

# **DNG MEDIA (Annandale Observer Limited)**

## **CONDITIONS OF ACCEPTANCE OF ADVERTISING**

### **1 INTERPRETATION**

1.1 In these Conditions unless the context requires otherwise:

“Advert”	means any notice, advertisement or announcement to be published in a Title by the Company whether in textual, graphic form or a combination of text and graphic;
“the Advertiser”	means the person(s), firm or company who wishes to advertise in the Titles;
“the Company”	means Annandale Observer Limited (trading as DNG Media and Dumfriesshire Newspaper Group) of 96 High Street, Annan, being the publisher of the Titles;
“Contract”	means any contract between the Company and the Advertiser for the placing of an Advert in one or more of the Titles;
“Titles”	means the Annandale Herald, Annandale Observer, Dumfries Courier, Moffat News, <a href="http://www.dngonline.co.uk">www.dngonline.co.uk</a> , <a href="http://www.annandaleobserver.co.uk">www.annandaleobserver.co.uk</a> , <a href="http://www.dumfriescourier.co.uk">www.dumfriescourier.co.uk</a> , <a href="http://www.annandaleherald.co.uk">www.annandaleherald.co.uk</a> , <a href="http://www.moffatnews.co.uk">www.moffatnews.co.uk</a> , and any other periodical publication, information service, website or newspaper published from time to time by the Company in whatever form whether physical or electronic.

1.2 In these Conditions (i) references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced; (ii) references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires; and (iii) headings will not affect the construction of these Conditions.

### **2 TERMS AND CONDITIONS**

- 2.1 Subject to any variation under Condition 2.3, the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Advertiser purports to apply under any submission, purchaser order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Advertiser’s submission, purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Company’s acceptances of Advert and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a duly authorised representative of the Company. The Company reserves the right to increase the price in the event of the Contract departing from these Conditions at the request of the Advertiser.
- 2.4 Each submission of an Advert for publication shall be deemed to be an offer by the Advertiser to the Company to submit an Advert subject to these Conditions. The Company reserves the right to refuse to publish any Advert in its sole discretion.

### **3 PRICES AND PAYMENT**

- 3.1 Unless otherwise agreed by the Company, the price of each Advert shall be the price set out in the Company's then current rate card. The Company reserves the right to alter its rate card from time to time and without prior notice.
- 3.2 All prices shall be exclusive of any Value Added Tax which the Advertiser shall pay in addition.
- 3.3 All prices for Adverts shall be inclusive of a 0.1% Advertising Standards Board of Finance surcharge.
- 3.4 All advertisements must be prepaid unless otherwise determined by the Company. No payment to the Company shall be deemed to have been received until the Company is in cleared funds or has received a bankers' draft in terms satisfactory to the Company. The Company reserves the right to make an additional charge to any Advertiser who has not prepaid for an Advert or who does not have a credit account with the Company.
- 3.5 Where the Company offers a group discount in respect of a series of Adverts, it reserves the right to withdraw that discount and charge the full price for all Adverts where:-
  - (a) the Advertiser requires a change to be made to any Advert during publication of the series of which it forms part; or
  - (b) the Advertiser decides to cancel the Adverts before the full series has been published.

### **4 FORM OF ADVERTS**

- 4.1 All Adverts must conform to the Company's standard style, form and format (available on request). The Company reserves the right to alter any Advert to so conform, without any compensation being payable.
- 4.2 The Advertiser must ensure that all Adverts comply with the British Code of Advertising Practice and similar codes under the supervision of the Advertising Standards Authority (see [www.asa.org.uk](http://www.asa.org.uk)). Also the Advertiser must ensure that copy (a) does not contravene the provisions of any Act of Parliament, Statutory Instrument of Order in Council, (b) is not illegal or defamatory, and (c) does not infringe any copyright.
- 4.3 The copyright in any artwork, graphic, text or other copy comprising part of an Advert which the Company or its employees have originated, contributed to or reworked shall belong to the Company.
- 4.4 The Company shall be entitled to record, reproduce, publish, distribute, broadcast or webcast any Advert accepted for publication and make any such Advert available in any Title.
- 4.5 Any artwork, graphic, text or other material supplied by an Advertiser for any Advert shall following preparation of the Advert be destroyed or, if the Advertiser so requests, returned to the Advertiser at his risk and expense.

### **5 CANCELLATION AND SUSPENSION OF ADVERTS**

- 5.1 The Company will accept cancellation of an Advert only up until a reasonable time before publication dictated by the practicalities of printing and publication. The Company reserves the right to charge the Advertiser for the price of the Advert in the event of a cancellation.

- 5.2 The cancellation of any series of Adverts must be made by notice in writing addressed to the Sales Director of the Company.
- 5.3 The Company reserves the right in its sole discretion to suspend or cancel publication of any Advert without notice or obligation to give a reason. The Company may charge the Advertiser for the price of the Advert and for any loss of income caused by a suspension arising from a breach by the Advertiser of any statutory provision or code of conduct.

## 6 LIABILITY OF THE COMPANY

- 6.1 The Company shall not be liable in any circumstances for any loss, injury or damage (including but not limited to those of an indirect or consequential nature, economic loss, pecuniary loss, loss of turnover, loss of revenue, loss of profit or depletion of goodwill) suffered by an Advertiser as a result of:-
- 6.1.1 the cancellation of an Advert by the Advertiser;
  - 6.1.2 the suspension of an Advert by the Company due to its breach of any statutory provision or the British Code of Advertising Practice;
  - 6.1.3 any error or inaccuracy in an Advert which has before publication been proofed and accepted by the Advertiser;
  - 6.1.4 any total or partial failure (however caused) of publication, dissemination or distribution of any Title in which an Advert is scheduled to appear;
  - 6.1.5 service interruption due to failures in the world wide web, the transmission of viruses or other malicious computer code through the internet, the acts or omissions of providers of telecommunications services or faults in or failures of their networks and equipment, or disruption caused by system failure, maintenance or repair (whether planned or not);
  - 6.1.6 any error or inaccuracy in an Advert which forms part of a series and which is published subsequent to the first Advert in that series and in respect of which the Advertiser has failed to bring an error or inaccuracy to the Company's attention in accordance with Clause 6.1.10;
  - 6.1.7 loss of or damage to any artwork, graphic, copy, drawings or other material supplied by an Advertiser for an Advert;
  - 6.1.8 any delay, non-delivery or mis-delivery of any response to an Advert directed through the Company's Box Number service or websites;
  - 6.1.9 any failure to print (or to publish online) an Advert in any particular issue of a Title;
  - 6.1.10 any error, mis-print or omission from an Advert which is not brought to the Company's attention by notice within 21 days from the date of publication; or
  - 6.1.11 any difference between actual distribution figures for any edition of a Title in which an Advert appears and the typical distribution figures audited for and issued by the Company in line with the Verified Industry Distribution Guidelines.
- 6.2 Subject to Clause 6.1, in the event of any error, mis-print or omission in an Advert or part of an Advert appearing in any title, the Company will either re-insert the Advert or the relevant part of the Advert as the case may be, or make a reasonable refund or adjustment to cost. No re-insertion, refund or adjustment will be made where the error,

mis-print or omission does not materially detract from the Advert. In no circumstances shall the total liability of the Company for any error, mis-print or omission exceed the lesser of (a) the amount of a full refund of the price paid to the Company for the Advert concerned and (b) the cost of a further or corrective Advert of a type and standard reasonably comparable to the Advert concerned.

## **7 WARRANTIES AND INDEMNITY BY ADVERTISER**

7.1 The Advertiser warrants to the Company in respect of each Advert that the Advert:-

7.1.1 does not contravene any statutory provision or other rule of law;

7.1.2 is not defamatory of any person;

7.1.3 does not infringe the intellectual property rights (including without limitation copyright) of any third party; and

7.1.4 complies in all respects with the terms of the British Code of Advertising Practice and any other code of practice in the publishing or newspaper industries.

7.2 The Advertiser undertakes fully and promptly to indemnify the Company against any and all loss, injury, damage, costs and expenses incurred by the Company and arising from a breach of the foregoing warranties (including without limitation the whole legal costs and expenses incurred by the Company in respect of any legal action, threatened or raised, arising from the publication or acceptance for publication of any Advert in any Title).

## **8 DUMFRIESSHIRE NEWSPAPER GROUP**

8.1 The Company may fulfil its obligations under any Contract through any subsidiary company, holding company or subsidiary of such holding company from time to time.

## **9 MISCELLANEOUS**

9.1 The Advertiser may not assign or sub-contract its rights under any Contract, nor resell the right to use any advertising space purchased from the Company.

9.2 Any notice under a Contract must be given in writing and delivered by first class prepaid post or by fax to the Company or the last known address of the Advertiser; and will be deemed to be received 2 working days after posting; or (if sent by fax) at the time of sending if sent before 3 p.m. or if sent thereafter, the next working day.

9.3 Failure or delay by the Company in enforcing or partially enforcing any provision of a Contract shall not be construed as a waiver of any of its rights under the Contract.

9.4 If any provision of a Contract is found by any court of competent jurisdiction to be unenforceable in any way, the remaining provisions of the Contract shall continue in full force and effect.

9.5 Each Contract and these Conditions shall be construed in accordance with Scots law and the parties submit to the non-exclusive jurisdiction of the Scottish Courts.