

WEBSITE TERMS AND CONDITIONS

1. DEFINITIONS

In this Contract, the following definitions shall apply:

Client: the person or business named as the Client in any application for OM Membership and anyone authorised to access the OM Membership by that person or business in accordance with clause 4.1;

Client Content: such content uploaded by the Client;

Contract: means these terms and conditions of use as updated from time to time under clause 14;

Customer: anyone who accesses the site to hire a service from a Client.

Customer Contracts: means a contract for the supply of Services between the Client and a Customer;

Intellectual Property Rights: means rights such as copyright, trade marks, domain names, design rights, database rights, patents and all other intellectual property rights of any kind whether or not they are registered or unregistered (anywhere in the world).

Subscription Fee: the monthly subscription fee payable by the Client to OM for the OM Membership;

Term: means the period starting on the day OM receives payment from the Client for subscription to the OM Membership and ending on the date this Contract is terminated pursuant to clause 9;

OM: means Occasion Maker which is the trading name of S.E.A. Developments (U.K) Limited

OM Membership: subscription for membership by a Client in accordance with clause 3;

Website: this website includes the following websites: www.occasionmaker.com and www.occasionmaker.co.uk, and all associated web pages;

Website Materials: any text, graphics, images, audio, software, data compilation, page layout, underlying code and software and any other form of information capable of being stored in a computer that appears on or forms part of the Website

2. ABOUT THESE TERMS

2.1 This Contract details the rights and obligations of OM and the Client in relation to the Client's use of the OM Membership and Website. The Client should read this Contract carefully before subscribing to the OM Membership or accessing the Website.

2.2 By accessing or using the OM Membership or the Website, the Client agrees to be bound by this Contract and the documents referred to in them. If the Client does not agree with or accept any of the terms of this Contract, the Client should stop using the OM Membership and the Website immediately.

2.3 If the Client has any questions about the OM Membership, please contact OM by e-mail only at info@occasionmaker.co.uk (Monday to Friday, 9:30 to 16:00)

- 2.4 A Client's use of the OM Membership means that the Client must also comply with OM's privacy policy and cookie policy where applicable.
- 2.5 The Client acknowledges that in entering into this Contract it is not relying on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract or any document expressly referred to in them.
- 2.6 OM and the Client each agree that neither shall have any claim against the other for innocent or negligent misrepresentation based on any statement in this Contract.

3. SUBSCRIPTION TO THE OM MEMBERSHIP

- 3.1 Subscribing to and accessing the OM Membership, will result in the Subscription Fee becoming payable in accordance with clause 5.3.
- 3.2 You subscribe to the OM Membership by completing your details and clicking 'Pay Now'. Please read and check your details carefully before submitting it. However, if you need to correct any errors you can do so before submitting it to us. In any event, before you subscribe you must check that the hardware and software requirements of your computer or device mean that you can access and use the OM Membership.
- 3.3 When you subscribe to the OM Membership (eg when you click on the 'submit' button), we will acknowledge it by email.
- 3.4 Once you have clicked on the 'Pay Now' button (see clause 3.2), received the acknowledgement email (see clause 3.3) and receipt of payment by OM of the Subscription Fee (see clause 5.2) the Client will be provided with access to the OM Membership.
- 3.5 By subscribing to the OM Membership the Client confirms that he or she has authority to bind any business on whose behalf the Client subscribes to the OM Membership.
- 3.6 This Contract and any document expressly referred to in them constitutes the entire agreement between OM and the Client and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between OM and the Client, whether written or oral, relating to its subject matter.

4. USING THE OM MEMBERSHIP

- 4.1 Access to the OM Membership is personal to the Client and the Client undertakes not to share its password and other account details with anyone except as agreed in writing with OM.
- 4.2 The Client agrees that it is solely responsible for:
 - 4.2.1 all costs and expenses incurred by it in relation to your use of the OM Membership; and
 - 4.2.2 keeping all passwords and other account details confidential and ensuring that any other person given those passwords and account details keeps them confidential.
- 4.3 OM ensures its compliance with the GDPR and sets out its policy with respect to GDPR in its Privacy Policy which can be found on the Website at

occasionmaker.com/privacy-policy The Client is responsible for compliance with the GDPR with respect to all information it provides as part of the OM Membership and the information it displays on the Website. OMOM

- 4.4 OM may prevent or suspend a Client's access to the OM Membership or Client's Content if a Client does not comply with any part of this Contract, any terms or policies to which they refer or any applicable law.
- 4.5 OM may suspend or terminate operation of the OM Membership or amend or remove any of the Client's Content at any time as it sees fit.
- 4.6 As a condition of the Client's use of the OM Membership, the Client agrees:
 - 4.6.1 not to use the OM Membership for any purpose that is unlawful under any applicable law or prohibited by this Contract;
 - 4.6.2 not to use the OM Membership to commit any act of fraud;
 - 4.6.3 not to use the OM Membership to distribute viruses or malware or other similar harmful software code;
 - 4.6.4 not to use the OM Membership for purposes of promoting unsolicited advertising or sending spam;
 - 4.6.5 not to use the OM Membership to simulate communications from OM or another service or entity in order to collect identity information, authentication credentials, or other information ('phishing');
 - 4.6.6 not to use the OM Membership in any manner that disrupts the operation of OM's business or the website or business of any other entity;
 - 4.6.7 not to use the OM Membership in any manner that harms minors;
 - 4.6.8 not to promote any unlawful activity;
 - 4.6.9 not to represent or suggest that we endorse any other business, product or service unless we have separately agreed to do so in writing;
 - 4.6.10 not to use the OM Membership to gain unauthorised access to or use of computers, data, systems, accounts or networks;
 - 4.6.11 not to attempt to circumvent password or user authentication methods;
 - 4.6.12 not adjust to try to circumvent or delete any notices contained on the website (including any intellectual property notices) and in particular in any digital rights or other security technology embedded or contained within the website;
 - 4.6.13 not to make, transmit or store electronic copies of Website Material or another Client's Content protected by copyright without the permission of the owner; and
 - 4.6.14 not to use the OM Membership to submit any content to the Website that contains material that is offensive, obscene, pornographic, false or defamatory
 - 4.6.15 to comply with the provisions relating to our intellectual property rights and software contained in this Contract.

- 4.7 If a Customer decides to engage a Client to provide its services, the Client shall enter into a Customer Contract to provide such services and OM shall not be party to such Customer Contract.
- 4.8 OM shall not be laible for any breach of a Customer Contract by either the Client or the Customer or redeeming any payment from a Customer on behalf of the Client.
- 4.9 The Client shall maintain all such authorisations and other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with this Contract and the Customer Contract.

5. CHARGES AND PAYMENT

- 5.1 The Client shall pay OM the Subscription Fee for the OM Membership in accordance with clause 5.2 below.
- 5.2 The Subscription Fee will become payable in full on the day of subscription in accordance with clause 3.2 to a bank account nominated by OM.
- 5.3 [All amounts payable by the Client exclude amounts in respect of value added tax (VAT).]
- 5.4 If the Client fails to make any payment due to OM under this Contract by the due date for payment, then, without limiting OM's remedies under clause 9 (Termination):
- 5.4.1 the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.4.2 OM may suspend access to the OM Membership until payment has been made in full.
- 5.5 All amounts due under this Contract from the Client to OM shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.6 OM reserve the right to revise the Subscription Fee in accordance with OM's prevailing rates at the time. Any such revision will be notified to the Client at least two weeks before the revision to the Subscription Fee. The provision of additional services above the services available at the date of this Contract, or which may be made available in after the date of this Contract may attract further charges.

6. OWNERSHIP, USE AND INTELLECTUAL PROPERTY RIGHTS

- 6.1 The Website Materials, and all Intellectual Property Rights in them are owned by OM, its licensors or both (as applicable). OM and its licensors reserve all rights in any intellectual property in connection with website material.
- 6.2 Nothing in this contract grants the Client any legal rights in the Website Materials other than as necessary to enable the Client to access the OM Membership during the Term.
- 6.3 The Client warrants that the Client Content, and all Intellectual Property Rights in them are owned by the Client, its licensors or both (as applicable).
- 6.4 The Client and OM agree that they will:

- 6.4.1 not use any Intellectual Property owned by the other party (or its licensors) otherwise than for the purposes set out in this Contract or agreed to in writing in advance between the parties;
- 6.4.2 not take or authorise any action whereby the Intellectual Property Rights will or might be jeopardised or invalidated; and
- 6.4.3 immediately inform the other party of any actual or threatened infringement of the other parties Intellectual Property Rights of which it becomes aware.

7. SOFTWARE

- 7.1 Software may be made available by OM for the Client to download in order to help the Website work better. The Client may only use such software if it agrees to be bound by the terms and conditions that apply to such software (e.g. the 'end user licence agreement' or 'EULA'). The Client will be made aware of any terms and conditions that apply to the software prior to downloading it. If the Client does not accept such terms and conditions, the Client will not be allowed to download the software. The Client should read any terms and conditions carefully.
- 7.2 Using the software in an unlawful way (such as reproducing or redistributing it in a way that breaches this Contract and any others that apply to it) is expressly prohibited and may result in civil and criminal penalties.

8. ACCURACY OF INFORMATION

- 8.1 While OM try to make sure that the Website and OM Membership is available for the Client's use, OM do not promise that the OM Membership and the Website will be available at all times nor does OM promise the uninterrupted use by the Client of the OM Membership and the Website.
- 8.2 The Client represents and warrants that:
 - 8.2.1 it owns or otherwise controls all the rights to the Client Content;
 - 8.2.2 the Client Content is accurate; and
 - 8.2.3 use of the Client Content it supplies does not violate any provisions of this Contract.

9. TERM AND TERMINATION

- 9.1 This Contract shall terminate on the last day of the Term selected by the Client.
- 9.2 The Subscriber may terminate this contract at any time during the Term by giving OM not less than Four week's notice in writing.
- 9.3 OM shall be entitled to terminate this Contract immediately and at any time if the Client:
 - 9.3.1 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if OM reasonably believes that to be the case;
 - 9.3.2 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 9.3.3 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 9.3.4 has a resolution passed for its winding up;

- 9.3.5 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 9.3.6 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
 - 9.3.7 has a freezing order made against it;
 - 9.3.8 is subject to any recovery or attempted recovery of items supplied to it by a Contractor retaining title to those items;
 - 9.3.9 is subject to any events or circumstances analogous to those in clauses 9.3.1 to 9.3.8 in any jurisdiction;
 - 9.3.10 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 10.3.1 to 10.3.9 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process; and
- 9.4 OM shall be entitled to terminate this Contract with 14 days notice in writing to the Client if OM receives 3 complaints from a Customer about the Client.
- 9.5 Either party may at any time by notice in writing to the other party terminate this Contract as from the date of service of such notice whenever any of the following events occurs:
- 9.5.1 there is a breach by the other party of any provision hereof which expressly entitles the non-breaching party to terminate this Contract; or
 - 9.5.2 the other party commits a material breach of any of its obligations hereunder which is not capable of remedy or, if capable of remedy, is not remedied within a reasonable time (agreed between the parties at the time), after receipt of written notice from the non-breaching party of its intention to terminate.
- 9.6 OM may write to the Client to terminate this contract at any time should OM decide that it is going to stop providing OM Membership. OM will let the Client know at least 14 days in advance and will refund (in accordance with clause 10.1.4) on a pro rata basis any sums the Client has paid in advance for access to the OM Membership which will not be available.
- 9.7 Termination of this Contract, as provided by this clause 9, shall not prejudice or affect any right of action or remedy which shall have accrued or which may thereafter accrue to OM or the Client.

10. EFFECTS OF CANCELLATION

- 10.1 Subject to clause 10.2, in the event of termination of this Contract:
- 10.1.1 the Client shall make payment in respect of the Subscription Fee for services delivered up to the time of expiry of the relevant notice and termination of this Contract.
 - 10.1.2 the Client will return or destroy any Website Content held by it within 14 days.

- 10.1.3 OM shall remove any Client Content from the Website within 14 days.
- 10.2 The obligations of the parties set out in this Contract and any other provisions expressed to survive termination of this Contract shall survive termination or expiry of this Contract howsoever arising.

11. LIMITATION ON OUR LIABILITY

11.1 Liability not excluded

- 12.** Notwithstanding any other provision of this Contract, the liability of the parties shall not be limited in any way in respect of the following:

- 12.1.1 death or personal injury caused by negligence;
- 12.1.2 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 12.1.3 fraud or fraudulent misrepresentation;
- 12.1.4 any other losses which cannot be excluded or limited by applicable law;

12.2 Limitation on Liability

- 13.** Subject to clause 11.1 and clause 11.4, the entire liability of either party to the other under this Contract in respect of all other losses arising under or in connection with this Contract, whether in tort (including negligence), contract, breach of statutory duty, or otherwise, shall in no circumstances exceed the Subscription fee.

13.1 Exclusion of Liability

- 13.1.1 Subject to clause 11.1 and clause 11.4, neither party shall in any circumstances whatsoever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for and of the following (whether direct or indirect):

- (a) any loss of profits or business or revenue or goodwill or savings, discount or rebate (whether actual or anticipated);
- (b) loss or corruption of data or Software insofar as it is inherently incapable of being re-constituted and returned to a fully operational state;
- (c) any harm to reputation or loss of opportunity or use

- 13.1.2 Subject to clause 11.1 and clause 11.4, neither party shall in any circumstances whatsoever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for consequential, indirect or special losses.

13.2 Indemnity

- 14.** Subject always to OM's proper observance of its obligations under this Contract, the Client shall fully indemnify OM against all claims, demands, actions, costs, expenses (including but not limited to full legal costs and disbursements on a solicitor and client basis), losses and damages suffered by OM and arising from or incurred by reason of any claim by any third party of infringement or alleged infringement by OM resulting from OM's use of any copyrights, patents, trademarks, service marks, design rights (whether registered or unregistered) and all other similar proprietary intellectual property supplied by the Client to OM. This indemnity shall include, but

not be limited to, the costs and expenses incurred by OM in the defence of such alleged infringement.

15. EVENTS BEYOND OUR CONTROL

15.1 OM shall have no liability to the Client for any breach of this Contract caused by any event or circumstance beyond OM's reasonable control including, but not limited to, strikes, lock-outs or other industrial disputes; breakdown of systems or network access; or flood, fire, explosion or accident.

15.2 If something happens which:

15.2.1 is outside of OM's control; and

15.2.2 affects the Client being able to access the OM Membership or the Website;

16. OM will let the Client have a revised time for when the Client can expect to be able to access the OM Membership or the Website;

17. RIGHTS OF THIRD PARTIES

No one other than a party to this Contract has any right to enforce any of the terms of this Contract.

18. VARIATION

OM reserve the right to vary this Contract from time to time. Updated terms will be displayed on the OM Membership and by continuing to use and access the OM Membership following such changes, the Client agrees to be bound by any variation made by OM. It is the Client's responsibility to check for variations from time to time to verify such variations.

19. DISPUTES

19.1 OM will try to resolve any disputes with the Client quickly and efficiently.

19.2 If the Client is unhappy with OM please contact OM as soon as possible.

19.3 If the parties cannot resolve a dispute using OM's complaint handling procedure, OM will let the Client know that it cannot settle the dispute with the Client.

19.4 If the Client wants to take court proceedings, the relevant courts of the England and Wales will have exclusive jurisdiction in relation to this Contract.

19.5 Relevant English law will apply to this Contract.