

Collaborate

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TERMS AND CONDITIONS
OF BUSINESS



General Terms & Conditions of Business

1.1 Quotes & Prices

- 1.1.1. All quotes/estimates are valid for 30 days from the date of submission.
- 1.1.2. Quotes/estimates are based on the information provided by the Client, including but not limited to detail on quantities, structure, scope and functionality. Any quote/estimate may therefore be subject to change should the client's requirements change at any time.
- 1.1.3. Unless otherwise stated, photography, stock images, delivery, copywriting and VAT will be charged extra.
- 1.1.4. If the contract or hourly price has not been fixed for the term of a contract, our hourly rate of £65 will apply.
- 1.1.5. The Agency reserves the right to alter the hourly rate at any time as business needs dictate.
- 1.1.6. Quotes/estimates are based on the Agency's current costs of production and unless otherwise agreed are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs.
- 1.1.7. Any estimates given by The Agency as to the time of completion or performance of its services (whether completion of the whole or a part of those services) shall be estimates only and time shall not be of the essence.
- 1.1.8. Any stated timescale is reliant upon the client providing all required information/copy/images within the time set out at project initiation.

1.2 Methods

- 1.2.1. The Agency reserves the right to sub-contract the fulfilment of an order or any part thereof.
- 1.2.2. Any images supplied electronically will be incorporated into designs without charge provided that they are of suitable quality. All images need to be supplied as EPS illustrator vectors for logos and Photoshop tiffs (300dpi min) for pictures. Any logos that need to be re-drawn will be charged extra at our hourly rate. All supplied images requiring scanning or alterations to images will incur a charge. Images sourced from external image libraries may incur additional licence/royalty charges payable by the Client.
- 1.2.3. Should the Client supply text, artwork or images, the Agency is not obliged to edit, check or guarantee the correctness thereof in any way whatsoever, and the end product shall be made at the entire risk of the Client.
- 1.2.4. The Agency shall be indemnified by the Client in respect of any claims, costs and expenses arising out of any libellous matter or any infringement of copyright, patent design or any other proprietary or personal rights contained in any material supplied by the Client. The indemnity shall extend to any amounts paid on a lawyer's advice in settlement of any claim.
- 1.2.5. Origination and/or conceptual work and any copyright subsisting therein shall remain the property of the Agency unless otherwise agreed in writing with the Client.
- 1.2.6. The Client's property and property supplied to the Agency on behalf of the Client, while it is in the possession of the Agency or in transit to or from the Client, will be deemed to be at Client's risk unless otherwise agreed and the Client should insure accordingly.
- 1.2.7. Any design or concept from the agency, remains the property of the agency until it is signed over. Sample designs that are paid for but not moved forward, cannot be taken in-house by the client without permission from the agency and an extra fee.

- 1.2.7. The Agency may charge rent for storage of goods retained at Client's request, or items left with the Agency before receipt of the order or after notification to the Client of completion of the work.
- 1.2.8. When required to expedite project delivery ahead of the time needed for proper production of a given deadline, the Agency shall not be liable for defects occasioned thereby. Should such delivery require payment of overtime wages, delivery charges or other additional costs, all such extras will be for the Client's account.
- 1.2.9. The Agency shall not be required to use, print, upload or hold any matter which in its opinion is or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of a third party.

1.3 Invoices & Payment

- 1.3.1. Payment must be made no more than 30 days after date of invoice unless otherwise agreed in writing in advance.
- 1.3.2. We understand and will exercise our statutory right to interest under the Late Payment Of Commercial Debts (Interest) Act 1998 amended by European Directive 2000/35/EC if we are not paid according to these terms.
- 1.3.3. All work remains copyrighted to the Agency until settlement of relevant fee account.
- 1.3.4. All invoices are subject to UK VAT at the current rate, unless a valid exemption certificate is provided.
- 1.3.5. All payments must be in UK Pounds Sterling.
- 1.3.6. All work completed after project inception will be billed as it is completed at the end of every calendar month as Work in Progress (WIP) until the conclusion of the project.
- 1.3.7. If the Agency incurs any costs as a result of the Client's neglect or default, the Agency may charge those costs to the Client in addition to the contract price.
- 1.3.8. The Client shall pay for any preliminary work which is produced at his/her request, whether experimentally or otherwise. A 50% rejection fee is applicable on all designs executed by the Agency should the Client cancel their contract/order.
- 1.3.9. When payment is overdue, the Agency may suspend work, service and/or delivery without notice and without prejudice to any other legal remedy until due payment has been made. Furthermore, any work started but incomplete may be suspended and payment therefore becomes immediately due and payable, notwithstanding anything expressed herein, and any monies in respect of.
- 1.3.10. The Agency may require payment in advance, or a deposit of at least 50% of the quote/estimate total prior to instigating work on an order, particularly but not limited to the following situations: new clients; clients with a poor payment history; large, lengthy or complex projects. Where a deposit is required, the balance shall be due upon completion of the work, unless otherwise agreed in writing in advance.
- 1.3.11. If your payment is returned by the bank as unpaid for any reason, you will be liable for a charge.



1.4 Proofing

- 1.4.1. Proofs, pull samples, specimens, sketches, photographs, links or any representation, whether partial or total, of the finished article in whatever form may be submitted to the Client for approval.
- 1.4.2. Colour proofing will incur a charge.
- 1.4.3. After approval the Client shall have no claim against the Agency for errors in the exemplar as approved by them.

1.5 Insolvency

- 1.5.1. If the Client ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is deemed to be unable to pay its debts or have a winding-up petition issued against it or being a person who commits an act of bankruptcy or has a bankruptcy petition issued against him, the Agency without prejudice to other remedies shall:
 - 1.5.1.1. Have the right not to proceed further with the contract or any other work for the Client and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the Client. Such charge to be an immediate debt due to him.
 - 1.5.1.2. In respect of all unpaid debts due from the Client have a general lien on all goods and property in its possession (whether worked on or not) and shall be entitled on the expiration of 14 days' notice to dispose of such goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards such debts.

1.6 Force Majeure

- 1.6.1. The Agency shall be under no liability if it shall be unable to carry out any provision of the contract for any reason beyond its control including (without limiting the foregoing) Act of God, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute or owing to any inability to procure materials required for the performance of the contract. During the continuance of such a contingency the Client may by written notice to the Agency elect 'to terminate the contract and pay for work done and materials used', but subject thereto shall otherwise accept delivery when available.

1.7 Information Provided by You

- 1.7.1. You warrant that the name, address and payment information provided when you place your order with the Agency will be correct and you agree to notify the Agency of any changes in the name, address and/or payment details.
- 1.7.2. You agree that the Agency may disclose your name and address where any enquiries are made.
- 1.7.3. You warrant that you possess the legal right and ability to enter into this Agreement and to use the Agency's services in accordance with this Agreement.

1.8 Indemnity

- 1.8.1. You shall indemnify us and keep us indemnified and hold us harmless from all liabilities, actions, claims, proceedings, losses, expenses (including reasonable legal costs and expenses), costs and damages, howsoever suffered or incurred by us in consequences of your breach or non-observance of this Agreement, or arising out of claims based upon or relating to our work for you or any claim brought against us by a third party resulting from the provision of any Services to you and your use of them.
- 1.8.2. The Agency will notify you promptly of any claim for which the Agency seeks specific indemnification at the currently supplied address. The Agency will afford you the opportunity to participate in the defence of such claim, provided that your participation will not be conducted in a manner prejudicial to the Agency's interests, as reasonably determined by the Agency and/or its legal representatives.

1.9 Limitation of Liability

- 1.9.1. All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, are subject always to sub clause 1.9.2.
- 1.9.2. Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.
- 1.9.3. In any event, no claim against the Agency shall be brought unless you have notified the Agency of the claim within one year of the issue arising.
- 1.9.4. In no event shall the Agency be liable to you by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, for any loss of business, contracts, anticipated savings or profits or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the Agency's negligence or the negligence of its servants or agents or otherwise) which arise out of or in connection with the provision of any goods or services by the Agency.
- 1.9.5. The Agency warrants that its services will be provided using reasonable care and skill. Where the Agency supplies any goods supplied by a third party, the Agency does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign the benefit of any warranty, guarantee or indemnity given by the supplier of the goods to the Agency.

1.10 General Terms

- 1.10.1. These conditions and all other express terms of the contract shall be governed and constructed in accordance with the laws of England and you hereby submit to the non-exclusive jurisdiction of the English courts.
- 1.10.2. The Agency shall not be liable or deemed to be in breach of contract by reason of any delay in performing, or failure to perform, any of its obligations if the delay or failure was due to any cause beyond its reasonable control.
- 1.10.3. All quotes/estimates, briefs and other Client/Agency documents are commercially confidential and may not be disclosed to third parties without prior written agreement.
- 1.10.4. These terms and conditions, together with any documents expressly referred to in them, contain the entire Agreement between the Agency and the Client relating to the subject matter covered and supersede any previous agreements, arrangements, undertakings, proposals or contemporaneous communications, written or oral: between the Agency and the Client in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you confirm that you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation which has not been expressly made in this Agreement.
- 1.10.5. Any notice to be given by either party to the other may be sent by either email or post to the address of the other party as appearing in this Agreement or ancillary application forms or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved, be deemed to be received on the day it was sent, or if sent by post shall be deemed to be served two days following the date of posting.
- 1.10.6. Headings, numbering and summaries are included in this Agreement for convenience only and shall not affect the construction or interpretation of this Agreement.
- 1.10.7. You acknowledge that no joint venture, partnership, employment, or agency relationship exists between you and the Agency as a result of your use of these services. You agree not to hold yourself out as a representative, agent or employee of the Agency. You agree that the Agency will not be liable by reason of any representation, act or omission to act by you.
- 1.10.8. The Agency reserves the right to revise, alter, modify or amend these terms and conditions, and any of our other policies and agreements at any time and in any manner without prior notification. Notice of any revision, amendment, or modification will be posted in accordance with our Terms and Conditions.
- 1.10.9. If any of the provisions of this Agreement are judged to be illegal or unenforceable, the remainder shall continue in full force and the effect of the remainder of them will be not be deemed to be prejudiced.
- 1.10.10. This Agreement takes effect on the date on which you order our services. Acceptance of these terms is an absolute condition of the Client requesting work. An order constitutes acceptance of all our Terms and Conditions.
- 1.10.11. You shall not assign this Agreement or any benefits or

interests arising under this Agreement without the Agency's prior written permission.

1.11 Service Level Agreements

- 1.11.1. The hours provided in Service Level Agreements (SLA) can be used in any way, other than for fixed costs and essential services – such as web hosting or advertising placement – or towards payment of debts or existing/quoted jobs.
- 1.11.2. Once an account handler at the Agency has been given a job brief as part of the SLA, should the work take longer than 30 minutes, we will endeavour to provide a total estimate of how long the job will take for approval by the Client before any work is commenced.
- 1.11.3. For each job requested by the Client as part of the SLA, a minimum of 15 minutes will be deducted from the remaining SLA time allowance.
- 1.11.4. All hours worked as part of an SLA are recorded and can be forwarded to the Client on request.
- 1.11.5. Once a Client approaches the final two hours of their SLA allowance, the Agency will endeavour to notify them automatically via email, providing the opportunity to purchase another SLA.
- 1.11.6. Any hours that have not been used within the initial 12 months after purchase will roll over to the following year, up to a maximum of 24 months. However, although the Agency reserves the right to increase the hourly rate as business needs dictate, the hours in an SLA will be honoured at the original rate at which they were purchased for one year, after which time, any roll-over hours will be applied to subsequent years at the new hourly rate.

Print Terms & Conditions

2.1 Proofing

- 2.1.1. After initial design and layout, a mono proof will be submitted for author's corrections to be identified. These corrections will be carried out inclusive of the quoted price. On approval of a second mono proof, again inclusive of the quoted price, the design will be classed as complete, where a final colour proof will be provided for full Client sign off. Any additional author's corrections requested after the second mono proof is submitted will be charged at our normal rate of £65 per hour and £5 for each colour A3 proofing page printed.

2.2 Print

- 2.2.1. Standing matter and printers' materials of any kind are effaced or disposed of immediately after the order is executed unless written arrangements are made for retention in advance.
- 2.2.2. The Agency shall not be required to work to tolerances closer than those applicable to the materials obtained by him in the ordinary course of trade. No liability shall arise from variation in the standard, quality and performance of such materials.
- 2.2.3. Every endeavour will be made to deliver the correct quantity ordered, but estimates are conditional upon margins of 5% for work in one colour and 10% for other work being allowed for overs or shortage (4% and 8% respectively for quantities exceeding 50,000) the same to be charged or deducted.

2.3 Materials supplied by the Client

- 2.3.1. The Agency will not be responsible for imperfect work caused by defects in or unsuitability of material and equipment supplied by the Client. The Agency will not be responsible for Client's material wasted in course of production. Extra costs incurred through the use of defective materials or equipment supplied are for the Client's account.
- 2.3.2. The Agency may reject any paper, plates or other materials supplied or specified by the Client which appear to them to be unsuitable. Additional cost incurred if materials are found to be unsuitable during production may be charged except that if the whole or any part of such additional cost could have been avoided but for unreasonable delay by the Agency in ascertaining the unsuitability of the materials then that amount shall not be charged to the Client.
- 2.3.3. Quantities of materials supplied by the Client shall be adequate to cover normal spoilage.

2.4 Machine Readable Codes

- 2.4.1. In the case of machine readable codes or symbols, the Agency shall print the same as specified or approved by the Client in accordance with generally accepted standards and procedures.
- 2.4.2. The Client shall be responsible for satisfying themselves that the code or symbol will read correctly on the equipment likely to be used by those for whom the code or symbol is intended.
- 2.4.3. The Client shall indemnify the Agency against any claims by any party resulting from the code or symbol not reading or not reading correctly for any reason, except to the extent that such claim arises from any failure of the Agency to comply with any of the above which is not attributable to error falling within the tolerances generally accepted in the trade in relation to printing of this sort.

2.5 Delivery

- 2.5.1. Goods will be dispatched or must be collected by the Client when ready and the Client shall not refuse or delay delivery.
- 2.5.2. Advice of damage, delay or partial loss of goods in transit or of non-delivery must be given in writing to the Agency and the carrier within three clear days of delivery (or, in the case of non-delivery, within 28 days of despatch of the goods) and any claim in respect thereof must be made in writing to the Agency and the carrier within seven days of delivery (or, in the case of non-delivery, within 42 days of despatch). All other complaints and claims must be made in writing to the Agency within 28 days of delivery. The Agency shall not be liable in respect of any claim unless the aforementioned requirements have been complied with except in any particular case where the Client proves that it was not possible to comply with the requirements and advice (where required) was given and the claim made as soon as reasonably possible.
- 2.5.3. Goods completed but not delivered shall thereupon forthwith become due and payable. Moreover after the expiration of 14 days notice the Agency may exercise a general lien on all the Client's goods and property in our hands and may dispose of such goods and property as they see fit and apply the proceeds towards such debts. The Agency may also elect to cancel further work and/or not produce any unmade balance of such contract and recover from the Client any losses

sustained by so doing.

- 2.5.4. The Agency shall not be liable for any loss to the Client arising from delay in transit howsoever caused.
- 2.5.5. The risk in the goods passes to the Client upon delivery (whether to the Client or to a common carrier) but legal and beneficial ownership shall remain with the Agency until payment in full has been received (each delivery being considered as a whole). Until the date of payment the Client, if so required by the Agency, shall store the goods in such a way that they are clearly identifiable as the property of the Agency.

Digital Media Terms & Conditions

3.1 Programming

- 3.1.1. The Agency can only program sites to be as secure as reasonably possible at the time of delivery and can not offer indemnity against future threats/developments.
- 3.1.2. Once the Agency has deemed a project to be complete, any amendments will be charged at the Agency's standard billing structure of £65/hour.
- 3.1.3. The Agency develops websites for compatibility with the current version of Microsoft Internet Explorer: not all previous versions or every browser. If further compatibility is required, the Agency must be advised at the outset.

3.2 Ownership

- 3.2.1. The ownership of the web pages and copyright therein shall remain with the Agency until payment in full has been received for all sums owing. Once payment has been received, ownership and copyright shall pass to the Client for page text and graphics specific to the Client.
- 3.2.2. Ownership of all code used in processing web pages shall remain with the Agency and it is expressly agreed that the use of such code in processing the web pages does not confer any passing of title from the Agency to the Client.

3.3 Content

- 3.3.1. The Client shall supply the copy for your web pages in clear and usable permanent or electronic form and shall be entirely responsible for the content of the web pages.
- 3.3.2. All images uploaded to websites by the Client (via CMS, FTP or other) should be optimised (compressed file size). The Agency can provide advice on the best image editing software packages, but accepts no responsibility for the performance or compatibility of third-party software, or the results they produce.
- 3.3.3. When a test link is provided, it is the responsibility of the Client to test the functionality, read and check all copy, as well as approve the design and images used before approval is given.
- 3.3.4. The Agency can provide legal disclaimers and privacy policies; but it is the responsibility of the Client to confirm with their own legal advisers that these meet their individual requirements, as The Agency accepts no responsibility for their accuracy, relevance or currency.



Website Hosting and Email Terms & Conditions

Summary

The Agency offers website hosting and database hosting services through the use of third party providers and is subject to requirements set out in these terms and conditions and any other relevant terms and conditions, policies and notices which may be applicable to the supply of hosting services.

Below is a summary of the main points covered in these terms:

Whilst we and our suppliers will always endeavour to give you the best possible level of service, we cannot guarantee 100% availability of service. The Agency and our suppliers accept no responsibility for any losses caused through a loss of service.

Your service will be removed if you fail to pay in time or misuse the service.

The Agency will not be liable for any costs to restore your service once it has been removed. Specifically, any websites with databases will require reprogramming once they have been removed from their original server. Any work undertaken by the Agency at the request of the Client will be charged at our standard rate of £65 per hour, including investigations regarding problems or loss of service that are not due to the Agency or our suppliers. The Agency should only be contacted after you and your IT professional/advisor have established that any problems are not due to you or your systems.

4.1 Website & Email Content & Use

4.1.1. We make no representation and give no warranty as to the accuracy or quality of information received by any person via the Server and we shall have no liability for any loss or damage to any data stored on the Server. You warrant the accuracy, truthfulness and reliability of any information (including, where applicable, statements of opinion or advice) which you place or allow to be placed on your web pages. You warrant that you are authorised to promote and/or provide any information which you promote and/or provide on your web pages (for example if you are providing financial information, that you hold any necessary authorisation under all relevant legislation including the Financial Services Acts).

4.1.2. You represent, undertake and warrant to us that you will use the website allocated to you only for lawful purposes. In particular, you represent, warrant and undertake to us that:

4.1.2.1. You will not use the Server in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will you authorise or permit any other person to do so.

4.1.2.2. You will not host, post, publish, disseminate, link to or transmit:

4.1.2.2.1. Any material or information which is unlawful, infringing, threatening, abusive, malicious, defamatory, obscene, indecent, blasphemous, profane or otherwise objectionable in any way.

4.1.2.2.2. Any material containing a virus or other hostile computer program.

4.1.2.2.3. Any material or information which constitutes, or encourages the commission of a criminal offence, or which threatens, harasses, stalks, abuses, disrupts or violates the legal rights (including rights of privacy and publicity) of others, or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.

4.1.2.3. You will not send bulk email, whether opt-in or otherwise, from our network. Nor will you promote a site hosted on our suppliers network using bulk email.

4.1.2.4. You will not employ programs which consume excessive system resources, including but not limited to processor cycles and memory.

4.1.2.5. You shall observe the procedures which we may from time to time prescribe and you shall make no use of the Server which is detrimental to other customers.

4.1.2.6. You shall procure that all mail is sent in accordance with applicable legislation (including data protection legislation) and in a secure manner.

4.1.2.7. In the case of an individual User, you warrant that you are at least 16 years of age and if the User is a company, you warrant that the Server will not be used by anyone under the age of 16 years.

4.1.2.8. You are entirely responsible for any civil or criminal liability that is incurred as a result of any use of your web pages. If you post or allow to be posted a defamatory or libellous message, it is you that will be deemed to have published it and you shall be liable for the consequences of it.

4.1.3. We and our suppliers reserve the right to remove any material which they deem inappropriate from your web site without notice (specifically, but not restricted to, WareZ and illegal MP3 content).

4.1.4. If you advertise or offer to sell goods or services via your web pages, you undertake to provide goods in conformity with any description and warranties made. You agree to comply with all relevant legislation including Advertising and Broadcast regulations, Consumer Credit Acts and Trades Descriptions Acts. If you are advertising goods in the course of a trade or business this must clearly be so stated.

4.2 Charges

- 4.2.1. All charges payable by you for the Services shall be in accordance with the scale of charges and rates published from time to time by us and shall be due and payable in advance of their service provision without any set-off or other deduction. We reserve the right to change pricing at any time, although all pricing is guaranteed for the current subscription period.
- 4.2.2. Payment is due each anniversary month, quarter or year following the date the Services were established until closure notice is given.
- 4.2.3. Without prejudice to our other rights and remedies under this Agreement, if any sum payable is not paid on or before the due date, we shall be entitled forthwith to suspend or terminate the provision of Services to you.
- 4.2.4. If an account goes unpaid for at least ten days, the account and its associated services are suspended. A charge will be applied upon account reactivation to cover administration costs, based on our standard hourly charge of £65. An estimate of this cost will be given prior to any work being undertaken.
- 4.2.5. Once an account has been suspended, access to files, databases and other content is explicitly denied. After an account has been suspended for 10 days it will be terminated, with all files, databases and other content - including the account itself - permanently deleted.
- 4.2.6. Should access to files, databases and other content be required before they are deleted, account reactivation will be required, incurring a reactivation charge based on our standard hourly rate of £65.
- 4.2.7. The Agency's pricing is based on the Client's site generating accesses (using bandwidth) roughly in proportion to the number of pages on the site. Should accesses to your site increase beyond a reasonable level, The Agency and our suppliers reserve the right to make additional charges at any time.

4.3 Investigation Charges

- 4.3.1. Any investigations undertaken by the Agency at the request of the Client into perceived problems, such as loss of service, where it is subsequently found that the Agency or our suppliers are not at fault, will be charged at £65 per hour. We therefore suggest that the Agency is only contacted after the Client and their IT professional/advisor have fully established that any problems are not due to your systems or actions.

4.4 Security

- 4.4.1. Any access to other networks connected to the Agency or our suppliers must comply with the rules appropriate for those other networks.
- 4.4.2. While our suppliers will use every reasonable endeavour to ensure the integrity and security of the Server, neither we nor our suppliers guarantee that the Server will be free from unauthorised users or hackers and neither we nor our suppliers shall be under any liability for non-receipt or misrouting of email or web traffic, or for any other failure of email or websites. Your data pages may not be secure against hackers and you take that risk. If you find evidence of infiltration, you must notify the Agency immediately so

that your server can be taken offline until any vulnerabilities are fixed. The Agency can provide an estimate of the work required to fix any vulnerabilities if required.

- 4.4.3. The Agency and our suppliers shall take reasonable care to avoid introducing computer viruses to your computer systems and shall not be liable to you by reason of any virus unknowingly introduced to your system by it for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or any claims which arise out of or in connection with such introduction of a computer virus.
- 4.4.4. The Client shall effect and maintain adequate insurance cover in respect of any loss of service, or loss or damage to data stored on the Server.
- 4.4.5. The Client shall keep secure any identification, password and other confidential information relating to your account and shall notify us immediately of any known or suspected unauthorised use of your account or breach of security, including loss, theft or unauthorised disclosure of your password or other security information.

4.5 Service Availability

- 4.5.1. Our suppliers shall use their reasonable endeavours to make available to you at all times the Server and the Services but neither we or our suppliers shall, in any event, be liable for interruptions of Service or down-time of the Server.
- 4.5.2. The Agency and our suppliers shall have the right to suspend the Services at any time and for any reason, generally without notice, but if such suspension lasts or is to last for more than 7 days you will be notified of the reason in writing.
- 4.5.3. No backups of any files, databases or any other content will be made unless explicitly requested (with time taken to carry out requested backups charged at the standard rate of £65 per hour) or as part of our automated backup service (£45 for 12 months).

4.6 Termination

- 4.6.1. The Agency expressly reserves the right to terminate or suspend your subscription without prior notice should you fail to comply with any clause within these Terms and Conditions or should the Agency or our suppliers deem such action necessary where legal proceedings are threatened or issued regarding the form or content of your web pages and in such circumstances the Agency will confirm such termination or suspension by subsequent notice.
- 4.6.2. No refunds will be made for Services suspended and/or terminated. Where the Agency or our suppliers terminate or suspend your subscription in reliance upon your breach of Agreement, or you terminate your subscription, you will not be entitled to any refund of any 'unused' part of your subscription.
- 4.6.3. If you are a company and you go into insolvent liquidation or suffer the appointment of an administrator or administrative receiver or enter into a voluntary arrangement with your creditors, we shall be entitled to suspend the Services and/or terminate this Agreement forthwith without notice to you.
- 4.6.4. We reserve the right to suspend the Services and/or terminate this Agreement at any time.
- 4.6.5. You may cancel the Services at any time, upon ninety (90)



days' notice and providing that all charges have been paid.

- 4.6.6. On termination of this Agreement we shall be entitled to immediately block your Website and to remove all data located on our servers.
- 4.6.7. The agency shall not be liable for any consequential loss whatsoever in relation to termination of your account in any circumstances.



Intellectual Property

1 Terms

1. Defined Terms In these Terms and Conditions, "Artist", "Artwork", "Territory", "Period", "Licensed Goods", "Licensed Use", "Customer", "Fee", "Royalty" "Delivery Date", "Return Date", and "Credit Line" have the meanings given to them in the Particulars in the invoice or your quotation.

"Collaborate" means Collaborate Agency Limited and acting as representative for other creatives involved in the Artwork and Licenced Goods..

2 Licence

- 2.1 Subject to the payment of the Fee and the Royalty by the Customer to Collaborate when due, Collaborate grants to Customer a non-exclusive/exclusive licence to reproduce the Artwork solely for the purposes of the manufacture, distribution and sale of the Licensed Goods or for the purposes of the Licensed Use (as appropriate) in the Territory for the Period, or until earlier termination of this licence in accordance with the provisions of clause 9 below. In the case of a licence to manufacture Licensed Goods, the licence also includes the right to reproduce the Artwork in advertising and promotional material for the Licensed Goods.
- 2.2 If, at any time during the Period the Artwork has not been exploited by the Customer by way of manufacture, distribution and sale of the Licensed Goods or for the purposes of the Licensed Use for a consecutive period of 12 months, Collaborate may serve a written notice upon the Customer terminating the licence granted under clause 2.1 in respect of the Artwork which notice shall take effect upon delivery. For the avoidance of doubt Licensed Goods as stated in the particulars will relate to traditional retail models and unless stated as such excludes electronic sales and bespoke publishing via print on demand.

3 Delivery

- 3.1 Delivery of Artwork Collaborate shall use its reasonable endeavours to procure the delivery of the Artwork to the Customer by the Delivery Date. Time shall not be of the essence for the purpose of this clause and, Collaborate shall not be liable for any loss (including without prejudice to the generality of foregoing any consequential loss or loss of profits) incurred by the Customer if delivery of the Artwork is not made by the Delivery Date.

4 Payment

- 4.1 The Customer shall pay the Fee to Collaborate by the end of the calendar month following the month in which Collaborate's invoice is issued which Fee shall be on account of Royalties due to Collaborate under clause .
- 4.2 In addition to the payment of the Fee, the Customer shall pay to Collaborate the Royalty which shall be calculated as a percentage of the Net [Wholesale][Retail] Price of all the Licensed Goods sold or otherwise disposed of by the

Customer during the Period. The Net [Wholesale][Retail] Price of the Licensed Goods shall be the [wholesale][retail]price, excluding Value Added Tax, at which the Licensed Goods are sold [by the Customer to the retailer][to the public].

- 4.3 The Customer shall pay interest to Collaborate on any late payments of the Fee or Royalty at the rate of 4% per annum over Barclays Bank PLC base rate from time to time from the date such payment fell due until receipt by Collaborate of the full amount due, whether before or after judgement.4.4 All payments to be made under this licence shall be exclusive of VAT and any applicable VAT shall be paid in addition to such payments upon production of a valid VAT invoice.

5 Records and Inspection

- 5.1 The Customer shall keep true and accurate accounts and records of the sale and disposal of all Licensed Goods and the aggregate Net Retail Price received in respect thereof together with any other information relevant to the computation of the Royalty. The Customer shall within 14 days of the end of each [calendar month/quarter] during the Period send to Collaborate a full statement showing the number of Licensed Goods sold or otherwise disposed of during that period, and the aggregate Net Retail Price in respect thereof, together with a remittance for the Royalty due to Collaborate.
- 5.2 The Customer shall, on request, allow Collaborate, or its auditors, to inspect, audit and take copies of the Customer's accounts and records insofar as necessary to verify sales and other disposals of the Licensed Goods and the aggregate of the Net Retail Price in respect thereof and the Royalty due to Collaborate. If the sums paid by the Customer to Collaborate are less than the amount certified as due by such auditors, the Customer shall pay the outstanding balance and (if the said balance exceeds £1,000 or 10% of the amount due, whichever is the smaller) the auditor's fees to Collaborate within seven (7) days of the date of the auditors' certificate.
- 5.3 All sums shall be paid in full without deductions except only for such tax as the Customer is legally bound to withhold. The Customer shall provide official tax receipts in respect of such deductions and shall provide all documentation in relation to the withholding that Collaborate requires in order to recover the withheld tax.

6 Return of Artwork

- 6.1 Return of Artwork The Customer shall return the Artwork to Collaborate by the Return Date.

7 Loss of Artwork

- 7.1 Risk in the Artwork shall pass to the Customer at the time of despatch to you from Collaborate or the Artist(as applicable). The Artwork shall remain at the Customer's risk until it has been returned to and received by Collaborate in accordance with the terms of clause 6.

8 Quality of Licensed Goods



8.1 The Customer shall ensure that any reproductions of the Artwork for the Licensed Use shall be of first class technical and pictorial quality and that the Licensed Goods are manufactured to a high standard of quality and shall, if requested by Collaborate, submit samples of the Licensed Goods to Collaborate for their approval prior to any distribution, sale or disposal of any Licensed Products. If such approval is requested, no Licensed Goods shall be distributed or sold by the Customer without such prior written approval.

8.2 The Customer shall comply with all applicable laws, safety standards, codes and regulations relating to the manufacture, sale, distribution or other dealing with the Licensed Goods in the Territory.

9 Termination and Consequences of Termination

9.1 Collaborate may terminate the Licence immediately by notice in writing at any time to the Customer if:(a)the Customer commits a material breach of any of the terms or conditions of this Licence unless such breach is remedied (if capable of remedy) within fourteen (14) days of notice given by Collaborate requiring the Customer to do so;(b) if the Customer enters into a deed of arrangement or commits an act of bankruptcy or compounds with its creditors or if a receiving order is made against the Customer or if (being a company) an order is made or a resolution is passed for the winding up of the Customer or for the appointment of an administrator to manage the Customer's affairs, business and property or if a receiver is appointed of any of the Customer's assets or undertaking or if circumstances arise which entitle the Court to make a winding-up order.

9.2 Upon the termination or expiration of this Licence for any reason all Royalty and other monies accrued due hereunder shall become immediately due and payable to Collaborate and, subject to clause 10.1, the Customer shall within thirty (30) days deliver to Collaborate or otherwise dispose of in accordance with the directions of Collaborate the Artwork, all Licensed Goods, samples thereof and any advertising, promotional or sales material relating to the Licensed Products then in the possession of the Customer. The Customer shall cease to manufacture, distribute, advertise or sell the Licensed Products.

9.3 Upon termination or expiration of this Licence subject to any rights or obligations which have accrued prior to termination and to the continued existence and validity of the rights and obligations of the parties under those clauses which are expressed to survive termination and any provisions of this Agreement necessary for the interpretation or enforcement of this Agreement, neither party shall have any further obligation to the other under this Agreement.

9.4 Upon termination or expiration of this Licence other than in accordance with the provisions of clause 9.1, the Customer shall be entitled for a period of up to 6 months following such termination or expiration, to distribute, sell and deal any Licensed Goods in its possession and manufactured prior to the date of termination or expiration. For the avoidance of doubt, Royalties shall be due to Collaborate on any Licensed Goods sold or otherwise disposed of during

this period.

10 Alterations

- 10.1 The Customer shall not in any way modify, alter, amend or adapt the Artwork or permit the Artwork to be altered, amended, adapted or modified in any way.
- 10.2 The Customer shall not use the Artwork in anything other than its original form save that the Customer may overprint text on reproductions of Artwork and apply colour enhancement to reproductions of the Artwork.

11 Artist

11. The Customer hereby acknowledges that Collaborate has been appointed as the Artist's sole agent in respect of the exploitation of the Artwork and all and any other artistic works created by the Artist and the Customer hereby agrees that if the Customer wishes to acquire an additional licence to reproduce and exploit such Artwork and other artistic works the Customer shall acquire such a licence from Collaborate and not from the Artist directly.

12 Assignability

- 12.1 In the case of a non-assignable licence, this licence is personal to the Customer, and the Customer shall not assign its rights or obligations hereunder to a third party save that if the Customer is a company, this licence may be assigned to another company within the same group. For purposes of this clause, "group" has the same meaning as in Section 42 of the Landlord & Tenant Act 1954. In case of an assignable licence, the Customer may assign the benefit of this Licence to a third party.

13 Liability and Indemnity

- 13.1 Collaborate shall not be liable to the Customer for any loss or damage suffered or incurred by the Customer as a result of the Artwork or the Licensed Goods breaching any copyright, intellectual property rights or any other rights of any third party.
- 13.2 The Customer shall indemnify Collaborate and hold it harmless against any costs, claims, damages, demands, liabilities or expenses (including legal expenses) awarded against or incurred or paid by Collaborate arising out of or in connection with any breach by the Customer of any of its obligations under this Agreement

14 Export Duties

- 14.1 The Customer is responsible for any customs, duties or local taxes in whatever form incurred, and Collaborate does not accept any liability for these charges.

15 Credit Line and Copyright Notice

- 15.1 The Customer hereby agrees that the Credit Line shall be included on all Licensed Goods. Collaborate hereby asserts on behalf of the Artist, the Artist's right to be identified as the author of the Artwork in accordance with Sections 77 and 78 of the Copyright, Designs and Patents Act 1988. 15.2 Each and everyone of the Licensed Goods including the packaging, advertisements and other related material shall contain such copyright notices as shall be required and/or approved by Collaborate.



16 Warranties

- 16.1 Collaborate warrants: (a) it is the exclusive Licensee of the Artwork and entitled to enter into this licence;(b) to the best of its knowledge and belief the Artwork does not infringe the copyright or any other right of any other person;(c) to the best of its knowledge and belief the does not contain any defamatory or obscene statement or matter; and(d) it has not previously licensed, assigned, granted or in any way encumbered the Artwork so as to derogate from the licence hereby granted.

17 Severability

- 17.1 If any provision of these terms and conditions is declared by court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions.

18 Entire Agreement and Variation

- 18.1 This Agreement supersedes all prior agreements, negotiations and discussions between the parties relating thereto. No amendment or other variation to this Agreement shall be effective unless it is in writing and is signed by or on behalf of each of the parties.

19 Notices

- 19.1 All notices required or permitted under this Agreement shall be in written form and shall be sent to the addresses set out in the Particulars to which these Terms and Conditions are attached and shall be given by personal delivery, post or transmitted by facsimile and if sent by post shall be deemed to have been delivered (in the case of internal UK post) 48 hours after despatch and in proving the fact of despatch it shall be sufficient to show that the envelope containing such notice was properly addressed stamped and posted, if delivered personally shall be deemed to have been delivered when it is received and in the case of notices sent by facsimile, when it has been successfully transmitted.

20 Governing Law

- 20.1 This Licence shall be governed by and construed in accordance with the laws of England and the parties submit to the jurisdiction of the English Courts.