

## NEWCASTLE NE1 LIMITED

### NEWCASTLE CITY CENTRE PROMOTIONS - CONDITIONS OF USE

#### Documentation

- 1) Applications for consent to hold a promotion at a Newcastle NE1 Limited commercial site (being each of a site on Grainger Street, a site at Northumberland Street north-end and a site a Northumberland Street south-end) (**Site**) must be made in writing using the appropriate Newcastle NE1 Limited application form (**Application**). The Application will be processed by Newcastle NE1 Limited on receipt of all necessary information. Before consent to hold a promotion is issued by Newcastle NE1 Limited (**Letter of Consent**), a written undertaking must be given by the applicant/event organiser that these Conditions of Use will be adhered to. Such an undertaking shall be deemed to have been given by the applicant/event organiser on signing the Letter of Consent and returning it to Newcastle NE1 Limited. The person giving the undertaking must be on Site for the duration of the relevant promotion or the applicant/event organiser must clearly identify a person who will be on Site during the relevant promotion.
- 2) The Letter of Consent must be made available by the applicant/event organiser for inspection on the day(s) of the relevant promotion.
- 3) Applicants must provide, at their own cost and expense, method statements, risk assessments, site plan, specifications and any other documentation as and when requested by Newcastle NE1 Limited and / or Newcastle City Council.
- 4) Newcastle NE1 Limited confirms it is the applicant's/event organiser's sole responsibility to ensure that all equipment, structures, vehicles and installations are erected in accordance with any applicable manufacturer guidelines and the applicant's/event organiser's appointed person on Site will be asked to confirm this in writing by signing all relevant documentation. Manufacturer guidelines or structural information must be submitted to Newcastle NE1 Limited at the point of Application by the applicant/event organiser – for large structures, structural calculations will be required in order for Newcastle NE1 Limited to approve use of the structure. For the avoidance of doubt, Newcastle NE1 Limited shall not be liable for the failure of the applicant/event organiser to comply with this clause nor for any resulting claim arising from the applicant's/event organiser's failure to comply with this clause.
- 5) It is the applicant's/event organiser's sole responsibility to obtain all licences, consents and/or approvals necessary from Newcastle City Council in relation to the promotional event – including, but not limited to, in relation to charity collections, distribution of free literature (samples) and any permissions required for music/performances.
- 6) Newcastle NE1 Limited accepts no liability from claims arising in relation to rights managed music. It is the applicant's/event organiser's sole responsibility to ensure that all appropriate licenses, consents and/or approvals are obtained and arranged in relation to rights managed music from all relevant collecting societies. Please view <http://www.ppluk.com/> or <http://www.prsformusic.com/Pages/default.aspx> in particular for further details. This is not an exhaustive list.

## On-Site

- 7) All on-Site displays must be safe, tidy and attractive. Attaching or placing of signs, banners, 'A' frames or other items on the highway surface, on or to street furniture, is not permitted.
- 8) Activities will be positioned per Site plan and within the Site boundaries to cause minimum disruption of pedestrian movement and no obstruction to shop frontages. The applicant/event organiser is solely responsible for crowd control during each relevant promotion. Where, as determined by Newcastle NE1 Limited at its sole discretion, the applicant/event organiser fails to manage crowd control during a relevant promotion, then Newcastle NE1 Limited shall be entitled to require the applicant/event organiser to resolve the crowd control issues, which may include the cancellation of the relevant promotion and the applicant/event organiser shall comply with Newcastle NE1 Limited's instructions in this regard. Newcastle NE1 Limited also reserves the right to contact the relevant authorities with regards to such crowd control and crowd control issues.
- 9) The applicant/event organiser or their activities must not cause any nuisance or annoyance to other users of the Site, or to occupiers of adjacent land and buildings or to Newcastle City Council. Where, as determined by Newcastle NE1 Limited at its sole discretion, the applicant's/event organiser's activities are causing, or have caused, nuisance or annoyance, then Newcastle NE1 Limited shall be entitled to require the applicant/event organiser to resolve such nuisance or annoyance, which may include the cancellation of the relevant promotion and the applicant/event organiser shall comply with Newcastle NE1 Limited's instructions in this regard. Newcastle NE1 Limited also reserves the right to contact the relevant authorities with regards to such nuisance or annoyance.
- 10) The applicant/event organiser will be solely responsible for clearing up after the relevant promotion/event. Any litter/waste produced at the relevant promotion/event must be removed by the applicant/event organiser from the Site, transported and disposed of/recovered in accordance with the Environmental Protection Act 1990. It is not permitted to hand out material such as 'stickers' or balloons which could be misused by members of the general public.
- 11) All vehicles used or authorised to be used by the applicant/event organiser must use drip trays to avoid oil marks on the paving. The applicant/event organiser will pay for the cost of the removal of, and remediation of, any fuel spillages or oil marks on the paving caused by vehicles at the relevant promotion/event. The applicant/event organiser will be solely responsible for the reasonable cost of repair to the highway or street furniture if damage is caused by their event.
- 12) Generators used at the relevant promotion/event must be diesel powered and/or ultra-silent. The sound level at 10 metres or more should not be dominant or above background level, as determined solely by Newcastle NE1 Limited. Petrol generators are not permissible at the relevant promotion/event.
- 13) All cables must be adequately covered or flown well above head height in accordance with all applicable laws and regulations.
- 14) The applicant/event organiser will be solely responsible for the behaviour of any employees or other people involved in the relevant promotion/event. The applicant/event organiser or delegate is solely

responsible for ensuring that these Conditions of Use are complied with by all of its staff participating in the promotion.

- 15) If firefighting equipment is deemed necessary by the risk assessment referred to at clause 3) above it must be provided by the applicant/event organiser at its sole cost and expense and be readily available during the relevant promotion/event.
- 16) The applicant/event organiser will ensure that sound levels generated by the promotion are reasonable (as determined solely by Newcastle NE1 Limited) and do not cause any noise nuisance to other businesses in the vicinity. If a complaint is received from a third party, immediate corrective action approved by Newcastle NE1 Limited must be taken by the applicant/event organiser at its sole cost and expense. No loudspeakers or amplifiers shall be used during the relevant promotion/event for the purposes of direct advertising. It is an offence under the Control of Pollution Act 1974 to directly advertise a product or service using a loudspeaker or amplifier.
- 17) Any vehicular movement on Site must be taken with proper provision for public safety, which shall be the sole responsibility of the applicant/event organiser. There is a core restriction of 9.30am – 5.30pm each day when vehicles, including tractor units and support vehicles, must not be moved. Details of all promotional vehicles that will remain on Site must be confirmed by the applicant/event organiser no later than 7 (seven) days before the event (registration, make, model etc). Other vehicles should be removed from the Site during the promotion.
- 18) PLEASE NOTE THERE IS A POTENTIAL HEIGHT RESTRICTION AT THE SITE OF 3.2 METRES. Newcastle NE1 Limited will confirm in writing to the applicant/event organiser whether or not such a height restriction applies as soon as reasonably practicable.
- 19) All promotions must be manned by sufficient numbers of personnel, which shall, without exception, be not less than 1 (one) individual at all times. Should a promotion remain on-Site overnight then adequate provision for security must be made by the applicant/event organiser at the applicant's/event organiser's sole cost and expense.
- 20) In performing its obligations under these Conditions of Use, the applicant/event organiser shall, and shall procure that all of its staff involved with the relevant promotion/event shall, comply with all applicable laws, statutes, regulations, licenses and codes from time to time in force, including but not limited to The Food Safety Act 1990, The Food Hygiene (England) Regulations 2006/14, Regulation (EC) No 852/2004 and the Health and Safety at Work etc Act 1974 insofar as such legislation is applicable to the relevant promotion/event. Specifically leafletting on site will require a "Distribution of Free Literature License" issued by Newcastle City Council.

#### Restrictions

- 21) Direct selling of goods and services by the applicant/event organiser or its delegates at or during the relevant promotion/event is not permitted.
- 22) Cash collections for charitable organisations will be the subject of a separate agreement between the applicant/event organiser and the Licensing Section of Newcastle City Council and such activities are expressly excluded from these Conditions of Use.

23) No amplified sound is permitted in connection with any promotional event.

#### Liability, Cancellation, Reparation and Transposition

24) The applicant/event organiser will indemnify Newcastle NE1 Limited against any and all actions, costs, claims, liabilities and demands that result from their use of the highway and/or from their commercial promotion. The applicant/event organiser will take out and maintain public liability insurance in the sum of a least £5,000,000 (five million pounds) with an insurance company who shall be approved by Newcastle NE1 Limited. The applicant/event organiser will provide a copy of its insurance certificate to Newcastle NE1 Limited with its Application. For the avoidance of doubt, Newcastle NE1 Limited will not issue a Letter of Consent until it has received the applicant's insurance certificate. Any claim arising from the relevant event will be met through the applicant's/event organiser's insurance cover.

25) Newcastle NE1 Limited reserves the right to refuse any promotion or to cancel or withdraw any Letter of Consent at any time, including on the day of the relevant promotion/event without incurring any liability whatsoever to the applicant/event organiser.

26) Without Newcastle NE1 Limited incurring any liability, the applicant/event organiser may be required to curtail or cancel a promotion/event on the day of the relevant promotion/event in the circumstances of emergency or other authorised legitimate access requirements for which no satisfactory alternative access arrangements can be made. A driver, towing vehicle and/or sufficient manpower should be available at all times to move the exhibition if required by the emergency or other essential services, for loading, or as otherwise required by a Police Officer, Police Community Support Officer, Traffic Warden, Officer of Newcastle City Council or Newcastle NE1 Limited. If the applicant/event organiser is asked to move their location by a representative of Newcastle City Council, Police, Fire Service or Newcastle NE1 Limited, they will immediately comply with that request.

27) Neither party shall be in breach of these Conditions of Use nor liable for delay in performing, or failure to perform, any of its obligations under these Conditions of Use if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 28 (twenty eight) days, the party not affected may terminate the agreement by giving 14 (fourteen) days' written notice to the affected party.

#### Payment

28) A fee confirmed by Newcastle NE1 on Application, and included in the Letter of Consent, will be charged for promotions, which must be paid by the applicant/event organiser within 30 (thirty) days of the date of the invoice. Should a promotion be cancelled by the applicant/event organiser after the Letter of Consent has been issued by Newcastle NE1 Limited, a proportion of the fee will be payable as below:

Cancellation up to 60 (sixty) days before event	25% of fee
Cancellation up to 30 days (thirty) before event	50% of fee
Cancellation up to 14 days (fourteen) before event	75% of fee

- 29) The parties confirm that these sums represent a genuine pre-estimate of Newcastle NE1 Limited's loss.
- 30) If the applicant/event organiser fails to make any payment due to Newcastle NE1 under these Conditions of Use by the due date for payment, then the applicant/event organiser shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The applicant/event organiser shall pay the interest together with the overdue amount.
- 31) Payment shall be made via either:

BACS to:

Account Name: Newcastle NE1 Ltd  
Bank: Handelsbanken  
Sort Code: 40-51-62  
Account No: 54840604

Or via cheque, made payable to "Newcastle NE1 Limited" and sent to:

Annabel Carter  
Newcastle NE1 Limited  
Suite A8, Milburn House  
Dean Street  
Newcastle upon Tyne  
NE1 1LE

### General

- 32) Nothing in these Conditions of Use is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 33) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party. Each party may disclose the other party's confidential information (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these Conditions of Use. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this provision and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Conditions of Use.

- 34) Newcastle NE1 Limited may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under these Conditions of Use. The applicant/event organiser shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under these Conditions of Use.
- 35) These Conditions of Use, the Letter of Consent and the Application constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 36) No variation of these Conditions of Use shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 37) No failure or delay by a party to exercise any right or remedy provided under these Conditions of Use or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 38) If any provision or part-provision of these Conditions of Use is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Conditions of Use. If any provision or part-provision of these Conditions of Use is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 39) No one other than a party to these Conditions of Use, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 40) These Conditions of Use and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England.
- 41) Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Conditions of Use or their subject matter or formation.