

1) Definitions:

- a) Advertising Standards – the codes of conduct and rulings (as appropriate) of the Advertising Standards Authority, the British Code of Advertising Practice, the Ofcom broadcasting codes, the Institute of Practitioners in Advertising and the other codes or standards laid down voluntarily within the industry to ensure that all advertising placed is legal, decent, truthful and honest.
- b) Brief – an outline description of the services which may form the basis of an Order
- c) Client (You, Your) – Whoever acts as principle in commissioning our Services
- d) Client's Agent – Any third party engaged by You in the procurement of Marketing Services from Us or another supplier.
- e) Due Date:-
 - i) Where credit terms have been agreed in writing – 28 days after the invoice date
 - ii) Where credit terms have not been agreed in writing - the date of the Order.
- f) Marketing Material – Any tangible or intangible product resulting from the execution of the Marketing Services Including, but not limited to: Advertisements, Printed Material, Point of Sale items, Emailers, Web Sites, Content for broadcast or on-line media. Also images, designs and styles for inclusion in our other Services or Client's other work.
- g) Marketing Service – One or more of the following types of service:
 - i) Media Planning and Buying - scheduling Media Activity; agreeing the price and placing orders with the Media Owners for the fulfilment of Media Activity.
 - ii) Creative Design and Production - covering the design and production of Marketing Material using market intelligence or marketing data.
 - iii) Public Relations – covering the preparation and presentation of corporate messaging to an appropriate audience.
 - iv) Point of Sale – covering the design, production and fitting of products including, but not limited to:- internal and external signage, displays and digital user experience interactive facilities
 - v) Design & Build – covering the design, project management, and fit out of public access areas including, but not limited to:- marketing suites, communal areas, show homes. Also the construction of modular marketing suites.
- h) Media Activity – includes, but is not limited to:- space in any printed or electronic publication or medium or at public access spaces; airtime on any broadcast medium; direct marketing by printed or electronic method; internet marketing; Sponsorship.
 - i) Media Owner – any third party responsible for the fulfilment of the Media Activity.
 - j) Order – any order placed by You or the Client's Agent and accepted by Us for the delivery of Marketing Services.
 - k) Supplier (Our, Us, We) – ThinkBDW Ltd (ThinkBDW)
 - l) Suspend – an instruction by You to temporarily suspend Our further work on an Order
 - m) Written (Writing) – written communication in English in either hard copy or, with the exception of notice under clause 11, e-mail form provided this is acknowledged by Us.

2) Duration and Scope of the Terms & Conditions

- 2.1) These Terms & Conditions will remain in force unless and until varied in Writing in accordance with clause 11 below.
- 2.2) All Orders placed by the You and accepted by Us will be separate Contracts subject to these Terms & Conditions.

3) Terms of Payment

- 3.1) Our settlement terms are payment by cheque received by Us by the Due Date, or cleared funds in our account by 2 working days following the Due Date.
- 3.3) Settlement will not be complete unless a remittance advice giving details of invoices being paid has also been received by Us.
- 3.4) Failure to settle within 5 days of the Due Date entitles Us to impose an immediate 3 per cent surcharge followed by a 2 per cent surcharge in respect of each succeeding month before settlement.
- 3.5) Where an invoice remains overdue for more than two months, We reserve the right to cancel forthwith, without prejudice to any outstanding liabilities, any subsisting Contracts relating to Your Marketing Services by giving Written notice to You to that effect. We reserve the right to charge a fee for work in progress which has not yet been invoiced and any losses suffered by Us as a result of such cancellation and such cancellation will create no liability for early termination.

4) Approvals and Authority

- 4.1) You agree to give a full and clear Brief to Us and ensure that all the facts given about Your product or service are accurate and in no way misleading. You agree to inform Us without delay if You consider that any claim or trade description in any advertisement submitted to You by Us is false or misleading in relation to Your product or service.
- 4.2) After receiving Your Brief, we will submit to You for approval as appropriate:
 - i) Estimates for the cost of the various Marketing Services which may be involved

- ii) Charge rates for Marketing Services where the costs cannot reliably be estimated
 - iii) Where the completion of the Marketing Service is anticipated to be more than one month after commencement, a schedule of stage invoicing.
- 4.3) Unless specifically stated in the Brief, We will take Your request to continue work, whether Written or verbal, as forming the basis of an Order in accordance with the estimates given
- 4.4) Where You require to see proofs for approval before production costs are committed You must specify this in the Brief and Order. Where proofs are required Your approval of copy and layouts will be our authority to purchase production materials and prepare proofs, and Your approval of proofs will be Our authority to commit to completion of the Order.
- 4.5) Your Order will be confirmation that the reasonable value of the work already performed by us up to any point in time will be chargeable to You whether or not you subsequently cancel or Suspend the Order and whether or not any tangible Marketing Material has been produced.
- 4.6) Where time is of the essence for the delivery of Marketing Services You must specify this in the Brief and Order.
- 4.7) Where Your Order is given on Your standard order form stating Your standard conditions, in as much as those conflict with these Terms & Conditions, these Terms & Conditions will take precedence.

5) Cancellation, Suspension and Amendments to Orders

- 5.1) You may request Us in Writing to change, reject, cancel or Suspend any and all plans, schedules or work in progress, and We shall take all reasonable steps to comply,
- 5.2) You will pay Us for the reasonable value of the work already performed by Us whether or not any tangible Marketing Material has been produced and reimburse Us for any additional costs or charges as a direct or indirect result of any such change, rejection, cancellation or stopping including the costs of outstanding contractual obligations to third parties.
- 5.3) Where You Suspend an order from more than one month We reserve the right to invoice You for the reasonable value of the work already performed by us up to the time of Suspension whether or not any tangible Marketing Material has been produced.

6) Limitation of Liability

- 6.1) Notwithstanding anything else to the contrary in these Terms & Conditions, We do not exclude or limit Our liability (even if any other term would otherwise suggest this may be the case) for death or personal injury caused by Our or Our employees' negligence or for fraudulent misrepresentation.
- 6.2) If, due directly or indirectly to war, terrorist action or threatened action, hostilities, strikes, industrial action short of a strike, lock-outs, accident, civil commotion, fire, blockage, import or export embargo, natural catastrophe, Act of God or any other matter of similar nature affecting Us, Our staff, Our management, outside suppliers, Media Owners or other relevant parties, We fail to carry out the service contemplated by a Contract (or any part thereof) such failure shall not constitute a breach of Contract and We shall not be liable to any manner howsoever for any costs, expenses, loss or damage which may be incurred by You directly or indirectly as a result of such failure.
- 6.3) We will not be liable for any indirect or consequential loss (including loss of profits) to You or for any loss to You arising from claims of whatever nature by third parties.
- 6.4) We will use Our best endeavour to complete an Order in the time and to the specification contained in the Order, but, even if time is stated to be of the essence, should the Order not be completed to time or specification, Clause 6.3 will still be applicable.
- 6.5) We will take all reasonable precautions to safeguard Your property entrusted to Our care, but We will not be responsible in any manner howsoever, for its loss, damage, destruction or unauthorised use except where the same is the direct result of Our negligence or wilful default.
- 6.6) Any claims against Us arising as a result of damage, delay or loss of goods in transit must be submitted in writing to Us and the carrier so as to reach Us and the carrier within three days of delivery and claims for non-delivery within twenty-eight days of despatch of the goods. All other claims must be made within ten days of delivery.
- 6.7) We will take reasonable precautions in the handling of personal data. Where You collect personal data (whether or not using a service We provide) You will be the data controller and should advise us if data to which we may have access contains personal data.
- 6.8) Subject to clause 6.1 above, Our maximum aggregate liability under or in connection with any Contract under these Terms & Conditions shall not exceed the fees paid by You to Us in respect of that Contract.

7) Indemnities

You will fully and effectually indemnify Us and keep Us so indemnified at all times against all proceedings, threatened proceedings, claims, demands, penalties, fines and civil liabilities of whatever nature (and all costs and expenses incurred in connection therewith and all costs incurred in connection with any criminal liabilities, proceedings, threatened proceedings) including, but not limited to:-

- i) infringement of intellectual property rights
- ii) breaches of Advertising Standards

- iii) breaches of data protection regulations
- iv) breaches of planning consents
- v) Infringements of rights of way or other property rights

which may at any time be incurred by, imposed on or asserted against Us in any way relating to or arising directly or indirectly in any manner in connection with any work of whatever nature prepared or conducted by Us for You and approved orally or in Writing by You prior to publication, transmission or commencement of production.

8) Copyright and Other Rights

- 8.1) All intellectual property rights (including, in the case of copyright, by way of present and future assignment), together with the right to sue for damages for past infringement, in and to the Marketing Material produced by Us for You under these Terms & Conditions remain with Us. Without Written assignment You may not, nor allow any third party to, incorporate any part of the Marketing Material into other work.
- 8.2) Notwithstanding anything else in these Terms & Conditions, We shall retain the right to use any general know-how, expertise and experience gained in providing the Marketing Services. In addition, We shall retain ownership in all intellectual property rights in and to all underlying, pre-existing computer software tools, formats and other content incorporated in the Marketing Material produced for You under these Terms & Conditions (Pre-existing Materials) and We shall be entitled to use such Pre-existing Material as We see fit, including, without limit, to provide services to Our other clients.
- 8.3) If and to the extent that the Marketing Material produced for You includes or incorporates any material the intellectual property rights in which are owned by a third party, We shall use reasonable endeavours to obtain such usage rights in such Marketing Material as are deemed reasonably necessary by Us at the time such material is commissioned or obtained and We shall grant to You (at Your expense) only such rights as We are permitted by the relevant third party to grant to You.
- 8.4) Notwithstanding any of the above, We shall:
- i) be entitled to use Marketing Material produced for You for the purpose of promoting Our own business, for example, by including the same on Our web site and/or entering into industry awards; and
 - ii) retain all intellectual property rights in any work produced by Us, during the provision of the Marketing Services or otherwise, which is not included or incorporated into any Marketing Material produced for You, including without limitation any work contained in a pitch or presentation made to You, whether in competition with another design company or not, in the event that You choose not to proceed with Our design beyond concept stage.

9) Ownership, Insurance and Custody of Material

- 9.1) Subject to copyright under clause 8.1 and the following provisions of this clause all Marketing Material prepared for You by Us and paid for by You will be Your property. This does not apply to 'stock' photographs obtained from news or photographic agencies.
- 9.3) You will insure Your property when in the possession of, and when in transit between Us, the Media Owner, printers, production companies and other outside suppliers and sub-contractors.

10) Confidential Information

- 10.1) Save as required by law or regulatory body, We acknowledge a duty not to disclose without Your permission during or after the fulfilment of a Contract any confidential information resulting from studies or surveys commissioned and paid for by You. In turn, You acknowledge Our right to use as We see fit any general marketing or advertising intelligence in the field of Your product or service which We have gained in the course of Our appointment.
- 10.2) During or after the continuance of Contracts under these Terms & Conditions, We acknowledge Our responsibility to treat in complete confidence all the marketing and sales information and statistics which You may supply Us in the course of any work for You. In turn and reports and information submitted by Us to You shall be treated by You as confidential.
- 10.3) When You provide Us with personal data which is or should be subject to Data Protection Regulations (Personal Data) You warrant that the Personal Data is to be used for a purpose for which You have a current and valid Data Protection registration and that You have proper consent for that use from each person. You will remain the data controller as defined by the Act. In turn We undertake to only use the Personal Data for the use which You intended and We will execute reasonable care in the security of the Personal Data which We will retain only as long as reasonably required for proper execution of the Order to which it relates. Where We pass the Personal Data to a third party for part of the fulfilment of the Order We will require a similar undertaking from the third party.

11) Variation, Termination and Continued Applicability

- 11.1) Any variation to these Terms & Conditions will only be valid if agreed in Writing and signed by a director of both parties.
- 11.2) Termination of a Contract may be effected at any time under and subject to Clauses 2 and 5 above.

- 11.3) Both parties may terminate Contracts under these Terms & Conditions immediately upon notice if:
- i) the other commits a material breach of these Terms & Conditions and, if remediable, such breach is not remedied within 30 days of the date of Written notice sent to that party by the party not in default, specifying the nature of the breach and requiring that the same be remedied within such 30 day period; or
 - ii) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
 - iii) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - iv) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
 - v) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or vi) the other party ceases, or threatens to cease, to trade; or
 - vi) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001); or
 - vii) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 11.4) We reserve the right to terminate all Contracts under these Terms & Conditions and/or suspend performance of all services provided to You (at our absolute discretion) in the event that You fail to fulfil Your obligations to pay under 3 above.
- 11.5) Where there is no new Marketing Services activity arising from Contracts under these Terms & Conditions the parties agree that all the terms of these Terms & Conditions will remain in force in respect of any Orders already placed by You.
- 11.7) On termination of a Contract for any reason:
- i) You will immediately pay to Us all of Our outstanding unpaid invoices and interest; and
 - ii) in respect of services supplied but for which no invoice has been submitted, We may submit an invoice, which shall be payable immediately on receipt; and
 - iii) in respect of the reasonable value of the work already performed by us which has not yet been invoiced, whether or not any tangible Marketing Material has been produced, and any additional costs or charges as a direct or indirect result of any such termination including the costs of outstanding contractual obligations to third parties, We may submit an invoice, which shall be payable immediately on receipt;
 - iv) You will return all of Our Marketing Materials. If You fails to do so, then We may enter Your premises and take possession of them. Until they have been returned or repossessed, You will be solely responsible for their safe keeping; and
 - v) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

12) Assignment and Rights of Third Parties

- 12.1) You shall not, without Our prior Written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of Our rights or obligations under the Contract.
- 12.2) Contracts are made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and are not intended to benefit, or be enforceable by, anyone else.

13) Notices

Notice given under these Terms & Conditions shall be in Writing, sent for the attention of the Finance Director at the registered office (or such other address or person as the relevant party may notify to the other party) and shall be delivered personally or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of email, at the time of positive acknowledgement by the intended recipient, in the case of pre-paid first class post or recorded delivery, 48 hours from the proven date of posting and, if deemed receipt under this condition is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery.

14) Legal Jurisdiction

- 14.1) We act in all our Contracts as a principal at law.
- 14.2) All Contracts between You and Us are to be governed by and construed in accordance with English law and any litigation for enforcement or redress shall be brought in the Courts of England.

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