an Advertisement in any Print or Online Publication The Publishers shall not be responsible to the Buyer or liable for:
 - 5.2.1 checking the correctness of the Advertisement in the form it is received from the Buyer;
 - 5.2.2 any error in the Advertisement in the form it is received from the Buyer;
 - 5.2.3 the wording, representation, placement or quality of colour or mono reproduction of the Advertisement;
 - 5.2.4 the actual positioning or prominence of the Advertisement in the Print and/or Online Publication (as the case may be);
 - 5.2.5 the repetition of any error in an Advertisement ordered for more than one insertion;
 - 5.2.6 the distribution of the Print or Online Publication in a specific geographical area;

- 5.2.7 the failure, corruption or malfunction of any system of electronic publication, whether by means of electronic storage, display or retrieval equipment or otherwise;
 - 5.2.8 any order given by the Buyer in the nature of a “stop order” or cancellation or transfer of the publication of the Advertisement unless it is given to The Publishers in writing, in the case of an Advertisement to be published in a Print Publication, at least 28 Working Days before the Copy Deadline and, in the case of an Advertisement to be published in an Online Publication, at least 72 hours prior to the intended go-live date;
 - 5.2.9 any loss whatsoever caused by delay or failure by The Publishers to issue the Print or Online Publication on the due date (or such other date of release, display or publication, as the case may be), or The Publishers’ decision to suspend the Print and/or Online publication or cease the Print or Online Publication altogether;
 - 5.2.10 the payment of any damages or other compensation for breach of contract because of The Publishers’ failure to perform any of its obligations under these terms and conditions if such failure is caused by anything beyond The Publishers.’ reasonable control (that is to say as a result of force majeure) including acts or threats of terrorism, strikes, lock-outs or other industrial actions or trade disputes, pandemic, epidemic or other widespread illness whether involving The Publishers employees or those of any third party;
 - 5.2.11 any loss whatsoever caused as a consequence of any instructions, artwork or any other material relating to the Advertisement being submitted by the Buyer in electronic form that is in breach of the warranty at Condition 3(h) above;
 - 5.2.12 any matter of complaint, claim or query (whether in relation to the Advertisement, in which case Condition 5.3 shall apply, or The Publishers’ invoice related thereto) unless raised with The Publishers in writing within 5 Working Days following the publication of the Advertisement or at the date on which it is claimed the Advertisement was intended to appear, or the receipt by the Buyer of the invoice giving rise to it; and
 - 5.2.13 any failure of the Advertisement to meet or generate any target response levels or page impressions.
- 5.3 Subject to Condition 5.2, if an Advertisement contains an error caused by The Publishers and this detracts materially from the Advertisement then provided the

Buyer gives written notice to The Publishers of the error in the Advertisement (as the case may be):

- 5.3.1 within 5 Working Days of its publication or display in the case of a single order; or
- 5.3.2 before either the Copy Deadline for its next insertion or subsequent go live date (as the case may be) in the case of a series order.

The Publishers will at its discretion either:

- 5.3.3 give the Buyer credit for the cost of the Advertisement containing the error; or
 - 5.3.4 publish the Advertisement for a second time without charge to the Buyer and to that extent such credit or re-publication (as the case may be) shall be The Publishers' maximum liability to the Buyer. Such matter dealt with under this Condition 5.3 shall not affect the liability of the Buyer for payment by the due date of The Publishers charges for the Advertisement and all other Advertisements. Except to the extent specified in Condition 5.3.
- 5.4 The Publishers shall not be liable for any loss or damage suffered by the Buyer (or the Advertiser) as a result of any total or partial failure of publication, distribution or availability of any Print or Online Publication in which any Advertisement is scheduled to be included, or for any error, misprint or omission in the printing of any Advertisement.
- 5.5 The total liability of The Publishers to the Buyer for any act or omission of The Publishers, its employees or agents relating to any Advertisement shall not exceed the amount of the full refund of any price paid to The Publishers for the Advertisement or the cost of a reasonably comparable further or corrective Advertisement. Without limiting the foregoing, The Publishers shall not be liable for any (i) loss of profits, goodwill or business or (ii) indirect or consequential loss.

6 **Payment Terms**

- 6.1 Payment for any Advertisement or any other goods or services is due 30 days after the date of TWMs invoice and the Buyer will ensure that payment is received by TWM no later than this due date. The Buyer must submit all information requested by The Publishers (including, but not limited to, any relevant purchase order number) and in accordance with The Publishers instructions and deadlines in order for TWM to generate its invoices, and failure

to supply such information in accordance with any such request or instructions shall not excuse late or non-payment.

6.2 All the rates and charges payable under or with reference to these terms and conditions are subject to and exclusive of Value Added Tax, which shall be charged in addition at the rate from time to time in force.

6.3 If the Buyer:

fails to pay The Publishers' invoice in accordance with the Payment Schedule in Condition 6.1 above; or

is in breach of any obligation under these terms and conditions,

The Publishers shall be entitled to terminate its contract with the Buyer immediately (without prejudice to any other right or remedy available to The Publishers whether under these terms and conditions or otherwise) and, without prejudice to The Publishers' right to terminate its contract with the Buyer in such circumstances, the outstanding balance owed by the Buyer shall become due and payable immediately.

6.4 Without prejudice to Condition 6.3, The Publishers shall be entitled to:

6.4.1 charge interest on any outstanding balance owed to The Publishers at the rate of 4% above the base rate of Barclays Bank Plc from the date that the invoice became due for payment until the date it is paid in full (whether before or after Judgment);

6.4.2 charge an administration fee of £25 if any cheque drawn in its favour by the Buyer in purported satisfaction of any unpaid invoice is dishonoured on presentation; and

6.4.3 instruct a debt collection agency (apart from solicitors) to recover any sum due and in that case all charges incurred by The Publishers as a result of such instruction shall be payable by the Buyer in any event upon demand.

6.5 The Publishers reserves the right at its discretion and without notice to the Buyer:

6.5.1 to charge the Buyer for any extra production and colour processing costs because of any act or omission by the Buyer to supply artwork, film, copy or other materials of sufficient quality or otherwise in accordance with the Advertiser Dependencies; and

6.5.2 to change any matters shown on the Rate Card, including in particular (but not limited to), its scale of advertisement rates at any time.

6.6 Any currency conversions necessary to prepare an invoice shall be calculated at the rate quoted by Barclays Bank Plc at the date of invoice.

7 Cancellation & Termination

7.1 The Publishers shall not be bound by any request from the Buyer to stop, cancel or suspend an Advertisement unless such request is in writing and confirmed in writing by The Publishers.

7.2 Without prejudice to Condition 7.1, the following costs remain due on cancellation, and the Buyer acknowledges that these charges represent a genuine pre-estimate of The Publishers losses.

Display advertising

7.2.1 Notice of cancellation received 29 –42 days or more before the first final copy deadline, 25% of total booking fee due.

7.2.2 Notice of cancellation received 15-28 days before the first final copy deadline, 50% of total booking fee due

7.2.3 Notice of cancellation received 0-14 days before the first final copy deadline, 100% of total booking fee due

Digital advertising

7.2.4 Notice of cancellation received 28 days or more before first display, 25% of total booking fee due

7.2.5 Notice of cancellation received 8-27 days before first display, 50% of total booking fee due

7.2.6 Notice of cancellation received 0-7 days before first display, 100% of total booking fee due

7.3 If the rates agreed between the Buyer and The Publishers are subject to a discount in respect of multiple bookings being made, and the Buyer cancels the booking part way through, then the buyer acknowledges that The Publishers withhold the right to charge the buyer for the difference between the published rate for the actual number of insertions carried and the rate originally agreed.

7.4 If the Buyer has paid sums for Advertisements in advance and is entitled to a refund, The Publishers shall use its reasonable endeavours to pay such refund to the Buyer within 30 Working Days of receipt of the written notice of cancellation.

7.5 Should the Buyer, part way through wish to stop or cancel an Advertisement that is being displayed in an Online Publication for an agreed period of time in excess of 14 days then the Buyer must give written notice to The Publishers of

its request to stop or cancel the Advertisement and all charges connected with the display of the Advertisement shall, unless otherwise expressly agreed by The Publishers in writing, be non-refundable.

7.6 The Publishers shall be entitled (without prejudice to any other remedy available to it) to treat this contract as repudiated if the Buyer or the Advertiser;

7.6.1 being an individual, dies or makes voluntary arrangement with his creditors or his estate becomes subject to an administration order or he becomes bankrupt;

7.6.2 being a company becomes insolvent, has a receiver appointed to manage its assets or it enters into liquidation or commences to be wound up (other than for the purpose of amalgamation or reconstruction);

7.6.3 allows an encumbrancer to take possession of any of its property or assets; or

7.6.4 is unable to pay its debts as they fall due or ceases or threatens to cease to carry on business.

8 General

8.1 Governing Law. These terms and conditions (and The Publishers' contract with the Buyer) shall be governed by and construed according to English Law and the parties submit to the exclusive jurisdiction of the English courts.

8.2 Severance. If any provision of these terms and conditions is or becomes invalid, illegal or void, that shall not affect the validity and legality of the other provisions.

8.3 Waiver. No failure or delay by The Publishers to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

8.4 Third Parties. None of the provisions of these terms and conditions are intended to confer a benefit on or be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise